

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

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DENZEL DORSEY,	)		Electronically Filed
#1099468,	)		Jun 10 2020 03:13 p.m.
	)		Elizabeth A. Brown
Appellant,	)	CASE NO.: 79845	Clerk of Supreme Court
v.	)	<b>E-FILE</b>	
STATE OF NEVADA,	)	D.C. Case No.: C-17-323324-1	
Respondent.	)	Dept.: XV	
_____	)		

**APPELLANT'S APPENDIX VOLUME II of II**

**This is an Appeal from a Judgment of Conviction After a Guilty Plea**

**Eighth Judicial District Court, Clark County**

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...

Counsel for Appellant

Counsel for Respondent

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[3-13-2018] (06/14/2018)

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**CERTIFICATE OF SERVICE**

I certify I am an assistant to Terrence M. Jackson, Esquire; a person competent to serve papers, not a party to the above-entitled action and on the 10th day of June, 2020, I served a copy of the foregoing: Appellant's Opening Brief and the Appendix and Index, Volume I and II, as follows:

[X] Via Electronic Service to the Nevada Supreme Court, to the Eighth Judicial District Court, and by U. S. mail with first class postage affixed to the Nevada Attorney General and the Petitioner/Appellant as follows:

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By: /s/ Ila C. Wills  
Assistant to T. M. Jackson, Esq.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT  
CRIME ANALYSIS SUPPLEMENTAL FORM -- SUSPECT / SUBJECT INFORMATION

PAGE 1 OF 2

URN 918-13675-1182-0001

BY DEP Klauson, J

EMPLOYEE # 4625757

SUSPECT # \_\_\_\_\_ NAME \_\_\_\_\_

SUSPECT # \_\_\_\_\_ NAME \_\_\_\_\_

CLOTHING DESCRIPTION	
ITEM TYPE	DESCRIPTION

ITEM TYPES  
CAP / HAT  
COAT / JACKET  
DRESS / SKIRT  
GLASSES  
GLOVES  
JEWELRY  
PANTS  
SHIRT / BLOUSE  
SHOES  
SHORTS  
OTHER

CLOTHING DESCRIPTION	
ITEM TYPE	DESCRIPTION

L	R	UNK	BODY PART	SCARS / MARKS / TATTOOS / ODDITIES

☐ SUSPECTED GANG MEMBER NAME OF GANG \_\_\_\_\_

L	R	UNK	BODY PART	SCARS / MARKS / TATTOOS / ODDITIES

☐ SUSPECTED GANG MEMBER NAME OF GANG \_\_\_\_\_

HAIR LENGTH  
☐ COLLAR  
☐ LONG  
☐ SHORT  
☐ SHOULDER

HAIR TYPE  
☐ BALD  
☐ RECEDING  
☐ THICK  
☐ THINNING  
☐ WIG

HAIR STYLE  
☐ AFRO / NATURAL  
☐ BRAIDED / DREADLOCKS  
☐ BUSHY  
☐ BUTCH  
☐ COMBED BACK  
☐ CURLERS  
☐ CURLY  
☐ FLAT TOP  
☐ GREASY  
☐ JHERI CURL  
☐ MILITARY  
☐ NETS  
☐ PONY TAIL  
☐ PROCESSED  
☐ PUNK  
☐ SHAVED  
☐ STRAIGHT  
☐ WAVY

COMPLEXION  
☐ ACNE / POCKED  
☐ ALBINO  
☐ DARK  
☐ FRECKLED  
☐ LIGHT / FAIR  
☐ MEDIUM  
☐ PALE  
☐ RUDDY  
☐ SALLLOW  
☐ TANNED  
☐ WEATHERED  
☐ WRINKLED

FACIAL HAIR  
☐ BEARD  
☐ CLEAN SHAVEN  
☐ FUZZ  
☐ GOATEE  
☐ LOWER LIP  
☐ MOUSTACHE  
☐ SIDE BURNS  
☐ UNSHAVEN

TEETH  
☐ BROKEN / CHIPPED  
☐ BRACES  
☐ BUCK  
☐ CROOKED  
☐ DECAYED  
☐ FALSE  
☐ GAP / SPACE  
☐ GOLD CAP  
☐ JEWELLED  
☐ MISSING  
☐ NONE  
☐ SILVER CAP  
☐ STAINED

SPEECH  
☐ ACCENT  
☐ DISGUISE  
☐ LISPS  
☐ MUMBLES  
☐ RAPID  
☐ RASPY  
☐ SLOW  
☐ SLURRED  
☐ STUTTER

HANDS  
☐ LEFT  
☐ RIGHT  
☐ BOTH

WEAPON  
FIREARM  
Style:  
☐ MULTIPLE  
☐ BB / PELLET  
☐ HANDGUN  
☐ RIFLE  
☐ SAWED-OFF  
☐ SHOTGUN  
☐ SIMULATED  
☐ ZIP GUN  
Action:  
☐ DERRINGER  
☐ FULLY AUTO  
☐ PUMP  
☐ REVOLVER  
☐ SEMI AUTO  
☐ SINGLE SHOT

Barrel Type:  
☐ SINGLE BARREL  
☐ DOUBLE BARREL  
☐ THREE BARREL  
☐ 4 OR MORE BARREL

Color / Finish:  
☐ BLUE STEEL  
☐ CHROME / NICHEL  
☐ DULL BLACK  
☐ RUSTED  
☐ STAINLESS STEEL

Grip / Stock:  
☐ ALTERED  
☐ BONE / PEARL / IVORY  
☐ COLLAPSES / FOLDS  
☐ METAL / PLASTIC  
☐ NO GRIP  
☐ RUBBER / VINYL  
☐ TAPED  
☐ THUMB HOLE  
☐ WOOD  
☐ GAUGE  
☐ CALIBER \_\_\_\_\_

KNIFE  
Style:  
☐ MULTIPLE  
☐ BUCK  
☐ BUTCHER / KITCHEN  
☐ DIRK / DAGGER / STILETTO  
☐ HUNTING / BOWIE  
☐ SIMULATED  
☐ SWITCHBLADE  
☐ TOY  
Blade:  
☐ FIXED  
☐ FOLDING

CHEMICAL  
☐ CAUSTIC  
☐ INFECTIOUS  
☐ MACE  
☐ PEPPER SPRAY  
☐ SIMULATED  
☐ TEAR GAS  
☐ TOXIC

BLUNT INSTRUMENT  
☐ BASEBALL BAT  
☐ BILLY CLUB  
☐ BRASS KNUCKLES  
☐ BRICK / ROCK / BOTTLE  
☐ CLUB / BLUDGEON  
☐ HAMMER / TOOL  
☐ NUNCHAKUS  
☐ TIRE IRON

CUT / STAB  
☐ BAYONET / SWORD  
☐ BOTTLE / GLASS  
☐ ICE PICK  
☐ MACHETE  
☐ RAZOR  
☐ SCREWDRIVER  
☐ THROWING STARS

EXPLOSIVE / INCENDIARY  
☐ FIREWORKS  
☐ MOLOTOV COCKTAIL

OTHER WEAPON  
☐ BODILY FORCE  
☐ LIGATURE  
☐ SLUNG SHOT  
☐ SYRINGE  
☐ TASER / STUN GUN

RELATIONSHIP OF VICTIM TO SUSPECT:

VS \_\_\_\_\_ VS \_\_\_\_\_ ACQUAINTANCE  
VS \_\_\_\_\_ VS \_\_\_\_\_ BABYSITTEE  
(PERSONS WATCHED / BABY)  
VS \_\_\_\_\_ VS \_\_\_\_\_ BOYFRIEND / GIRLFRIEND  
VS \_\_\_\_\_ VS \_\_\_\_\_ CHILD  
VS \_\_\_\_\_ VS \_\_\_\_\_ CHILD OF BOYFRIEND  
OR GIRLFRIEND  
VS \_\_\_\_\_ VS \_\_\_\_\_ COMMON - LAW SPOUSE  
VS \_\_\_\_\_ VS \_\_\_\_\_ EMPLOYEE  
VS \_\_\_\_\_ VS \_\_\_\_\_ EMPLOYER  
VS \_\_\_\_\_ VS \_\_\_\_\_ EX - SPOUSE  
VS \_\_\_\_\_ VS \_\_\_\_\_ FRIEND  
VS \_\_\_\_\_ VS \_\_\_\_\_ GRANDCHILD  
VS \_\_\_\_\_ VS \_\_\_\_\_ GRANDPARENT  
VS \_\_\_\_\_ VS \_\_\_\_\_ HOMOSEXUAL RELATIONSHIP  
VS \_\_\_\_\_ VS \_\_\_\_\_ IN - LAW  
VS \_\_\_\_\_ VS \_\_\_\_\_ NEIGHBOR  
VS \_\_\_\_\_ VS \_\_\_\_\_ OTHER FAMILY MEMBER  
VS \_\_\_\_\_ VS \_\_\_\_\_ OTHERWISE KNOWN  
VS \_\_\_\_\_ VS \_\_\_\_\_ PARENT  
VS \_\_\_\_\_ VS \_\_\_\_\_ RELATIONSHIP UNKNOWN  
VS \_\_\_\_\_ VS \_\_\_\_\_ SIBLING (BROTHER OR SISTER)  
VS \_\_\_\_\_ VS \_\_\_\_\_ SPOUSE  
VS \_\_\_\_\_ VS \_\_\_\_\_ STEPCHILD  
VS \_\_\_\_\_ VS \_\_\_\_\_ STEPPARENT  
VS \_\_\_\_\_ VS \_\_\_\_\_ STEPSIBLING  
(STEPBROTHER OR STEPSISTER)  
VS \_\_\_\_\_ VS \_\_\_\_\_ VICTIM WAS OFFENDER  
VS \_\_\_\_\_ VS \_\_\_\_\_ VICTIM WAS STRANGER

INCIDENT HISTORY REPORT  
LANCASTER

Station: LAN Incident Date: 07/10/18 Tag #: 247 Incident #: LAN18191-0247  
/1258 ENTRY (625936) INCIDENT, [REDACTED] LAN X 40W/L,,459R,,,,,GREG,, [REDACTED]  
[REDACTED] UNKN DP BROKE INTO LOC THROU, GH FRONT DOOR AND TOOK ITEMS, OC, CD BTWN 1030-1230HRS  
IAD 2-3H, RS,,, LAN,,,,, LAN05  
/1258 ASSIGN/D (513022) 113A/D #468751 WILSON #506559 SCHANK JR  
/1300\* ACK (468751) 113A/D <000>  
/1401\* ENR (468751) 113A/D <000>  
/1411\* 10/97 (468751) 113A/D <000>  
/1435\* URN REQUEST (468751) X, 1182, 064, CR, V, FISHER, DONALD,,, M, W, 247,, <000>  
/1435 URN () 918-13675-1182-064  
/1535\* 10/98 (468751) 113A/D <000>  
/1535\* CLEAR (468751) 113A/D,,, 064,,,,, C/ MR FISHER MW/A RE 459 RPT,, 18-13675-  
11,,,, 1182, 01,,,,, <000>  
/1601 OKI (503666)

PROPERTY OF THE MISSOURI STATE DEPARTMENT - SUPPLEMENTARY LOSS REPORT

DATE 7/10/18

FILE 98-13675-1182-064

TIME 9:59 PM Burglary

ADDITIONAL PROPERTY LOSS

CTIM - Fisher x3  
(Home and address)

LIST ADDITIONAL PROPERTY OF THE REPORTING PARTY, INCLUDING ITEMS WITH SERIAL NUMBERS, OTHER ITEMS.

QTY.	ARTICLE	MODEL NO.	MISC. DESCRIPTION (EG COLOR, SIZE, INSCRIPTION, CALIBER, REVOLVER, ETC.)	DOLLAR VALUE
00	100 dollar Bills		Cash	50,000
00	20 dollar Bills		Cash	4,000
50	10 dollar Bills		cash	500
00	5 dollar Bills		cash	500
000	quarters Rolled		cash	3000.00
30	Series E Bonds		purchased @ 100 each	3,000.00
7	Pink Slips	2009	Water Truck	
		2009	Water Truck	
		1996	Water Truck	
		2005	Jeep	
		2012	Silver ADO	
		1948	Ford	
		2014	ALLEGRO	
3	Social Cards		Donald R Fisher	
			Barbara A Fisher	

FOR DEPARTMENTAL USE ONLY

TYPE OF PROPERTY	PROPERTY	REMARKS	RECOVERED
OTHER/FURS			
VALUABLE GOODS			
WEAPONS/NOTES			
ARMED			
HOUSEHOLD GOODS			

TOTAL ADDITIONAL LOSS \$

PERSON REPORTING (SIGNATURE)  
Markman 53506

DAYTIME PHONE NO.

MAIL OR BRING COMPLETED REPORT TO:

AA 0253





**COUNTY OF LOS ANGELES - SHERIFF'S DEPARTMENT - SUPPLEMENTARY LOSS REPORT**

DATE 7/10/18

FILE 918-13675-1182-064

CRIME 999 PC BURGLARY

Action Taken \_\_\_\_\_

/ADDITIONAL PROPERTY LOSS

VICTIM - Fisher x3  
(Name and Address)

Please read instructions on reverse before completing this form.

LIST ADDITIONAL PROPERTY LOSSES IN THIS ORDER: CURRENCY, GUNS, ITEMS WITH SERIAL NUMBERS, OTHER ITEMS.						
QUAN.	ARTICLE	RETAIL NO.	BRAND	MODEL NO.	MISC. DESCRIPTION (EG. COLOR, SIZE, INSCRIPTION, CALIBER, REVOLVER, ETC.)	DOLLAR VALUE
1	Necklace					
	Earrings	SET			Diamond	1200-
1	Necklace				Gold chain	500-
10	Bracelets				various shapes	
	Earrings	SETS			various counts	400-
1	Necklace		Purchase	1965	Pearls	350-
1	Watch	WOMENS			Gold & Diamond	175-
1	Watch	ANTIQUE		1923	Gold pocket	??
1	Mans Ring				Gold 14k & Stone	225-
2	Necklaces				Rope & chain gold	250
1	COIN				ANTIQUE GOLD	500
1	sparkle tie	Bottle	Plastic		filled with COIN	
					2.00 BILLS	2500-

**FOR DEPARTMENTAL USE ONLY**

PROPERTY TYPE					
TYPE OF PROPERTY	PROPERTY	RECOVERED	RECOVERED	RECOVERED	RECOVERED
CLOTHING/FURS					
CONSUMABLE GOODS					
CURRENCY/NOTES					
FIREARMS					
HOUSEHOLD GOODS					

TOTAL  
ADDITIONAL  
LOSS \$ \_\_\_\_\_

PERSON REPORTING (SIGNATURE)  
ON BEHALF OF VICTIM  
MARILYN J. Fisher

DAYTIME PHONE NO. \_\_\_\_\_

MAIL OR BRING COMPLETED REPORT TO:

AA 0255

FILE 918.13675.1182.064

### Action Taken

/ADDITIONAL PROPERTY LOSS

\_\_\_\_\_

LIST ADDITIONAL PROPERTY LOANED IN THIS GROUP: STOLEN U.S. CURRENCY, GUNS, ITEMS WITH SERIAL NUMBERS, OTHER ITEMS.

FOR OFFICIAL USE ONLY

TOTAL  
ADDITIONAL  
LOSS \$ \_\_\_\_\_

PERSON REPORTING (SIGNATURE)  
ON BEHALF OF V/FISHER  
X MARKMAN 535063

DAYTIME PHONE NO.: \_\_\_\_\_

MAIL OR BRING COMPLETED REPORT TO:

COUNTY OF LOS ANGELES  
SHERIFF'S DEPARTMENT

**SUPPLEMENTAL REPORT**

DATE: 07.11.18 FILE: 918.13675.1182.064 ACTION: Additional information

C: Burglary (residential) 459 PC /F/ 064

V: Fisher, Donald Gregory M/W 02.02.71

V: Fisher, Donald Roscoe M/W 08.22.35

V: Fisher, Barbara F/W 07.01.41

**NARRATIVE**

The purpose of this supplemental report is to document the contact and information relayed to me by LAPD officer Smith.

On 07.11.18 at 0650 I was contacted by LAPD Merto Division Officer Smith, Dana #38409, who informed me he had arrested a person (S/Dorsey, Denzel M/B 09.24.93) who was in possession of an animal identification tag with the name of Donald Fisher (V/1) and a contact phone number.

Officer Smith informed me he had called the victim and the victim informed him of the burglary that occurred 07.10.18. The officer informed me the animal tag, along with a sock filled with coins, and approximately 22,000.00 dollars were recovered from S/Dorsey. Officer Smith told me that S/Dorsey provided him with the name and ID of Sands, Ivan 03.24.92. It should be noted that Sands has a last address of 1600 Avon Ct. Palmdale. It is possible that the ID was left in the vehicle and Sands is a possible suspect or accomplice to the burglary.

Officer Smith told me S/ Dorsey was arrested in a rental car with the license plate number CA 7VGJ703.

I informed Officer Smith I was authoring the first report of the burglary and would be his point of contact until the case was assigned to a Detective. I informed Officer Smith I was unable to provide him with a full list of the stolen items due to the fact the victims were not home at the time of the report.

I emailed Officer Smith a copy of the first report and requested he email myself and or Detective Markman any and all report, photographs, and recording if there were any.

BY: Det. Wilson, J#468751

APPROVED: ALBERT DET BARBER 441984 7-11-18 1200 HRS

ASSIGNED: \_\_\_\_\_

SECRETARY: \_\_\_\_\_

AA 0257

# CONTINUATION SHEET

Los Angeles Police Department

PAGE NO. 2		TYPE OF REPORT Arrest				BOOKING NO. 5363194		DR NO. 1813	
ITEM NO.	QU AN	ARTICLE	SERIAL NO	BRAND	MODEL NO.	MISC DESCRIPTION (EG. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC)			DOLLAR VALUE

**Suspect: Dorsey, Denzel**      **DOB: 09/24/93**      **Charge: 496 PC – Receiving Stolen Property**

## Source of Activity:

On 07/11/16 at approximately 0005 hours, my partner Officer Smith #38409, and I, Officer Meza #38460, were assigned to Metropolitan Division, Unit R11. We were in full uniform and driving in a dual purpose blue police vehicle. We were in the area of Broadway and Slauson as we observed a vehicle in violation of 5200 (a) VC and 26708 (a) 1 VC.

Incident #180711000005

RD#1372

## Investigation:

My partner (Passenger) and I (Driver) were travelling southbound Broadway approaching Slauson Avenue when we observed a silver Mercedes (2008 Mercedes CL550, silver, 2 door, VIN #WDDEJ71X58A016519 – Suspect's Vehicle – purchased 07/10/2018 by Sanders, Ivan according to the sticker in the front windshield) with paper plates (in violation of 5200 (a) VC) and tinted front windows (in violation of 26708 (a)1 VC). I negotiated a U-turn to conduct a traffic stop on the previous mentioned violations. As I conducted our U-turn the Silver Mercedes rapidly accelerated northbound Broadway and then eastbound 55<sup>th</sup> Street. The Suspect's vehicle continued at a high rate of speed, approximately 80 miles per hour in a 35 mile per hour residential zone (in violation of 22350 VC) eastbound 55<sup>th</sup> Street until we were finally able to initiate a traffic stop at 55<sup>th</sup> Street west of Towne Avenue where Sergeant II Ramos #30916, assisted us.

I made contact with the driver (Later identified as Dorsey, Denzel) and advised him of the multiple violations that he had committed. I asked for his driver's license which he provided me with a California Drivers License (F1618728) in the name of Sanders, Ivan - date of birth: 03/24/1992. I returned to my Police Vehicle and conducted a want and warrant check via our Police Vehicle's Mobile Digital Computer (MDC). My return revealed a valid drivers license with no wants or warrants. I took a closer look at the picture on the Driver's License Dorsey provided me along with the height (603) and weight (219) and determined that the picture and descriptors did not match Dorsey (in violation of 31 VC – False information to Peace officer). I then conducted a want and warrant check on the passenger (Later identified as Clemons, Takiya - date of birth: [REDACTED] with negative results.

I advised my partner of our current status regarding Dorsey being deceitful about his true identity and Clemons lack of a return with a California Identification. We decided to remove both occupants to continue our investigation. Dorsey and Clemons exited the vehicle without incident and were detained to obtain their true identity. I spoke with Dorsey regarding his attempt to pass himself as another person in an attempt to avoid a ticket or arrest. Dorsey then provided me with the name Dorsey, Devon - date of birth: 10/11/1994. I conducted a want and warrant check with the name Dorsey, Devon and utilizing department resources obtained a photograph as well. Again, Dorsey provided me with identity belonging to another person. I advised Dorsey that he was going to be placed under arrest for 529 PC - False Personation of Another. At that point Dorsey finally gave me his true identity, Dorsey, Denzel - date of birth: 09/24/1993. I conducted a want and warrant check on Dorsey, Denzel which returned on Parole for 459 PC with search conditions, a Misdemeanor Warrant (warrant # MV117009137) and a

AA 0258

PAGE NO. 3		TYPE OF REPORT Arrest				BOOKING NO. 5363194		DR NO. 1813	
ITEM NO.	QU AN	ARTICLE	SERIAL NO	BRAND	MODEL NO.	MISC DESCRIPTION (EG. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC)			DOLLAR VALUE

suspended or revoked driver's license. Utilizing department resources, I was able to obtain a photograph of Denzel which confirmed his identity.

I conducted a parole compliance search and incident to arrest search (Misdemeanor Warrant) of the vehicle. During my search, I discovered a Nevada State Driver's License in the name of Clemons, Takiya - date of birth [REDACTED]. I conducted a want and warrant check with that information and was able to identify Clemons. I continued searching the vehicle and discovered in the back rear passenger seat directly behind the driver's seat a black, gray, and red backpack (ITEM # 6). Inside the backpack contained multiple items. United States Currency including a white sock filled with coins (pennies, nickels, dimes, quarters, and silver dollars) (ITEMS # 1 - 5 - totaling in \$22,583.04), multiple pieces of jewelry (rings, necklaces, bracelet, and earrings) (ITEMS #9 - 45, 48, 57), a dog collar tag with phone number (discovered at Newton Station inside the white sock containing the coins during itemized search) (ITEM # 8), and other miscellaneous items (including a receipt from 7-Eleven at 07/10/2018 at 9:59pm) (ITEMS # 7, 46, 47, 49 - 56, 58). Dorsey stated that the bag belonged to him and that he earned all the money while working as a barber and that the Jewelry belonged to his girlfriend.

Believing Dorsey was in possession of stolen property, lied multiple times about his identity and providing me with another's driver license, and with his outstanding Misdemeanor Warrant we decided to place Dorsey under arrest and transport him back to Newton Police station for further investigation.

I asked Dorsey who the Mercedes belonged to so we could determine if we needed to impound it or release it to someone of his choosing. Dorsey told me his cousin, Ivan Sanders purchased it for him and Takiya from CarMax and that he wanted Takiya to take it, however the vehicle was last registered to Hayward Mitsubishi in Hayward, California as of 03/09/2017. We released the Mercedes to Clemons, Takiya.

Before being transported, Dorsey removed a key from his left front pants pocket. The key belonged to a 2017 Mazda 6 sedan, white license plate #7VGJ703 (rental car). Dorsey stated the vehicle was Clemons' that they rented and both occupied throughout the course of the rental. Clemons took possession of the rental car key as well.

We then transported Dorsey to Newton Station for booking approval. While at Newton Station Dorsey was mirandized at per LAPD Form 15.03 by Detective II Hernandez #26182. When asked about the amount of money in his possession, Dorsey stated that the money belonged to both him and his girlfriend (Clemons, Takiya). Dorsey said he has collected the money over time by being a Barber, but does not have any receipts or documentation proving the money belonging to him. See attached Statement Form.

While at Newton Station my partner contacted Clemons and asked her if she could respond to Newton to pick up her jewelry. Clemons stated, "Only if you are going to release it to me." My partner said we would if she could identify the jewelry that Dorsey claimed was hers. Clemons stated, "No." and immediately hung up the phone.

# Los Angeles Police Department CONTINUATION SHEET

PAGE NO. 4		TYPE OF REPORT Arrest				BOOKING NO. 5363194	DR NO. 1813
ITEM NO.	QU AN	ARTICLE	SERIAL NO	BRAND	MODEL NO.	MISC DESCRIPTION (EG. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC)	DOLLAR VALUE

Detective Hernandez contacted the Los Angeles Sheriff's Department – Palmdale Station and requested the watch commander to have a Deputy conduct a follow up to Ivan Sanders' residence in an effort to find out if he purchased the Mercedes on 07/10/2018.

During an itemization of the coins that were recovered from the backpack, my partner discovered a blue dog tag with the name RINGO and a phone number. My partner contacted the phone number from the dog tag, Donald Fisher (Victim of a 459 in LASD-Lancaster area on 07/10/2018 at approximately 1030-1230) answered the phone. During a conversation with my partner, Fisher confirmed his house was burglarized, a safe containing US Currency, and bonds were taken, an empty sparkletts water jug filled with coins (US Currency), and jewelry was also taken.

I contacted Parole and spoke with agent Ayala. I advised Agent Ayala of the circumstances regarding his parolee. Agent Ayala placed a no bail hold on Dorsey.

Deputy Terrell #609114, responded to Ivan Sanders' residence and met with a roommate (Johnson, Will). Johnson stated Sanders has not been at home since early morning on 07/10/2018.

My partner contacted Detective Wilson from Los Angeles County Sheriff's Department – Lancaster Station and advised him off the items we recovered from Dorsey. Detective Wilson stated he was going to continue his investigation and contact us at a later time.

Unit 13A75-W3, Officers Sloan #31080, and Mayoral #43225, transported Dorsey to the Metropolitan Detention Center for Booking.

## **Arrest:**

Dorsey was arrested for 496 PC – Receiving Stolen Property and booked at Metropolitan Detention Center.

## **Booking:**

Dorsey was booked at Metropolitan Detention Center on the advice from Detective II Hernandez #26182 and Sergeant II Marquez #32875, Newton Division Watch Commander

## **Injuries/Medical:**

None

## **Photographs, Recordings, Videos, DICVS, and Digital Imaging:**

Officer Smith took Digital Photographs of the items recovered.

My partner and I were equipped with body worn video which was activated during the incident.

This incident was captured on BWV by the interviewing officers. All statements in this investigation are paraphrased by the investigating officers. Paraphrased statements do not contain the entire statements and are the officer's interpretation of the statements. If there is any doubt about the content of the paraphrased statement, reviewers are encouraged to review the video recording of the investigation.

PAGE NO. 5		TYPE OF REPORT Arrest				BOOKING NO. 5363194		DR NO. 1813	
ITEM NO.	QU AN	ARTICLE	SERIAL NO	BRAND	MODEL NO.	MISC DESCRIPTION (EG. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC)			DOLLAR VALUE

**Evidence:**

All items recovered were booked at Metropolitan Detention Center Property. See Property Report.

**Court Information:**

My partner and I can testify to all contents of this report.



**LOS ANGELES POLICE DEPARTMENT  
FOLLOW-UP INVESTIGATION**

CORONER CASE NUMBER

☐ MULTIPLE

DATE THIS REPORT <b>7/12/2018</b>		DATE ORIGINAL <b>7/11/2018</b>		SPECIFIC TYPE OF ORIGINAL RPT. (ADW, TFV, EVID., T/BURG., ETC.) <b>Receiving Stolen property</b>				RD <b>1372</b>		DR NO. <b>18-1315291</b>	
VICTIM BOOKED TO / ARRESTEE (AS ON ORIGINAL REPORT) <b>Dorsey, Denzel</b>						IF RECLASSIFYING TO HOMICIDE SEX / DESCENT / AGE <b>VICT'S</b>		BKG NO. (SUPPL TO ARREST)		WORK FOLDER PERIOD ORIG. RPT / INDEX NO.	
<b>CASE STATUS</b> 1 <input type="checkbox"/> CLEARED BY ARREST    2 <input type="checkbox"/> CLEARED OTHER    3 <input type="checkbox"/> REPORT UNFOUNDED    4 <input checked="" type="checkbox"/> INVESTIGATION CONTINUED											
Use this section only to add or correct info - do not repeat info from previous reports. Exception: Complete entire suspect info if making final disposition.											
DATE OCCURRED		CHANGE TO - DN OR BETWEEN MO DAY YEAR TIME		&		MO DAY YEAR TIME		TYPE ORIGINAL REPORT - CHANGE TO		RD- CHG. TO	
PROPERTY VALUE:		ADDITIONAL LOSS		PARTIAL RECOVERY		TOTAL RECOVERY		DELETED FRDM ORIG. RPT.		DESCRIPTION CHANGE <input type="checkbox"/>	
ITEM NOS. RECOVERED/DELETED (ON MULTI. RPTS. USE NARRATIVE)											
S- SEX		DESC		HAIR		EYES		HEIGHT		WEIGHT	
DOB		AGE		NAME & ADDRESS (OR NAME & CHARGE, IF ARRESTED) <b>Dorsey, Denzel 496 (A) Rec. Stolen property</b>							
1		M		BLK		BLK		BRO		602	
9/24/1993		24		ACTION TAKEN Filed with D.A.							
										<input type="checkbox"/> MNU# <input type="checkbox"/> CII# <input checked="" type="checkbox"/> BKG# <b>536184</b>	
S- SEX		DESC		HAIR		EYES		HEIGHT		WEIGHT	
DOB		AGE		NAME & ADDRESS (OR NAME & CHARGE, IF ARRESTED)							
2											
										ACTION TAKEN	
										<input type="checkbox"/> MNU# <input type="checkbox"/> CII# <input checked="" type="checkbox"/> BKG# <b>5362295</b>	
S- SEX		DESC		HAIR		EYES		HEIGHT		WEIGHT	
DOB		AGE		NAME & ADDRESS (OR NAME & CHARGE, IF ARRESTED)							
3											
										ACTION TAKEN	
										<input type="checkbox"/> MNU# <input type="checkbox"/> CII# <input type="checkbox"/> BKG#	

<b>NARRATIVE (USE BELOW COLUMNS FOR MULTIPLE REPORTS ONLY)</b>							
P/T/D	MULTIPLE RPT: DR NOS.	TYPE OF CRIME	RD	VICTIM'S NAME	DATE ORIG. RPT.	VALUE	

**CASE SUMMARY:**

Officers obs'd suspect-Dorsey commit several traffic violations. Officers conducted a traffic stop. During the traffic investigation, Dorsey gave (2) false identifications to officers when they asked for his identity. 1<sup>st</sup> false identity he used was a California Driver's license F1618728 with the information of Sanders, Ivan DOB 03/24/1992. Officers discovered that the picture and descriptors on the Cal-op were different that the descriptors of Dorsey. Dorsey was confronted regarding the false identification. He proceeded to give a second false identification with the name and information of Dorsey, Devon DOB of 10/11/94. Officers conducted a want and warrant check and pulled a picture using department resources and once again discovered that Dorsey was attempting to provide a false identification. At this point Dorsey finally provided Officers with his identity. Officers discovered that Dorsey was on active parole and search conditions for 459 P.C. (Burglary), driving with a suspended or revoked driver's license and an outstanding misdemeanor warrant

Officers conducted an incident to arrest and parole search of the vehicle Dorsey was driving. Officers obs'd a red, gray and black back pack in the rear passenger seat. Inside the backpack was several items containing large amounts of U.S Currency totaling up to \$22,583.04. Dorsey stated that he saved that money cutting hair. There were also several pieces of jewelry. Dorsey stated that the jewelry belonged to his girlfriend Clemons, Takiya, who was the passenger in the vehicle.

Dorsey informed the officers that the vehicle he was driving belonged to his cousin Ivan Sanders. Dorsey stated that his cousin bought the car for him and his girlfriend.

Officers believing that Dorsey was in possession of stolen property, they arrested him for the misdemeanor warrant and providing false information to police officers. He was transported to Newton Station. Once at Newton Station, Officers discovered dog tag mixed in with some of the U.S. currency (coins) belonging to Donald Fisher. Officers called the number on the dog tag and discovered that Donald Fisher was the victim of a 459 P.C. Burglary in Lancaster on 07/10/18 between the hours of 1030 a.m. - 1230 a.m.

Officers contacted Det. Wilson from Los Angeles County Sheriff's Department. Officers advised him of the

WAS PROPERTY BOOKED IN CONJUNCTION WITH THIS REPORT OR INCIDENT? <input type="checkbox"/> NO <input type="checkbox"/> YES .....				IF YES, HAS 10.06.00 BEEN COMPLETED? <input type="checkbox"/> NO <input type="checkbox"/> YES			
SUPERVISOR APPROVING		SERIAL NO.		REPORTING OFFICER(S) <b>DIAZ-IBARRA</b>		SERIAL NO. <b>34696</b>	
DATE & TIME REPRODUCED		DIVISION		CLERK		DIVISION <b>NEWTON</b>	
						SERIAL NO.	

arrest of Dorsey and some of the items in his possession. Det Wilson advised officers that he would continue with the investigation.

Officers arrested Wilson for receiving stolen property. Dorsey asked that the jewelry be released to his girlfriend Takiya Clemons because it was her jewelry. Officers called Clemons via phone and advised her that she can pick up her jewelry if she could identify it. Clemons stated "No" and immediately hung up the phone.

**FOLLOW-UP INVESTIGATIONS:**

On 07/11/18, at approx. 3:30 P.M I spoke to Clemons. She came to the station and stated that the money was hers and some of the jewelry was hers also. I asked her to identify the jewelry and all she can say was that the rings were round and made of gold and some had stones on them. But she couldn't tell me specifics like colors of the stones and markings. I read her Miranda rights per LAPD form. I advised her that she was not being arrested and free to go at any time.

The Following information is her statements after I para phrased it.

She stated that Dorsey went to her house at 1557 W. 145<sup>th</sup> Street in Gardena on 07/10/18. It was some time in the morning but she wasn't sure of the time. Dorsey brought diapers for their baby. Dorsey stayed for a couple of hours. Dorsey went to the store and bought a bottle of alcohol for them to drink. Dorsey and Clemons went to a 7-11 by her house around 3 pm to buy some blunts to smoke weed. They came back to her house and smoked weed for a few hours. After smoking they went to Clemons sister's house and that's when they were pulled over by the police. Clemons informed me that she had approx. \$15,000.00 in the backpack. She saved that money selling hair and dancing. She can provided tax returns for the money earned. She also informed me that approx. \$7,000.00 belonged to Dorsey. She did not know where he got the money from. Clemons stated that they were going to get a motel room and go to city of Burbank in the morning to see about buying a house with the money.

Officer Meza informed me that the vehicle Dorsey was driving had paperwork from CARMAX. It was under the name of Ivan Sanders and the vehicle was purchased on 07/10/18. I called CarMax in Burbank and in Los Angeles. A representative from CARMAX advised me that the vehicle was last sold in Las Vegas in 2014. Then a different representative from CARMAX advised me that the vehicle was in their possession in 2016 for approx. (1) day but it was returned to the owner. They were unable to provide additional information at this time.

Clemons advised me that Dorsey had the vehicle since early this morning.

On 07/12/18 at approx. 730 a.m. I spoke to Det. Markman from LASD. He informed me that he received some photos from Officer Smith. These were photos of the property that Dorsey had in his possession. Det. Markman advised me that the victim positively identified a coin and a ring as being theirs.

I sent additional photos to Det. Markman. He informed me that he will show these pics to the victim and see if the positively identify additional items.

**CRIMINAL HISTORY:**

Suspect Dorsey id on parole for 459 P.C. burglary. Dorsey has several arrests for burglary and theft. He also lives or has been arrested in Lancaster.

Pending D.A review.

C

C

COUNTY OF LOS ANGELES  
SHERIFF'S DEPARTMENT

**SUPPLEMENTAL REPORT**

DATE: 07-12-2018 FILE: 918-13675-1182-064 ACTION: active/additional

C: Burglary (residential) 459 P.C/F/064

V: Fisher, Donald [REDACTED]

V: Fisher, Barbara [REDACTED]

S: Dorsey, Denzel [REDACTED]

**NARRATIVE**

The purpose of this supplemental report is to provide additional information regarding V/Barbara identifying her stolen property (during a burglary) that S/Dorsey had in his possession.

On 07-12-2018 at approximately 0600 hours, I received photographs from LAPD officer Dana Smith #38409 via email. The pictures were items they recovered from a backpack in vehicle S/Dorsey was driving. Also found inside the backpack was approximately 22,448.78 dollars in miscellaneous U.S currency. It should be noted approximately 58,000.00 dollars of miscellaneous U.S currency was taken from the residence during the burglary. The LAPD officer's found a dog tag (belonging to a dog named RINGO) that depicted the phone number of Donald Fisher. They called Donald and confirmed he was a victim of a residential burglary on 07-10-2018. They arrested S/Dorsey for 496 P.C. For further information refer to their attached report.

On 07-12-2018 at approximately 1000 hours, I contacted V/Barbara at Lancaster Sheriff Station. I asked her to look at 23 photographs of items depicting miscellaneous jewelry items and coins and other items (recovered from the suspect).

V/Barbara looked at all the photographs. She positively identified all items as her and her families belongings, that were taken from her residence during the burglary. See attached pictures.

Based on the fact the suspect was pulled over and detained by LAPD approximately 14 hours after the burglary (with approximately 22,448.78 in miscellaneous U.S currency), coupled with the fact V/Barbara positively identified 23 photographs of property recovered from S/Dorsey, I formed the opinion S/Dorsey is responsible for the residential burglary under the above file number. Due to the above I'm naming S/Dorsey as the suspect.

BY: Det. Michael Markman #535063

APPROVED: ASGT. Pico #478237 07/12/18, 1123 HRS

ASSIGNED: Lancaster DB

SECRETARY: \_\_\_\_\_

# Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 1 of 4

## Declaration of Arrest

DR# 1621448

FH# 16

Arrestee's Name: DORSEY, DENZEL

Date of Arrest: 11/28/2016

Time of Arrest: 1404

Charge	Degree	NRS/NAC
HOME INVASION, (2+)	Felony	205.067.2
DESTROY PROP OF ANOTHER, \$250 - \$5K	Gross Misdemeanor	208.310

THE UNDERSIGNED MAKE THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I, James McGeahy am a peace officer with the Henderson PD, Clark County, Nevada, being so employed since 08/28/2006. That I learned the following facts and circumstances which led me to believe that the above named subject committed (or was committing) the above offense/offenses at the location of 2731 Warm Rays Avenue Henderson Nevada 89052, and that the offense occurred at approximately hours on .

### Details of Probable Cause

On 11/28/16, PSU Detectives were notified of a home invasion that had occurred at 2731 Warm Rays Avenue at approximately 1155 hours. Officer T. Roundy was the responding officer who contacted the victim Kevin M. Nazareno [REDACTED]. Kevin resides at the address with his parents. Kevin's mother is Norma Nazareno [REDACTED]. Norma was later contacted and advised that she wanted to press charges if a suspect is caught.

Kevin advised the following to Officer Roundy:

Kevin stated he was upstairs in his bedroom when he heard his doorbell ringing at approximately 1155 hours.

Kevin stated the doorbell was continuously ringing, until he came downstairs and saw a black male standing beyond the front door, through the large glass window. Kevin stated he then saw the black male punch his fist through glass door window, making a fist size hole.

Kevin stated the black male reached his arm (possibly left arm) through the hole and unlock the front door dead bolt from the inside.

Kevin stated he immediately ran to the front door and locked the dead bolt, at which time the black male realized someone was home, and fled to the street.

Kevin then unlocked the dead bolt, ran out to the front of his house, and watched the black male get into a blue Suzuki sedan, which was parked in front of the house, facing southbound. Kevin stood behind the vehicle, and read the Nevada license plate of, "953LGM."

Kevin stated the black male sped away, southbound, then made a U-turn, and sped back down Warm Rays Avenue, northbound, past Kevin who was still standing on the curb.

Kevin stated he could see into the vehicle, and the black male appeared to be the only occupant.

Detective Gutierrez responded to 2731 Warm Rays Avenue where he spoke with Kevin. Kevin was not able to give a very good description other than the suspect was a black male with short hair. Kevin stated that he was able to look at the suspect directly in the eye through the broken glass, which lead Detective Gutierrez to determine that the suspect was approximately 5'8" to 5'9" tall. Kevin could not recall if the suspect was wearing gloves or his clothing.

James McGeahy

Declarant's Name

Exhibit "4"

AA 0265

# Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 2 of 4

## Declaration of Arrest Continuation Page

DR# 1621448

FH# 16

Arrestee's Name: DORSEY, DENZEL

### Details of Probable Cause (Continued)

I conducted a records check of NV 953LGM and it showed it was a 2010 Suzuki 4 door sedan registered to Global Auto car rental in Las Vegas (1525 E Sunset Road). I contacted Global Auto and spoke with Manager Ghassan Hayek (12/18/70) who advised the vehicle was rented on 11/21/16 to Marquisha Powell (03/02/1993). An address of 5101 E Twain was provided and a phone number of 702-902-9931. While speaking with Hayek, he advised the vehicle had a GPS Tracker on the vehicle and would provide me with the information.

I asked if they were able to provide information from a previous time/location, specifically where the vehicle was located at approximately 1200 hours.

Detectives responded to Global Autos and met with Hayek. The following information was provided:

At 1138 hours, the vehicle was located at the 2577-2699 block of W. Horizon Ridge Pkwy

At 1148 hours, the vehicle was located at the 2700 block of Thomasville Ave and driving approximately 15 mph (2 blocks away from where the incident occurred)

at 1152 hours, the vehicle stopped at the 2727 Warm Rays Ave (next to the victims house)

At 1156 hours, the vehicle started again at the same location

At 1201 hours the vehicle was traveling 30 mph at the 10300 block of Eastern (north of victims residence, intersection of Coronado Center and Eastern)

At 1208 hours the vehicle was traveling 67 mph on westbound I-215.

At 1216 hours the vehicle was traveling 54 mph on northbound Decatur.

The vehicle made a stop in a neighborhood near Decatur and Flamingo (Spitz Drive) for 3 minutes. Another Stop near the 3800 block of Lindell for 3 minutes.

The entire travel history of the Suzuki sedan for the date of 11/28 was provided and is attached to this report.

While at Global Autos, Detective Chen was advised by Hayek that the vehicle was supposed to be turned in by noon on 11/28/16. They contacted Marquisha who advised that she was at work and would return it by 3 PM. Detectives were given a rental contract showing the vehicle was rented on 11/21 and due back by noon on 11/28/16. The cost was \$600.00 and paid with cash. Global Autos requested that if the subjects were contacted, the vehicle be towed back to their location.

PSU Detectives were able to locate the vehicle as it entered the rear parking lot of the Fashion Show Mall. While there, the vehicle was observed with a single occupant who matched the description of the suspect that was given by the victim. The vehicle parked and the suspect exited the vehicle where he met another male. They both re-entered the vehicle and drove to the back side of Dillards where they parked. Upon exiting the vehicle, both subjects were contacted by HPD Detectives and LVMPD Officers.

James McGeahy

Declarant's Name

AA 0266



# Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 3 of 4

## Declaration of Arrest Continuation Page

DR# 1621448

FH# 16

Arrestee's Name: DORSEY, DENZEL

### Details of Probable Cause (Continued)

They were identified as driver Denzel Dorsey (09/24/1993) and passenger Joel Velasco (09/20/87). Both were extremely uncooperative and denied being in the car although detectives observed them exit the vehicle. Both gave bogus names before being identified. Velasco had warrants out of LVMPD Jurisdiction and was ultimately arrested by LVMPD.

Detectives attempted to talk with Dorsey, but again was uncooperative. At 1404 hours, Det. Pilz advised Dorsey of his Miranda Rights of which he stated he understood. After being asked a couple of questions, Dorsey requested a lawyer and the interview was over.

I arrived on scene and advised Dorsey that I was going to charge him with Home Invasion and Damage to Property at which time Dorsey asked how. I explained to Dorsey that amongst the evidence, we had GPS locations of the vehicle placing him at the location of the crime. Dorsey simply looked down and stated "Ah shit".

Dorsey was wearing a dress coat that had fresh tears on the left sleeve. Dorsey's hands were dirty and had fresh cuts on his right hand. Dorsey did not have an explanation for the tears or cuts only stating that they were old.

During search incident to arrest, I located the key to the Suzuki in his right pocket. Also in the right pocket was a gray and white striped glove that had blood on the knuckle. The blood was fresh and was for the right hand. I retained the glove as evidence and it was later booked under this DR#.

I also retained Dorsey's jacket and booked it under this DR#.

Photographs were taken of Dorsey and his injuries and booked under this DR#.

A records check of Dorsey revealed an extensive criminal history including burglary, home invasion, narcotic arrests, traffic, larceny, burglary tools and obstruct. In 2012, Dorsey was convicted of Home Invasion (Case #12FN0210A).

A tow truck was requested prior to being towed back to Global Auto (per their request). An inventory of the vehicle was conducted by myself and the following was located and retained as evidence:

1. Three (3) loose white pills with 114 and H imprinted on them; later identified as methocarbamol 500mg (prescription only) muscle relaxer.
2. Package of unused ziplock baggies commonly used for illegal drug sales
3. Prescription bottle for Oxycodone made out to Kyle Rossell
4. Several pieces of antique jewelry including a mismatched earrings, necklace pendants and a silver ring with clear stone.
5. Gray glove with white stripes (match to glove found on Dorsey's person).

The prescription bottle was filled on 11/23/16 for 8 pills. The bottle contained 1/4 pill.

Contact was made with Kyle Rossell's mother who lives near Las Palmas Entrada and Gibson, in the City of Henderson. As of this report, it has not been determined how Dorsey came into possession of the prescription bottle.

James McGeahy

Declarant's Name

AA 0267

# Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 4 of 4

## Declaration of Arrest Continuation Page

DR# 1621448

FH# 16

Arrestee's Name: DORSEY, DENZEL

### Details of Probable Cause (Continued)

All the aforementioned items were retained and booked as evidence under this DR#.

Based on the aforementioned investigation, I determined the following facts:

1. That on 11/28/16 at approximately 1155 hours, a black male punched a hole through the window of a front double door at 2731 Warm Rays Avenue.
2. That the same male placed his left arm through the fist sized hole, into the residence and unlocked the double door in an attempt to get inside.
3. That the occupant/victim ran and locked the door again after the suspect unlocked it causing the suspect to pull his arm from inside the house and run back to his vehicle, a dark blue Suzuki sedan (NV 953LGM).
4. That Upon a records check, I learned that the vehicle was registered to Global Autos and after contact with Global Auto, learned it had a GPS tracker on it placed by the rental company.
5. That the GPS tracker history of the vehicle showed that it was parked next door to 2731 Warm Rays Avenue for approximately 4 minutes between the times of 1152 and 1156 hours on 11/28/16.
6. That detectives were able to track the vehicle to the Fashion Show Mall after making 2 stops in separate neighborhoods in Las Vegas for approximately 3 minutes each.
7. That upon contact, the subject driving the vehicle was identified as Denzel Dorsey and that prior to picking up a second subject in the parking garage at the Fashion Show Mall, was the only occupant of the vehicle.
8. That upon a records check, I learned that Dorsey has an extensive criminal history including a prior conviction from 2012 for Home Invasion (Case #12FN0210A).
9. That Dorsey was wearing a jacket that had fresh tears on the left sleeve that was consistent with what the victim described occurred.
10. That Dorsey had fresh cuts on his right knuckle which was consistent with punching a hard object such as glass.
12. That Dorsey had a glove in his right pocket with fresh blood on the knuckle.
11. That Dorsey had a short haircut and is 5'9" tall, fitting the description given by the victim.

That based on the aforementioned facts, I determined that probable cause existed to charge Dorsey with Home Invasion 2+ F (NRS 205.067.2) and Destroy Property of Another GM (NRS 206.310).

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

James McGeahy

Declarant's Name

AA 0268

7022675051

11:14:48 a.m. 12-01-2016

10/29



Global Autos  
1525 E. Sunset Rd. Suite 1  
Las Vegas 89119  
PH# 702-799-9584 Fax# 702-579-9863  
Tax#

Rental Out  
RA #: K16052

10-21-778

## RENTER INFO

Marquisha Powell

5101 E. Twain ave.

Las Vegas NV 89122 PH# 702-902-9931

DL# F2735974  
DOB 3/2/1993

CA

Store Hours Mon-Friday: 08:00-18:00  
Saturday: 09:00-14:00  
Sunday: Closed

## REPAIR ORDER:

CLAIM:

Date/Time Out: 11/21/2016 2:46 PM  
Date/Time Due In: 11/28/2016 12:00 PM

## CHARGES SUMMERY

			Total
Daily	7	\$28.99	\$188.93
Miles Allowed	700		
Total T&M			\$188.93
LDW \$750 DED.	7	\$19.99	\$139.93
Weekend	1	\$35.00	\$35.00
Options Total			\$174.93
Sub Total			\$363.86
Clark County Fee	1	2%	\$7.28
EPF	7	\$3.75	\$26.25
Facility Charge	7	\$4.75	\$33.25
Govt. Service Fee	1	10%	\$18.89
Sales Tax	1	8.15%	\$19.40
Total			\$464.53
Total Payments			\$600.00
Balance			(\$135.07)

## UNIT DETAILS

Unit #: 225  
Model: SX4  
LIC #: 953LGM  
VIN #: JS2YC5A27A8302963

Odometer Out: 95932  
TOTAL MILES ALLOWED: 700  
FUEL OUT: 1/8

Odometer In:

BILL TO: None  
Payment Type:  
AUTH:

NOTE: BY PRESENTING A CREDIT CARD FOR PAYMENT, ALL CHARGES INCLUDING PARKING TICKET EXPENSES, TRAFFIC VIOLATIONS AND COSTS, INCLUDING 407 ETR AND ANY VEHICLE DAMAGE FOR WHICH I AM RESPONSIBLE MAY BE BILLED TO THE CARD AND SIGNATURE BELOW WILL BE CONSIDERED TO HAVE BEEN MADE ON THE APPLICABLE CREDIT CARD VOUCHER.

VEHICLE DEEMED TO BE STOLEN IF NOT RETURNED WHEN DUE ON DEMAND

LDW \_\_\_\_\_ XX \$0.00

T &amp; W.D.W. \_\_\_\_\_ XX

Renter's Signature

I understand I am responsible for payment of all tolls, fines, violations and hereby authorize Global Autos to release my rental and charge/debit card information for exclusive purpose of processing billing and/or payment for tolls, parking or traffic fines, fees, and/or penalties, plus an administrative fee up to \$40 for EACH infraction or toll incurred during the term of this rental. I authorize the lessor or his agent to process a credit card voucher, if any for charges incurred hereunder. I have read the terms and conditions of all pages on this agreement and agree thereto and also to return vehicle to lessor or his agent or or before due back date and a place specified.

Additional Driver #1

Additional Driver #2

Total Payments

Cash

Checkout RA#K16052

\$600.00

AA 0269

Exhibit "5"

I HAVE READ THE TERMS AND CONDITIONS OF PAGE 1 (NEXT PAGE) AND PAGE 1 OF THIS AGREEMENT AND AGREE THERETO

XX



7022675051

11:15:16 a.m. 12-01-2016

11/29

16-21440

## Vehicle History

## 10 BLUE SK4 953GM

Date & Time	Event	Location	Speed	Duration
01:57 PM 11/28/2016	Response: Locate		0	
01:57 PM 11/28/2016	Attempt: Locate	3286-3448 Industrial Rd, Paradise, NV, 89109	11	
01:51 PM 11/28/2016	Travel Start	3286-3448 Industrial Rd, Paradise, NV, 89109	11	
01:50 PM 11/28/2016	Stop	Dio Dr, Paradise, NV	0	1 Minute
01:49 PM 11/28/2016	Drive	Dio Dr, Paradise, NV	0	
01:46 PM 11/28/2016	Response: Locate	Fashion Ia, Paradise, NV	7	
01:46 PM 11/28/2016	Attempt: Locate	3231-3239 Las Vegas Blvd S, Paradise, NV, 89109	0	
01:44 PM 11/28/2016	Drive	3231-3239 Las Vegas Blvd S, Paradise, NV, 89109	0	
01:43 PM 11/28/2016	Response: Locate	Fashion Show Dr, Paradise, NV, 89109	16	
01:42 PM 11/28/2016	Attempt: Locate	W Twain Ave, Paradise, NV	33	
01:39 PM 11/28/2016	Drive	W Twain Ave, Paradise, NV	33	
01:38 PM 11/28/2016	Response: Locate		0	
01:36 PM 11/28/2016	Attempt: Locate	38003911 W Twain Ave, Paradise, NV, 89103	33	
01:37 PM 11/28/2016	Response: Locate	38003911 W Twain Ave, Paradise, NV, 89103	33	
01:37 PM 11/28/2016	Attempt: Locate	4326-4361 W Twain Ave, Paradise, NV, 89103	27	
01:36 PM 11/28/2016	Response: Locate	5001-5125 Cantaro Dr, Spring Valley, NV, 89103	13	
01:36 PM 11/28/2016	Attempt: Locate	5001-5125 Cantaro Dr, Spring Valley, NV, 89103	13	
01:29 PM 11/28/2016	Drive	3700-3746 S Greenwood Dr, Spring Valley, NV, 89103	3	
01:24 PM 11/28/2016	Drive		12	
01:21 PM 11/28/2016	Response: Locate		23	
01:21 PM 11/28/2016	Attempt: Locate	3700-3746 S Greenwood Dr, Spring Valley, NV, 89103	23	
01:19 PM 11/28/2016	Drive	7261-7309 W Sequoia Springs Dr, Spring Valley, NV, 89147	15	
01:14 PM 11/28/2016	Drive	7100-7288 Spring Mountain Rd, Spring Valley, NV, 89117	27	
01:09 PM 11/28/2016	Drive	3500-3698 S Matriga Dr, Spring Valley, NV, 89103	0	
01:04 PM 11/28/2016	Drive	6801-6899 Pelayan Rd, Spring Valley, NV, 89146	22	

AA 0270

7022675051

16-21448

12:54 PM 11/28/2016	Travel Start	6435-6499 W Desert Inn Rd, Spring Valley, NV, 89146	37	
12:53 PM 11/28/2016	Stop	3300-3498 S Remuda Trl, Spring Valley, NV, 89146	0	1 Minute
12:53 PM 11/28/2016	Drive	3300-3498 S Remuda Trl, Spring Valley, NV, 89146	0	
12:48 PM 11/28/2016	Drive	5801-6099 W Desert Inn Rd, Spring Valley, NV, 89146	26	
12:43 PM 11/28/2016	Travel Start	3866-3898 Red Rock St, Spring Valley, NV, 89103	17	
12:39 PM 11/28/2016	Stop	5801-5899 W Valley Rd, Spring Valley, NV, 89103	0	3 Minutes
12:39 PM 11/28/2016	Drive	5801-5899 W Valley Rd, Spring Valley, NV, 89103	0	
12:34 PM 11/28/2016	Travel Start	5801-5878 W Valley Ave, Spring Valley, NV, 89103	19	
12:31 PM 11/28/2016	Stop	3800-3850 S Lindell Rd, Spring Valley, NV, 89103	0	3 Minutes
12:28 PM 11/28/2016	Travel Start	3800-3836 S Spitz Dr, Spring Valley, NV, 89103	18	
12:23 PM 11/28/2016	Stop	3838-3880 S Spitz Dr, Spring Valley, NV, 89103	0	3 Minutes
12:21 PM 11/28/2016	Drive	3838-3880 S Spitz Dr, Spring Valley, NV, 89103	0	
12:16 PM 11/28/2016	Drive	5524-5536 S Decatur Blvd, Paradise, NV, 89118	54	
12:11 PM 11/28/2016	Drive	Enterprise, NV	37	
12:06 PM 11/28/2016	Drive	I-215, Paradise, NV	67	
12:01 PM 11/28/2016	Drive	10300-10532 S Eastman Ave, Henderson, NV, 89052	30	
11:56 AM 11/28/2016	Travel Start	2716-2700 Wynn Rays Ave, Henderson, NV, 89052	19	
11:52 AM 11/28/2016	Stop	2727-2769 Wynn Rays Ave, Henderson, NV, 89052	0	4 Minutes
11:48 AM 11/28/2016	Drive	2708-2700 Thomasville Ave, Henderson, NV, 89052	15	
11:43 AM 11/28/2016	Drive	Henderson, NV	7	
11:38 AM 11/28/2016	Travel Start	2577-2699 W Horizon Ridge Pkwy, Henderson, NV, 89052	16	
11:29 AM 11/28/2016	Stop	2577-2699 W Horizon Ridge Pkwy, Henderson, NV, 89052	0	9 Minutes
11:26 AM 11/28/2016	Drive	10534-10598 S Eastern Ave, Henderson, NV, 89052	21	
11:21 AM 11/28/2016	Drive	2605-2599 St Rose Pkwy, Henderson, NV, 89074	0	
11:16 AM 11/28/2016	Drive	10300-10532 S Eastern Ave, Henderson, NV, 89052	6	
11:11 AM 11/28/2016	Travel Start	11244-12078 Sunridge Heights Pkwy, Henderson, NV, 89052	33	
11:10 AM 11/28/2016	Stop	Henderson, NV	0	
11:07 AM 11/28/2016	Drive	Sunridge Heights Pkwy, Henderson, NV	51	
11:02 AM 11/28/2016	Drive	10534-10598 S Eastern Ave, Henderson, NV, 89052	41	
10:57 AM 11/28/2016	Drive	2505-2599 St Rose Pkwy, Henderson, NV, 89074	0	
10:52 AM 11/28/2016	Drive	5348-5176 I-215, Henderson, NV, 89014	51	

AA 0271

7022675051

11:16:15 a.m. 12-01-2016

13/29

16-21448

10:47 AM 11/28/2016	Drive	I-515, Henderson, NV	71	
10:42 AM 11/28/2016	Drive	3883-3901 Boulder Hwy, Sunrise Manor, NV, 89121	0	
10:37 AM 11/28/2016	Drive	I-515, Paradise, NV	70	
10:32 AM 11/28/2016	Drive	601-799 Marks St, Henderson, NV, 89014	20	
10:27 AM 11/28/2016	Drive	I-515, Paradise, NV	62	
10:22 AM 11/28/2016	Travel Start	1-99 Boulder Hwy, Paradise, NV, 03812	10	
10:20 AM 11/28/2016	Stop	4006-4088 S Nellis Blvd, Sunrise Manor, NV, 89121	0	1 Minute
10:19 AM 11/28/2016	Drive	4006-4088 S Nellis Blvd, Sunrise Manor, NV, 89121	0	
10:14 AM 11/28/2016	Drive	4518-4598 E Flamingo Rd, Paradise, NV, 89121	0	
10:09 AM 11/28/2016	Drive	I-515, Sunrise Manor, NV	1	
10:04 AM 11/28/2016	Drive	4810-4830 E Flamingo Rd, Paradise, NV, 89121	0	
09:59 AM 11/28/2016	Travel Start	1-99 Boulder Hwy, Paradise, NV, 03812	13	
09:50 AM 11/28/2016	Stop	4006-4088 S Nellis Blvd, Sunrise Manor, NV, 89121	0	3 Minutes
09:53 AM 11/28/2016	Drive	1-99 Boulder Hwy, Paradise, NV, 03812	10	
09:46 AM 11/28/2016	Travel Start	6399-6301 Tradition, Sunrise Manor, NV, 89122	6	
09:44 AM 11/28/2016	Drive	6399-6301 Tradition, Sunrise Manor, NV, 89122	17	
09:39 AM 11/28/2016	Drive	4134-4208 Carol St, Sunrise Manor, NV, 89122	1	
09:34 AM 11/28/2016	Drive	4246-4201 Camille St, Sunrise Manor, NV, 89122	14	
09:29 AM 11/28/2016	Drive	5880-5924 Natures Dr, Whitney, NV, 89122	14	
09:24 AM 11/28/2016	Drive	8156-6988 E Tropicana Ave, Whitney, NV, 89122	23	
09:19 AM 11/28/2016	Drive	4581-4589 Stephanie St, Whitney, NV, 89122	19	
09:14 AM 11/28/2016	Drive	5530-5598 E Flamingo Rd, Sunrise Manor, NV, 89122	33	
09:09 AM 11/28/2016	Drive	4952-4898 E Pata del Sol Dr, Paradise, NV, 89121	1	
09:04 AM 11/28/2016	Drive	4178-4188 E Flamingo Rd, Paradise, NV, 89121	48	
08:59 AM 11/28/2016	Travel Start	2838-2998 E Flamingo Rd, Paradise, NV, 89121	41	
08:58 AM 11/28/2016	Stop	2860-2798 E Flamingo Rd, Paradise, NV, 89121	0	1 Minute
08:54 AM 11/28/2016	Drive	2400-2498 E Flamingo Rd, Paradise, NV, 89121	32	
08:44 AM 11/28/2016	Drive	Las Vegas, NV	65	
08:39 AM 11/28/2016	Travel Start	1201-1283 S Charnest Ln, Las Vegas, NV, 89102	22	
08:37 AM 11/28/2016	Stop	1201-1283 S Charnest Ln, Las Vegas, NV, 89102	0	2 Minutes
08:35 AM 11/28/2016	Drive	1201-1283 S Charnest Ln, Las Vegas, NV, 89102	0	

AA 0272

16-21448

08:30 AM 11/29/2016	Drive	281-499 Shadow Ln, Las Vegas, NV, 89108	29	
08:35 AM 11/29/2016	Travel Start	2031-2098 Center St, Las Vegas, NV, 89109	11	
08:35 AM 11/29/2016	Stop	401-499 S Toropah Dr, Las Vegas, NV, 89106	0	
08:41 AM 11/29/2016	Drive	99-189 S Flamingo Dr, Las Vegas, NV, 89106	39	
08:46 AM 11/29/2016	Drive	N Orian K Grogson Expy, Las Vegas, NV	61	
08:41 AM 11/29/2016	Travel Start	Las Vegas, NV	11	
12:15 AM 11/29/2016	Stop	Las Vegas, NV	0	7 Hours, 56 Minutes
12:11 AM 11/29/2016	Travel Start	3201-3299 N Tenaya Way, Las Vegas, NV, 89129	21	
12:06 AM 11/29/2016	Stop	3201-3299 N Tenaya Way, Las Vegas, NV, 89129	0	5 Minutes
12:05 AM 11/29/2016	Drive	3201-3299 N Tenaya Way, Las Vegas, NV, 89129	0	
12:00 AM 11/29/2016	Drive	2301-2399 N Buffalo Dr, Las Vegas, NV, 89128	22	



Exhibit "6"

AA 0274





PALESTINE HIGH SCHOOL  
37423 70TH ST. EAST  
PALMDALE, CA 93552  
PHONE: (661) 533-9600

ANTHONY HIGH SCHOOL DISTRICT  
44811 NORTH SIERRA HWY  
LANCASTER, CA 93534  
PHONE: (661) 948-7655



#### HIGH SCHOOLS

ANTELOPE VALLEY HIGH SCHOOL  
EASTSIDE HIGH SCHOOL  
HIGHLAND HIGH SCHOOL  
KNIGHT HIGH SCHOOL  
LANCASTER HIGH SCHOOL  
LITTLE ROCK HIGH SCHOOL  
PALMDALE HIGH SCHOOL  
QUARTZ HILL HIGH SCHOOL  
SOAK HIGH SCHOOL

#### ALTERNATIVE HIGH SCHOOLS

VIRTUAL ONLINE SCHOOL  
DESERT WINDS HIGH SCHOOL  
R. REX PARRIS HIGH SCHOOL

#### STUDENT SERVICES

SOAR CAMPUS  
KNIGHT CAMPUS  
PALMDALE CAMPUS

#### ADULT EDUCATION

AV ADULT EDUCATION

#### STUDENT SERVICES

ACCESSIBILITY  
POLICIES / NOTICES  
EMPLOYMENT  
CONTACT US





**RPLY**

GARY A. MODAFFERI, ESQ. (12450)  
LAW OFFICE OF GARY A. MODAFFERI, LLC  
815 S. Casino Center Boulevard  
Las Vegas, NV 89101  
Telephone: (702) 474-4222  
Fax: (702) 474-1320  
*Attorney for Defendant Denzel Dorsey*

**DISTRICT COURT  
CLARK COUNTY, STATE OF NEVADA**

THE STATE OF NEVADA

Plaintiff

vs

DENZEL DORSEY

Defendant

Case No. C-17-323324-1  
Dept No. XV

**REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO  
WITHDRAW GUILTY PLEA**

COMES NOW the Defendant DENZEL DORSEY by and through his counsel, GARY A. MODAFFERI, ESQ. of THE LAW OFFICE OF GARY A. MODAFFERI, LLC, and respectfully submits the following Reply to State's Opposition to Defendant's Motion to Withdraw Guilty Plea. This Reply is grounded in the attached Points and Authorities, the attached exhibits, and any evidence and/or argument adduced at a hearing on this matter.

DATED this 28<sup>th</sup> day of March, 2019.

By: /s/ Gary A. Modafferi Esq.  
GARY A. MODAFFERI, ESQ.  
Nevada Bar No. 12450  
815 S. Casino Center Boulevard  
Las Vegas, NV 89101  
Counsel for Defendant  
*Denzel Dorsey*

**AA 0277**



**REPLY**

The Defense and State agree that the applicable law to determine this Motion is set forth in Stevenson.<sup>1</sup> The holding of Stevenson permits a defendant to withdraw his previously entered guilty plea “before sentencing for any reason where permitting withdrawal would be fair and just.”<sup>2</sup> The State in its Opposition does not suggest that actual innocence is not a fair and just reason permitting withdrawal under Stevenson rather; the State argues at length that circumstances exist to dispute the Defendant’s claim of innocence.<sup>3</sup>

The State instead argues that the declarations tendered by the Defense from Davey Dorsey and Takiya Clemons are not “credible” and therefore are not be fair and just.<sup>4</sup> While the Defense appreciates the State’s continued advocacy, the determination of whether David Dorsey and Takiya Clemon’s testimonies are “credible” is a jury determination and should not guide this Honorable Court in deciding this motion. The truth of the two witnesses’ statements should be presumed for purposes of deciding this motion.

The State repeatedly questions why these two witnesses have come forward “now” as opposed to closer in time to the plea.<sup>5</sup> In fact, the Defendant constructed a *pro se* Motion to Withdraw Plea almost immediately after his plea was entered.<sup>6</sup> In his handwritten Motion, the Defendant in his declaration states that he wanted his lawyer to investigate his brother’s involvement in this crime and the misidentification of the Defendant for his brother at the

---

<sup>1</sup> Stevenson v. State, 354 P.3d 1277, 131 Nev. 61 (2015)

<sup>2</sup> *Id.* at 1281.

<sup>3</sup> See e.g. Opposition at pp. 6-8.

<sup>4</sup> *Id.* at pp. 8, and 13-15.

<sup>5</sup> *Id.* at p.13.

<sup>6</sup> See attached Exhibit A.

1 preliminary hearing.<sup>7</sup> The Defendant further explains that given that his counsel failed to  
2 properly investigate his brother's culpability, coupled with the desire to see his child's birth, that  
3 he accepted the plea agreement when he was not guilty.<sup>8</sup> Both the Motion to Withdraw Guilty  
4 Plea and the Motion to Dismiss Counsel were filed almost immediately after the plea was  
5 entered. The Defendant's change of heart was almost immediate.  
6

7 In Stevenson, the Court cited with approval the holding in Barker explaining that "A  
8 swift change of heart is a strong indication that the plea was entered in haste and confusion."<sup>9</sup>  
9 The Defendant changed his mind almost immediately; the initial decision was substantially based  
10 on the Defendant's belief that his Counsel was not going to investigate his claims of actual  
11 innocence.  
12

### 13 CONCLUSION

14

15 It is respectfully argued that fair and just reasons have been presented to permit the  
16 Defendant to withdraw his plea.  
17

18 DATED this 28<sup>th</sup> day of March, 2019.  
19

20 By: /s/ Gary A. Modafferi Esq.

21 GARY A. MODAFFERI, ESQ. (12450)  
22 LAW OFFICE OF GARY A. MODAFFERI,  
23 LLC  
24 815 S. Casino Center Boulevard  
25 Las Vegas, NV 89101  
26 Counsel for Defendant  
27 *Denzel Dorsey*

---

27 <sup>7</sup> Id at p.4.

28 <sup>8</sup> See attached Exhibit B, Motion to Dismiss Counsel.

<sup>9</sup> Stevenson, supra, at 1281-82, citing United States v. Barker, 514 F.2d 208, 222 168 U.S. App. D.C. 312 (D.C. Cir. 1975)

**CERT**

GARY A. MODAFFERI, ESQ. (12450)  
LAW OFFICE OF GARY A. MODAFFERI, LLC  
815 S. Casino Center Boulevard  
Las Vegas, NV 89101  
Telephone: (702) 474-4222  
Fax: (702) 474-1320

*Attorney for Defendant Denzel Dorsey*

**DISTRICT COURT  
CLARK COUNTY, STATE OF NEVADA**

THE STATE OF NEVADA

Plaintiff

vs

DENZEL DORSEY

Defendant

Case No. C-17-323324-1  
Dept No. XV

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the 28<sup>th</sup> day of March, 2019, I served a true  
copy of **REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO  
WITHDRAW GUILTY PLEA** upon the following:

Richard Scow, Esq.  
Chief Deputy District Attorney  
[richard.scow@clarkcountyda.com](mailto:richard.scow@clarkcountyda.com)

/s/ Erika W. Magana

Erika W. Magana, An Employee of  
Gary A. Modafferi, LLC

# **EXHIBIT “A”**

1 DENZEL DORSEY

2 # ~~784~~ 5569, CCDC, NVC

3 330 S. Casino Center Blvd  
4 LAS VEGAS, NEVADA 89101

District Court  
Clark County, Nevada

5 THE STATE OF NEVADA

6 Plaintiff,

7 vs.

8  
9 DENZEL DORSEY

10 Defendant

Case No.: 0-17-323324-1

Dept. No.: XXII (22)

Docket No.: \_\_\_\_\_

11  
12  
13 Motion To Withdraw plea

14  
15 Comes now, defendant, Denzel Dorsey, IN Pro Se,  
16 moves this Honorable Court for A Motion To withdraw  
17 plea.

18 This motion is made and based upon all papers,  
19 pleadings, and document on file with the Clerk of the  
20 Court, The points and Authorities, and the Argument  
21 contained therein,

22 Dated this \_\_\_\_\_ Day of MAY 2018

23 Respectfully submitted  
24 Denzel Dorsey #2845569

25 DD

26 In Pro Se, CCDC  
27 330 S. Casino Center Blvd  
28 LAS VEGAS, NEVADA 89101

## Points And Authorities Argument

In this case, defendant, was appointed counsel and counsel ignored defendants requests to reasonably investigate and therefore now the defendant asserts that his guilty plea was not knowingly, voluntarily, and intelligently entered because counsel led him to believe his case was indefensible.

### Strickland v. Washington

Defendant has explained his favorable facts in which counsel ignored defendants request to investigate wherein counsel told defendant that he was surely to lose in his trial and become habituated under the habitual criminal act because of the defendants extensive criminal history, and at the fact that there was drugs in the vehicle, the jury would put shame upon him, regardless of defendants favorable facts, and that the defendant was advised by his counsel that if he don't take the states only offer to him he would lose in trial and become habituated under a 5 - 20 years sentence.

### Cripps v. State.

Defendant was also expecting his first child to be born at the he had entered the guilty plea wherein counsel has told the defendant that the only way to get rid of this to move on with life and to be able get out to witness his first child be born was to sign and enter the states plea offer with the

1 stipulation that the defendant was to get his bail  
2 reinstated in Case NO. C-17-323324-1 and A.O.R in  
3 Case NO. 17F21598x for dismissal after rendition  
4 of sentence, where as the defendant was to re-  
5 main out of custody until sentencing. The defendant  
6 told his counsel that he may have a fugitive debiner  
7 in the state of California and counsel stated to the  
8 defendant that he would be released from Nevada's  
9 custody within 30 days upon entering the guilty plea.  
10 The defendant has not seen this relief in his release from  
11 custody, wherein the state has placed a informal hold on  
12 the defendant to hold him until his sentencing, where  
13 as the defendant had entered his plea with the knowledge  
14 of promise to remain out of custody until sentencing  
15 as told by counsel. **Crawford v. State**

16 Therefore, the defendant's counsel was ineffective for failing  
17 to reasonably investigate, failing to explain the strengths  
18 and weaknesses of the evidence, failing to inform him of  
19 the consequences of the plea, failing to provide an adequate  
20 defense, and failing to ensure defendant understood the  
21 sentencing scheme.

22 wherefore, there is new evidence that could relieve the  
23 defendant of guilt and persecution in this case, and  
24 with the defendant's belief that he had no viable defense  
25 and therefore no choice than to accept the states plea bargain,  
26 the defendant moves to submit his declarations and to  
27 withdraw his plea addressing NRS 176.165

28 Dated this        Day of MAY 2018

1 Declaration by:  
2 Denzel Dorsey  
3

4 I, Denzel Dorsey, Hereby State:

5 1.) That the true suspect Davey Dorsey has given his  
6 Confession which relieves defendant of guilt and  
7 Persecution in this case.

8 2.) That I am A 5'10 165 LB Black male which the true  
9 suspect is about 6'1 195 LB and is also a Black male  
10 which positively identifies him as the true suspect  
11 that was given by victim in this case.

12 3.) That the victim never positively identifies the  
13 defendant within his court proceedings.

14 4.) That Defendant was present on the block of  
15 Rochelle / S. Lindell at the time of the crime.

16 5.) That after the Occurance of the crime the  
17 Vehicle (953 LBM) made two seperate stops  
18 for 3 minutes each (1) S. Lindell<sup>ST</sup> which where  
19 the defendant was present and recieved the  
20 Vehicle from Davey Dorsey without knowledge  
21 of the crime that previously had Occurred, and  
22 also (2) The Vehicle (953 LBM) stoped on Viking<sup>ST</sup>  
23 which the defendant Dropped the suspect off  
24 after he recieved the Vehicle from suspect.

25 6.) That Defendant was caught in the vehicle  
26 2 hours after the time of the crime Occurance.

27 7.) I am a Layman Not trained in law

28 8.) My Full Name is Denzel Robin Dorsey; DOB  
9/24/93; Social Security # 620 68 5408

(4)



1 9.) That defendant is submitting his declar-  
2 ations in Pro Se.  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13

14 DATED THIS \_\_\_\_ day of MAY, 2018.

15 I Denzel Dorsey, do  
16

17 solemnly swear, under the penalty of perjury, that  
18 the above Declarations is accurate,  
19 correct, and true to the best of my knowledge.

20 NRS 171.102 and NRS 208.165.

21 Respectfully submitted,

22 Denzel Dorsey

23 Defendant  
24 DD

25 NRS 208.165 A prisoner may execute any instrument by signing his name immediately  
26 following a declaration "under penalty of perjury" with the same legal effect as if he had  
27 acknowledged it or sworn to its truth before a person authorized to administer oaths. As used in  
28 this section, "prisoner" means a person confined in any jail or prison, or any facility for the  
detention of juvenile offenders in this state.

# Certificate of service By mailing

I, Denzel Dorsey, do declare pursuant to N.R.C.P. 5(b) that on the \_\_\_\_ day of MAY 2018 I sent A copy of Motion TO withdraw Plea, and notice of motion to:

The Clerk of The Court  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89101

Steven Wolfson  
District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89101

Caitlyn McAmis  
Attorney at law (court appointed)  
550 E. Charleston Blvd suite A  
Las Vegas, Nevada 89104

Dated this \_\_\_\_ day of MAY 2018

Respectfully Submitted  
Denzel Dorsey #2845569

[Signature]

In Prose, CCDC  
330 S. Casino Center Blvd  
Las Vegas, Nevada 89101

# **EXHIBIT “B”**

**AA 0288**

191

*Steven D. Grierson*

MC  
DA  
PP  
AOL-  
Caitlyn  
McAmis

DENZEL DORSEY  
#2845569, CCDC, NVC  
330 S. Casino Center Blvd.  
LAS Vegas, Nevada 89101

District Court  
Clark County, Nevada

The State of Nevada  
Plaintiff

-VS-  
#2845569

Case NO. # C-<sup>17</sup>323324-1  
Dept. NO. # 22 ~~XXII~~

Denzel Dorsey  
Defendant

Date: 06/28/18 Time: 9:00 AM

Motion To Dismiss Counsel

Comes now, defendant, Denzel Dorsey, in Pro Se, moves  
this Honorable Court for a Motion To Dismiss Counsel.  
This motion is made and based upon all papers, pleadings, and  
documents on file with the clerk of the Court. The Points and  
Authorities, and the argument contained therein,

Dated this 27 day of MAY 2018

Respectfully Submitted  
Denzel Dorsey #2845569  
*[Signature]*

In Pro Se, CCDC NVC  
330 S. Casino Center Blvd  
LAS Vegas, Nevada 89101

CLERK OF THE COURT

RECEIVED  
JUN 06 2018

CLERK OF THE COURT

RECEIVED  
MAY 31 2018

# Points AND Authorities Argument

Nev. Rev. Stat. 7.055 provides that:

An Attorney who has been discharged by his client shall, upon demand... immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client

In this case, defendant was appointed counsel, and counsel simply not filing the requested Pre Sentence motion to withdraw guilty plea, addressing Nev. Rev. Stat. 176.165 to where the defendant can move to withdraw his plea. and also wherein counsel has failed to comply with Rule 40(1)-(4) under the Nevada Rules of Professional Conduct, by failing to carry out defendant's interest in his court proceedings whereas counsel (1) not reasonably informing defendant about the status of his case matters (2) failing to communicate with the defendant as ordered by counsel (3) misinforming defendant of various court proceedings on counsel's behalf (4) by not filing various motions that defendant has requested

wherefore, defendant has filed this motion to Dismiss Counsel to be heard, and formally requested that Counsel be Dismissed,

Certificate of Service by Mailing

I, Denzel Dorsey, do declare pursuant to N.R.C.P 5(b) that on this day 27 of May 2018 I sent a copy of Motion to Dismiss Counsel, and notice of Motion to;

The Clerk of the Court  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89101

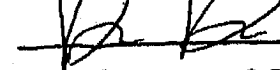
Steven Wolfson  
District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89101

Kristina Wildeveld, Esq.  
Attorney at Law [Court appointed]  
550 E. Charleston Blvd Suite A  
Las Vegas, NV 89104

Dated this 27 day of May 2018

Respectfully Submitted

Denzel Dorsey

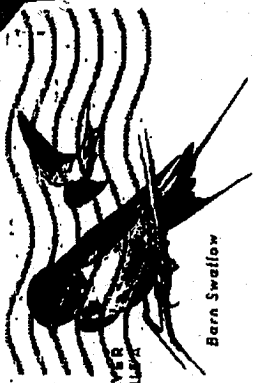


In Pro Se, CCDC NVC  
330 S. Casino Center Blvd  
Las Vegas, Nevada 89101

Denzel Daisey #2845569  
CCDC, NV  
330 S. Casino Center Blvd  
Las Vegas, NV 89101

LAS VEGAS NV 890

29 MAY 2018 PM 4 40 REVER



Barn Swallow

CONFIDENTIAL CCDC

Attn: Clerk of the Court  
Dept. XVII (22)  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89101

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THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT



DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

## COURT MINUTES

April 04, 2019

C-17-323324-1      State of Nevada  
vs  
Denzel Dorsey

April 04, 2019      08:30 AM      All Pending Motions

HEARD BY:      Hardy, Joe      COURTROOM: RJC Courtroom 11D

COURT CLERK: Duncan, Kristin

RECORDER:      Yarbrough, Matt

REPORTER:

## PARTIES PRESENT:

Denzel Dorsey	Defendant
Gary Modafferi	Attorney for Defendant
Sandra K. Digiacomo	Attorney for Plaintiff
State of Nevada	Plaintiff

## JOURNAL ENTRIES

The Court noted that an Evidentiary Hearing would be necessary. Mr. Modafferi indicated he would be bringing in Daniel Dorsey, who would be willing to testify that he was the individual who committed the crime. The State advised that, out of an abundance of caution, it felt that an Evidentiary Hearing should be held. Upon Court's inquiry, the State represented that two hours would be needed for the hearing. COURT ORDERED and Evidentiary Hearing was hereby SET, and the Motion to Withdraw Guilty Plea, was hereby CONTINUED to the date of the Evidentiary Hearing.

## CUSTODY

5/13/19 8:30 AM DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW GUILTY PLEA...EVIDENTIARY HEARING



DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 23, 2019

C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

May 23, 2019      10:30 AM      All Pending Motions

HEARD BY:      Hardy, Joe      COURTROOM: RJC Courtroom 11D

COURT CLERK: Duncan, Kristin

RECORDER:      Yarbrough, Matt

REPORTER:

PARTIES PRESENT:

Gary Modafferi      Attorney for Defendant

Sandra K. Digiacomio      Attorney for Plaintiff

State of Nevada      Plaintiff

JOURNAL ENTRIES

EVIDENTIARY HEARING...DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW GUILTY PLEA

The Defendant not having been transported, COURT ORDERED the Motion and Evidentiary Hearing were hereby CONTINUED.

CUSTODY

CONTINUED TO: 5/28/19 10:30 AM

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 28, 2019

C-17-323324-1      State of Nevada  
vs  
Denzel Dorsey

May 28, 2019      10:30 AM      All Pending Motions

HEARD BY:      Hardy, Joe      COURTROOM: RJC Courtroom 11D

COURT CLERK: Duncan, Kristin

RECORDER:      Yarbrough, Matt

REPORTER:

PARTIES PRESENT:

Denzel Dorsey	Defendant
Gary Modafferi	Attorney for Defendant
Sandra K. Digiacomo	Attorney for Plaintiff
State of Nevada	Plaintiff

## JOURNAL ENTRIES

EVIDENTIARY HEARING...DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW  
GUILTY PLEA

The State advised that Defendant's brother, Davey Dorsey, who would allegedly be admitting to the subject crimes through testimony, would require independent counsel. Mr. Modafferi suggested the Court canvass Davey Dorsey, to determine whether he wished to retain counsel. EXCLUSIONARY RULE INVOKED by the State. The Court expressed its frustration with the State's failure to raise the independent counsel issue prior to the instant hearing. Matter trailed.

Matter recalled. Having reviewed the law applicable to the issue raised by the State, COURT ORDERED that the Evidentiary Hearing would proceed as scheduled. The State noted that its investigator was currently out of the jurisdiction; therefore, the hearing may have to be bifurcated, to allow for the investigator to appear and testify. Testimony and exhibits presented (see worksheets). At Mr. Modafferi's request, the COURT ORDERED that it would consider the Preliminary Hearing transcripts, as they were already part of the record in the instant case. Additionally, the COURT TOOK JUDICIAL NOTICE of the handwritten briefs attached to the Motion to Withdraw Guilty Plea as exhibits A and B. Colloquy regarding scheduling. Mr. Modafferi indicated there was no objection to the hearing being continued to accommodate the State's investigator. COURT ORDERED the Evidentiary Hearing, as well as the Motion to Withdraw Guilty Plea, were hereby CONTINUED.

CUSTODY

CONTINUED TO: 7/8/19 8:30 AM



1 **NOTM**

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565

5 SANDRA K. DIGIACOMO  
6 Chief Deputy District Attorney  
7 Nevada Bar #006204  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 THE STATE OF NEVADA,

15 Plaintiff,

16 -vs-

17 **DENZEL DORSEY,**  
18 **#2845569**

19 Defendant.

CASE NO: C-17-323324-1

DEPT NO: XV

20 **STATE'S NOTICE OF MOTION AND MOTION TO REMAND DEFENDANT**

21 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the State of  
22 Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through SANDRA K.  
23 DIGIACOMO, Chief Deputy District Attorney, will bring a **Motion to Remand Defendant**  
24 before the above entitled Court **on the \_\_\_\_\_ day of JUNE, 2019**, at the hour of **8:30 o'clock**  
25 **A.M.**, or as soon thereafter as counsel may be heard.

26 This Motion is made and based upon all the papers and pleadings on file herein, the  
27 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
28 deemed necessary by this Honorable Court.

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AA 0296

## STATEMENT OF THE CASE

On May 9, 2017, the State filed an Information charging Defendant DENZEL DORSEY with one (1) count of INVASION OF THE HOME (Category B Felony – NRS 205.067) and one (1) count of MALICIOUS DESTRUCTION OF PRIVATE PROPERTY (Gross Misdemeanor – NRS 206.310, 193.155). The State further noticed Defendant of its intent to seek habitual criminal treatment due to his prior felony convictions. Defendant pled not guilty, waived his speedy trial right, and trial was set for September 11, 2017.

That trial date was continued and several status checks were heard. On January 9, 2018, the Court reviewed the procedural history of the case and with outstanding warrants, at the State's request, the Court ordered Defendant be remanded into custody without bail.

On March 13, 2018, Defendant plead guilty to COUNT 1 – INVASION OF THE HOME (Category B Felony – NRS 205.067). Per the Guilty Plea Agreement, the State retained the right to argue at sentencing but would not seek habitual criminal treatment, and agreed to dismiss Count 2 and Case No. 17F21598X after sentencing. The Defendant agreed to pay restitution including for the case and count to be dismissed. Further, the State would not oppose a standard bail setting after Defendant entered his plea; however, if Defendant failed to go to P&P, failed to appear at any future court dates, or was arrested for any new offenses, then Defendant stipulated to habitual criminal treatment, to the fact that he had the requisite priors for such treatment, and to a sentence of sixty (60) months to one hundred twenty (120) months in prison.<sup>1</sup> The Court reiterated that Defendant would serve 60 to 120 months should he fail to appear for future court dates, and set a sentencing date. As Defendant had already posted standard bail, he was released from custody.

On June 5, 2018, Defendant's counsel advised that sentencing could not proceed as Defendant wanted to withdraw his plea and further wanted to dismiss his counsel of record. Another status check was set and Defendant remained out of custody. Several status checks were heard and on July 17, 2018, Defendant failed to appear. Further, Defendant's counsel

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<sup>1</sup> The maximum sentence was typed incorrectly on the Guilty Plea Agreement as sixty (60) to one hundred twenty (120) months is an illegal sentence; sixty (60) months as the minimum sentence requires a minimum of (150) months for the top end of the sentence.

1 had no contact with Defendant. The Court issued a no bail bench warrant and took  
2 Defendant's motion to withdraw plea off calendar.

3 On July 31, 2018, Carl Arnold appeared and confirmed as counsel for Defendant. Mr.  
4 Arnold advised that Defendant was in custody in California and requested that his bench  
5 warrant be quashed, which would allow Defendant to post bail in his California case. The court  
6 denied the motion without prejudice, noting that with the bench warrant remaining in place,  
7 Defendant's appearance in Nevada would be assured after the resolution of his California case.  
8 The matter was taken off calendar and Defendant remained in warrant in the instant case.

9 On October 17, 2018, Defendant was involved in a traffic collision in Las Vegas. The  
10 responding officer was advised of Defendant's warrants, and booked him on the outstanding  
11 bench warrants on Las Vegas Justice Court case 17F21598X. The officer also booked  
12 Defendant on his fugitive warrant out of California for a burglary case. Since Defendant was  
13 not booked on the District Court bench warrant, the State placed the case on calendar to set a  
14 sentencing date.

15 On November 8, 2018, Defendant appeared in court with Mr. Arnold. The State noted  
16 that Defendant had a fugitive hold out of California and there was a possibility of other charges  
17 being filed. Mr. Arnold requested a thirty day continuance to determine what was going on  
18 with the case. The State continued the sentencing date for two weeks, to November 27, 2018.

19 On November 27, 2018, Gary Modafferi appeared on behalf of Defendant and again  
20 requested a continuance to get up to speed on the case. The Court granted another two week  
21 continuance for the sentencing, and on December 13, 2018, Mr. Modafferi appeared and asked  
22 the court to appoint an investigator via a Motion for Expert Services. The Court again  
23 continued the sentencing to February 5, 2019.

24 On January 3, 2019, the Court granted Defendant's motion for an investigator for the  
25 purpose of investigating whether it was appropriate for Defendant to withdraw his plea. The  
26 sentencing date of February 5, 2019 stood.

27 On January 17, 2019, Mr. Modafferi requested the sentencing date be continued, and  
28 the Court reset the sentencing for February 19, 2019.

1 On February 15, 2019, Defendant filed a Motion to Withdraw Guilty Plea, which was  
2 set for hearing on February 26, 2019. On February 19, 2019, the Court continued the hearing  
3 to allow the State to file a response to the Motion to Withdraw. The State filed its Opposition  
4 on March 19, 2019, and the hearing on March 26, 2019 was continued to April 4, 2019. The  
5 Defendant filed his Reply on March 28, 2019. On April 4, 2019, the Court noted an  
6 evidentiary hearing would be necessary, and the Evidentiary Hearing began on May 28, 2019;  
7 the remainder of the hearing is currently set for July 8, 2019.

8 **ARGUMENT**

9 Defendant was not booked on the outstanding District Court bench warrant from his  
10 failure to appear on July 17, 2018. Further, the Court did not order Defendant be remanded  
11 on the instant case. As such, the instant case's Bench Warrant filed July 25, 2018 still remains  
12 outstanding. The State requests that Defendant be remanded on that no bail Bench Warrant,  
13 as this will allow him to accrue credit for time served while this case continues. Additionally,  
14 since California still has a hold and Defendant has waived extradition, this will also insure  
15 Defendant remains in Nevada pending the outcome of this case.

16 DATED this 11th day of June, 2019.

17 STEVEN B. WOLFSON  
18 Clark County District Attorney  
Nevada Bar #001565

19  
20 BY /s/ Sandra K. DiGiacomo  
21 SANDRA K. DIGIACOMO  
22 Chief Deputy District Attorney  
23 Nevada Bar #006204  
24  
25  
26  
27  
28

1                                    CERTIFICATE OF ELECTRONIC TRANSMISSION

2                    I hereby certify that service of the above and foregoing was made this 11th day of June,  
3                    2019, by electronic transmission to:

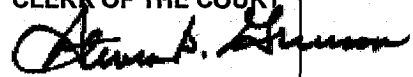
4                                    GARY MODAFFERI, ESQ.  
5                                    Email Address: modafferilaw@gmail.com

6                                    BY: /s/ J. Georges  
7                                    Secretary for the District Attorney's Office

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DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*



State of Nevada  
vs  
Denzel Dorsey

Case No.: C-17-323324-1

Department 15

**NOTICE OF HEARING**

Please be advised that the State's Notice of Motion and Motion to Remand Defendant in the above-entitled matter is set for hearing as follows:

**Date:** June 25, 2019  
**Time:** 8:30 AM  
**Location:** RJC Courtroom 11D  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89101

**NOTE:** Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Joshua Raak  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Joshua Raak  
Deputy Clerk of the Court





1 **RTRAN**

2  
3  
4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

6  
7 **THE STATE OF NEVADA,** )

8 **Plaintiff,** )

9 **vs.** )

10 **DENZEL DORSEY,** )

11 **Defendant.** )  
12

**CASE NO. C323324-1**  
**DEPT. NO. 15**

13 **BEFORE THE HONORABLE JOE HARDY, DISTRICT JUDGE**  
14 **THURSDAY, JULY 11, 2019 AT 10:57 A.M.**

15 **RECORDER'S TRANSCRIPT RE:**  
16 **EVIDENTIARY HEARING**  
17 **DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW GUILTY PLEA**

18  
19 **APPEARANCES:**

20 **FOR THE STATE:**

**SANDRA K. DIGIACOMO**  
**Chief Deputy District Attorney**

21  
22 **FOR THE DEFENDANT:**

**GARY A. MODAFFERI, ESQ.**

23  
24  
25 **Recorded by: MATT YARBROUGH, COURT RECORDER**

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INDEX OF WITNESSES

<u>STATE'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
James McGeahy	4	16	19, 22	21

INDEX OF EXHIBITS

<u>STATE'S EXHIBITS</u>	<u>IDENTIFIED</u>	<u>ADMITTED</u>
1	3	4

1 (THURSDAY, JULY 11, 2019 AT 10:57 A.M.)

2 THE CLERK: The State of Nevada versus Denzel Dorsey.

3 MS. DIGIACOMO: Good morning, Your Honor. Sandra DiGiacomo  
4 on behalf of the State.

5 MR. MODAFFERI: Good morning, Judge. Gary Modafferi on behalf  
6 of Mr. Dorsey. He's present in custody.

7 THE COURT: Good morning. Okay. Are we ready today?

8 MS. DIGIACOMO: Yes, Your Honor.

9 THE COURT: All right.

10 MR. MODAFFERI: Yes.

11 MS. DIGIACOMO: At this point I believe the State is proceeding  
12 with a witness.

13 THE COURT: Okay.

14 MS. DIGIACOMO: And the State would call Detective James  
15 McGeahy.

16 THE COURT: All right.

17 MS. DIGIACOMO: And before he takes the stand, Your Honor, I  
18 also have marked as State's Exhibit, I believe, 1 -- Proposed 1. It is all of the jail  
19 calls that were made by the Defendant from November 28<sup>th</sup>, 20 -- and what year  
20 was this -- 16 until his release I believe it was December 3<sup>rd</sup>, 2016, and I'll  
21 address that after but I'd move for admission. Mr. Modafferi said I did not need  
22 to bring in the custodian of records and I did provide a copy to him previously.

23 MR. MODAFFERI: That's correct, Judge.

24 THE COURT: Okay. So the State's Proposed Exhibit 1 is admitted,  
25 and let's go ahead with the --

1 (Whereupon, State's Exhibit Number 1 was admitted into evidence.)

2 THE CLERK: Sir, please raise your right hand.

3 JAMES McGEAHY,

4 having been called as a witness, was duly sworn and testified as follows:

5 THE CLERK: For the record, please state and spell your first and  
6 last name.

7 THE WITNESS: James McGeahy, first name, J-a-m-e-s, last name,  
8 M-c-G-e-a-h-y.

9 MS. DIGIACOMO: May I, Your Honor?

10 THE COURT: Sure. Thank you.

11 DIRECT EXAMINATION

12 BY MS. DIGIACOMO:

13 Q Sir, how are you employed?

14 A I'm a Detective with Henderson Police Department.

15 Q How long have you been so employed?

16 A I've been a Detective for one year right now.

17 Q And how long have you been with Henderson Police Department?

18 A Thirteen years.

19 Q All right. Now, directing your attention back to November of 2016  
20 were you with the Henderson Police Department?

21 A Yes.

22 Q What was your assignment at that time?

23 A I was in the Problem Solving Unit at that time.

24 Q And can you just explain to the Court briefly what the Problem  
25 Solving Unit is, please?

1           A     We assisted with patrol in responding to active incidents such as  
2 burglaries, robberies, narcotics related offenses, things like that.

3           Q     Is it fair to say that the Problem Solving Unit is a hybrid between  
4 you're actually a patrol officer, however, you do detective stuff?

5           A     Correct.

6           Q     Okay. So on November 28, 2016 did you become aware of a home  
7 invasion that had – or a burglary, however the call came out, that occurred at  
8 2731 Warm Rays Avenue at approximately 11:55 in the morning?

9           A     Yes.

10          Q     And how was it that you first got notified of that?

11          A     We actually heard it occurring on the radio because we would  
12 monitor our radios while we were in the office.

13          Q     Okay. So you're in the office?

14          A     Correct.

15          Q     And you said we. Who else – who were you working with that day?

16          A     We had in our – in that specific office, because we were West Side  
17 PSU, we had myself, I believe Detective Gutierrez and possibly Detective Ward  
18 and Detective Chen.

19          Q     Okay. What about an Officer Max Pilz at that time?

20          A     Yes. He was also working that day but he's East Side PSU, so he  
21 was in a different office.

22          Q     Okay. All right. So you are monitoring the radio and you heard this  
23 call. Do you know did patrol officers respond?

24          A     Yes, they did.

25          Q     Okay. And what did you guys do when you heard the call go out?

1           A     We contacted patrol to find out exactly what was going on, and when  
2 we learned about the vehicle information in the call we started researching that in  
3 the office.

4           Q     Okay. So you call from the office to the officer at the scene?

5           A     Yes.

6           Q     And he provided you what information about the vehicle?

7           A     He gave us the plate of the vehicle and that it was a Suzuki. I forget  
8 what – it was a blue Suzuki. I don't recall which –

9           Q     All right. But you actually had the license plate number?

10          A     Yes. We had the license plate number which was provided by the  
11 victim who was home at the time.

12          Q     All right. So you're in the office, you run the license plate number?

13          A     Yes.

14          Q     And what do you find out?

15          A     It comes back to Global Autos which is a cash rental car rental place  
16 located off of Sunset Road.

17          Q     All right. So what's the next step?

18          A     We contacted them.

19          Q     And is this all pretty immediate even while patrol is still at the scene?

20          A     Yes. Yes.

21          Q     And when you contacted Global Auto what did you learn?

22          A     Learned – talked to the manager there. We learned that the vehicle  
23 had a GPS locator on the car.

24          Q     And did that interest you?

25          A     Very much so.

1 Q Okay. And then what did you request when you learned that  
2 information?

3 A The past GPS locations as well as the current locations of where the  
4 vehicle was at that time.

5 Q Now, did Global Auto give you that over the phone?

6 A Yes. And then shortly as we were -- as I was on the phone Detective  
7 Chen responded to Global Auto and was there with them relaying that  
8 information once he got there.

9 Q So when Detective Chen got to Global Auto is he like watching the  
10 screen --

11 A Yes.

12 Q -- or as -- and seeing where the car is going as it's going?

13 A Yes.

14 Q And is he relaying that information back to you and your other  
15 officers?

16 A Yes.

17 Q Okay. And based upon the information you were learning what did  
18 you do?

19 A We attempted to locate the vehicle as it was traveling around from  
20 Henderson through Las Vegas.

21 Q Okay. Now, when you talked to Global Auto was it confirmed that  
22 that car had been at the location on Warm Rays Avenue?

23 A Yes. It was stopped there between 11:52 and 11:56 a.m.

24 Q Okay. And then about what time is it when Detective Chen gets  
25 there and you're trying to track the car through the GPS?

1           A     Probably – when Detective Chen gets there it's probably closer to  
2 like between 12:30 and 1:00 o'clock.

3           Q     Okay. And you're trying to find the car. As you're given locations  
4 what do you guys do?

5           A     We respond to those locations trying to locate the vehicle.

6           Q     All right. Were you able to do that?

7           A     Eventually, yes.

8           Q     Okay. The – and do you recall how many stops the vehicle made  
9 before it was initially – or first contacted by police?

10          A     If I recall there was two stops and I think they were only for like three  
11 minutes each.

12          Q     Okay. So pretty quick?

13          A     Yes.

14          Q     So by the time you get to that location the car had moved on?

15          A     Yes.

16          Q     And you're getting updated information from Detective Chen as to  
17 where to go next?

18          A     Yes.

19          Q     All right. Where was it that officers finally came into contact with the  
20 vehicle?

21          A     It was located in the lower garage at the Fashion Show Mall.

22          Q     And what officer was the one that initially located it?

23          A     Max Pilz.

24          Q     Okay. Now, when he initially located the car was anybody in it?  
25



1           A     He observed one male who matched the description from the – from  
2 the victim.

3           Q     Okay. And so there was one male in it. Was he driving? Was he  
4 parked?

5           A     He was in the driver's seat. I believe he was driving, yes, and then I  
6 think he parked and exited the vehicle.

7           Q     All right. And after the person parked the vehicle and exited is that  
8 when Officer Pilz contacted him?

9           A     Not at that time. At that time the driver met with another subject,  
10 they both got back into the car and then exited the garage and parked in the back  
11 side by Dillard's which is where they were contacted.

12          Q     Okay. So did Officer Pilz contact them inside the vehicle or as they  
13 were walking into the mall?

14          A     As they were walking – as they exited the vehicle and walking  
15 towards the mall.

16          Q     Okay. And Detective Pilz, when he contacted the individuals did you  
17 eventually respond?

18          A     Yes.

19          Q     Okay. And did Officer Pilz show you or point out to you who the  
20 driver was?

21          A     Yes.

22          Q     Okay. Do you see that person in the courtroom here today?

23          A     Yes. He's sitting right there.

24          Q     Okay. And the person you just pointed to, if you can describe what  
25 he's wearing so that the Court knows who you're talking about, please.

1 A Blue jumpsuit.

2 MS. DIGIACOMO: Your Honor, would the record reflect  
3 identification of the Defendant?

4 THE COURT: The record will reflect the identification of the  
5 Defendant.

6 MS. DIGIACOMO: Thank you.

7 Q (By Ms. DiGiacomo) When Officer Pilz first contacted the Defendant  
8 did Officer Pilz, I guess, ask him about the car he had just come from?

9 A Yeah, I believe so. And he denied that he was driving that car.

10 Q The Defendant denied he was driving the Suzuki –

11 A Yes.

12 Q -- that was rented from Global Auto?

13 A Yes.

14 Q And that car – when you get to the scene, the car with the same  
15 license plate that you had been tracking that the victim had given you that license  
16 plate, it was at the Fashion Show?

17 A Yes. It was parked in a parking spot.

18 Q All right. When you contacted – got there and contacted the  
19 Defendant where was he?

20 A He was sitting on the curb.

21 Q Okay. Was he next to the car or was he by a police car?

22 A He was sitting on the curb near the entrance of the mall at that time.

23 Q When you contacted him did you speak with him?

24 A Yes.

25 Q Okay. And did you advise him of why you were there?

1 A I just explained to him why he was under arrest.  
2 Q Okay. So he was under arrest at that time?  
3 A Yes.  
4 Q And what did you tell the Defendant?  
5 A I explained to him that he was under arrest for home invasion.  
6 Q Okay. And what was the Defendant's response when you said that?  
7 A He asked how.  
8 Q And what did you say?  
9 A I explained to him that we had GPS locations of the vehicle that  
10 placed him at the location of the home invasion.  
11 Q And then what was the Defendant's reaction?  
12 A He just put his head down and I believe he said something to the  
13 effect of like, ah, shit or oh, shit or something like that.  
14 Q Okay. Did you search his person incident to arrest?  
15 A Yes.  
16 Q All right. Now, before you searched this person do you recall  
17 specifically what he was wearing?  
18 A He had – he was actually dressed fairly nice. He had a sport coat  
19 on. I don't recall what type of pants but nice shoes.  
20 Q Did you notice any – so the sport coat or the jacket he had on, was it  
21 long sleeve or short sleeve?  
22 A It was long sleeve.  
23 Q All right. Did you notice anything about the sports coat or the jacket  
24 that he was wearing?  
25 A The sleeve, the right sleeve was torn.

1 Q Was it the right sleeve?

2 A I believe it was the right sleeve.

3 Q If I was to show you your Declaration of Arrest, would that refresh  
4 your recollection as to if it was the right or the left sleeve?

5 A Yes.

6 Q All right.

7 MS. DIGIACOMO: May I approach, Your Honor?

8 THE COURT: Sure.

9 Q (By Ms. DiGiacomo) Were you the one that actually authored the  
10 Declaration of Arrest in this case?

11 A Yes, I was.

12 Q I am going to show you Page 3 of your Declaration of Arrest. Does  
13 that look familiar?

14 A Uh-huh.

15 Q I'm going to ask you to read the third full paragraph, the fourth full  
16 paragraph and the fifth full paragraph to yourself and then let me know when  
17 you're done, please.

18 A Okay.

19 Q Okay. So after reading those paragraphs does that refresh your  
20 recollection as to the specific sleeve that --

21 A Yes, it does.

22 Q -- you notated was -- had some --

23 A Yeah.

24 Q -- sort of issue with it? Okay. So which sleeve was it?

25 A It was the left sleeve.

1 Q It was the left sleeve. And what did you notice about the left sleeve?

2 A It was – had fresh tears in it.

3 Q Okay. Now, you say fresh tears, and you pointed to the area above  
4 where a watch would be on the forearm.

5 A Yeah. It was on the forearm.

6 Q Okay. So it was close to the edge of the sleeve?

7 A Yeah.

8 Q And you said fresh tears. What made you think they were fresh?

9 A Because like older tears start to fray a lot more, and based – kind of  
10 based on how he was dressed he was dressed nice, and I can't imagine that  
11 someone dressed as nice as he was is going to put on a jacket, a sport coat that  
12 is all torn up.

13 Q Okay. So it had tears but they didn't look frayed with strings coming  
14 off?

15 A Correct, yeah.

16 Q Okay. Did you notice anything else about his physical appearance,  
17 specifically his hands?

18 A He had some cuts on his right hand.

19 Q On his right hand?

20 A Yes.

21 Q And when you say cuts, like were they old and scabbed? Did they  
22 appear newer?

23 A They were newer. They were – they weren't – they were starting to  
24 scab but they weren't like – like – like an old wound. They were pretty fresh.

25

1 Q And when you did a search incident to arrest of his person, did you  
2 locate anything else of interest on him?

3 A A glove in his pocket.

4 Q A glove in his pants pocket?

5 A Yes.

6 Q And what was notable about the glove that you found?

7 A It had blood on it as well.

8 Q Okay. And do you know was that for the right hand or left-handed  
9 glove?

10 A It was for the right hand.

11 Q Did it appear that the injuries on his hand matched up to where you  
12 saw the blood on the glove?

13 A I believe it did.

14 Q Do you also remember – you said he was dressed really nicely, but  
15 do you remember whether or not his hands were dirty?

16 A Yeah, they were dirty.

17 Q Did you locate any car keys on him?

18 A Yes. He had a set of car keys for the Suzuki in his pocket.

19 Q For the same car he had denied being in?

20 A We were able to confirm that it was from the same car, yes.

21 Q Okay. And the glove that you said that had some blood on it, did it  
22 appear that that blood was fresh or old based upon the color?

23 A I don't recall.

24 Q Would it refresh your recollection to look at your report –

25 A Yes.

1 Q -- to see if you notated that?

2 A Yes.

3 MS. DIGIACOMO: Page 3, counsel. May I approach, Your Honor?

4 THE COURT: Sure.

5 Q (By Ms. DiGiacomo) Page 3, the fifth full paragraph, please. Read  
6 that to yourself and let me know when you're done.

7 A Okay.

8 Q All right. So do you recall whether or not the blood that was on the  
9 glove appeared newer or was old?

10 A It appeared fresh, new.

11 Q Now, after he was arrested where was he taken?

12 A Henderson Detention Center.

13 Q And when somebody is booked into the Henderson Detention  
14 Center, are the jail calls recorded?

15 A Yes.

16 Q Okay. Did you actually pull and -- well, let me ask you do you have  
17 the ability to pull and listen to those jail calls?

18 A Yes.

19 Q And where do you do that at?

20 A I can do it from my desk computer.

21 Q Do you recall listening to the jail calls for the Defendant in this case?

22 A Yes.

23 Q Okay. Did the Defendant ever talk about why he was in jail on those  
24 calls?

25 A Yes.

1 Q What did he say?

2 A His reason according to the jail call for being there was that he was  
3 arrested for a battery or assisting in a battery or something to that effect.

4 Q Okay. Did he say something about going to – taking his friend to his  
5 girl's house to get something out of it?

6 A Yes.

7 Q Okay. And do you recall whether or not they – he talked about the  
8 malicious destruction was for destroying a TV or hitting --

9 A Yes.

10 Q When you arrested the Defendant and told him he was under arrest  
11 for home invasion did – did you tell him like the specific facts of what the crime  
12 were or did you just tell him, you're under arrest for home invasion?

13 A The only thing I mentioned to him was that we had the GPS data and  
14 that he was under arrest for home invasion.

15 MS. DIGIACOMO: I have nothing further.

16 MR. MODAFFERI: Thank you.

17 CROSS-EXAMINATION

18 BY MR. MODAFFERI:

19 Q Detective, good morning.

20 A Good morning.

21 Q Detective, during the course of your investigation did you present the  
22 complaining witness, Mr. Nazareno, with a six-pack identification lineup?

23 A We did not.

24 Q So is it fair to say that during the course of your investigation you  
25 never got a positive identification from the person who was at the house?



1           A     Just a description.

2           Q     Just a description. Now, after you went to to court at the Preliminary  
3 Hearing -- and you were at that hearing, right, the Preliminary Hearing in this  
4 matter?

5           A     I believe so.

6           Q     And did you hear that -- that there had been problems with the  
7 identification?

8           A     I don't recall that.

9           Q     You weren't told what happened at the Preliminary Hearing with the  
10 witness?

11          A     No.

12          Q     And you didn't --

13          A     I may have not have been at the Prelim on that one.

14          Q     I -- if I showed you a copy of the Preliminary Hearing transcript would  
15 it refresh your recollection on that matter?

16                 MS. DIGIACOMO: And just to kind of cut to the chase, Your Honor,  
17 if I may, the exclusionary rule was invoked, so he would have been outside since  
18 he did testify. He would not have heard the other witnesses.

19                 THE WITNESS: Okay.

20                 THE COURT: Do you recall testifying at the Prelim?

21                 THE WITNESS: I -- I'm not sure.

22                 THE COURT: Okay.

23          Q     (By Mr. Modafferi) Would showing you a copy of the Preliminary  
24 Hearing transcript possibly refresh your recollection?

25          A     Yes, it would.

1 MR. MODAFFERI: May I approach, Judge?

2 THE COURT: Sure. Thank you.

3 THE WITNESS: Okay.

4 Q (By Mr. Modafferi) Having reviewed that does it refresh your  
5 recollection as to whether or not you testified at the Preliminary Hearing in this  
6 matter?

7 A Yes.

8 Q Okay. And after the hearing was over were you asked to do any  
9 follow-up about the identification process or anything regarding this case?

10 A That I don't recall.

11 Q Now, you said that – in your testimony that there were fresh cuts on  
12 the Defendant's hand but there was some scabbing over?

13 A Well, it was just dry. It wasn't scabbing. It was just dry. It wasn't like  
14 actively bleeding but it was dry.

15 Q And did the Defendant tell you that he had gotten those cuts  
16 because he worked as a mechanic?

17 A No.

18 Q He didn't tell you that they were old?

19 A No. He did not tell me any of that. He told me they were old but he  
20 did not tell me it was because he was a mechanic, and he didn't tell me  
21 specifically. My understanding was he told that to Max Pilz.

22 Q Have you, since you've been assigned to this case, done any  
23 investigation about whether Davey Dorsey was involved in this robbery?

24 A No.

25 Q Had you had the opportunity to ever interview Takiya Clemons?

1 A No.

2 MR. MODAFFERI: Okay. I have nothing further, Judge.

3 MS. DIGIACOMO: May I?

4 THE COURT: Sure.

5 REDIRECT EXAMINATION

6 BY MS. DIGIACOMO:

7 Q Okay. So the tears on his left sleeve the Defendant had no  
8 explanation for either; correct?

9 A No.

10 Q I mean he just said they were old?

11 A He just said they were old.

12 Q And did you -- in the course of your investigation of being at the  
13 scene with the Defendant and Max -- excuse me, Officer Pilz talking to him, was  
14 there any information that you didn't have the wrong -- excuse me -- that you did  
15 not have the correct person that committed the burglary?

16 A No. Nothing was ever mentioned.

17 MR. MODAFFERI: Well, that calls for speculation. I'm sorry.

18 MS. DIGIACOMO: No. I asked if he ever had any information from  
19 the scene. It's not speculation.

20 THE COURT: No. Just -- and I actually did not hear the question, I  
21 got a little distracted, so you can repeat that question or rephrase it.

22 MS. DIGIACOMO: Thank you.

23 Q (By Ms. DiGiacomo) When you're at the scene and you're getting  
24 the information from other officers, was there ever any information that you  
25

1 learned that somebody else may have done the home invasion, that you had the  
2 wrong person?

3 A No.

4 Q As the case went on did you ever learn that information?

5 A No.

6 Q While you were at the scene and speaking to the Defendant and  
7 getting information from other officers, did you learn that the Defendant may have  
8 had an alibi and was – for the time of the home invasion?

9 A No.

10 Q During the course of the case going through the system did you ever  
11 learn that?

12 A No.

13 Q So you were never given any information like that?

14 A No.

15 Q If you had been given that information what would you have done  
16 with it?

17 A I would have investigated it.

18 Q And, in fact, you listened to the Defendant's jail calls, correct –

19 A Yes.

20 Q -- at the time back in 2016?

21 A Yes.

22 Q And was there ever any indication that somebody else had done the  
23 home invasion?

24 A No. Nothing was ever mentioned.  
25

1 Q And was there ever any information about he couldn't have done it  
2 because he was with his girlfriend?

3 A No.

4 Q And the person that he was talking to on those calls, who was it?

5 A I believe it was his sister.

6 Q Okay. But you're not sure?

7 A I'm not sure. I can't recall her name, Marquisha or something like  
8 that.

9 MS. DIGIACOMO: Okay. Nothing further.

10 RECROSS-EXAMINATION

11 BY MR. MODAFFERI:

12 Q So, Detective, there was a court filing in this case made pro se by  
13 the Defendant in his motion to withdraw the guilty plea back in May of 2018 and  
14 in that points and authorities he said that Davey Dorsey, his brother, had given a  
15 full confession which relieves the Defendant of guilt in this case. Even though  
16 this was a filed court pleading you didn't either know of it or act on it?

17 A Initially, no, I didn't know. I didn't know until I was subpoenaed to  
18 come to here.

19 Q Okay. Given the fact that a man has taken – Davey Dorsey has  
20 taken the stand in this matter and under oath claimed sole responsibility for the  
21 burglary at issue, the home invasion at issue, have you done anything since  
22 then?

23 A No. I assisted with having him arrested back in October when Metro  
24 was getting him arrested and I investigated another case that involved him since  
25 2016.

1 Q Regarding this specific case there's been no further investigation --

2 A No.

3 Q -- since he's said under oath that he's the person?

4 A No.

5 MR. MODAFFERI: Thank you, Judge. I have nothing further.

6 FURTHER REDIRECT EXAMINATION

7 BY MS. DIGIACOMO:

8 Q And, I'm sorry, I was confused when you were saying you assisted  
9 with his arrest and you had other cases with him. Are you talking about the  
10 Defendant or are you talking about Davey Dorsey?

11 A The Defendant. I apologize.

12 Q Okay. So do you even know who Davey Dorsey is?

13 A No. I've never even heard the name until this came up.

14 Q And in the other home invasions or cases that you've investigated  
15 against the Defendant, Davey Dorsey never came up?

16 A No.

17 MS. DIGIACOMO: Nothing further.

18 MR. MODAFFERI: Thank you, Judge.

19 THE COURT: Thank you.

20 THE WITNESS: Thank you.

21 MS. DIGIACOMO: Your Honor, at this time that concludes the  
22 testimony by the State but I would like to address State's Exhibit 1 --

23 THE COURT: Sure.

24 MS. DIGIACOMO: -- which are the jail calls. Instead of opting to  
25 play them in court, Your Honor, there's 49, I would like to just give them to the

1 Court and then explain to you why I've submitted them and give you a couple of  
2 specific calls to reference if that is okay.

3 THE COURT: Any objection to that?

4 MR. MODAFFERI: No, Judge.

5 THE COURT: Okay.

6 MS. DIGIACOMO: First of all, the reason, Your Honor, I had to  
7 provide you with all of the jail calls versus just playing a few in court is because if  
8 you recall when we were here last time Davey Dorsey testified that he told his  
9 brother on a jail call that – that he was the one that committed the burglary. He  
10 said that the Defendant called his mom, he took the phone from his mom and he  
11 spoke to him.

12 So the reason why I provided you all calls is that call does not  
13 exist anywhere, and, in fact, in support of that is with a call – and because there's  
14 no date and time stamp on these, Your Honor, I'm going to go by the size, the  
15 kilobyte size, so it's the ninth call on the disc and it's kilobytes 14,338 is the size  
16 of the file.

17 Sorry, wrong one. I'm looking – okay. I'm sorry.

18 THE COURT: That's okay.

19 MS. DIGIACOMO: I'll get back to that call in a minute. Call 20 on  
20 this disc, it is 11,226 kilobytes. The Defendant on all of these calls is either  
21 talking to a bonds person or talking to Takiya, who is the other person who  
22 testified, and that's evident from the calls. He is upset with Takiya because  
23 Takiya told him that she had told his mom, and Defendant gets upset because he  
24 didn't want his mom to know about it, he didn't want anybody in his family to  
25

1 know what happened, so that also supports the fact that Mr. Davey Dorsey was  
2 not truthful when he testified on the stand.

3           The other calls that the State would submit that are important  
4 to look at, Call 9, as I just mentioned which is 14,338 kilobytes, Takiya on there –  
5 because remember she testified that the Defendant was with her the entire time  
6 – Takiya states on there that if he would have just chilled with her he wouldn't be  
7 in jail. She refers specifically that she prays for him every night but didn't pray for  
8 him last night because she was mad at him which obviously indicates they are  
9 not together.

10           Call 30, which is 10,206 kilobytes –

11           THE COURT: Say that – bear with me one second.

12           MS. DIGIACOMO: Sure. No problem. It's call Number –

13           THE COURT: Hold on – I'm still writing on the ninth –

14           MS. DIGIACOMO: Oh, I'm sorry.

15           THE COURT: That's okay. Okay. So Call 30, how big is that one?

16           MS. DIGIACOMO: That one is 10,206 kilobytes.

17           THE COURT: Okay.

18           MS. DIGIACOMO: And in that call she also tells him – because  
19 throughout all of these calls, Your Honor, all he cares about is getting out of  
20 custody because he's afraid his parole hold from California will catch up to him  
21 and so he's constantly calling trying to see when he's going to get out, and in this  
22 Call 30 she tells him that he's not getting out right now so he can just sit there  
23 and think about what he did, and he's going to – and how he needs to change it,  
24 and the Defendant's response is something like yeah or eh, which, again,  
25



1 indicates he knows he did something wrong which is contrary to what the  
2 evidence was that you heard.

3           The other call that I would ask the Court to reference is the first  
4 call. It is 13,577 kilobytes. That very first call Takila – excuse me, not Takila,  
5 Takiya asks him what happened and he says the story about how he went to a  
6 friend's house to get – took a friend to his girl's house to get his stuff, she got  
7 mad and she told him, you know – and she said home invasion and the TV got  
8 damaged, so that's where the malicious destruction is. And he also references  
9 that that same kind of thing happened in Call 16, and, pardon me, I forgot to write  
10 down the size of that one. Court's indulgence.

11           THE COURT: Sure.

12           MS. DIGIACOMO: Call 16 I am not sure, but it's the sixteenth call  
13 on the disc. He's talking to the bonds person and he – and he's talking about  
14 what the destruction charge is for kicking a TV and – but nowhere, again, on  
15 these calls, Your Honor, does he talk about, I didn't do anything wrong, why am I  
16 in here. Also I'd refer the Court to Call 22. That one is 3,997 kilobytes.

17           THE COURT: What number was it again?

18           MS. DIGIACOMO: Call – it's the twenty-second call on the disc,  
19 and, again, on that call he's telling the bond girl at the bondmen's office about  
20 how he's in jail for home invasion because he went with a friend to get his stuff  
21 out of a girl's house and she called and he broke the TV and shit, so the State  
22 would submit that all of the calls taken together show that he did – he had a guilty  
23 conscience and what Mr. Davie Jones and Takiya Clemons testified to, it's all  
24 belied by the jail calls.

1                   And also – those are the ones that I would ask the Court to  
2 reference specifically, but, as I said, when you look at all of them there's no  
3 indication that he didn't do the crime, especially with his reaction with the officer,  
4 and also there's no indication he himself had an alibi, so with that that will close  
5 the State's evidence.

6                   THE COURT: Okay. Thank you. So are we done with all the  
7 evidence other than Exhibit 1, I guess?

8                   MR. MODAFFERI: I'm sorry, Judge?

9                   THE COURT: Are we done –

10                  MR. MODAFFERI: Oh, yes.

11                  THE COURT: -- except for all this? In total how long are the calls?

12                  MS. DIGIACOMO: A long time.

13                  THE COURT: Okay.

14                  MS. DIGIACOMO: A long time. I don't know if the defense just  
15 wants to stipulate that nowhere on those jail calls does he talk to his brother, but  
16 it took me – because, you know, a lot of the calls are quick or it's not even him  
17 because somebody else was using his ID, but most of the calls that do go  
18 through are anywhere from 5 to 10 minutes and I believe there's 49 on the disc,  
19 something – somewhere around 50.

20                  MR. MODAFFERI: And, Judge, I think it's important that the Court  
21 understands that he's also in jail on another charge, so when she talks about him  
22 talking about the charge there's an overlap in circumstances.

23                  MS. DIGIACOMO: Actually at the time he was arrested on this one  
24 he wasn't – he hadn't been arrested on – he was arrested just on this case. He  
25 had other active charges, but –

1 MR. MODAFFERI: My understanding he was being held on a home  
2 invasion that involved a broken TV with his girlfriend. He went into her apartment  
3 and –

4 MS. DIGIACOMO: And I have no –

5 MR. MODAFFERI: -- broke the television.

6 MS. DIGIACOMO: No. I have no evidence of that. I don't know if  
7 the defense has something more to – to –

8 MR. MODAFFERI: Well, he references that on the phone call  
9 specifically.

10 THE COURT: I think you're both in agreement that he talks about  
11 the TV in the –

12 MS. DIGIACOMO: Correct. But so at the time that he was arrested  
13 here, Your Honor, this Case Number 16FH2022X, at the time of this arrest he  
14 had no other pending charges in Nevada. The other cases, especially the ones  
15 that I agreed to dismiss as part of this deal, were 17 case numbers, so at the  
16 time -- when you listen to all the jail calls he's worried about his parole hold from  
17 California catching up to him, but when she's asking what happened it's clearly  
18 referencing why he's in jail that day.

19 THE COURT: Does the defense have any particular calls you want  
20 me to focus on?

21 MR. MODAFFERI: No, Judge. It's not – I did listen to them. I didn't  
22 really find any of them –

23 THE COURT: Okay. That's fair.

24 MR. MODAFFERI: -- very remarkable.  
25

1 THE COURT: So how do you all suggest we proceed? I was  
2 anticipating ruling today, but I don't –

3 MR. MODAFFERI: I'm ready to argue, Judge, and I would defer to  
4 the Court on however it wanted to schedule a decision in the matter.

5 MS. DIGIACOMO: Yeah. I know I kind of threw in a loop with all of  
6 these jail calls.

7 THE COURT: Well, so if you want maybe this might make the most  
8 sense is to argue right now –

9 MS. DIGIACOMO: That's fine. And then –

10 THE COURT: -- and then can I – would there be any objection to  
11 me issuing a decision via minute order?

12 MS. DIGIACOMO: Not by the State.

13 MR. MODAFFERI: Not at all, Judge.

14 THE COURT: Okay. Yeah. Let's go ahead and argue now, then.

15 MR. MODAFFERI: Thanks, Judge. Judge, the basis – the general  
16 parameter of why we brought this motion is best summarized in the reply brief,  
17 and it encapsulates the law that the Nevada Supreme Court set forth in  
18 *Stevenson*, so as the Court's well aware there's two different standards. There's  
19 a fair and just standard, a more lenient, permissive standard which is applied by  
20 the courts before sentencing, and then there's the correct manifest injustice  
21 standard which is the much more demanding standard which is applied after  
22 sentencing, so because of that and the fact that this motion was brought well  
23 before sentence has been thought of or imposed we're asking the Court to  
24 consider these factors.

1                   Number one, one of the things in *Stevenson* that the Nevada  
2 Supreme Court said was important was how quickly did the person have a  
3 change of mind or change of heart about wanting to withdraw his plea, and in this  
4 case because of – because it's indicated by the pleadings that were filed pro se it  
5 was less than a couple of weeks, maybe a month or two when the Defendant is  
6 specifically indicating that he tried to get in touch with his defense attorney at the  
7 time to do proper and due diligence to research his brother as a culprit, and given  
8 the fact that his attorney was present at the Preliminary Hearing where the  
9 alleged victim or the homeowner, the resident was – was, how should I say this,  
10 unable at first to identify the person and then later did so after some prompting  
11 and a Cross-Examination occurred, there was significant doubt and there should  
12 have been doubt in his mind that what he was being told by his client was – had  
13 merit and should have been investigated.

14                   You know, out of all of the reasons that could constitute what's  
15 fair and just, Judge, having not done it is probably the most important of fair and  
16 just reasons. I mean all of the cases that I've tried both as a prosecutor and as a  
17 defense attorney that have dealt with withdrawal of guilty pleas they mostly focus  
18 on the canvass, they focus on whether a person understood the nature and  
19 consequences of the charges, understood the deportation consequences,  
20 understood the fact that maybe they were under the influence of something at the  
21 time although that's less rare.

22                   But out of all of those things the one thing that should stand  
23 out and carry the most weight I would argue to the Court is the fact that the  
24 person didn't do it and that someone has come forth under oath and said, you  
25 know, they did get the wrong person, I'm willing to take responsibility, and that

1 didn't happen in a vacuum in this case, and I'll talk about the vacuum because I  
2 think that's another important concept, the concept that the whole record need  
3 not – need be considered and shouldn't be considered in a vacuum, but neither  
4 did the evidence in this case because Ms. Clemons came up and she said that  
5 11:55 he was with me, at the time that this crime was happening he had an alibi,  
6 he was there, so it's not only Davey Dorsey saying, I did it, he didn't, he didn't  
7 have anything to do with it, she's saying he was with me.

8                   So I understand the prosecutor believes in her case and  
9 believes that she's got the right man and you would hope that that's true, you  
10 would hope that the prosecutor would believe that, but that's not really for the  
11 Court to decide at this point. At this point the Court does not need to make a  
12 determination of whether or not there's proof beyond a reasonable doubt, that's a  
13 determination for the jury to make, and I would argue that given the state of  
14 evidence in this case that between Davey Dorsey's testimony and Ms. Clemons'  
15 testimony and the fact that there was no pre-investigation lineup or identification  
16 of the Defendant that there is good cause, there is substantial reason, there is  
17 fair and just reason under *Stevenson* to allow him to withdraw the plea.

18               THE COURT: Thank you.

19               MS. DIGIACOMO: Your Honor, obviously the State disagrees.

20               THE COURT: I'm shocked.

21               MS. DIGIACOMO: I know. So when you look at the history of this  
22 case, and I don't know how far you've gone back, there is a long history to this  
23 case, and the reason why the Defendant either probably took a deal in this case  
24 was just to get out of custody and – because he had come to us – a bench  
25 warrant issued because he didn't show back up because he got back in trouble in

1 California, I think they sent him here, I got his bail revoked because he was, you  
2 know, committing more crimes, he did multiple crimes, and if you look at his  
3 history everything is home invasion or burglaries here and in California.

4 He gets out of custody, gets in trouble again, that's why we get  
5 him back in custody, so for -- up until he wanted to withdraw his plea there's  
6 never any information, any information whatsoever that comes up about his  
7 brother may have been the one to do it other than I would submit to you it was  
8 his brother's name that he gave falsely to the police when he was arrested  
9 because he laughs about it on the jail call.

10 But when -- you know, he put in his motion -- and we haven't  
11 heard from the Defendant in this but in their motion he put in that he felt he  
12 needed to take responsibility for this crime to protect his brother. Well, I submit  
13 to you there was no reason to do that because nobody even knew about his  
14 brother, nobody even knew that he might have been possibly involved which  
15 obviously the State denies, there was no information about him whatsoever, so  
16 the State submits to you that's just false. The Defendant is just trying to get out  
17 of this because now he knows he's looking at habitual treatment. There was no  
18 reason for him to enter this plea to protect his brother because nobody even  
19 knew about his brother.

20 And then also there's no reason to enter the plea to protect his  
21 brother or do anything of the sort because he knew he had an alibi. His  
22 girlfriend, he was with her all night but yet that's not referenced in any of the jail  
23 calls. That's not referenced in any of the -- you know, we were preparing this for  
24 trial, notice of witnesses, nothing. Defendant is the one that had all of this  
25 information, Your Honor, at the time he stood up, entered his plea and said he

1 was guilty. It wasn't an *Alford* plea. He took this deal. Now, I submit it's  
2 probably to get out of custody, but he did it and there has to be some finality. He  
3 shouldn't just get to willy-nilly, you know, get his brother to come in here, perjure  
4 himself, you know, because conveniently he is a juvenile at the time or do any of  
5 this if he's not the one that actually did it.

6 And also this is very incredible too the fact not only is he  
7 actually innocent but he's got an alibi, so the reasons he stated he entered the  
8 plea is just not correct. He knew at the time what the circumstances were when  
9 he entered the plea, and it's not fair just to now allow him to withdraw it because  
10 he's changed his mind, he doesn't want to be treated as a habitual, it's non-  
11 probationable because he's got the prior burglary or home invasions and he gets  
12 two people to come in and lie for him because when you listen to all those jail  
13 calls, Your Honor, everything that his girlfriend and brother said on the stand is  
14 belied.

15 And also if you look at his brother on the stand, look at his  
16 demeanor. He was kind of frustrated, didn't -- you know, was just like, I took  
17 responsibility, didn't want to get into the details when I asked him about it, and if  
18 you recall he talked about how, you know, he went in the backyard and then he  
19 came around and then he knocked on the door and then he broke the window  
20 and put his hand through. Well, if you look at the Preliminary Hearing transcript,  
21 Your Honor, that's not what happened. The person who tried to break into the  
22 house, the State submits the Defendant, rang the doorbell over and over and  
23 over again and that's what woke up the son that came downstairs, so he doesn't  
24 even know the facts.

25



1 He lied when he said that I told the Defendant in jail, hey, bro,  
2 sorry, it was me. That's a lie because there's no jail call to that effect, and as I  
3 stated there's another jail call where the Defendant specifically said he did not  
4 want his mom to know and was upset with the girlfriend for telling her, so that  
5 indicates he never called his mom again – or never called his mom and talked to  
6 his brother on the phone. And the Defendant – or, excuse me, the brother also  
7 testified how he came down to court and it was this courthouse and it was a  
8 female attorney, well, that's incorrect too because the Preliminary Hearing was in  
9 Henderson and that's where he would have gone for the initial case.

10 So he's just making it up as he goes probably to protect his  
11 brother, but it's not fair and just to let him out of this plea he knowingly and  
12 voluntarily entered into just because he doesn't want to do the time now, and –  
13 you know, and also too you've heard, Your Honor, this Defendant is a prolific  
14 residential burglar and his brother had nothing but like a petty larceny from  
15 stealing a phone but yet he's the one that went off on his own and didn't talk to  
16 his brother. It just doesn't make sense.

17 And then also on the jail calls you'll hear reference to the friend  
18 that he was with that got him in this trouble, Your Honor, is called Slick. That's  
19 what the Defendant refers to him throughout the jail calls is as Slick. I asked his  
20 brother who Slick was and he's like, I don't know, so, again, they didn't get their  
21 stories straight, but, you know, clearly when you listen to all the calls the  
22 Defendant knows he did it. His reaction when he found out there was GPS on  
23 the car, he hangs his head and he's like, oh, man or oh, shoot and – because he  
24 knows he did something wrong, then when his girlfriend who's not happy he's in  
25 jail again asks him what happened of course he downplays it and makes it sound

1 like it was somebody else's fault, but, again, he knew he did something wrong,  
2 he knew he committed crimes, he's just trying to get out of custody before the  
3 parole hold catches up with him. And when you look at the totality of the  
4 circumstances, Your Honor, there is no fair and just reason to allow the  
5 Defendant to withdraw this plea and to reward him for getting two people to come  
6 in and lie, and with that I'll submit it.

7 THE COURT: Thank you.

8 MR. MODAFFERI: Judge, just briefly I want to --

9 THE COURT: Sure.

10 MR. MODAFFERI: It's not fair and just to have the prosecutor make  
11 the --

12 THE COURT: I'm sorry I coughed. Go ahead.

13 MR. MODAFFERI: No, no problem. This is the salient point I just  
14 want to underscore because *Stevenson* presents this law, and this is what's  
15 necessary, I think, for the Court to keep in the back of its mind, it is not fair and  
16 just to allow the prosecutor to determine who is worthy of belief, that is a jury  
17 determination, so when she says he got these two people to come in here and lie  
18 under oath now that's a stretch, that's a stretch that, you know, 12 people should  
19 decide. If the -- for Ms. --

20 THE COURT: So let me ask --

21 MR. MODAFFERI: Yes, Judge.

22 THE COURT: -- on that issue we're having an evidentiary hearing  
23 to determine whether to grant or deny the motion to withdraw, so isn't it fair,  
24 accurate, appropriate, however you want to call it, to say, well, for better or worse  
25 on here for the motion and the hearing it's me who determines the credibility?

1 MR. MODAFFERI: A couple of things on that point. Number one,  
2 you've heard about all these phone calls. Do we hear about one phone call  
3 where they're conspiring to commit perjury? That did not happen. The second  
4 thing, Judge, Judge, I think it's more like you present this prima facie case of  
5 reasons and in this instance, I did it, he didn't, he was with me, not there, that, I  
6 think – I mean understandably if there's no evidence we couldn't possibly move  
7 the motion forward, all right, but at what point do we have to prove those facts  
8 beyond a reasonable doubt? I say not. Preponderance? I don't know, I'm not  
9 exactly sure, but I do know one thing, we've moved the ball on that point.

10 I would respectfully submit to the Court that that evidence that  
11 we said we would present in our moving pleadings we did present, and I would  
12 underscore again, Judge, that out of all the reasons that are encapsulated or  
13 contemplated by *Stevenson* for possibly withdrawing not doing it has got to be  
14 the most important one. What does the State absolutely lose? They actually  
15 have to go to trial and prove their case beyond a reasonable doubt like they  
16 would have had to have done before the plea was entered, so they don't really –  
17 they haven't claimed any lost evidence or lost witnesses. All they're saying is we  
18 like the situation status quo because we got him over a barrel and want to keep  
19 him there. Thank you, Judge.

20 THE COURT: Thank you. So I may – what I'll plan on doing,  
21 reviewing Exhibit 1 and issuing a decision via minute order or I might also need  
22 to bring you back but I'll let you know.

23 MS. DIGIACOMO: And, Your Honor, actually we'll need to come  
24 back either way because we either need a sentencing date or a trial date, so  
25 should we just do a status check maybe in August for your order --

1 THE COURT: That's --  
2 MS. DIGIACOMO: -- that way we don't --  
3 THE COURT: -- an excellent idea because --  
4 MS. DIGIACOMO: Otherwise I will lose track of this case.  
5 THE COURT: And why I say it's an excellent idea is because I may  
6 lose track of the case too and that gives me a deadline, so, yeah, let's -- let's  
7 come back for a status check in 30 days if that --  
8 MS. DIGIACOMO: I'm sorry, when?  
9 THE CLERK: Do this in 30 days, Judge?  
10 THE COURT: Yeah. And we'll figure out what works for all of you  
11 too.  
12 THE CLERK: August 8th of 2019 at 8:30 a.m.  
13 MS. DIGIACOMO: Thank you.  
14 THE COURT: If that -- does that work for you, Mr. Modafferi?  
15 MR. MODAFFERI: Yes. Did you say 8:30, Judge?  
16 THE CLERK: 8:30, yes.  
17 MR. MODAFFERI: Thank you. Thank you, Your Honor.  
18 THE COURT: Thank you, all.  
19 MR. MODAFFERI: Judge, just as a matter of housekeeping -- I'm  
20 sorry about that --  
21 THE COURT: No, that's fine.  
22 MR. MODAFFERI: -- you're going to consider the exhibits that were  
23 attached to the motions and the replies and stuff, you know, the pro se pleadings  
24 that were filed in this matter?  
25 THE COURT: That's a really good question.

1 MS. DIGIACOMO: And I would also submit like everything I  
2 attached to my motion as well as –

3 THE COURT: If both parties want me –

4 MS. DIGIACOMO: Yes.

5 THE COURT: -- to consider all that I definitely will.

6 MS. DIGIACOMO: Right.

7 MR. MODAFFERI: I have no objection. I would ask the Court to do  
8 so.

9 MS. DIGIACOMO: I just – I thought that's the way it was the last  
10 time we were here because that's why I didn't admit like the GPS and all of that  
11 because it's already attached to the pleadings.

12 THE COURT: So I will consider all of the arguments as well as all  
13 the evidence, exhibits attached to the briefs.

14 MR. MODAFFERI: Thank you, Judge.

15 THE COURT: Thank you. Thank you, all.

16 MS. DIGIACOMO: Thank you.

17 (Whereupon, the proceedings concluded.)

18 \* \* \* \* \*

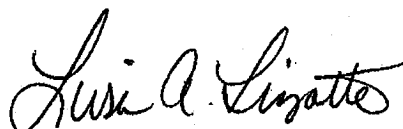
19

20 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
21 audio/visual proceedings in the above-entitled case to the best of my  
22 ability.

23

24

25



LISA A. LIZOTTE  
Court Recorder



1 **ORDR**

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**

4  
5 **THE STATE OF NEVADA,**

6 **Plaintiff,**

7 **v.**

8 **DENZEL DORSEY,**

9 **Defendant.**

**CASE NO.: C-17-323324-1**

**DEPT NO.: XV**

**ORDER DENYING  
DEFENDANT'S MOTION TO  
WITHDRAW GUILTY PLEA**

10  
11 This matter came on for an evidentiary hearing on May 28, 2019, and July 11, 2019,  
12 Defendant Denzel Dorsey ("Defendant") was present in custody, represented by counsel, Gary A.  
13 Modafferi. Plaintiff State of Nevada ("State") represented by Steven B. Wolfson, Clark County  
14 District Attorney, through Sandra K. Digiacomio, Chief Deputy District Attorney. The Court having  
15 considered Defendant's moving papers, the opposition, the transcript of Defendant's plea canvass,  
16 the written Guilty Plea Agreement ("GPA"), the arguments of counsel, the jail calls, as well as the  
17 sworn testimony of the witnesses hereby denies Defendant's Motion to Withdraw Guilty Plea.

18 **I. STATEMENT OF FACTS**

19 On November 28, 2016, Kevin Nazareno ("Kevin") lived at 2731 Warm Rays in Henderson,  
20 Clark County, Nevada with his parents, Florentino and Norma Nazareno ("Norma"), who own the  
21 residence. See Preliminary Hearing Transcript ("PHT") at 4:16-5:6. On that date, Kevin was asleep  
22 in his bed when he was awoken by the sound of the front doorbell ringing constantly, as someone  
23 kept pushing the doorbell multiple times, would stop and then would press the button again multiple  
24 times. *Id.* at 5:12-6:10. Annoyed someone was ringing the doorbell that much; Kevin got out of bed  
25 and went to the front door. *Id.* at 6:13-22. The front doors were glass and as Kevin looked over the  
26 stair railing from upstairs, Kevin could see a single African American male standing outside the  
27 front door punching the glass with his fist. *Id.* at 6:23-7:14. Kevin could also hear banging on the  
28 door itself. *Id.* at 7:20-22. Kevin saw the glass on the front door break, which left a round hole with

1 jagged edges. *Id.* at 8:1–8:24. Kevin stated that an African American male reached through the hole  
2 in the glass to unlock the deadbolt with his left hand. *Id.* at 9:3–10. He also stated that the male was  
3 wearing a jacket or clothing on his arm. *Id.* at 16:10–19. Kevin rushed forward to the door, grabbed  
4 the deadbolt and kept it locked. *Id.* at 9:11–19. At this time, the male realized someone was home  
5 and took his arm out of the glass and ran away. *Id.* at 9:23–25.

6 Kevin went outside of the house and chased after the male. *Id.* at 10:5–6. Kevin saw the male  
7 get into a blue Suzuki, four door, on the driver's side. *Id.* at 10:7–20. Kevin was able to obtain the  
8 license plate, 953LGM, before the male drove away. *Id.* Kevin did not observe anyone else in the  
9 vehicle. *Id.* at 11:9–10. The male had the keys to the vehicle and started the ignition. *Id.* at 18:14–15.  
10 Kevin then called the police at approximately 11:55 a.m. and gave them the license plate number. *Id.*  
11 at 10:21–25.

12 Norma was at work on November 28, 2016, when she received a call from her husband  
13 around noon, so she rushed home. *Id.* at 21:14–16. When she arrived, she saw that the glass on her  
14 front door was broken, and that there was a big hole right by the doorknobs. *Id.* at 23:6–25. First,  
15 Norma had to pay \$474.41 to have the door boarded up until the glass could be replaced. *Id.* at  
16 24:16–25:5. Next, Norma paid \$723.72 to have the glass replaced in the door. *Id.* at 25:6–8.

17 Officer James McGeahy ("Officer McGeahy") of the Henderson Police Department, Problem  
18 Solving Unit, was assigned this residential burglary on November 28, 2016. *Id.* at 30:18–24. He and  
19 his squad began investigating immediately. *Id.* at 31:1–5. The plate, 953LGM, was run through their  
20 database and returned to a rental car. *Id.* The rental car company was contacted and the officers  
21 learned that it was rented to a female and had a GPS equipped on it; therefore, the rental car  
22 company was able to provide officers with the exact location of the vehicle at that moment. *Id.* at  
23 31:6–10. At that point, two officers went to the rental car company to have direct contact with the  
24 person tracking the vehicle with the GPS. *Id.* at 31:23–25.

25 The GPS for the vehicle showed that it was located on the street of the residential burglary,  
26 so officers wanted to make contact with the car. *Id.* at 32:11–12. Within a very short time of the  
27 residential burglary, officers made contact with the vehicle at the Fashion Show Mall. *Id.* at 32:18–  
28 19. Officers observed the vehicle in the parking garage picking up another person and then parked

1 the vehicle near Dillard's. *Id.* at 33:18-22. Officers contacted the vehicle and Defendant was  
2 arrested. *Id.* at 36:20-25. Officer McGeahy made contact with Defendant to let him know he was  
3 under arrest for the residential burglary at 2731 Warm Rays and noticed that the jacket Defendant  
4 was wearing had several tears on his left arm that were fresh and frayed. *Id.* at 37:2-22. Defendant  
5 also had injuries on his right hand with some dried blood and appeared to be fresh. *Id.* at 37:23-  
6 38:10. During a search incident to arrest, the key to the Suzuki rental vehicle was found in  
7 Defendant's pocket, along with one glove with some blood on it. *Id.* at 38:11-39:13. The other  
8 matching glove was found in the vehicle. *Id.* at 39:13-39:18. Both the jacket and gloves were  
9 booked into evidence. *Id.* at 40:5-9.

10 When Officer McGeahy told Defendant what he was being arrested for, he explained that the  
11 rental car had a GPS tracker which placed him at the location of the crime; Defendant looked down  
12 and said "ah shit." See Declaration of Arrest ("DOA") at 3, attached as Exhibit "4" to State's  
13 Opposition to Defendant's Motion to Withdraw Guilty Plea. The GPS records for the vehicle  
14 showed the following:

15 11:52 a.m.: the vehicle is stopped at 2727-2729 Warm Rays in Henderson  
16 for 4 minutes  
17 11:56 a.m.: the vehicle started traveling  
18 12:01 p.m.: the vehicle was traveling 30 mph in the 10300-10532 block of  
19 Eastern  
20 (north of the victim's residence by the intersection of Coronado Center  
21 and Eastern)  
22 12:06 p.m.: the vehicle was traveling 67 mph on westbound I-215  
23 12:11 p.m.: the vehicle was traveling 37 mph in Enterprise, NV  
24 12:16 p.m.: the vehicle was traveling 54 mph near 5524-5698 S. Decatur  
25 12:23 p.m.: the vehicle stopped at 3938-3980 S. Spitze Drive for 3  
26 minutes  
27 12:26 p.m.: the vehicle began traveling  
28 12:31 p.m.: the vehicle stopped at 3800-3850 S. Lindell for 3 minutes  
12:34 p.m.: the vehicle started traveling  
12:39 p.m.: the vehicle stopped at 5801-5899 block of W. Viking for 3  
minutes  
12:43 p.m.: the vehicle started traveling  
12:48 p.m.: the vehicle was traveling 26 mph near 5901-6099 W. Desert  
Inn  
12:53 p.m.: the vehicle stopped at 3300-3498 S. Ramuda Trl for 1 minute



1 See Vehicle Rental Agreement and History Printout for November 28, 2016, attached as Exhibit "5"  
2 to State's Opposition to Defendant's Motion to Withdraw Guilty Plea.

3 The vehicle made no other stops and was on Fashion Show Drive at 1:43 p.m. and at 3231-  
4 3299 Las Vegas Boulevard South ("Fashion Show Mall") at 1:44 p.m. *Id.*

## 5 II. PROCEDURAL HISTORY

6 On November 28, 2016, Defendant was arrested for Attempt Invasion of the Home and  
7 Malicious Destruction of Property. Defendant was released after his arrest on a \$6,000 surety bond,  
8 despite having four prior felony convictions in Nevada and California. Defendant was arraigned in  
9 justice court on December 19, 2016, and a preliminary hearing was scheduled for February 15, 2017.  
10 Because Defendant's attorney had to withdraw due to a conflict, the preliminary hearing was  
11 continued to March 30, 2017.

12 On February 22, 2017, the State filed an Amended Criminal Complaint charging Defendant  
13 with Invasion of the Home and Malicious Destruction of Property. On March 30, 2017, the defense  
14 moved to continue the preliminary hearing because defense counsel had had no contact with  
15 Defendant and it was reset for May 2, 2017. On May 2, 2017, the preliminary hearing was  
16 conducted; at its conclusion, Defendant was held to answer in district court on both charges.<sup>1</sup>  
17 Further, the State filed a Notice of Prior Burglary and/or Home Invasion Convictions and Notice of  
18 Intent to Seek Punishment as a Habitual Criminal in the Information listing Defendant's two  
19 convictions from Nevada for Attempt Burglary in case number C-12-279732-1 and Invasion of the  
20 Home in case number C-12-284308-1.

21 On May 15, 2017, Defendant pleaded not guilty and waived his speedy trial right. The trial  
22 was scheduled for September 11, 2017. On September 7, 2017, the defense moved for a continuance,  
23 which was not objected to by the State as it was the first trial setting. The trial was reset for  
24 December 4, 2017. On November 30, 2017, Defendant's counsel moved to withdraw due to a  
25 conflict and Defendant indicated he wished to hire private counsel; a status check was set for  
26 December 12, 2017, and continued to January 9, 2018, to see if counsel would confirm.

27  
28 <sup>1</sup> Defendant did not present any witnesses at the preliminary hearing; *i.e.*, neither Davey Dorsey nor  
Takiya Clemons testified.

1 In December 2017, an arrest warrant for Defendant was issued in 17F21598x for Invasion of  
2 the Home, two counts of Burglary and Possession of Stolen Property. Defendant was booked on the  
3 warrant in the beginning of January 2018. On January 9, 2018, private counsel was still unable to  
4 confirm and the State moved to remand Defendant without bail for committing new crimes while out  
5 of custody in this case. The court remanded Defendant with no bail and set a status check to appoint  
6 counsel for January 16, 2018. On that date, new appointed counsel confirmed for Defendant and a  
7 trial date was scheduled for April 23, 2018.

8 On March 13, 2018, Defendant pleaded guilty to Invasion of the Home pursuant to a guilty  
9 plea agreement which stated, in part:

10 The State will retain the right to argue. Additionally, the State agrees not  
11 to seek habitual criminal treatment. Further, the State will not oppose  
12 dismissal of Count 2 and Case No. 17F21598X after rendition of sentence.  
13 The State will not oppose standard bail after entry of plea. However, if I  
14 fail to go to the Division of Parole & Probation, fail to appear at any future  
15 court date or am arrested for any new offenses, I will stipulate to habitual  
16 criminal treatment, to the fact that I have the requisite priors and to a  
sentence of sixty (60) to one hundred twenty (120) months in the Nevada  
Department of Corrections. Additionally I agree to pay full restitution  
including for cases and counts dismissed. See GPA at 1-2.

17 Defendant stated during his plea canvass that he was pleading guilty on his own free will and that he  
18 committed the instant offense. See Reporter's Transcript of Hearing Re State's Request for Entry of  
19 Plea Filed June 14, 2018 ("RTH"), at 5-6. Pursuant to the terms of the agreement, Defendant was  
20 released on his own recognizance due to his prior bail not having been exonerated. *Id.* at 6-7.

21 The Court also cautioned Defendant that if he failed to go to the Division of Parole and Probation, to  
22 appear at any future court date, or was arrested on any new offenses, he would serve as a habitual  
23 criminal. *Id.* at 7. A sentencing date was scheduled for July 17, 2018. *Id.*

24 On April 26, 2018, Defendant filed a Motion to Place on Calendar to Address Custody Status  
25 and Hold. Defendant was on parole in California at the time he committed the crimes in this case  
26 and 17F21598x; therefore, a hold was placed on him when he was arrested on the latter case. In the  
27 motion, Defendant asked to be remanded and for his sentencing date to be moved to a sooner date.  
28 The motion was heard on May 8, 2018, at which time the Court rescheduled Defendant's sentencing  
to June 5, 2018; however, Defendant was not remanded.

1 On June 5, 2018, defense counsel stated that sentencing could not proceed as Defendant  
2 wanted to withdraw his guilty plea and to dismiss her as counsel. Defendant stated he had filed the  
3 motions previously but the court indicated it had not received them. The matter was continued to  
4 June 12, 2018, for a status check regarding the motions and a new sentencing date. On June 6, 2018,  
5 Defendant filed in pro per a Motion to Dismiss Counsel and a Motion to Withdraw Plea. On June 12,  
6 2018, the court granted Defendant's Motion to Dismiss Counsel and set another status check for  
7 confirmation of counsel for June 28, 2018. On June 28, 2018, all matters were continued to July 17,  
8 2018. On July 3, 2018, the State filed an Opposition to Defendant's Pro Per Motion to Withdraw  
9 Plea.

10 On July 11, 2018, Defendant was arrested just after midnight in California for Receiving  
11 Stolen Property, as Defendant was in possession of property stolen from a residential burglary which  
12 occurred earlier on July 10, 2018. Thus, on July 17, 2018, Defendant failed to appear and a bench  
13 warrant was issued in the instant case and Defendant's Motion to Withdraw Plea was also taken off  
14 calendar. On July 24, 2018, a Motion to Quash Bench Warrant was filed by Defendant's newly  
15 retained counsel. The motion stated that Defendant was presently incarcerated in California but  
16 would make all future court dates. On July 31, 2018, defense counsel asked for the bench warrant to  
17 be quashed because Defendant could not post bail in his California case with the hold from this case.  
18 The court denied the motion finding that the bench warrant remaining in place would ensure  
19 Defendant's appearance in court subsequent to the resolution of his California case.

20 On November 8, 2018, Defendant appeared in custody on the bench warrant return and his  
21 counsel requested thirty days to determine the status of Defendant's cases in California but the State  
22 objected. The Court set a sentencing date for November 27, 2018. On November 27, 2018, newly  
23 retained counsel substituted in and the matter was continued to December 13, 2018. On December  
24 13, 2018, defense counsel requested a continuance because he filed a Motion for Expert Services  
25 (Investigator) Pursuant to *Widdis* on December 5, 2018. The Motion for Expert Services was granted  
26 by the Court on January 9, 2019, in a signed order. On January 17, 2019, it was confirmed the  
27 investigator would only be working on information related to a motion to withdraw guilty plea and  
28 the sentencing date was rescheduled for February 19, 2019.

1 On February 15, 2019, Defendant filed a Motion to Withdraw Guilty Plea. On February  
2 19, 2019, the sentencing date was continued to March 28, 2019, to allow the State time to file an  
3 opposition to the motion. That date was later changed by the parties and this Court to April 4, 2019.  
4 On February 21, 2019, the State filed a Notice of Intent to Seek Punishment as a Habitual Criminal  
5 and Notice of Prior Burglary and/or Home Invasion Convictions adding Defendant's two  
6 convictions from California for Burglary, 1st Degree in case number MA058464-01 and Burglary,  
7 1st Degree in case number MA066766- 01. Also on this date, Defendant filed a Supplemental  
8 Exhibit in Support of Defendant's Motion to Withdraw Guilty Plea. The State filed an opposition on  
9 March 19, 2019.

10 On April 4, 2019, the Court noted that an evidentiary hearing would be necessary and  
11 scheduled the evidentiary hearing for May 13, 2019. On May 9, 2019, the evidentiary hearing was  
12 rescheduled by the Court to May 23, 2019. On May 23, 2019, Defendant was not transported. Thus,  
13 the evidentiary hearing was rescheduled to May 28, 2019.

14 On May 28, 2019, the Court heard sworn testimony from Defendant's brother, Davey Dorsey  
15 ("Davey"), and Defendant's girlfriend, Takiya Clemons ("Takiya"). The evidentiary hearing was  
16 continued to July 8, 2019, to accommodate the State's investigator, Officer McGeahy. On July 2,  
17 2019, the parties agreed to continue the matter and it was rescheduled to July 11, 2019. On July 11,  
18 2019, the Court heard testimony from Officer McGeahy. The State also presented multiple recorded  
19 jail calls made by Defendant for the Court to consider. The recorded calls were admitted without  
20 objection by the defense. Upon request by both parties, the Court considered all evidence attached to  
21 the briefs as exhibits. The Court deferred ruling and this order follows.

### 22 **III. ARGUMENT**

23 Defendant requests to withdraw his guilty plea by arguing that he is factually innocent of the  
24 charges he pled guilty to. The crux of Defendant's argument is that he entered into the plea  
25 agreement to protect his minor brother, Davey who committed the residential burglary. To support  
26 his assertion, Defendant offered written declarations from both Davey and Takiya that Defendant did  
27 not commit the residential burglary. In addition, Davey and Takiya testified at the evidentiary  
28 hearing. After reviewing all the evidence presented and under a totality of the circumstances, the

1 Court concludes that Defendant has not met his burden of proving by a preponderance of the  
2 evidence that a credible fair and just reason exists to withdraw his guilty plea.

3 Nevada Revised Statutes § 176.165 provides that a defendant who has pleaded guilty may  
4 petition the court to withdraw his plea “before sentence is imposed or imposition of sentence is  
5 suspended.” NRS 176.165. A “district court may grant a defendant’s motion to withdraw his guilty  
6 plea before sentencing for any reason where permitting withdrawal would be fair and just.”  
7 *Stevenson v. State*, 354 P.3d 1277, 1281 (2015). When making this decision, a district court “must  
8 consider the totality of the circumstances.” *Id.*

9 A plea of guilty is presumptively valid. *Jeziarski v. State*, 107 Nev. 395, 397, 812 P.2d 355,  
10 356 (1991). The defendant has the burden of proving that the plea was not entered knowingly or  
11 voluntarily. *Wynn v. State*, 96 Nev. 673, 615 P.2d 946 (1980). Therefore, the defendant seeking to  
12 withdraw a guilty plea must show good cause as to why a denial of the motion to withdraw plea  
13 constitutes an injustice. *Wynn*, 96 Nev. at 675, 615 P.2d at 947 (citing *State v. Second Judicial Dist.*  
14 *Court*, 85 Nev. 381, 385 (1969)).

15 In *Stevenson v. State*, the Nevada Supreme Court determined that the district court must  
16 consider the totality of the circumstances to determine whether permitting withdrawal of a guilty  
17 plea before sentencing would be fair and just. The court found that none of the reasons presented  
18 warranted the withdrawal of Stevenson’s guilty plea, including allegations that the members of his  
19 defense team lied about the existence of the video in order to induce him to plead guilty. *Stevenson*,  
20 354 P.3d at 1281. The court found similarly unconvincing Stevenson’s contention that he was  
21 coerced into pleading guilty based on the compounded pressures of the district court’s evidentiary  
22 ruling, stand by counsel’s pressure to negotiate a plea, and time constraints. *Id.* As the court noted,  
23 undue coercion occurs when a defendant is induced by promises or threats which deprive the plea of  
24 a voluntary act. *Id.* (quoting *Doe v. Woodford*, 508 F.3d 563, 570 (9th Cir. 2007)).

25 The court also rejected Stevenson’s implied contention that withdrawal was warranted  
26 because he made an impulsive decision to plead guilty without knowing definitively whether the  
27 video could be viewed. *Id.* Stevenson did not move to withdraw his plea for several months. *Id.* The  
28 court made clear that one of the goals of the fair and just analysis is to allow a hastily entered plea

1 made with unsure heart and confused mind to be undone, not to allow a defendant to make a tactical  
2 decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made  
3 a bad choice in pleading guilty. *Id.* at 1281–82 (quoting *United States v. Alexander*, 948 F.2d 1002,  
4 1004 (6th Cir. 1991)).

5 The court found that considering the totality of the circumstances, it had no difficulty in  
6 concluding that Stevenson failed to present a sufficient reason to permit withdrawal of his plea. *Id.* at  
7 1282. Permitting him to withdraw his plea under the circumstances would allow the solemn entry of  
8 a guilty plea to become a mere gesture, a temporary and meaningless formality reversible at the  
9 defendant’s whim, which the court would not allow. *Id.* (quoting *United States v. Baker*, 514 F.2d  
10 208, 222 (D.C. Cir. 1975)).

11 Similar to *Stevenson*, this Court, after reviewing the evidence and circumstances, determines  
12 none of the reasons presented by Defendant warrant a withdrawal of his guilty plea.

13 **A. Defendant’s plea was freely and voluntarily entered.**

14 Because the guilty plea is assumed to be valid, Defendant had the burden of proving his plea  
15 was not entered freely and voluntarily. After reviewing the record and the totality of circumstances,  
16 the Court determines that Defendant’s plea of guilty was and remains valid.

17 The evidence demonstrates that Defendant understood the terms of his guilty plea and the  
18 consequences of his guilty plea. On March 13, 2018, Defendant signed the GPA which states that  
19 Defendant was signing the plea agreement voluntarily, after consulting with his counsel, and was not  
20 acting under duress, coercion, or by virtue of any promise of lenience except for what is outlined in  
21 the agreement. *See* GPA at 5:12–14. Defendant’s counsel, under penalty of perjury, signed the  
22 Certificate of Counsel certifying she explained to Defendant the allegations contained in the charges,  
23 the penalties for each charge and possible restitution, and certified that all pleas of guilty offered by  
24 Defendant pursuant to the agreement were consistent with the known facts. *Id.* at 6:2–18.

25 In addition to making the above representations by signing the GPA, Defendant was  
26 extensively and thoroughly canvassed by the district court, with Defendant’s counsel present, when  
27 he entered his plea on March 13, 2018. *See* RTH at 2–6. The court asked Defendant if anyone forced  
28 him to plead guilty, and Defendant said “No, Your Honor.” *Id.* at 5:3. Defendant affirmed he was

1 pleading guilty on his own free will. *Id.* at 5:6–7. When asked by the court, Defendant affirmed he  
2 understood the consequences of his guilty plea. RTH at 5:11–15. Before the plea was accepted, the  
3 court repeated the facts of the case, including the allegation of his illegal and forceful entry into  
4 2731 Warm Rays Ave, and Defendant affirmed the truthfulness of those facts. *Id.* at 6:10–19.

5 After reviewing the transcript of the entry of plea in this matter, the Court finds that the  
6 transcript does not contain any information showing that Defendant did not enter into his plea freely  
7 and voluntarily. Defendant knowingly waived his privilege against self-incrimination, the right to  
8 trial by jury, and the right to confront his accusers. The plea was voluntary, was not coerced, and  
9 was not the result of a promise of leniency. Defendant understood the consequences of his plea, and  
10 the range of punishment, and the nature of the charge, *i.e.*, the elements of the crime.

11 **B. Defendant's new representations are belied by the record.**

12 In *Stevenson*, the Nevada Supreme Court noted that the district court gave Stevenson  
13 considerable leeway to demonstrate how his counsel lied to or misled him, yet Stevenson struggled  
14 to articulate a cohesive response. *Stevenson*, 354 P.3d at 1281. Here, the Court gave Defendant much  
15 leeway to bring forth evidence demonstrating how his plea was not valid and that Davey committed  
16 the residential burglary. After reviewing the record and all evidence within, the Court finds that the  
17 record does not support Defendant's new representations.

18 **1. The Court warned Defendant not to commit any other crimes.**

19 During the canvass on March 13, 2018, the court explicitly warned Defendant that he  
20 stipulated to be treated as a habitual criminal if he was "arrested on any new offenses," and  
21 Defendant affirmed he understood the consequences of a new arrest. RTH at 7:11–19. On July 10,  
22 2018, the County of Los Angeles Sheriff's Department responded to a residential burglary in  
23 Lancaster, CA. *See* County of Los Angeles Sheriff's Department Incident Report at 1, 4, attached as  
24 Exhibit "3" to State's Opposition to Defendant's Motion to Withdraw Guilty Plea. On July 11, 2018,  
25 Defendant allegedly committed several traffic violations during an attempt by Los Angeles County  
26 officers to commence a traffic stop. *Id.* at 12. During the traffic stop, Defendant allegedly gave  
27 officers two false identifications. *Id.* at 16. The officers also discovered Defendant had an  
28 outstanding misdemeanor warrant and was driving while his license was suspended or revoked. *Id.*

1 at 12-13. Defendant was arrested for possession of stolen property, providing false identification,  
2 and having an outstanding misdemeanor warrant. *Id.* at 12.

3 Because Defendant did not heed the Court's warning and was arrested, he violated the  
4 conditions of his plea agreement and bail release. Thus, Defendant could be sentenced as a habitual  
5 criminal and possibly face a longer prison sentence. It was only after Defendant violated the terms of  
6 his plea and bail release that he offered to provide evidence proving that Davey committed the  
7 residential burglary.

8 **2. The record shows that Defendant committed the crime.**

9 Defendant argues that he is factually innocent and that his younger brother, Davey,  
10 committed the residential burglary. The evidence, however, shows that Defendant, not Davey,  
11 committed the crime. Defendant, not Davey was arrested at Fashion Show Mall. PHT at 37-39.  
12 Despite detectives observing Defendant exit the vehicle, Defendant denied being in the car, was  
13 uncooperative, and falsely identified himself. DOA at 3. Officer McGeahy testified that Defendant  
14 had the rental car's key in his pocket, wore a jacket with fresh tears on the left sleeve, had fresh  
15 injuries with dried blood on his right hand, and a glove with blood on it was found in his pocket.  
16 PHT at 37-39. When Officer McGeahy explained that the car's GPS system tracked his rental car to  
17 the location of the crime, Defendant looked down and stated, "ah shit." DOA at 3. Because  
18 Defendant, not Davey, committed the crime, the Court concludes that Defendant has not shown  
19 good cause for why his plea should be withdrawn.

20 **C. The Court does not find Davey credible.**

21 The Court does not find Davey's testimony credible. During Davey's testimony, the Court  
22 observed his demeanor—he was clearly frustrated when the district attorney questioned him as to the  
23 details of the crime he allegedly committed.<sup>2</sup> In addition, Davey testified that Defendant was at  
24 Takiya's apartment when he asked Defendant for the rental car keys on November 27, 2016.  
25 Recorder's Transcript of Hearing Evidentiary Hearing and Defendant's Motion to Withdraw Guilty  
26

27 <sup>2</sup> The Court notes that Davey struggled to give even basic descriptions of the locations he visited  
28 when he supposedly had the rental car including the 2731 Warm Rays Avenue. Davey stated he  
could not remember the locations because he was high on Xanax the morning of November 28,  
2016, and he could not remember what happened that day. See EHT at 22-23.



1 Plea ("EHT") at 9:8-11. Davey claimed Defendant did not know his plan to burglarize a home. *See*  
2 *id.* at 13-14. Using a GPS, Davey claimed he drove alone to the Nazareno home 1:00 p.m. and 2:00  
3 p.m. on November 28, 2016. *Id.* at 13:10-14. However, the car GPS showed the car at that location  
4 at 11:55 a.m. This is also when Kevin notified the police of the burglary. Davey also testified that he  
5 knocked on the front and back doors before breaking the door. In constrast, Kevin testified that at  
6 the time of the burglary he was in bed when he heard the doorbell ring multiple times, got up  
7 because of the constant ringing, and witnessed the front door being punched upon walking  
8 downstairs. PHT at 5-6. Thus, Davey's admissions are belied by the record.

9 Again, Defendant, not Davey, was the one arrested for the residential burglary and then  
10 pleaded guilty. Further, Davey testified that he told Defendant he was the one who committed the  
11 residential burglary during a jail phone call with Defendant a few days after the arrest. *See* EHT at  
12 31-33. After reviewing all jail phone calls, the Court finds that there are not any phone calls  
13 between Defendant and Davey. *See* Jail Phone Calls ("JPC"). In other words, the evidence does not  
14 support Davey's testimony. Because the Court concludes that Davey was less than truthful, Davey is  
15 not a credible witness.

16 **D. The Court does not find Takiya credible.**

17 In supporting the assertion that Davey committed the crime, Defendant also presented  
18 declarations and testimony from Takiya, his girlfriend since 2014 and mother of his child, as an  
19 alibi. Takiya testified that on November 28, 2016, she and Defendant were sleeping at her apartment  
20 and both woke up after 11:55 a.m. EHT at 62:17-19. However, the record shows that Defendant,  
21 had an injured hand with dried blood and fresh tears on his jacket sleeve, when he was arrested at  
22 Fashion Show Mall for the residential burglary. PHT at 37-39. Furthermore, Takiya told Defendant  
23 during a jail phone call that Defendant would not get into trouble if he remained at home and only  
24 focused on her and his hustle. *See* JPC at 10.92.0.21, Aug. 28, 2017, 2:19 a.m., 13577KB. Because  
25 Takiya has a young child with Defendant, her boyfriend, it is reasonable to conclude she wants to  
26 prevent Defendant from serving a long prison sentence. After reviewing the record and considering  
27 all circumstances, the Court concludes that Takiya was less than truthful and thereby not a credible  
28 witness.

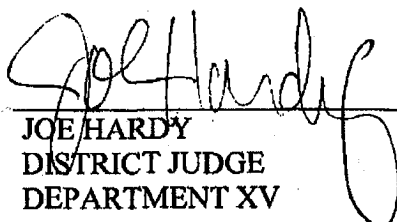
1     **IV.     CONCLUSION**

2           After considering Defendant's arguments, as well as the testimony presented at the multiple  
3     days of the evidentiary hearing and listening to the jail calls, the Court finds that Defendant entered  
4     into his plea freely and voluntarily. In addition, the Court does not find Defendant's witnesses  
5     credible because the record contradicts their testimony. Therefore, the Court having considered the  
6     preponderance of the evidence and the totality of circumstances, and there being no fair and just  
7     reason to permit the withdrawal of Defendant's guilty plea, Defendant's Motion to Withdraw Guilty  
8     Plea is denied.

9                                 **ORDER**

10           **THEREFORE, IT IS HEREBY ORDERED** that Defendant's Motion to Withdraw Guilty  
11     Plea is **DENIED**.

12           DATED this 16<sup>th</sup> day of August, 2019.

13     
14   \_\_\_\_\_  
15   JOE HARDY  
16   DISTRICT JUDGE  
17   DEPARTMENT XV

*Steven D. Grierson*

1 NEOJ

2 DISTRICT COURT,

3 CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,

CASE NO: C-17-323324-1

DEPT NO: XV

5 Plaintiff,

6 v.

**NOTICE OF ENTRY OF ORDER**

7 DENZEL DORSEY,

8 Defendant.

9  
10  
11 TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

12 PLEASE TAKE NOTICE that an Order has been entered on the 6<sup>th</sup> day of August, 2019, in  
13 the above-captioned matter. A copy of said Order is attached hereto as Exhibit A.

14 DATED this 7<sup>th</sup> day of August, 2019.

15  
16 *Joe Hardy*  
17 JOE HARDY  
18 DISTRICT COURT JUDGE

19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on the date e-filed, a copy of the foregoing was electronically served,  
21 pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court  
Electronic Filing Program.

22 *If indicated below*, a copy of the foregoing was also

23 ☐ Mailed by the U.S. Postal Service, postage prepaid, to the proper parties listed below at their  
24 last known address(es):

25  
26 *W. C.*  
27 Judicial Executive Assistant  
28



GARY A. MODAFFERI, ESQ.  
LAW OFFICES OF GARY A. MODAFFERI, LLC  
Nevada Bar No. 12450  
Hawaii Bar No. 3379  
Email: [modafferilaw@gmail.com](mailto:modafferilaw@gmail.com)  
612 S. 3<sup>rd</sup> Street, Suite A  
Las Vegas, Nevada 89101  
Tel: (702) 327-3033  
*Attorney for Defendant*

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	CASE NO: C-17-323324-1
Plaintiff,	)	DEPT NO: XV
	)	
vs.	)	
	)	
DENZEL DORSEY,	)	
	)	
Defendant.	)	
	)	

**DEFENDANT DENZEL DORSEY'S SENTENCING MEMORANDUM**

COMES NOW, DENZEL DORSEY, Defendant herein, by and through his attorney Gary A. Modafferi, Esq., of the Law Office of Gary A. Modafferi, LLC, and respectfully submits the following Sentencing Memorandum.

This Sentencing Memorandum is offered in addition to any evidence and/or argument adduced at a hearing on this matter.

Respectfully submitted this 23<sup>rd</sup> day of September, 2019.

/s/ Gary A. Modafferi

**GARY A. MODAFFERI, ESQ.**  
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Tel: (702) 327-3033

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**SENTENCING MEMORANDUM**

On August 6, 2019, this Honorable Court issued a detailed opinion/order denying Defendant's Motion to Withdraw Guilty Plea. Accordingly, a sentencing date was set and an updated presentence investigation report has been ordered. The central argument to be made by the Defendant at sentencing is that both the State and Defense should be bound by the Guilty Plea Agreement filed in this matter on March 9, 2018.<sup>1</sup>

It states in the guilty plea agreement that should the Defendant "...fail to appear at any future court date or am arrested for any new offenses, I will stipulate to habitual criminal treatment, to the fact that I have the requisite priors and to a sentence of sixty (60) to one hundred twenty months in the Nevada Department of Corrections."<sup>2</sup> The Defense has been told that the State wishes to increase the 120 month top end sentence agreed to in writing with the Defendant. The Defense strongly objects to this abrogation of the GPA.

In Santobello, the United States Supreme Court ruled that "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled."<sup>3</sup> This command was underscored by the Nevada Supreme Court in Van Buskirk where the Court held that in enforcing a plea bargain it holds the State to "the most meticulous standards of both promise and performance."<sup>4</sup>

The Nevada Supreme Court has held that violation of either the terms or the spirit of the agreement requires reversal.<sup>5</sup> The State has informed the Defense that the 60 to 120 month

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<sup>1</sup> Attached for court's convenience as Exhibit A.

<sup>2</sup> Exhibit A at p.1.

<sup>3</sup> Santobello v. New York, 404 U.S. 257, 262 (1971)

<sup>4</sup> Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d. 1215, 1216 (1986) As quoted recently in State v. Second Judicial District Court (attached as Exhibit B for court convenience).

<sup>5</sup> Citti v. State, 107 Nev. 89, 91, 807 P.2d. 724, 726 (1991)

1 agreed upon sentence is illegal because the minimum term must be forty percent (40%) of the  
2 maximum term. If the State finds it necessary to change the agreed upon sentence so that the  
3 minimum term of 120 months equals 40%, then the Defendant's minimum term should be 48  
4 months not 60 months because Due Process prevents increasing the sentence agreed upon in the  
5 GPA.<sup>6</sup> The Nevada Supreme Court has consistently held that the rule of lenity obligates the court  
6 to interpret statutes that contain ambiguity in the prescribed conduct in defining a crime or  
7 imposing a penalty should be resolved in the Defendant's favor."  
8

9  
10 **CONCLUSION**

11 The Defendant respectfully urges the Court to sentence the Defendant to a term of 48 to  
12 120 months.

13 Respectfully submitted this 23<sup>rd</sup> day of September, 2019.

14 /s/ Gary A. Modafferi

15 **GARY A. MODAFFERI, ESQ.**  
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17 815 S. Casino Center Drive  
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<sup>6</sup> Firestone v. State, 120 Nev. 13, 16, 83 P.3d. 279, 281 (2004); Castaneda v. State, 313 P.3d. 108 (Nev. 2016)

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10 *Attorney for Defendant*

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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )  
 ) CASE NO: C-17-323324-1  
 )  
Plaintiff, ) DEPT NO: XVII  
 )  
 )  
vs. )  
 )  
 )  
DENZEL DORSEY, )  
 )  
 )  
Defendant. )  
 )

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the 23<sup>rd</sup> day of September, 2019, I served a true copy of **SENTENCING MEMORANDUM** upon the following:

Sandra Digiacomo, Esq,  
Chief Deputy District Attorney  
[sandra.digiacomo@clarkcountyda.com](mailto:sandra.digiacomo@clarkcountyda.com)

/s/ Erika W. Magana

Assistant to Gary A. Modafferi, Esq.

# **EXHIBIT “A”**



ORIGINAL

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

MAR 09 2018

BY Keri Cromer  
KERI CROMER, DEPUTY

GPA  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
SANDRA K. DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006204  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DENZEL DORSEY,  
#2845569

Defendant.

CASE NO: C-17-323324-1

DEPT NO: XXII

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **COUNT 1 - INVASION OF THE HOME**  
**(Category B Felony - NRS 205.067 - NOC 50435)**, as more fully alleged in the charging  
document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as  
follows:

The State will retain the right to argue. Additionally, the State agrees not to seek  
habitual criminal treatment. Further, the State will not oppose dismissal of Count 2 and Case  
No. 17F21598X after rendition of sentence. The State will not oppose standard bail after entry  
of plea. However, if I fail to go to the Division of Parole & Probation, fail to appear at any  
future court date or am arrested for any new offenses, I will stipulate to habitual criminal  
treatment, to the fact that I have the requisite priors and to a sentence of sixty (60) to one  
hundred twenty (120) months in the Nevada Department of Corrections. Additionally I agree  
to pay full restitution including for cases and counts dismissed.

C-17-323324-1  
GPA  
Guilty Plea Agreement  
4728986

AA 0358



1 I agree to the forfeiture of any and all weapons or any interest in any weapons seized  
2 and/or impounded in connection with the instant case and/or any other case negotiated in  
3 whole or in part in conjunction with this plea agreement.

4 I understand and agree that, if I fail to interview with the Department of Parole and  
5 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,  
6 by affidavit review, confirms probable cause against me for new criminal charges including  
7 reckless driving or DUI, but excluding minor traffic violations, the State will have the  
8 unqualified right to argue for any legal sentence and term of confinement allowable for the  
9 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have  
10 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without  
11 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite  
12 twenty-five (25) year term with the possibility of parole after ten (10) years.

13 Otherwise I am entitled to receive the benefits of these negotiations as stated in this  
14 plea agreement.

#### 15 CONSEQUENCES OF THE PLEA

16 I understand that by pleading guilty I admit the facts which support all the elements of  
17 the offense(s) to which I now plead as set forth in Exhibit "1".

18 As to Count 1, I understand that as a consequence of my plea of guilty the Court must  
19 sentence me to imprisonment in the Nevada Department of Corrections for a minimum term  
20 of not less than ONE (1) year and a maximum term of not more than TEN (10) years. The  
21 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of  
22 imprisonment. I understand that I may also be fined up to \$10,000.00. I understand that the  
23 law requires me to pay an Administrative Assessment Fee.

24 I understand that, if appropriate, I will be ordered to make restitution to the victim of  
25 the offense(s) to which I am pleading guilty and to the victim of any related offense which is  
26 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to  
27 reimburse the State of Nevada for any expenses related to my extradition, if any.

28 ///

1 As to Count 1, I understand that I am not eligible for probation for the offense to which  
2 I am pleading guilty.

3 I understand that I must submit to blood and/or saliva tests under the Direction of the  
4 Division of Parole and Probation to determine genetic markers and/or secretor status.

5 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,  
6 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or  
7 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation  
8 and may receive a higher sentencing range.

9 I understand that if more than one sentence of imprisonment is imposed and I am  
10 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order  
11 the sentences served concurrently or consecutively.

12 I understand that information regarding charges not filed, dismissed charges, or charges  
13 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

14 I have not been promised or guaranteed any particular sentence by anyone. I know that  
15 my sentence is to be determined by the Court within the limits prescribed by statute.

16 I understand that if my attorney or the State of Nevada or both recommend any specific  
17 punishment to the Court, the Court is not obligated to accept the recommendation.

18 I understand that if the offense(s) to which I am pleading guilty was committed while I  
19 was incarcerated on another charge or while I was on probation or parole that I am not eligible  
20 for credit for time served toward the instant offense(s).

21 I understand that if I am not a United States citizen, any criminal conviction will likely  
22 result in serious negative immigration consequences including but not limited to:

- 23 1. The removal from the United States through deportation;
- 24 2. An inability to reenter the United States;
- 25 3. The inability to gain United States citizenship or legal residency;
- 26 4. An inability to renew and/or retain any legal residency status; and/or
- 27 5. An indeterminate term of confinement, with the United States Federal  
28 Government based on my conviction and immigration status.

///

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a legal resident.

I understand that the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the District Attorney has specifically agreed otherwise, the District Attorney may also comment on this report.

## WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.
2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.
6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

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VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of the charge(s) against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

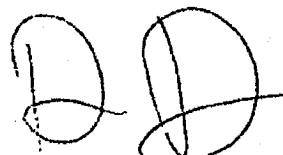
I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.


My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

DATED this 13<sup>th</sup> day of March, 2018.



DENZEL DORSEY  
Defendant

AGREED TO BY:



SANDRA R. DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006204

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court  
3 hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the  
5 charge(s) to which guilty pleas are being entered.  
6 2. I have advised the Defendant of the penalties for each charge and the restitution  
7 that the Defendant may be ordered to pay.  
8 3. I have inquired of Defendant facts concerning Defendant's immigration status  
9 and explained to Defendant that if Defendant is not a United States citizen any  
10 criminal conviction will most likely result in serious negative immigration  
11 consequences including but not limited to:  
12 a. The removal from the United States through deportation;  
13 b. An inability to reenter the United States;  
14 c. The inability to gain United States citizenship or legal residency;  
15 d. An inability to renew and/or retain any legal residency status; and/or  
16 e. An indeterminate term of confinement, by with United States Federal  
17 Government based on the conviction and immigration status.

18 Moreover, I have explained that regardless of what Defendant may have been  
19 told by any attorney, no one can promise Defendant that this conviction will not  
20 result in negative immigration consequences and/or impact Defendant's ability  
21 to become a United States citizen and/or legal resident.

- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are  
23 consistent with the facts known to me and are made with my advice to the  
24 Defendant.  
25 5. To the best of my knowledge and belief, the Defendant:  
26 a. Is competent and understands the charges and the consequences of  
27 pleading guilty as provided in this agreement,  
28 b. Executed this agreement and will enter all guilty pleas pursuant hereto  
voluntarily, and  
c. Was not under the influence of intoxicating liquor, a controlled  
substance or other drug at the time I consulted with the Defendant as  
certified in paragraphs 1 and 2 above.

29 Dated: This 13<sup>th</sup> day of March, 2018.



ATTORNEY FOR DEFENDANT

30 erg/L-5

## **EXHIBIT “B”**

421 P.3d 803 (2018)

134 Nev. Adv. Op. 50

The STATE of Nevada, Petitioner,

v.

The SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR the COUNTY OF WASHOE; and the Honorable William A. Maddox, Respondents, and John Thomas Kephart, Real Party in Interest.

No. 73389

Supreme Court of Nevada.

July 19, 2018.

Original petition for a writ of mandamus in a criminal matter.

*Petition granted.*

Adam Paul Laxalt, Attorney General, Carson City; Christopher J. Hicks, District Attorney, and Joseph R. Plater, Deputy District Attorney, Washoe County, for Petitioner.

Jeremy T. Bosler, Public Defender, and John Reese Petty, Chief Deputy Public Defender, Washoe County, for Real Party in Interest.

804 \*804 BEFORE PICKERING, GIBBONS and HARDESTY, JJ.

**OPINION**

By the Court, PICKERING, J.:

Nevada law imposes increasingly serious penalties on repeat domestic battery offenders. A first offense is a misdemeanor, while a third domestic battery offense within seven years of the first constitutes a felony. A jury convicted John Kephart of domestic battery, his third such offense in seven years. Kephart's second domestic battery conviction resulted from a plea bargain by which Kephart pleaded guilty to and was sentenced for a "first offense" domestic battery. The district court has ruled that it will not consider Kephart's second conviction at sentencing because it would be unfair, given the earlier plea deal, to use the second "first offense" conviction to enhance Kephart's most recent offense to a felony.

Kephart received the benefit of his earlier plea deal when he was given the shorter sentence and lower fine only available to a first-time offender. Before entering his plea, Kephart signed a written acknowledgment that, while he would be sentenced for a "first offense," the State could use that offense and any other prior offenses for enhancement purposes should he commit another domestic battery within seven years. Under these circumstances, using Kephart's two prior "first offense" convictions to enhance his third domestic battery conviction to a felony does not violate the plea bargain by which the second conviction was obtained. We therefore grant the State's petition for a writ of mandamus and direct the district court to take both of Kephart's prior convictions into account in imposing sentence and entering the judgment of conviction in this case.

**I.**

Kephart has three domestic battery convictions. The first conviction dates back to May 2010, when Kephart pleaded no contest to "Domestic Battery—1st Offense." Kephart was represented by counsel and signed an admonishment of rights form in which he acknowledged that "the State will use this conviction . . . to enhance the penalty for any subsequent offense." The form also set out the range of penalties for a "Second Offense within 7 years (Misdemeanor)" and a "Third Offense or any subsequent offense within 7 years (Category C felony)."

AA 0365



Kephart's second conviction came two months later, in July 2010. Citing the May 2010 conviction, the criminal complaint in the second case charged Kephart with "domestic battery with one prior conviction within the last seven years." A second domestic battery offense in seven years remains a misdemeanor but it carries a longer mandatory minimum term of imprisonment (ten days instead of two days), a higher minimum fine (\$500 instead of \$200), and more hours of community service (100-200 hours instead of 48-120 hours) than a "first offense" domestic battery conviction. See NRS 200.485(1)(a), (b) (2015).<sup>[1]</sup>

805 Kephart represented himself in the second case. He did so after being advised of his constitutional rights and signing a written waiver of the right to court-appointed counsel.<sup>[2]</sup> Initially, Kephart pleaded not guilty. Later, after the prosecutor amended the complaint by crossing out the references to the May 2010 conviction and writing in "1st" offense everywhere "2nd" offense appeared, Kephart changed his plea from not guilty to guilty. No transcript exists of the change-of-plea hearing, but the district court minutes note the district attorney "couldn't prove the prior domestic battery." The district court accepted Kephart's guilty plea and sentenced "805 him to the statutory minimums applicable to a first offense domestic battery—two days in jail with the remaining 28-day sentence suspended, a \$200 fine, and 48 hours of community service.

The plea was not memorialized in a formal plea agreement. Instead, Kephart signed and initialed an "admonishment of rights" form like the one he signed in connection with his May 2010 conviction. This form advised Kephart of the rights he waived by pleading guilty and reminded him of the increasingly severe sentences Nevada law imposes on repeat domestic battery offenders. In signing, Kephart acknowledged that:

*I understand that the State will use this conviction, and any other prior conviction from this or any other state which prohibits the same or similar conduct, to enhance the penalty for any subsequent offense.*

(emphasis added).

Kephart's third, and current, conviction came in January 2017, when the jury found him guilty of one count of domestic battery. In charging the offense, the State relied on Kephart's May and July 2010 domestic battery convictions to enhance the offense to a Category C felony. See NRS 200.485(1)(c). Kephart objected to the State using the July 2010 conviction for felony enhancement since the conviction resulted from plea negotiations which, he alleged, obligated the State to treat the conviction as a first offense for all purposes.

The district judge deferred decision on Kephart's objection until trial concluded. See NRS 200.485(4) (in prosecuting a repeat domestic battery offense the "facts concerning a prior offense must . . . not be read to the jury or proved at trial but must be proved at the time of sentencing"). After the jury returned its verdict, the district court conducted a hearing on Kephart's objection. At the hearing, Kephart testified that he thought pleading guilty to the second conviction as a "first offense" meant that if he reoffended the next conviction would be a second offense. On cross-examination, Kephart admitted signing the admonishment of rights form and that he "kind of" understood the acknowledgment about the State using the conviction and any other prior conviction for "future enhancement purposes. The district court did not find that the State affirmatively agreed not to use the July 2010 conviction for enhancement purposes, but nonetheless ruled in Kephart's favor. It deemed the notice to Kephart that the July 2010 conviction could be used to enhance a subsequent offense to a felony inadequate and entered an order stating that it would not consider Kephart's July 2010 conviction in sentencing him.

The district court vacated the sentencing date so the State could appeal. After this court dismissed the State's direct appeal for want of jurisdiction, see *State v. Kephart*, Docket No. 72481, \_\_\_ Nev. \_\_\_, 2017 WL 2483605 (Order Dismissing Appeal, June 6, 2017), the State filed the petition for a writ of mandamus now presented. We exercise our discretion in favor of granting extraordinary writ relief, *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991), because the State has no other adequate remedy at law, see NRS 34.170; NRS 177.015(3), and the district court's refusal, on this record, to take Kephart's July 2010 conviction into account at sentencing violates the statutory mandate in NRS 200.485(1)(c). See *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011).

## II.

### A.

AA 0366

Each of Kephart's convictions has been for the crime of "domestic battery, a violation of NRS 33.018, NRS 200.481, and NRS 200.485." Though three statutes are cited, they cross-reference each other and together establish the elements of battery constituting domestic violence and its associated penalties. The cross-referenced statutory scheme dates back to 1997 when the Legislature enacted NRS 200.485 and reorganized NRS 200.481 to discourage recidivism by enhancing the penalties for repeat domestic violence offenses. See *English v. State*, 116 Nev. 828, 832-35, 9 P.3d 60, 62-64 (2000) (chronicling the history of NRS 200.485 and its relationship to NRS 33.018 and NRS 200.481).

806 \*806 NRS 200.485 states the penalties for convictions for the crime of battery constituting domestic violence:

1. Unless a greater penalty is provided pursuant to subsection 2 or NRS 200.481, a person convicted of a battery which constitutes domestic violence pursuant to NRS 33.018:

(a) For the first offense within 7 years, is guilty of a misdemeanor and shall be sentenced to:

(1) Imprisonment in the city or county jail or detention facility for not less than 2 days, but not more than 6 months; and

(2) Perform not less than 48 hours, but not more than 120 hours, of community service.

The person shall be further punished by a fine of not less than \$200, but not more than \$1,000.

(b) For the second offense within 7 years, is guilty of a misdemeanor and shall be sentenced to:

(1) Imprisonment in the city or county jail or detention facility for not less than 10 days, but not more than 6 months; and

(2) Perform not less than 100 hours, but not more than 200 hours, of community service.

The person shall be further punished by a fine of not less than \$500, but not more than \$1,000.

(c) For the third and any subsequent offense within 7 years, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

The statute further provides: "An offense that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions." NRS 200.485(4) (2015), now codified in revised form as NRS 200.485(5) (2017); see note 1, *supra*.

The 1997 Legislature modeled NRS 200.485 on Nevada's DUI enhancement statutes, now principally codified at NRS 484C.400 (2017). See *English*, 116 Nev. at 834, 9 P.3d at 63; compare NRS 200.485(1) & (4) (2015), with NRS 484C.400(1) & (2). In interpreting NRS 200.485 and its related statutes, this court thus looks to cases that have construed Nevada's DUI enhancement laws. *English*, 116 Nev. at 834, 9 P.3d at 63.

## B.

A plain-text reading of NRS 200.485 undercuts the district court's decision not to count Kephart's July 2010 conviction against him because it purported to be for a "first offense." What determines felony enhancement under the statute is the defendant having committed three domestic battery offenses within seven years, two of which are evidenced by judgments of conviction—not the designation of the prior offenses as "first" and "second" offenses. Cf. *Speer v. State*, 116 Nev. 677, 679-80, 5 P.3d 1063, 1064-65 (2000) (holding that the DUI enhancement statute that NRS 200.485(4) copies "does not limit offenses that may be used for enhancement to those designated as a 'first offense' or a 'second offense'"). Even treating Kephart's July 2010 conviction as a "first offense" for all purposes leaves his May 2010 conviction for his first "first offense." And NRS 200.485(4) says that the sequence of the prior offenses and convictions does not matter, only how many of them there are. So, calling the July 2010 conviction a first offense still leaves Kephart with two prior offenses evidenced by convictions within seven years of his current offense, making his current offense a felony under NRS 200.485(1)(c).

Our cases construing the DUI enhancement statutes complicate this plain-text approach. Citing *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) ("when a plea rests in any significant degree on a promise or

agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled"), and Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (in enforcing a plea bargain we hold the State to "the most meticulous standards of both promise and performance"), we held in State v. Smith, 105 Nev. 293, 299, 774 P.2d 1037, 1041 (1989), *abrogated on other grounds as recognized by Byars v. State*, 130 \*807 Nev. 848, 854, 336 P.3d 939, 943 (2014), that unless a defendant is told otherwise, it is reasonable to expect that, in being allowed to plead guilty to a "first offense" DUI for a known second offense, the State is agreeing to treat the conviction as a first offense for all purposes, including future enhancement. Part of the incentive to resolve a second DUI charge by pleading guilty to a first offense is "the knowledge that a first-time offense, for purposes of minimizing criminal penalties for future drunk-driving convictions, [is] preferable to a second offense." *Id.* at 298, 774 P.2d at 1041. Thus, when a defendant pleads a second DUI charge down to a first offense, "[t]he spirit of constitutional principles" require "appropriate clarification and warning" that the conviction will count as a second offense for future enhancement purposes for it to be later so used. *Id.* Because the record did not show that Smith received such clarification or warning, the court interpreted the plea bargain as an agreement to treat the offense as a first offense for both sentencing and future enhancement purposes. *Id.* at 299, 774 P.2d at 1041. Accord Perry v. State, 106 Nev. 436, 438, 794 P.2d 723, 724 (1990) (reaffirming *Smith*); see State v. Crist, 108 Nev. 1058, 1059, 843 P.2d 368, 369 (1992) (declining to reconsider *Smith* and extending it to out-of-state pleas). But see Johnson v. Arkansas, 55 Ark. App. 117, 932 S.W.2d 347, 349 (1996) (declining to follow *Crist* as inconsistent with statutory enhancement penalty scheme, which bases felony enhancement on the number of prior offenses not their designation as first, second, or third).

We returned to the issue of using a second DUI pleaded to as a first offense to enhance a third offense to a felony in Speer v. State, 116 Nev. 677, 5 P.3d 1063 (2000). The defendant in *Speer* pleaded guilty to his third DUI offense in seven years. *Id.* at 678, 5 P.3d at 1064. The first conviction was for a felony DUI as the result of three DUI convictions during the preceding seven-year period. *Id.* The second conviction was for a misdemeanor pleaded to and sentenced as a "first offense." *Id.* But unlike *Smith*, where the record was silent as to future enhancement, in entering the guilty plea in *Speer*, "the parties agreed that the conviction would not be treated as a 'first offense' for all purposes and that *Speer's* next offense could be treated as a felony." *Id.*

*Speer* mainly argued that the State could not use his prior felony conviction as one of three convictions within seven years, because the applicable statute only allowed use of first-offense and second-offense misdemeanor convictions, and not a prior felony conviction, for enhancement. *Speer*, 116 Nev. at 679, 5 P.3d at 1064. Rejecting *Speer's* argument, the court deemed the statute plain and unambiguous in providing that "any two prior offenses may be used to enhance a subsequent DUI so long as they occurred within 7 years of the principal offense and are evidenced by a conviction." *Id.* at 679-80, 5 P.3d at 1064. Thus, the DUI sentencing statute did "not limit offenses that may be used for enhancement to those designated as a 'first offense' or a 'second offense,'" and a felony DUI conviction could be used as one of the three offenses within seven years. *Id.* at 680, 5 P.3d at 1064. *Speer* distinguished *Smith*, *Perry*, and *Crist* as cases in which

this court has held a second DUI conviction may not be used to enhance a conviction for a third DUI arrest to a felony where the second conviction was obtained pursuant to a guilty plea agreement specifically permitting the defendant to enter a plea of guilty to first offense DUI and limiting the use of the conviction for enhancement purposes. . . . The rule recognized [*Smith*, *Perry*, and *Crist*] is not applicable where, as here, there is no plea agreement limiting the use of the prior conviction for enhancement purposes. Because [*Smith*, *Perry*, and *Crist*] depend on the existence of a plea agreement limiting the use of the prior conviction for enhancement purposes, they do not stand for the general proposition that only offenses designated as a "first" or "second" offense may be used for enhancement purposes.

*Speer*, 116 Nev. at 680, 5 P.3d at 1065.

The State quotes this language from *Speer* and urges that, because the plea agreement did not specifically limit the State's use of the conviction for felony enhancement, it may use the conviction. But *Speer* misdescribes or at least oversimplifies *Smith* and its progeny. \*808 The plea agreement in *Smith* did not "specifically. . . limit[] the use of the conviction for enhancement purposes," *Speer*, 116 Nev. at 680, 5 P.3d at 1065; the record evidencing the plea agreement in *Smith* was silent on the subject of felony enhancement. *Smith*, 105 Nev. at 298, 774 P.2d at 1041 ("Nothing in the record indicates that, in 1986, the State advised Smith that after receiving treatment as a first-offender, the 1986 conviction would thereafter revert to a second offense in the event of further drunk-driving convictions."); accord *Perry*, 106 Nev. at 437, 794 P.2d at 724 (quoting this language from *Smith* and saying "the facts [in *Smith*] were similar to those in the instant case"). *Smith* holds that a defendant who pleads guilty to a first offense DUI originally charged as a second may reasonably expect the State to

treat the conviction as a first offense for all purposes, if the State allows the plea to be entered "without appropriate clarification and warning." 105 Nev. at 298, 774 P.2d at 1041.

It was in *Speer*, not *Smith*, that the plea deal specifically addressed enhancement: In *Speer*, "the parties agreed that the conviction would *not* be treated as a 'first offense' for all purposes and that *Speer's* next offense could be treated as a felony," 116 Nev. at 678, 5 P.3d at 1064 (emphasis added). Because the plea agreement allowed the State to use the second conviction, pleaded to as a first offense, for felony enhancement, the defendant could not reasonably expect the State to forgo that option. Having provided *Speer* the "appropriate clarification and warning" *Smith* requires, 105 Nev. at 298, 774 P.2d at 1041, the State could use *Speer's* second "first offense" to enhance his third offense in seven years to a felony. *Speer*, 116 Nev. at 681, 5 P.3d at 1065-66.

### C.

Consistent with *Smith* and *Speer*, we hold that, when a plea agreement allows a defendant to plead guilty to a first offense for a second domestic battery conviction, it is reasonable for the defendant to expect first-offense treatment of the conviction for all purposes, see *Smith*, 105 Nev. at 298, 774 P.2d at 1041; *Perry*, 106 Nev. at 438, 794 P.2d at 724; *Crist*, 108 Nev. at 1059, 843 P.2d at 388-89, unless the defendant receives "appropriate clarification and warning" (*Smith*, 105 Nev. at 298, 774 P.2d at 1041)—or explicitly agrees (*Speer*, 116 Nev. at 678, 5 P.3d at 1064)—that the State may count the conviction as a second offense for future enhancement purposes.

Applying these principles to this case, we must decide whether Kephart's July 2010 plea to "first offense" domestic battery is more like *Smith*, where it was reasonable for the defendant to expect first-offense treatment for all purposes, or *Speer*, where the agreement provided for the defendant to be sentenced for a first offense but for the conviction to count as a second offense for enhancement purposes. In interpreting a plea agreement, the object is to enforce the reasonable expectations of the parties. See *State v. Crockett*, 110 Nev. 838, 842, 877 P.2d 1077, 1079 (1994); *Van Buskirk*, 102 Nev. at 244, 720 P.2d at 1217. Contract principles apply but, because plea agreements "implicate the deprivation of human freedom, the rules governing their interpretation, although having their roots in the principles of contract law, also acknowledge that 'concern for due process outweigh[s] concern for freedom of contract.'" *United States v. Mankiewicz*, 122 F.3d 399, 403 n.1 (7th Cir. 1997) (quoting *United States v. Sandles*, 80 F.3d 1145, 1148 (7th Cir. 1996)).

Kephart did not sign a formal plea agreement establishing the terms of his July 2010 plea. The record includes, though, Kephart's May 2010 judgment of conviction for his first "first offense" domestic battery, the written admonishment of rights Kephart signed in pleading guilty to his second "first offense" domestic battery in July of 2010, and the July 2010 judgment of conviction. In signing the July 2010 admonishment of rights form, Kephart specifically acknowledged that "I understand that the State will use this conviction, and any other prior conviction from this or any other state which prohibits the same or similar conduct, to enhance the penalty for any subsequent offense." He was also told what the penalties were for first-offense, second-offense, and third-offense domestic battery over a seven-year period. This information, combined with the reference to the "809 use of "any other prior conviction" for "same or similar conduct," provided Kephart "appropriate clarification and warning" that the July 2010 conviction, in conjunction with his prior conviction from May 2010, would be used to enhance a subsequent third offense to a felony under NRS 200.485.

Kephart testified that he "understood" the July 2010 conviction would be a first offense for all purposes, but this understanding appears entirely subjective and not based on anything the State or the district court said or did to contradict the acknowledgment Kephart signed. Compare *Rouse v. State*, 91 Nev. 677, 679, 641 P.2d 643, 644 (1975) ("mere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea"), with *United States v. Malone*, 815 F.3d 367, 370 (7th Cir. 2016) ("we give unambiguous terms in the plea agreement their plain meaning"). Kephart received the benefit of his July 2010 plea deal when he was given the shorter sentence, lower fine, and lighter community service obligation only first offenders are eligible for. The record does not establish that, in entering into this plea deal, the State also agreed to treat Kephart's July 2010 conviction as a first offense for future enhancement purposes. Kephart's belief otherwise, in the face of the admonishment he acknowledged, was unreasonable. Under NRS 200.485(1)(c), Kephart has sustained three domestic battery convictions over a seven-year period for which the district court must now sentence him.

We therefore, grant the State's request for extraordinary relief and direct the clerk of this court to issue a writ of mandamus directing the district court to admit Kephart's July 2010 conviction for domestic battery to enhance his third conviction to a

felony.

We concur:

Gibbons, J.

Hardesty, J.

[1] The Legislature amended NRS 200.485 in 2017, see 2017 Nev. Stat., ch. 496, § 9, at 3183, but this opinion refers to the pre-amendment version of NRS 200.485, since the underlying offense predates the amendment.

[2] See Koenig v. State, 99 Nev. 780, 788, 672 P.2d 37, 42 (1983) (holding that a prior uncounseled misdemeanor conviction can be used for enhancement purposes if preceded by a valid waiver of counsel and the record establishes the proceedings were constitutionally adequate) (citing Baldasar v. Illinois, 446 U.S. 222, 100 S.Ct. 1586, 64 L.Ed.2d 169 (1980) (plurality opinion)). Although the Supreme Court later overruled Baldasar in Nichols v. United States, 511 U.S. 738, 748-49, 114 S.Ct. 1921, 128 L.Ed.2d 745 (1994), it did so on grounds not argued to undermine Koenig's application here.

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AA 0370





1 **RSPN**  
2 **STEVEN B. WOLFSON**  
3 **Clark County District Attorney**  
4 **Nevada Bar #001565**  
5 **SANDRA DIGIACOMO**  
6 **Chief Deputy District Attorney**  
7 **Nevada Bar #006204**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 DENZEL DORSEY,  
13 #2845569

14 Defendant.

CASE NO: C-17-323324-1

DEPT NO: XV

15 **STATE'S RESPONSE TO DEFENDANT DENZEL DORSEY'S**  
16 **SENTENCING MEMORANDUM**

17 **DATE OF HEARING: OCTOBER 3 2019**  
18 **TIME OF HEARING: 8:30 A.M.**

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through SANDRA DIGIACOMO, Chief Deputy District Attorney, and  
21 hereby submits the attached Points and Authorities in Response to Defendant Denzel Dorsey's  
22 Sentencing Memorandum.

23 This Response is made and based upon all the papers and pleadings on file herein, the  
24 attached Points and Authorities in support hereof, and oral argument at the time of hearing, if  
25 deemed necessary by this Honorable Court.

26 ///

27 ///

28 ///

///

AA 0371

1 POINTS AND AUTHORITIES

2 With his Sentencing Memorandum, Defendant asks this Court to *not follow* the  
3 negotiations contained in the Guilty Plea Agreement; Defendant requests that this Court *not*  
4 sentence him as a Habitual Criminal, but instead to a term of forty-eight (48) to one hundred  
5 twenty (120) months in the Nevada Department of Corrections. Such a sentence violates the  
6 terms of the Guilty Plea Agreement.

7 In interpreting a plea agreement, the object is to enforce the reasonable expectations of  
8 the parties. State v. Second Judicial Dist. Court in & for Cty. of Washoe, 134 Nev. 384, 391,  
9 421 P.3d 803, 808 (2018) (citing State v. Crockett, 110 Nev. 838, 842, 877 P.2d 1077, 1079  
10 (1994); and Van Buskirk, 102 Nev. at 244, 720 P.2d at 1217). In this case, Defendant agreed  
11 that if he failed to appear at any future Court date or was arrested for any new offenses, he  
12 would stipulate to the following three (3) things: (1) habitual criminal treatment; (2) to the fact  
13 that he has the requisite priors to be adjudicated as a habitual criminal; and (3) to a sentence  
14 of sixty (60) to one hundred twenty (120) months in the Nevada Department of Corrections.  
15 Therefore, the reasonable expectation of the parties *after* Defendant failed to appear on July  
16 17, 2018 and *after* Defendant was arrested on new charges in California on July 11, 2018, was  
17 that Defendant would be adjudicated guilty as a Habitual Criminal and receive a sentence with  
18 a minimum of sixty (60) months in prison.

19 Pursuant to NRS 207.010(1)(a), a Defendant adjudicated under the “small” habitual  
20 criminal statute “...shall be punished for a category B felony by imprisonment in the state  
21 prison for a minimum term of not less than 5 years and a maximum term of not more than 20  
22 years.” With these negotiations, Defendant agreed to adjudication as a habitual criminal and  
23 to a minimum sentence of five (5) years or sixty (60) months in prison if he violated the  
24 conditions of the Guilty Plea Agreement. Defendant *did violate* the terms of the agreement  
25 and does not contest that fact in his Sentencing Memorandum. Instead, Defendant asserts that

26 ///

27 ///

1 because there was a typographical error in the Guilty Plea Agreement regarding the maximum  
2 sentence stipulated to by the parties,<sup>1</sup> that he should receive the benefit of that typographical  
3 error, even if it is contrary to the expectations of the parties.

4 Defendant cites to Santobello v. New York, 404 U.S. 257, 262 (1971) for the  
5 proposition that “when a plea rests in any significant degree on a promise or agreement of the  
6 prosecutor, so that it can be said to be part of the inducement or consideration, such promise  
7 must be fulfilled.” In Santobello, a prosecutor promised to make no recommendation at  
8 sentencing in exchange for the Defendant’s guilty plea. Id. at 259. At the time of sentencing,  
9 the Defendant’s case was handled by a different prosecutor, who recommended the maximum  
10 sentence. Id. The Judge, who claimed to not be influenced by the prosecutor’s  
11 recommendation, imposed the maximum sentence. Id. The United States Supreme Court  
12 vacated the sentence and remanded it back to the state Court to determine whether specific  
13 performance was appropriate, or whether the Defendant was entitled to withdraw his guilty  
14 plea. Id. at 262-263.

15 Unlike in Santobello, here the State is not willfully violating the terms of the Guilty  
16 Plea Agreement. This Court is simply barred from imposing the sentence stipulated to in the  
17 Guilty Plea Agreement by both parties as it would be an illegal sentence per NRS 193.130.<sup>2</sup>  
18 The State is only requesting that this Court enforce the terms of the Guilty Plea Agreement  
19 that are enforceable, i.e. adjudicating Defendant as a habitual criminal and accepting that he  
20 has the requisite priors. The parties’ expectations were that Defendant would be adjudicated  
21 as a habitual criminal and receive (60) months as the minimum sentence. If this Court were  
22 to grant Defendant’s request of sentencing him to forty-eight (48) to one hundred twenty (120)  
23 months, it could not be as a habitual criminal and that is contrary to the expectations of the  
24 parties.

25  
26 <sup>1</sup> The minimum sentence under NRS 207.010(1)(a) is a minimum of five (5) years and a maximum of twelve and one half  
27 (12½) years or one hundred fifty (150) months, not minimum of five (5) years and a maximum of ten (10) years or one  
28 hundred twenty (120) months.

<sup>2</sup> The actual agreement between the parties before the Guilty Plea Agreement was drafted was that Defendant would  
stipulate to sixty (60) to two hundred forty (240) months under the habitual criminal statute if he violated the terms of the  
Guilty Plea Agreement; therefore, Defendant is receiving a benefit from the typographical error as the State is only  
requesting the minimum sentence allowed per NRS 207.010.



1 Defendant also directs this Court to Citti v. State, 107 Nev. 89, 91, 807 P.2d 724, 726  
2 (1991) in which the Nevada Supreme Court has held that "...the violation of the terms or 'the  
3 spirit' of the plea bargain requires reversal." Id. at 91. In Citti, the Defendant had pleaded  
4 guilty to two (2) counts in exchange for the dismissal of charges and the agreement that the  
5 prosecutor would argue for no more than five (5) years and two (2) years respectively on the  
6 two (2) counts. Id. at 90. After the Defendant entered his plea, the prosecutor in the case did  
7 not honor the terms of the agreement and argued for greater sentences for both crimes. Id. at  
8 90-91. The sentencing Judge imposed the greater sentences as requested by the prosecutor.  
9 Id. at 91. On appeal, the Court determined the prosecutor breached the plea agreement and  
10 remanded the case for a new sentencing with specific performance of the agreement. Id. at  
11 92-94.

12 Again, the facts of Citti can be easily distinguished from this case as the State is not  
13 willfully violating the terms of the Guilty Plea Agreement. The Guilty Plea Agreement  
14 contains three (3) terms in which the parties agreed would be imposed if Defendant violated  
15 the agreement and *only* the third term is unenforceable due to a typographical error.<sup>3</sup>  
16 Defendant should not be allowed to violate ALL of the terms in the Guilty Plea Agreement  
17 due to a typographical error in one section as long as the expectations of the parties can be  
18 determined and Defendant's due process rights are not violated. Therefore, the State is  
19 requesting that this Court enforce the terms in the agreement which are enforceable.

20 Defendant also cites to Firestone v. State, 120 Nev. 13, 16, 83 P.3d. 279, 281 (2004)  
21 and Castaneda v. State, 313 P.3d. 108 (Nev. 2016) for the proposition that "...Due Process  
22 prevents increasing the sentence agreed upon in the GPA." See Defendant's Sentencing  
23 Memorandum, p. 3. However, Firestone and Castaneda discuss statutory interpretation; both  
24 cases are silent as to the issue of interpretation and enforcement of plea agreements.  
25 Accordingly, both cases are not persuasive here.

26 ///

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<sup>3</sup> Technically only half of the third term is unenforceable, i.e. the maximum sentence.

1 While plea agreements are a matter of criminal jurisprudence, most Courts have held  
2 that they are also subject to contract principles. State v. Crockett, 110 Nev. 838, 842, 877 P.2d  
3 1077, 1079 (1994). See also e.g., United States v. Kingsley, 851 F.2d 16, 21 (1st Cir.1988)  
4 (using contractual analysis to enforce plea agreement and award "benefit of the  
5 bargain"); United States v. Read, 778 F.2d 1437, 1441 (9th Cir.1985) ("a plea bargain  
6 is contractual in nature and is measured by contract-law standards"), *cert. denied*, 479 U.S.  
7 835, 107 S.Ct. 131, 93 L.Ed.2d 75 (1986); United States v. Baldacchino, 762 F.2d 170, 179  
8 (1st Cir.1985) ("plea bargains are subject to contract law principles insofar as their application  
9 will insure the Defendant what is reasonably due him"); United States v. Fields, 766 F.2d  
10 1161, 1168 (7th Cir.1985) ("A plea bargain is a contract."). Viewing the Guilty Plea  
11 Agreement as a contract, Nevada contract law and the Uniform Commercial Code ("UCC")  
12 are instructive on remedying an unenforceable clause. Both NRS 104.2302 and the UCC state,  
13 "[i]f the Court as a matter of law finds the contract or any clause of the contract to have been  
14 unconscionable at the time it was made the Court may refuse to enforce the contract, or it may  
15 enforce the remainder of the contract without the unconscionable clause, or it may so limit the  
16 application of any unconscionable clause as to avoid any unconscionable result." NRS  
17 104.2302; NRS 104A.2108; NRS 116.1112; NRS 116B.275; Uniform Commercial Code §  
18 2-302.

19 Applying these contract principles, this Court should uphold the terms of the agreement  
20 of the parties which are enforceable. Here the Guilty Plea Agreement states, in relevant part:

21 "...if I fail to go to the Division of Parole & Probation, fail to appear at any  
22 future Court dates or am arrested for any new offenses, I will stipulate to habitual  
23 criminal treatment, to the fact that I have the requisite priors and to a sentence  
24 of sixty (60) to one hundred twenty (120) months in the Nevada Department of  
Corrections."

25 See Guilty Plea Agreement Filed on March 9, 2018. Because the third term of the agreement  
26 is unenforceable due to it violating the forty percent (40%) rule of NRS 193.130, this Court is  
27 unable to enforce that term. However, when the document is viewed as a whole, the parties'  
28 expectations are clear: that Defendant was to be sentence as a habitual criminal with a

1 minimum of sixty (60) months in prison. Accordingly, this Court should enforce the  
2 agreement, i.e. adjudicate Defendant as a Habitual Criminal and afford him the minimum  
3 sentence allowed, which Defendant agreed to have imposed---a minimum of sixty (60)  
4 months.

5 Nevada contract law and the UCC further state: “[w]hen it is claimed or appears to the  
6 Court that the contract or any clause thereof may be unconscionable the parties shall be  
7 afforded a reasonable opportunity to present evidence as to its...purpose and effect to aid the  
8 Court in making the determination.” NRS 104.2302; NRS 104A.2108; NRS 116.1112; NRS  
9 116B.275; Uniform Commercial Code § 2-302. Applying this principle, the State would note  
10 that it does not make a habit of agreeing to illegal sentences and that there was a typographical  
11 error in the Guilty Plea Agreement that neither the State, the defense or the Court realized at  
12 the time Defendant entered into his plea. In light of the first two terms, (stipulation to habitual  
13 criminal treatment and stipulation to the fact that Defendant has the requisite priors for habitual  
14 criminal treatment), it becomes clear that the parties’ intent was to impose habitual criminal  
15 treatment on Defendant in the event that he failed to appear for any Court date or was arrested  
16 for a new crime prior to his sentencing. However, “...because plea agreements ‘implicate the  
17 deprivation of human freedom, the rules governing their interpretation, although having their  
18 roots in the principles of contract law, also acknowledge that concern for due process  
19 outweigh[s] concern for freedom of contract.” State v. Second Judicial Dist. Court in & for  
20 Cty. of Washoe, 134 Nev. 384, 391, 421 P.3d 803, 808 (2018) (quoting United States v.  
21 Mankiewicz, 122 F.3d 399, 403 n.1 (7th Cir. 1997) quoting United States v. Sandles, 80 F.3d  
22 1145, 1148 (7th Cir. 1996)). The State would concede that due process and the rule of lenity  
23 would preclude the State from *increasing* the sentence stipulated to in the Guilty Plea  
24 Agreement; however, that is not what the State is asking from this Court. The State is asking  
25 that the Court simply enforce the expectation of the parties, which is to adjudicate Defendant  
26 as a habitual criminal and to impose the minimum sentence required by law under NRS  
27 207.010(1)(a)---the same minimum sentence Defendant agreed to in the Guilty Plea  
28 Agreement.

1 **CONCLUSION**

2 For the foregoing reasons, the State respectfully requests the Court follow the terms of  
3 the Guilty Plea Agreement by adjudicating Defendant as a habitual criminal pursuant to NRS  
4 207.010(1)(a) and sentence him to a minimum term of sixty (60) months and a maximum term  
5 of one hundred fifty (150) months in the Nevada Department of Corrections.

6 DATED this 1<sup>st</sup> day of October, 2019.

7 Respectfully submitted,

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

10 BY /s/ Sandra DiGiacomo  
11 SANDRA DIGIACOMO  
12 Chief Deputy District Attorney  
Nevada Bar #006204

13 **CERTIFICATE OF FACSIMILE TRANSMISSION**

14 I hereby certify that service of the above and foregoing was made this 1<sup>st</sup> day of  
15 October, 2019 by facsimile transmission to:

16 GARY MODAFFERI, ESQ.  
17 (702) 474-1320

18 BY /s/ E. Goddard  
19 E. Goddard  
20 Secretary for the District Attorney's Office  
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27 16FH2022X/erg/L-5  
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AA 0377

## **Evelyn Goddard**

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**From:** Service Monitoring  
**Sent:** Tuesday, October 1, 2019 2:55 PM  
**To:** Evelyn Goddard  
**Subject:** Your fax has been successfully sent to GARY MODAFFERI, ESQ. at 702-474-1320.

Your fax has been successfully sent to GARY MODAFFERI, ESQ. at 702-474-1320.

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**Account:** C323324  
**Matter:** DENZEL DORSEY

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10/1/2019 2:49:42 PM Transmission Record  
Sent to 97024741320 with remote ID ""  
Result: (0/339;0/0) Successful Send  
Page record: 1 - 7  
Elapsed time: 04:53 on channel 4

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

October 03, 2019

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C-17-323324-1      State of Nevada  
                                 vs  
                                 Denzel Dorsey

---

October 03, 2019      08:30 AM      Sentencing

HEARD BY:      Hardy, Joe      COURTROOM: RJC Courtroom 11D

COURT CLERK: Duncan, Kristin

RECORDER:      Yarbrough, Matt

REPORTER:

PARTIES PRESENT:

Denzel Dorsey	Defendant
Gary Modafferi	Attorney for Defendant
Sandra K. Digiacomo	Attorney for Plaintiff
State of Nevada	Plaintiff

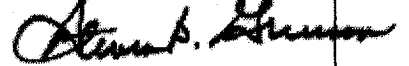
## JOURNAL ENTRIES

Mr. Modafferi requested the Court appoint appellant counsel for the Defendant post-sentencing. The State noted that it regained the right to argue, but would submit on the negotiations. Mr. Modafferi requested the maximum end of the potential sentence be reduced. Arguments regarding credit time served. Statements by the Defendant. DEFT DORSEY ADJUDGED GUILTY of COUNT 1 - INVASION OF THE HOME (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$150.00 DNA Analysis fee, WAIVED as previously taken, \$3.00 DNA Collection fee, \$130.00 Restitution, payable to VC2191137, and \$1,200.00 Restitution, payable to VC2252568, Deft. SENTENCED under the SMALL HABITUAL CRIMINAL STATUTE to a MAXIMUM of ONE HUNDRED FIFTY (150) MONTHS and MINIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC), with FOUR HUNDRED TWENTY-THREE (423) DAYS credit time served. COURT FURTHER ORDERED COUNT 2 was hereby DISMISSED.

Regarding the request for appointment of appellate counsel, COURT ORDERED that said request was DENIED at this time, as it was unsure whether the request was appropriate.

BOND, if any, EXONERATED.

NDC



**MOT**  
GARY A. MODAFFERI, ESQ.  
Nevada Bar No. 12450  
Law Offices of Gary A. Modafferi, LLC  
612 S. 3<sup>rd</sup> Street, Suite A  
Las Vegas, Nevada 89101  
(702) 327-3033  
Attorney for Defendant

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

DENZEL DORSEY,

Defendant.

CASE NO. C-17-323324-1  
DEPT. NO. XV

**MOTION TO WITHDRAW AS COUNSEL**

GARY A. MODAFFERI, attorney of record for the above-named Defendant, hereby moves this Court for an Order allowing him to withdraw as counsel for said Defendant in this matter. This Motion is made and based upon the papers and pleadings on file herein.

DATED this 3<sup>rd</sup> day of October, 2019.

/s/ Gary A. Modafferi

\_\_\_\_\_  
GARY A. MODAFFERI, ESQ.  
Nevada Bar No. 12450  
Attorney for Defendant

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DATED this 3<sup>rd</sup> day of October, 2019.

**GARY A. MODAFFERI, ESQ.**  
Nevada Bar No. 12450  
Attorney for Defendant



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1 **CERT**

2 GARY A. MODAFFERI, ESQ.  
3 Nevada Bar No. 12450  
4 Law Offices of Gary A. Modafferi, LLC  
5 612 S. 3<sup>rd</sup> Street, Suite A  
6 Las Vegas, Nevada 89101  
7 (702) 327-3033  
8 Attorney for Defendant

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 DENZEL DORSEY,

13 Defendant.

CASE NO. C-17-323324-1  
DEPT. NO. XV

14  
15 **CERTIFICATE OF SERVICE**

16  
17 I, the undersigned, hereby certify that I am an employee of Gary A. Modafferi, LLC, and  
18 that on the 8<sup>th</sup> day of October, 2019, I served a copy of the foregoing **MOTION TO**  
19 **WITHDRAW AS COUNSEL** upon the following:

20  
21 Sandra Digiacomo, Esq,  
22 Chief Deputy District Attorney  
[sandra.digiacomo@clarkcountyda.com](mailto:sandra.digiacomo@clarkcountyda.com)

23 /s/ Erika W. Magana

24  
25 Erika W. Magana, An Employee of  
26 Gary A. Modafferi, LLC

*Steven D. Grierson*

JOCP

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

*Plaintiff,*

-vs-

DENZEL DORSEY  
#2845569

*Defendant.*

CASE NO: C-17-323324-1

DEPT NO: XV

JUDGMENT OF CONVICTION  
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of COUNT 1 - INVASION OF THE HOME (Category B Felony) in violation of NRS 205.067; thereafter, on the 3<sup>rd</sup> day of October, 2019, the Defendant was present in court for sentencing with counsel GARY P. MODAFFERI, ESQ., and good cause appearing.

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense under the SMALL HABITUAL Criminal Statute and, in addition to \$25.00 Administrative Assessment Fee, \$1,200.00 Restitution to VC2252568 and \$130.00 to VC2191137 plus the \$3.00 DNA Collection Fee, the Defendant is sentenced to COUNT 1 - a MAXIMUM of ONE HUNDRED FIFTY (150) MONTHS and a MINIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); with FOUR HUNDRED TWENTY-THREE (423) DAYS credit for time served. As the \$150.00 DNA Analysis Fee and Genetic Testing have been previously imposed, the Fee and Testing in the current case are WAIVED. COUNT 2 - DISMISSED.

DATED this 8<sup>th</sup> day of October, 2019.

*Joe Hardy*  
JOE HARDY  
DISTRICT COURT JUDGE

*VD*

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input checked="" type="checkbox"/> Guilty Plea with Sent (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition	

AA 0384

*Steven D. Grierson*

1 NOAS  
2 Name: Denzel Dorsey  
3 Address: 330 S. Casino Center Blvd  
4 City/State/Zip: Las Vegas, NV 89101  
5 Phone: 253 617 8700

6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
7 STATE OF NEVADA IN  
8 AND FOR THE COUNTY OF CLARK

9 State of Nevada

10 Plaintiff,

11 v.

12 Denzel Dorsey

13 Defendant.

CASE NO. C-17-323324-1

DEPT. NO. XV (15)

14 NOTICE OF APPEAL

15 Notice is hereby given that Denzel R. Dorsey, Defendant above-named,  
16 hereby appeals to the Supreme Court of Nevada from the denial of defendants  
17 pre-sentence motion to withdraw plea and then sentencing  
18 defendant to a small habitual criminal (60-150 months).

19 entered in this action on the 9<sup>th</sup> day of October, 2019.

20 DATED this 9<sup>th</sup> day of October, 2019.

21 *Denzel Dorsey*  
22 Defendant's Signature

23 NOTE: list either the Final Judgment or an Order (describe it) on the lines above.  
24  
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28

AA 0385

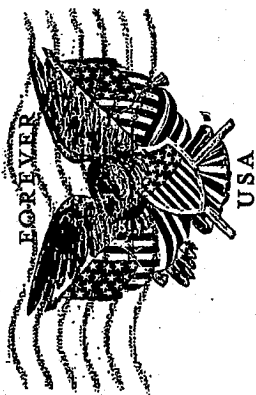
CLERK OF THE COURT

RECEIVED  
OCT 15 2019

Danzel R. Dorsey #2845569  
C.C.D.C.  
330 S. Casino Center Blvd  
Las Vegas, NV 89101

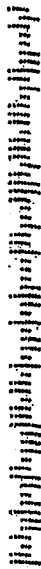
LAS VEGAS, NV 89000

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Steven D. Grierson  
200 Lewis Avenue, 3rd floor  
Las Vegas, NV 89155-1160

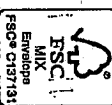
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AA 0386

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

October 22, 2019

C-17-323324-1      State of Nevada  
   vs  
   Denzel Dorsey

October 22, 2019      08:30 AM      Defendant's Motion to Withdraw as Counsel

HEARD BY:      Hardy, Joe      COURTROOM: RJC Courtroom 11D

COURT CLERK: Duncan, Kristin

RECORDER:      Yarbrough, Matt

REPORTER:

PARTIES PRESENT:

Gary Modafferi	Attorney for Defendant
State of Nevada	Plaintiff
Victoria A. Villegas	Attorney for Plaintiff

JOURNAL ENTRIES

There being no opposition, COURT ORDERED Defendant's Motion to Withdraw as Counsel, was hereby GRANTED; Gary Modafferi, Esq. WITHDRAWN.

NDC

AA 0387



1 RTRAN

2  
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4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,  
9 Plaintiff,  
10 vs.  
11 DENZEL DORSEY,  
12 Defendant.

CASE#: C-17-323324-1  
DEPT. XV

13  
14 BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**  
16 **EVIDENTIARY HEARING; DEFENDANT DENZEL DORSEY'S**  
17 **MOTION TO WITHDRAW GUILTY PLEA**

18 APPEARANCES

19 For the State:

SANDRA DIGIACOMO, ESQ.  
Chief Deputy District Attorney

20  
21 For the Defendant:

GARY MODAFFERI, ESQ.

22  
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25 RECORDED BY: MATTHEW YARBROUGH, COURT RECORDER

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**LIST OF WITNESSES**

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Cross-Examination by Ms. DiGiacomo 16

**TAKIYA CLEMSON**

Direct Examination by Mr. Modafferi 60  
Cross-Examination by Ms. DiGiacomo 64



1 TUESDAY, MAY 28, 2019 AT 10:37 A.M.

2  
3 MS. DIGIACOMO: Good morning, Sandra DiGiacomo on  
4 behalf of the State.

5 MR. MODAFFERI: Good morning, Judge. Gary Modafferi on  
6 behalf of Mr. Dorsey. He's present in custody.

7 THE COURT: Okay. Good morning. So, are we ready to go  
8 forward?

9 MR. MODAFFERI: Yes, Judge.

10 MS. DIGIACOMO: The only issue that State sees if he is  
11 going to call the brother, Davey Dorsey. He's going to need  
12 independent counsel, Your Honor, because he will be taking the stand  
13 according to the affidavit and admitting to a crime.

14 THE COURT: Comment, response.

15 MR. MODAFFERI: Judge, Mr. Dorsey is present in the  
16 courtroom. I have not personally discussed that matter although my  
17 investigator has. And I'm not trying to put him in more jeopardy or other  
18 jeopardy than the declaration itself does, but he's willing at this point to  
19 take the stand and discuss what was written in the declaration and make  
20 himself available to us.

21 MS. DIGIACOMO: I understand he may be willing, Your  
22 Honor, but he has rights and he'll need to have independent counsel not  
23 Mr. Modafferi advise him of his rights.

24 MR. MODAFFERI: Well, Judge, I think the Court could do  
25 that. The Court could advise him and if he wants independent counsel

1 then he can get it. But I don't believe that the State -- I'm sure the  
2 State's not looking out for Mr. Dorsey at this point. I think that their  
3 interests are -- in having the Court canvass him and if he's not willing to  
4 waive he shouldn't testify. He wants counsel he should have counsel.

5 MS. DIGIACOMO: And, Your Honor, no. The State's interest  
6 here is protecting a potential Defendant who has a right to remain silent  
7 and has a right to the advice by counsel and it's not this Court's duty to  
8 do that.

9 THE COURT: Okay.

10 MS. DIGIACOMO: And I would ask that the witness be  
11 excluded from the courtroom at this time.

12 THE COURT: So, I will do a witness exclusion rule, but bear  
13 with me one moment.

14 MS. DIGIACOMO: Your Honor, if the Court has any questions  
15 I believe it would be Drew Christensen that the Court would need to  
16 contact regarding this issue to get him independent counsel.

17 THE COURT: So, I wish -- I'll state on the record I wish this  
18 had been raised at some other earlier point in time other than the  
19 morning of the continued hearing.

20 MS. DIGIACOMO: Well, I understand, but I don't know who  
21 they are actually calling until the morning of the hearing. When we were  
22 here last Thursday there was nobody outside.

23 THE COURT: I'm going to take a break, I'm going to take a  
24 break.

25 [Recess taken at 10:40 a.m.]

1 [Proceedings resumed at 10:53 a.m.]

2 THE COURT: Well, I'm going to go forward today. Again, it's  
3 hard for me to deal with things sometimes when they're not timely  
4 brought before me. But his younger brother hasn't been arrested, he's  
5 not been charged; is that right?

6 MS. DIGIACOMO: That's correct. But based upon what he  
7 testifies today that could change.

8 THE COURT: Oh, sure. Okay. So, I'm thinking because  
9 Defendant has the burden here they go first, but I don't know if you all  
10 have discussed anything like that.

11 MR. MODAFFERI: I was prepared to present the two  
12 witnesses, Judge.

13 MS. DIGIACOMO: And, Your Honor, my -- I did email the  
14 Court. My investigator -- my detective is out of the state on vacation this  
15 week. So, we would need to bifurcate the hearing.

16 THE COURT: I know we got an email and what else? There  
17 was no response from Defendant's side.

18 MR. MODAFFERI: Judge, whatever the Court deems  
19 appropriate I'm willing. I have no objection to whatever the Court thinks  
20 is the proper course of action.

21 THE COURT: So, we'll go forward with who's here, and we'll  
22 see if we need to hear more. Okay. All right. So, Defendant -- well,  
23 here's the other question then, I guess, Given that it's an evidentiary  
24 hearing and essentially a mini-trial, if you will, does either side want to  
25 make an opening statement or go right into the evidence and then do

1 closing arguments?

2 MR. MODAFFERI: I'm willing just to head into the arguments  
3 if that's okay --

4 THE COURT: Okay. That's fine.

5 MR. MODAFFERI: -- with the Court. I think the oppositions --

6 THE COURT: -- that's fine with me.

7 MR. MODAFFERI: -- are well outlined in our brief.

8 MS. DIGIACOMO: And that's fine with the State.

9 THE COURT: Okay.

10 MS. DIGIACOMO: We'll submit on the pleadings.

11 THE COURT: No; thank you both. And to be clear I have  
12 read on more than one occasion the parties' briefs. So, okay. And so  
13 closings may be today, maybe at the follow-up if we have one. All right.  
14 So, our first witness.

15 MR. MODAFFERI: Thank you, Judge. We call Davey Dorsey  
16 to the stand.

17 THE COURT MARSHAL: Davey Dorsey.

18 MR. MODAFFERI: Davey Dorsey, yeah.

19 THE COURT: And the exclusion of witness rule still in place.

20 MR. MODAFFERI: Thank you. Judge, just for record  
21 keeping, I have Mr. Dorsey's declaration that was appended to the  
22 motion and marked as Exhibit A -- excuse me -- David's is marked as B  
23 and Takiya's is marked as A.

24 MS. DIGIACOMO: And, Your Honor, I object to the admission  
25 of those as hearsay.

1 THE COURT: So, when and if they're requested to be  
2 admitted and we'll deal with that --

3 **DAVEY DORSEY**

4 [having been called as a witness and  
5 being first duly sworn, testified as follows]:

6 THE COURT CLERK: For the record, please state and spell  
7 your first and last name.

8 THE WITNESS: Davey Dorsey, D-A-V-E-Y D-O-R-S-E-Y.

9 THE COURT: Have a seat, Mr. Dorsey. So, before we get  
10 into questions, Mr. Dorsey, you understand you're not required to make  
11 any statements today; right?

12 THE WITNESS: Yes.

13 THE COURT: You're here testifying voluntarily?

14 THE WITNESS: Yes.

15 THE COURT: You understand you're not under arrest?

16 THE WITNESS: Yes.

17 THE COURT: You've not been charged with any crime?

18 THE WITNESS: Yes.

19 THE COURT: You also understand, however, that what you  
20 say here may be used against you in a criminal proceeding; do you  
21 understand that?

22 THE WITNESS: Yes.

23 THE COURT: Okay. He's not under arrest. He hasn't been  
24 charged. You can go forward.

25 MR. MODAFFERI: Thank you.

1 **DIRECT EXAMINATION**

2 BY MR. MODAFFERI:

3 Q Good morning, Mr. Dorsey.

4 A Good morning.

5 Q Mr. Dorsey, do you recognize the person sitting at counsel  
6 table?

7 A Yes.

8 Q And who do you recognize him to be?

9 A That's my big brother, Denzel Dorsey.

10 Q And is he wearing the blue jump?

11 A Yes.

12 Q And he's seated next to me?

13 A Yes.

14 MR. MODAFFERI: Your Honor, the record reflect the  
15 identification by the witness?

16 THE COURT: Yes, it will.

17 BY MR. MODAFFERI:

18 Q On or about -- on or about November 28<sup>th</sup> of 2016, were you  
19 17 years old at the time?

20 A Yes.

21 Q Are you the younger biological brother of the Defendant?

22 A Yes.

23 Q And on or about the 25<sup>th</sup>, did you ask Denzel Dorsey if you  
24 could borrow his car, a rental car?

25 MS. DIGIACOMO: Objection to leading, Your Honor.

1 THE COURT: Sustained.

2 BY MR. MODAFFERI:

3 Q On that day did you ask whether or not you could borrow a  
4 car?

5 A Yes.

6 Q And what did he say?

7 A Yes.

8 Q And what kind of car was it?

9 A A blue Suzuki.

10 Q Okay. And did you actually take the keys from him?

11 A Yes.

12 Q And did you receive the rental car keys in the afternoon hours  
13 of November 27<sup>th</sup>?

14 MS. DIGIACOMO: Objection; leading.

15 MR. MODAFFERI: Well, it's foundational, Judge.

16 THE COURT: And I apologize. I -- repeat the question  
17 because I didn't --

18 BY MR. MODAFFERI:

19 Q Did you take or receive the keys from Mr. Dorsey on  
20 November 27<sup>th</sup>, 2016 in the afternoon hours?

21 A Yes.

22 Q Do you -- to the best of your knowledge did Mr. Dorsey, your  
23 brother, have any knowledge about whether or not you were going to  
24 involve yourself in robbing or burglarizing a home?

25 MS. DIGIACOMO: Objection; leading and speculation.

1 THE COURT: Yeah. So, sustained as to leading the way the  
2 question was phrased; denied or overruled as to speculation.

3 BY MR. MODAFFERI:

4 Q Was it your intention at that point that you were going to  
5 burglarize a house?

6 MS. DIGIACOMO: Objection, Your Honor, leading.

7 THE COURT: That's also leading the witness.

8 BY MR. MODAFFERI:

9 Q What were you going to do with the car?

10 A [Indiscernible] and try and get some money.

11 Q Did you --

12 MS. DIGIACOMO: I'm sorry. I can't understand the witness.

13 THE COURT: Yeah, of course. I got the last part do  
14 something.

15 THE WITNESS: Try and get some money.

16 BY MR. MODAFFERI:

17 Q And how were you going to do that, Davey -- Mr. Dorsey?

18 A I was planning on -- I was going to rob something. I don't  
19 know.

20 Q Okay. Did you on November 28<sup>th</sup> actually try to break into a  
21 house?

22 A Yes.

23 Q And was that house located at 27 --

24 MS. DIGIACOMO: Objection; leading.

25 MR. MODAFFERI: It's foundational, Judge.



1 MS. DIGIACOMO: It's not foundational when he's claiming --

2 THE COURT: So, counsel, there's -- I understand objections,  
3 but what I don't understand is being combative unnecessarily and  
4 raising voices. I mean there -- for one, there's no jury in here. It's just  
5 me. So, let's maintain our composure and go forward as reasonable  
6 attorneys.

7 MS. DIGIACOMO: Yes, Your Honor.

8 THE COURT: So, rephrase the question because now I don't  
9 even remember what it is.

10 MR. MODAFFERI: Okay, Judge. I'll do that.

11 MS. DIGIACOMO: Actually, may I be heard, Your Honor,  
12 before he rephrases?

13 THE COURT: Sure.

14 MS. DIGIACOMO: All right. What my objection is, is he is  
15 putting the address in Mr. Dorsey's mouth, so to speak. He called it  
16 laying foundation, however, this is the core issue what Mr. Dorsey is  
17 going to be able to give, you know, detailed as to what he did when he  
18 borrowed the car. It's -- I'm just objecting to Mr. Modafferi putting  
19 everything in his mouth for him. If he really did commit this crime, he  
20 should be able to say where he went, describe it, what he did.

21 THE COURT: Okay. So, the objection is now noted and  
22 rephrase or re-ask and let's see if there's still an objection. All right.

23 BY MR. MODAFFERI:

24 Q On November 28<sup>th</sup> of 2016, did you -- did you do anything with  
25 regard to breaking into someone else's house?

1 A Yes.

2 Q And was that -- do you recall the address?

3 A No, I don't but --

4 Q Not at this time?

5 A No, I don't, yeah.

6 Q If I were to show you the declaration that you gave to my  
7 investigator in this matter, would it refresh your memory as to the  
8 address?

9 A Yes.

10 MR. MODAFFERI: May I approach the witness, Judge?

11 THE COURT: Sure.

12 MR. MODAFFERI: And I'll show counsel page two of the  
13 declaration that's been marked for identification as Exhibit B.

14 MS. DIGIACOMO: Thank you.

15 BY MR. MODAFFERI:

16 Q Having looked at that is your memory refreshed as to the  
17 address involved?

18 A Yes.

19 Q And what is that address?

20 MS. DIGIACOMO: And, Your Honor, he's looking down. I'd  
21 ask that it be removed now.

22 THE COURT: Yeah, that's fair.

23 BY MR. MODAFFERI:

24 Q Do you remember the address, sir?

25 A 2731.

1 Q And do you remember the street?  
2 A No, but I can tell you it's in Henderson.  
3 Q Okay.  
4 A I can tell you that.  
5 Q That's fine, Mr. Dorsey. If I were to show you the exhibit  
6 again, would you be able to recall the street?  
7 A Yes.  
8 MR. MODAFFERI: May I approach, Judge?  
9 THE COURT: Sure.  
10 MR. MODAFFERI: And show counsel again.  
11 MS. DIGIACOMO: Mm-hmm.  
12 MR. MODAFFERI: Thank you.  
13 BY MR. MODAFFERI:  
14 Q Having looked at State's Exhibit B by identification, is your  
15 memory refreshed as to the actual street name?  
16 A Yes.  
17 Q And what is that?  
18 A 2741 Warm Rays Ave.  
19 Q Warm Rays Avenue did you said?  
20 A Yes.  
21 Q Okay. Now, once you were approximately what time did you  
22 get there, if you recall?  
23 A Approximately, like, one, two, like, afternoon -- like noon.  
24 Q It was in the afternoon --  
25 A It was in the afternoon.

1 Q -- about one or two o'clock?  
2 A Yes.  
3 Q And who was with you, if anyone?  
4 A Nobody.  
5 Q And can you explain to me what happened?  
6 A I tried to break the door and when I did it somebody locked the  
7 door. I broke a hole when I tried to unlock the door, and when I did it  
8 somebody locked the door so I left.  
9 Q And where did you go after that?  
10 A I went to take -- drop the car back off to my brother.  
11 Q And where did you drop it off to?  
12 A Tenaya, at my sister's house.  
13 Q What did Mr. Dorsey, your brother, have to do with planning  
14 this attempted home invasion?  
15 A Nothing.  
16 Q Did he know about the attempted home invasion before it  
17 happened?  
18 MS. DIGIACOMO: Objection; speculation.  
19 THE COURT: That's sustained.  
20 BY MR. MODAFFERI:  
21 Q Based upon your interactions with him, did he know about it?  
22 A No, I told him I was going to a girl house.  
23 Q So, nothing that you said would have informed him about what  
24 you were about to do?  
25 A No.

1 Q Did your brother, Denzel, have anything to do with assisting  
2 you after the attempted break-in, in hiding or disposing of any evidence?

3 A No.

4 Q I'm sorry?

5 A No.

6 Q Given what you've just told the Court, are you of the opinion  
7 that your brother was not involved in this matter?

8 MS. DIGIACOMO: Objection; relevance. It's his opinion.

9 THE COURT: You can rephrase.

10 BY MR. MODAFFERI:

11 Q Given what you've -- given what happened in this case, was  
12 your brother involved in this crime?

13 A No.

14 Q I'm sorry?

15 A No.

16 Q After your brother was arrested, did you try and tell people or  
17 anyone that it was in fact you that had done this crime and not your  
18 brother?

19 A Yes. I actually came to his first court date and I tried to talk to  
20 his attorney, but she, like, brushed me off, like, I don't got time. I  
21 actually came to Court -- this courtroom, actually.

22 Q And what were you trying to tell her?

23 A I was trying to confess and say it was me. I had the -- a  
24 affidavit. I had everything. I was trying to confess.

25 MR. MODAFFERI: All right, Judge. I have nothing further for

1 the witness, Judge.

2 THE COURT: Okay.

3 MS. DIGIACOMO: May I, Your Honor?

4 THE COURT: Sure. Thank you.

5 **CROSS-EXAMINATION**

6 BY MS. DIGIACOMO:

7 Q Thank you. All right. So, back in November of 2016, where  
8 were you living?

9 A I was living in California.

10 Q Okay. So, what were you doing here in Las Vegas on  
11 November --

12 A I was visiting.

13 Q You were visiting. So, when did you come and when did you  
14 leave?

15 A I can't tell you the exact dates, but I could tell you it was along  
16 October, like Halloween, then I left a little bit, like, December for  
17 Christmas and stuff.

18 Q And you were 17 at the time?

19 A Yeah, I just turned 17.

20 Q Were you in school?

21 A No, I graduated with [indiscernible]; I graduated early.

22 Q When did you graduate, in what year?

23 A 2016, Class of 2016.

24 Q What high school?

25 A Cal City High.

1 Q Where -- so you're visiting. Where were you staying while you  
2 were here in the fall of 2016?

3 A I was at my sister's house.

4 Q And who is your sister?

5 A Romeka Dorsey.

6 Q What is her address?

7 A I can't tell the exact address because she don't live over there,  
8 but I know it was on Tenaya Street or Tenaya, something like that.

9 Q So, she lives on Tenaya you just don't know the number??

10 A She don't live over there no more. She did.

11 Q No, but that's what I'm saying.

12 A Yes.

13 Q In fall of 2016 she lived on Tenaya?

14 A Yes.

15 Q Okay. And after you committed this attempted home invasion  
16 you went to Romeka's address on Tenaya?

17 A Yes.

18 Q And your brother was there?

19 A Yes. I dropped off the car.

20 Q Okay. So, let's go back. What day was it that you borrowed  
21 the car from him?

22 A It was -- this was the 28<sup>th</sup> so the 27<sup>th</sup>.

23 Q Okay. And where were you when you borrowed the car?

24 A I was at my sister's house, but I have to go get the car off  
25 Viking Street.

1 Q Okay. You were at which sister's house?

2 A Romeka.

3 Q Romeka. Okay. So, you had to go over to the Viking

4 residence to get it?

5 A Yes.

6 Q And how did you get to that Viking residence?

7 A I called Uber.

8 Q Okay. And whose residence was on Viking?

9 A It was -- I don't know. I'd say a friend of a friend, Aisha, I don't

10 know, somebody.

11 Q So, you go over to a residence on Viking you don't know who

12 owns it?

13 A Well, my brother is there so it's like it doesn't really matter.

14 Q Okay. And how did you know that your brother had a rental

15 car?

16 A I called him. I was on the phone and talked to him.

17 Q And you borrowed -- you planned to borrow the car over

18 night?

19 A Yeah. I actually called up to a girl house and I see a girl pull

20 up and I'm trying to be cool.

21 Q All right. So, you were asking to borrow the car to go see a

22 girl?

23 A Yes.

24 Q But you knew you were going to go rob something?

25 A No, but it just happened like that.



1 Q Okay. Well, previously when counsel was asking you why you  
2 borrowed the car you said you were going to go rob something?

3 A Correct, but -- I don't know.

4 Q Okay. So, when you took the car from your brother were you  
5 going to see a girl or were you going to go rob something?

6 A I hit a few corners, you know.

7 Q No. What does that mean hit a few corners?

8 A Like I hit a few corners, that I made a few stops, and then I  
9 seen -- I see a chance. I thought it was, you know, opening so I took it.  
10 I wasn't, like -- I don't know.

11 Q Okay. So, let me ask you this. Let's go back. When you  
12 went to borrow the car to go to a girl's house, is that what you were  
13 going to do?

14 A Yes.

15 Q So, does this girl live that you went to her house?

16 A I didn't go to her house. That's what I'm saying.

17 Q Okay.

18 A I made a few stops.

19 Q You made some stops. What time was it you borrowed the  
20 car?

21 A It was around 12 and 1.

22 Q Twelve or more. So, midnight?

23 A Yeah, like the prior day.

24 Q Okay. What does that mean midnight the prior day?

25 A Like, the day the crime happened, the 27<sup>th</sup>. So, it was

1 basically still the 28<sup>th</sup> because it's 12, one o'clock.

2 Q Okay. So, you borrowed the car midnight between the 27<sup>th</sup>  
3 and the 28<sup>th</sup>?

4 A Yes.

5 Q Okay. And you made a few stops; where did you go?

6 A I stopped at a gas station, a smoke store.

7 Q Well, tell me this. Where was the gas station located?

8 A I can't -- I don't really know Vegas. I'm from California so I  
9 can't tell you, and it was three years ago. I can't just be, like, oh, it was  
10 --

11 Q Well, can you tell me which side of town it was on?

12 A On the east.

13 Q It was on the east side?

14 A Yes.

15 Q Okay. Now, where your sister lived on Tenaya that was on  
16 the west side?

17 A Yes, so I was driving.

18 Q So, you drove all the way to the east side to get gas?

19 A I was making stops.

20 Q I know. And I want to know what stops you made. So, what  
21 was your first stop?

22 A Gas station.

23 Q And that's all the way on the east side?

24 A Yes.

25 Q So, why were you driving over to the east side of town?

1 A No reason.

2 Q You don't know your way --

3 THE COURT: Pause, pause a moment, please. Do you know

4 who that is?

5 MR. MODAFFERI: No one related to my side, Judge.

6 THE COURT: Go check. Okay. You can continue.

7 MS. DIGIACOMO: Thank you.

8 BY MS. DIGIACOMO:

9 Q Okay. So, you go to the east side of town and you end up

10 over there --

11 A Yes.

12 Q -- getting gas?

13 A Yes.

14 Q But you had no specific reason why you were driving to the

15 east side?

16 A Yes, but no.

17 Q What was it? What's the yes but no mean?

18 A I have to go pick somebody up.

19 Q You had to go pick --

20 A I had to go pick somebody up to get gas and put gas in the

21 car.

22 Q Okay. So, where did you go get the money?

23 A Off of -- where was that. So, I can't -- I don't really know, from

24 a friend.

25 Q So, you went to go get money first from a friend to get gas?

1 A Yes.

2 Q Okay. And then where did that friend live?

3 A I don't recall, but it was on the east side of town.

4 Q Okay. What's his name or her name?

5 A I call him Dada.

6 Q Excuse me?

7 A We call him Dada.

8 Q Dada?

9 A Yeah, like D-A-D-A

10 Q What's his real name?

11 A Darnell, Daynell, something like that. I don't know.

12 Q Do you know his last name?

13 A No.

14 Q How did you meet him if you're not from Vegas?

15 A In California.

16 Q So, he's from California?

17 A Yes.

18 Q So, you drove all the way to the east side of town to pick up

19 money from Darnell to get gas for the car?

20 A Yes.

21 Q And what did you do next?

22 A I went to the -- to the smoke shop.

23 Q And where was that located?

24 A I don't know. You can't -- it was three years ago, ma'am. I

25 don't recall everything and specific dates and places, you know. I used

1 to be -- like Xanax. I used to be high, like, off Xanax. So, my memory is  
2 kind of bad.

3 Q So, bad back in or the fall of 2016 you were high on Xanax?

4 A High on Xanax, yes.

5 Q So, were you high on Xanax when you borrowed the car?

6 A No.

7 Q Okay. So, you went to a smoke store or shop and you don't  
8 know where it was?

9 A It was on the east.

10 Q On the east side?

11 A Because I go over there any way to go get the gas money.

12 Q And what did you go in and buy?

13 A Some [Indiscernible] and a soda.

14 Q Okay. Was there anyone else with you --

15 A No.

16 Q -- when you went to the smoke store?

17 A No.

18 Q All right. From the smoke store, where did you go?

19 A I basically just waited till the next day.

20 Q So, you just sat in the car waiting?

21 A Not sat in the car, but where did I go? Smoke shop. Yeah,  
22 basically, yeah, I did sit in the car waiting, actually, I actually did, I  
23 actually did.

24 Q So, what time was it when you hit the smoke shop?

25 A I don't recall.

1 Q Was it dark out or light out?

2 A Yes, it was no -- yeah, it was light. I don't know. Yes, it was  
3 dark, yes.

4 Q So, it's fair to say it would be somewhere between like  
5 midnight and five in the morning if it's dark out?

6 A Yes.

7 Q All right. And then after the smoke store shop, where did you  
8 go?

9 A I drove toward the Henderson area.

10 Q Okay. You drive towards Henderson; what do you do?

11 A I'm sitting in the car smoking and pop a Xanax.

12 Q Did you have a license at the time?

13 A No.

14 Q So, your brother allowed you to take a car and he knew you  
15 didn't have a license?

16 A Well, I told him I was going around the corner to a girl's house  
17 so you know.

18 Q Well, did he call you and ask you where you were with the  
19 car?

20 A I actually turned my phone off.

21 Q Okay. Why would you turn your phone off?

22 A Because I didn't want people to be calling me and stuff.

23 Q So, what, do you get a lot of calls between midnight and five  
24 or six in the morning?

25 A Yes.

1 Q And who normally calls you at that time?

2 A Drug people, Xanax people on drugs.

3 Q Were you selling drugs at the time or were you just buying  
4 drugs?

5 MR. MODAFFERI: I'm going to object, Judge. That goes  
6 beyond the scope.

7 MS. DIGIACOMO: It does not. It goes to his --

8 THE COURT: No, it doesn't. So, that's overruled.

9 MS. DIGIACOMO: Thank you, Your Honor.

10 BY MS. DIGIACOMO:

11 Q I'm sorry. You just said that you were just buying drugs?

12 A Buying and selling, yes.

13 Q Were you buying and selling in Vegas or in California?

14 A Both.

15 Q So, when you were staying here in Las Vegas for that month  
16 to six weeks, you said that you were staying at your sister's house?

17 A Yes.

18 Q And what was your phone number back then?

19 A 661-350-2850.

20 Q Is the 661 area code, where is that?

21 A Lancaster, California.

22 Q Okay. And what was your brother's phone number?

23 A I don't recall.

24 Q Okay. But if I was to pull your records it would show calls  
25 between you and your brother and then your phone off from 12 to five in

1 the morning; correct?

2 A Yes.

3 Q Okay. So, you sat in the car. How long did you sit in the car  
4 for?

5 A Until the morning.

6 Q Where did you sit in the car?

7 A What do you mean where?

8 Q Where was the car parked that you were sitting in it for a  
9 couple hours or until the next morning?

10 A I was at a park.

11 Q Did you ever go to sleep?

12 A Yes.

13 Q Where did you sleep?

14 A I was in the car.

15 Q Now, you know that your brother is a convicted felon; correct?

16 A Correct.

17 Q And you know he's a convicted felon for doing residential  
18 burglaries?

19 A Correct.

20 Q Right. Have you ever talked to him about doing residential  
21 burglary?

22 A No.

23 Q Have you ever talked to him about committing any crimes?

24 A No.

25 Q So, have you ever previous to November 2016 committed any



1 sort of robbery or residential burglary?

2 MR. MODAFFERI: Again, I'm going to object to the  
3 relevance, Judge.

4 THE COURT: In response?

5 MS. DIGIACOMO: Your Honor, it just goes to his credibility.

6 THE COURT: Well, credibility --

7 MS. DIGIACOMO: It also acknowledges what he did.

8 THE COURT: But also the -- let's see -- the declaration and  
9 the motus operandi or however you want to say it. So, that's all. It's  
10 overruled.

11 MS. DIGIACOMO: Thank you, Your Honor. You can answer  
12 the question.

13 THE WITNESS: Not no home invasion, but petty theft.

14 BY MS. DIGIACOMO:

15 Q You've done petty thefts before. And when you did those  
16 petty thefts, was it -- like, can you describe what -- what you do?

17 A I took a phone from the -- you know.

18 Q Like, from a store or from another person?

19 A From a store, from another person.

20 Q Okay. So, you're in a store and you see a phone and you just  
21 took it?

22 A I was at school.

23 Q Oh, you were at school. Okay. What else have you done?

24 A Actually, yeah, that's pretty much -- I had a -- no, that's pretty  
25 much it.

1 Q Okay. So, you -- prior to this residential burglary you had  
2 done one petty theft where you stole somebody's phone at school?

3 A I had -- I have some other charges but they were dropped and  
4 it doesn't even --

5 Q Well, tell me what other charges you have, please?

6 A What's that called, armed burglary.

7 Q Okay. So, where you -- what was the burglary of, a business  
8 or a house?

9 A Business.

10 Q And what happened?

11 A I was found not guilty; I beat the case.

12 Q No, that's not what I'm asking you. What happened, like,  
13 where -- what business --

14 THE COURT: Like factually speaking, is that what --  
15 BY MS. DIGIACOMO:

16 Q Yeah, factually speaking. Not what happened with your case.  
17 Sorry.

18 A Well, I was with some friends and we was pretty much up to  
19 no good, and then they went into the store. I had a chain on and I had  
20 my friend wear the chain. So -- and I put my chain back on and I was  
21 walking down the street; I got pulled over by the police --

22 Q So, you had a match --

23 A -- because my chain matched the description.

24 Q Okay. So, your friends went in and did an armed robbery of a  
25 store?

1 A Yes.

2 Q But you found not guilty --

3 A Yes.

4 Q -- because you were outside?

5 A Yes.

6 Q Were you the lookout?

7 A No.

8 Q Okay. Anything else that you've been involved in prior to

9 November of 2016?

10 A No, that's -- that's it.

11 Q Okay.

12 A Because I got violated. I was on probation and I got violated

13 and I went to jail.

14 Q You were on probation for which?

15 A For petty theft.

16 Q For the phone?

17 A Yes.

18 Q And then after the armed robbery then you went to jail?

19 A Yes.

20 Q And then after you got out of jail you hadn't done anything

21 else in California?

22 A No.

23 Q Okay. And then you're here, you're in the car. You said you

24 slept some, and then what happened?

25 A The next day I was riding around then --

1 Q Okay. So, you're riding around where?

2 A In the Henderson area.

3 Q Okay. Describe the area that you're riding around in?

4 A I can't do that, ma'am.

5 Q You can't tell me a store you passed, a gas station you saw --

6 A No.

7 Q -- a neighborhood, a street sign?

8 A No.

9 Q You can't tell me any specifics about where you were driving  
10 in Henderson?

11 A Ma'am, I was high on Xanax. If you are aware, Xanax, you  
12 kind of lose your memory. I was high on Xanax.

13 Q Okay. So, if you were high on Xanax and you have no  
14 memory of any street or --

15 A I didn't say no memory.

16 THE COURT: Whoa, whoa, hold on. We have to take turns.  
17 So, she's in the middle of --

18 THE WITNESS: Okay.

19 THE COURT: -- asking her question. When she's done you  
20 can answer if you can or your brother's attorney can object if he thinks  
21 it's inappropriate, but wait until she's done with her question. So, you  
22 can restart it.

23 BY MS. DIGIACOMO:

24 Q Thank you. I'm sorry. So, this morning of November 28<sup>th</sup>  
25 you're so high on Xanax you can't remember any buildings you saw, any

1 street signs you saw, any landmarks you saw; correct?

2 A I don't recall.

3 Q You don't recall.

4 A I don't recall.

5 Q You don't recall what?

6 A Seeing any of that, but I -- that I passed it by and I can't say,  
7 oh, so this, this. I'm not really familiar with Vegas.

8 Q Okay. But -- so, it's fair to say as you sit here today three  
9 years or whatever it's been, two and a half years later, you can't  
10 remember any street signs you saw, any landmarks, businesses, Jack-  
11 in-the-Box, anything?

12 A Yes.

13 Q Okay. So, then how is it that you know that you were at the  
14 Warm Springs Street?

15 A There's paperwork -- I didn't --

16 Q So, what was the name of the street where you did this  
17 burglary?

18 A Warm -- Warm Rays Ave.

19 Q Okay. And so -- and you said it was paperwork that told you  
20 that; correct?

21 A No, it was paperwork that recalled my memory. Not in my  
22 memory, but I know it was something; but I have to look at the  
23 paperwork.

24 Q Okay. What paperwork did you see that jogged your memory,  
25 sir?

1           A     My affidavit.  
2           Q     Okay. So, when you saw your affidavit that jogged your  
3 memory as to where you were?  
4           A     Right now, yes.  
5           Q     Okay.  
6           A     When I wrote it this was like -- like, when did I write my  
7 affidavit, like --  
8           Q     How long ago did you do it?  
9           A     I want to say last year around -- when we first -- when we first  
10 got arrested.  
11          Q     Okay. So, if your affidavit is dated of February of this year  
12 that would be wrong?  
13          A     That's when I got it notarized and everything. It was already  
14 wrote, if that makes sense.  
15          Q     Okay. So -- but you -- you said it was last year that you spoke  
16 to somebody?  
17          A     As soon as my brother was arrested for this case that I did, I  
18 know -- took -- wanted to take responsibility.  
19          Q     Okay. So, you went to court?  
20          A     I went to court.  
21          Q     And you said it was this Court?  
22          A     The same exact Court.  
23          Q     The same exact Court. So, it was in this same exact location?  
24          A     Yes.  
25          Q     Okay. So, if I told you that his Court date, his first one, was in

1 Henderson not down here, does that change your memory?

2 A Well, I came here. I don't -- I was at this Court.

3 Q You were --

4 A I don't know if it was his first Court. It was probably like the  
5 second or third, but I came to this courtroom. I could tell that's a fact.

6 Q When was the first time you told your brother?

7 A About what?

8 Q About doing -- you were the one that did the residential  
9 burglary?

10 A When I found out he was in jail for it.

11 Q Okay. When did you find out he was in jail for it?

12 A Like, a couple days after he was arrested.

13 Q And who did you find out that from?

14 A My mom.

15 Q Where does your mom live?

16 A In California City.

17 Q What's her name?

18 A Keisha [phonetic].

19 Q Keisha what?

20 A Jones.

21 Q So, you found out your brother was arrested a couple days  
22 after his arrest. What did you do? Did you go see him?

23 A No. I actually was thinking to myself what should I do and  
24 then my brother he got recently just got out of jail. So, I didn't want him  
25 to go back to jail so I'm, like, I'll take responsibility for my actions.

1 Q But you didn't take -- you weren't able to take responsibility?  
2 A I wasn't able to, yes.  
3 Q Okay. So, when was it back in 2016 in November did you go  
4 the police and say, hey, I'm the one that did this?  
5 A No, I came to Court.  
6 Q I'm asking you. Did you go to the police?  
7 A I said no I came to Court.  
8 Q Okay. Did you tell your brother?  
9 A After the fact.  
10 Q Okay. When was after the fact?  
11 A A couple days he was -- when he was arrested I told him it  
12 was me.  
13 Q Okay. How did you tell him that?  
14 A Over the phone.  
15 Q Okay. So, he called you from jail?  
16 A My mom.  
17 Q He called your mom from jail.  
18 A Yes. And I just happened to be at my mom's house and I said  
19 can I talk to him.  
20 Q Okay.  
21 A And I told him.  
22 Q So, there would be a jail call that you're recorded on you  
23 telling your brother I'm the one that did this; correct?  
24 A Yes.  
25 Q Okay. So, let's go back to you're driving around Henderson,



1 you don't remember any landmarks. Describe the street where you did  
2 this burglary?

3 A I can't describe the street. I can tell you there was a big glass  
4 door --

5 Q I'm not asking about the house yet. I want to know the street.  
6 Describe the street, describe the neighborhood.

7 A Suburbs. I don't know how to describe it. I don't get what  
8 you're asking me.

9 Q You can't -- I couldn't understand.

10 A I don't understand what you're asking me, like describe the  
11 streets.

12 Q I'm asking you to describe the neighborhood, describe the  
13 streets. What did the houses look like? What did the streets look like?

14 A I don't really recall all that. I wasn't really -- like, I was looking  
15 but I really wasn't looking, like, I don't --

16 Q All right. So, why -- let's go back then. At what point did you  
17 decide you're going to try to commit a crime?

18 A Well, I was high on Xanax and just thinking and it just came  
19 into my head.

20 Q Okay. So, it came to your head at what point?

21 A I don't get what you asking me.

22 Q At what point in the morning, like, before you went to sleep,  
23 after you woke up?

24 A After I was --

25 Q After you were asleep you woke up?

1 A Yes.

2 Q You decided I'm going to commit a crime?

3 A Yes.

4 Q Why were you going to commit a crime?

5 A I needed some cash. I wanted to go -- I don't -- I don't get  
6 what you're asking me [indiscernible].

7 Q I'm asking you why you decided to commit a crime, what was  
8 your motivation. Why did you -- as you're driving around --

9 A Money, I needed some money.

10 Q Okay. So, you needed some money?

11 A Yes.

12 Q Okay. So, why didn't you just go back to your friend to get  
13 some more money?

14 A Because I -- because my friend is not like my friend. I can't go  
15 get 500 to \$1,000 from him.

16 Q Okay. So, what did you need 500 to \$1,000 for?

17 A Just for myself. I want -- I like my stuff.

18 Q So, you like nice stuff?

19 A Yes.

20 Q But you weren't working at the time?

21 A No.

22 Q Other than you were selling or buying drugs?

23 A Yes.

24 Q How much were you making selling drugs?

25 A It wasn't really a primary thing. So, I can't give you no

1 numbers, you know. It's just here and there.

2 Q Well, let me ask you this. Why did you decide to commit a  
3 crime to get money instead of just go and sell drugs?

4 A Because I got to buy -- you got to spend money to make  
5 money.

6 Q Okay.

7 A I needed to get more -- you know, I wanted to go get some  
8 stuff.

9 Q Who did you buy your drugs from in Vegas?

10 A I don't recall.

11 Q You don't recall a name, nothing?

12 A No, no.

13 Q Okay. Was his phone number in your phone?

14 A No. I would meet up with him.

15 Q How did you know to meet up with him if you don't have a  
16 contact number?

17 A On Messenger, Facebook.

18 Q Okay.

19 A It was like a group chat.

20 Q Okay. Was there here in Vegas or in California?

21 A Both, it was like a international thing.

22 Q Okay. So, you decide I need some money, I going to commit  
23 a crime; correct?

24 A Correct.

25 Q What crime did you decide -- like, did you think about many

1 different crimes to commit or did you just decide you were going to do a  
2 burglary?

3 A You asked how I decided really trying to make cash besides  
4 burglary.

5 Q I'm sorry. I can't hear you.

6 A I said what other way is there the way to make cash besides  
7 burglary, you know.

8 Q What other ways?

9 A Like you said, I was planning on doing, like, committing a  
10 crime, what other crimes can you commit to get money besides burglary.

11 THE COURT: Well, she gets to ask you the questions.

12 BY MS. DIGIACOMO:

13 Q Okay. Well, armed robbery of a store would get you money;  
14 correct?

15 A It's still burglary though. Robbery, burglary is still the same  
16 kind of a--

17 Q What about mugging somebody on the street?

18 A No, I don't [indiscernible].

19 Q Okay. So, you just decided I'm going to do a burglary?

20 A Correct.

21 Q Okay. How many houses did you look at before you decided  
22 on the house you were going to burglarize?

23 A Probably two or three.

24 Q Okay. And what did you do to decide? What made your  
25 decision for you?

1 A Cars in the driveway, cameras, and stuff like that.

2 Q Okay. So, let's talk about the first house you were looking at.

3 What kept you from doing the burglary of that house?

4 A I seen a camera across the street.

5 Q Okay. The next one. What kept you from doing that one?

6 A Somebody came outside.

7 Q Okay. And then what about the next one?

8 A Nothing stopped me. I actually tried to.

9 Q Oh, so the third house was the one that you tried?

10 A Yes.

11 Q All right. So, you pull up in your car. Where do you park?

12 A Kind of like the house next to it but like in the front.

13 Q Okay. So, like, if I'm seeing looking at the house that you

14 decided to burglarize, where did you park your car?

15 A I was towards the left, the house to the left in the front of it.

16 Q To the next neighbor?

17 A Yes.

18 Q Okay. And you were in front of that house?

19 A Yes.

20 Q All right. What are you wearing?

21 A I had like a sweater vest, like a sweater and a vest.

22 Q Okay. So, you're now making a motion with your hand all

23 over your chest and down your front.

24 A A sweater with a vest on it.

25 Q Okay. So, long sleeved was my point.

1 A A sweater with a vest on it.

2 Q Okay. So, you're wearing a long sleeved sweater; correct?

3 A Correct; yes.

4 Q Okay. When you get out of your car, what's the first thing that

5 you do?

6 A I looked around.

7 Q Okay. What's the next thing you do?

8 A I proceeded towards the door.

9 Q Then what did you do?

10 A I looked, went around back. I was looking. Then I -- that's

11 when I did the [indiscernible].

12 Q All right. When you went around back, did you get all the way

13 in the backyard?

14 A Yeah.

15 Q How did you get into the back yard?

16 A The side door or the gate.

17 Q Okay. You go through the gate. And you said you were

18 looking, are you looking in the windows?

19 A Yeah, just looking around, yeah.

20 Q All right. Did you see what you liked?

21 A I wasn't really looking for nothing like that. I was looking to

22 see if the people was home.

23 Q Okay. Was anybody at home that you could see?

24 A Well, I didn't see nothing so I attempt.

25 Q Okay. So, what did you do?

1           A     I went back around the front and I punched a hole in like the  
2 glass door and I tried to unlock the door and when I tried to unlock it  
3 somebody locked it back.

4           Q     Okay. So, let's break that down. So, you were in the back  
5 yard; correct?

6           A     Correct.

7           Q     And you go back to the front door?

8           A     Right.

9           Q     All right. And the back yard, there's a sliding glass door;  
10 correct?

11          A     Correct.

12          Q     Okay. And there's also windows in the back of the house;  
13 correct?

14          A     Correct.

15          Q     All right. So, you go back around to the front of the house and  
16 you said you punched your hole -- a hole through the door?

17          A     Correct.

18          Q     All right. As you're looking at --

19          A     It's -- it's a glass door. I don't mean to cut you off. So, the  
20 front, I could see through the back yard, if it makes sense.

21          Q     Okay.

22          A     I could see straight through the house.

23          Q     Okay. Perfect. So, now you're standing at the front door?

24          A     Correct.

25          Q     Describe what the door looks like.

1           A     It was like glass, like -- kind of like the corridor right there, like  
2 a glass two-door.

3           Q     I'm sorry. Did you say -- I'm having a hard time hearing you.

4           A     It was like glass two door, like kind of like similar to the  
5 courtroom door.

6           Q     Okay. So, it was two doors next to each other?

7           A     Yeah.

8           Q     And they were both glass?

9           A     Yeah.

10          Q     Okay. Was it just clear glass that you could see through to  
11 the back?

12          A     Yes.

13          Q     Okay. So, no design or --

14          A     It was designs but you could still see through.

15          Q     What was the design?

16          A     I don't recall.

17          Q     Okay. What do you mean it was a design?

18          A     It was like -- you know -- I don't know, I don't know.

19          Q     Well -- I. Okay. You, as you're sitting here, said you that  
20 remember a design. I'm asking you what you mean by that?

21          A     It was like -- I don't know. It was nice doors, a design. I don't  
22 know.

23          Q     Okay. Was it clear, was it -- so it was frosted? Was it -- what  
24 was it? You said before it was a clear door --

25          A     It was a clear and you could see straight through the house,



1 ma'am.

2 Q So, as you're standing at the front door you could see straight  
3 through to the back?

4 A Straight through to the back.

5 Q Okay. Was it a one story or two-story house?

6 A It was a two-story.

7 Q All right. And so when you walked up to the front door you  
8 immediately punched a hole through the glass door?

9 A Correct.

10 Q As you're standing there looking at the glass doors, did you do  
11 the one on the left or the right?

12 A I can't recall if it was left or right just like that, but whatever  
13 side the lock was on 'cause I unlocked the door.

14 Q So, the door that would open and walk that's the one that you  
15 did?

16 A Correct.

17 Q What did you use to make the hole?

18 A My fist.

19 Q Which fist?

20 A My right.

21 Q Your right -- your right fist?

22 A Correct.

23 Q And you said you were wearing a sweater so you just had  
24 bare knuckles as you --

25 A I had a glove.

1 Q You had a glove?  
2 A Yes.  
3 Q Okay. What did the glove look like?  
4 A It was like a biker glove.  
5 Q A biker glove. So, what color was it?  
6 A I can't recall, but it was a glove.  
7 Q Well, was it like a light colored glove, a dark colored glove?  
8 A Light colored -- no, dark colored. It was bluish colors.  
9 Q What did you get that glove from?  
10 A I always have it.  
11 Q Do you always carry one glove with you?  
12 A No, but I just did that day.  
13 Q Okay. So, you had one glove with you?  
14 A No, I have two gloves.  
15 Q Okay. Where was the other glove?  
16 A What do you mean?  
17 Q Well, one's on your right hand when you punched the door.  
18 Where's the left-handed glove?  
19 A In the car.  
20 Q So, you didn't put two gloves on to do this burglary?  
21 A No.  
22 Q Okay. So, you used your right hand to punch the door. What  
23 do you next?  
24 A I tried to unlock it and when I did that somebody locked it so I  
25 left.

1 Q Okay. When you left, did you see the person who locked the  
2 door?

3 A No, I ran.

4 Q You ran. To where?

5 A Back to the car.

6 Q Okay. And you didn't see whether or not anybody else was in  
7 the street when you ran back to the car?

8 A No.

9 Q And if I have this correct, you go from the back yard to the  
10 front door and immediately punch a hole?

11 A Something like that, yes.

12 Q Well, you tell me.

13 A I don't recall, ma'am. You're like trying to make me remember  
14 stuff that I don't know. You got me second guessing things because I  
15 don't recall things.

16 Q Well, I'm just asking if anybody --

17 A You're kind of like antagonizing me.

18 Q No, sir. I'm just trying to ask you details about this burglary  
19 you say you committed.

20 A All right.

21 Q When you looked through the window you said you could see  
22 to the back; did you see anything else?

23 A No.

24 Q Did you see anyone around?

25 A No.

1 Q Do you remember what rooms you were looking at?  
2 A Kitchen, living room, yeah.  
3 Q Okay. When you punched your -- the hole through the  
4 window, did you immediately reach in to try to unlock the door?  
5 A Yes.  
6 Q Which hand did you use to try to unlock the door?  
7 A My right.  
8 Q So, the same hand that had the glove?  
9 A Yes.  
10 Q And it was at that time somebody was there and locked the  
11 door as you were trying to open it?  
12 A I seen somebody coming down the stairs and they locked it.  
13 Q At what point was it that you saw somebody coming down the  
14 stairs?  
15 A After I broke the hole and tried to unlock it. It was all in one  
16 motion. It was too fast to even --  
17 Q And before you put your hand through the window, you didn't  
18 like ring the doorbell or anything?  
19 A No -- well, yes -- no, actually no. I actually knocked on the  
20 door.  
21 Q Okay.  
22 A I actually knocked on the door.  
23 Q Okay. You knocked on the door to see if somebody was  
24 home?  
25 A Yes.

1 Q And nobody answered?

2 A And that's why I went around back to double check.

3 Q Okay. So, you went up and knocked on the front door and  
4 then went around back, then came back and immediately punched a  
5 hole in the window to the door?

6 A Yeah.

7 Q Okay. And the address that was in your affidavit, what made  
8 you remember that part of your Xanax induced morning?

9 A Actually -- can you say that again?

10 Q Well, you told me before you don't remember any street signs,  
11 or any restaurants, buildings that you had passed that morning.

12 A Correct.

13 Q But you said at the time that you gave your statement to the  
14 Defense --

15 A Correct.

16 Q -- to your brother's attorney, you knew that the address was  
17 the 2731 Warm Rays?

18 A Well, actually, I went to Court for my brother and they was  
19 talking about it and they kind of like -- oh, then when I talked to the  
20 attorney, he kind of like -- he, like, refreshed my memory, like, this, this  
21 and that, and I'm like, yeah, that was.

22 Q Okay. Now, do you have a moniker or anything?

23 A Nickname, no.

24 Q Okay. So, you don't go by anything like your buddy goes by  
25 Dada?

1 A I'm Davey.

2 Q I'm sorry. You just go by Davey?

3 A Yes.

4 Q Who's Slick?

5 A Slick. I don't know.

6 Q You don't know anybody named Slick?

7 THE COURT: Is that a no?

8 THE WITNESS: No.

9 BY MS. DIGIACOMO:

10 Q All right. So, when you leave to leave this residence, where  
11 do you go?

12 A I tried -- I was going back to my sister house.

13 Q Okay. And how did you get there?

14 A I drove.

15 Q Okay. What streets did you take to get there?

16 A I don't know, ma'am.

17 Q Did you take freeways or did you take streets?

18 A I took the freeway; I GPS'd it.

19 Q You GPS'd it?

20 A Yes.

21 Q And where does your sister live?

22 A On Tenaya.

23 Q On Tenaya. Okay. Did you go anywhere else in between this  
24 residential burglary house and your sister's house on Tenaya?

25 A I probably did but I don't know if I did.

1 Q You say probably, like, where would you have gone?  
2 A Actually, no I didn't, no I didn't.  
3 Q You went straight there?  
4 A Yeah, went straight there.  
5 Q Okay. And then when you got to your sister's house what  
6 happened?  
7 A I had my brother drop me off.  
8 Q I'm sorry?  
9 A My brother was over there -- no, yeah, no, I picked him on  
10 Lindell. I went to Lindell first to drop the car back off to my brother.  
11 Q Okay. What's Lindell?  
12 A I don't recall, but I just know it was a street, Lindell Street.  
13 Q Well, who's house was it?  
14 A I don't recall but my brother was there.  
15 Q How did you find out that your brother was there?  
16 A Because I called him and he was calling me asking for his car  
17 back.  
18 Q Okay. And that's the first time he had asked you for his car  
19 back?  
20 A Yes. Well, my phone was off. So, when I finally turned it on  
21 he was calling.  
22 Q At what point did you finally turn on your phone?  
23 A The next morning.  
24 Q Okay. Before or after you did the residential burg?  
25 A Before. But my phone was off all night, if that makes sense.

1 Q Okay. So, you went -- the next place you went was to pick up  
2 your brother at Lindell?

3 A Yeah, and I got dropped off.

4 Q Got dropped off where?

5 A To my sister house.

6 Q On Tenaya?

7 A On Tenaya.

8 Q Okay. So, where did you get dropped off? You said your  
9 sister's and that's on Tenaya; correct?

10 A Correct.

11 Q All right. Now, in your statement, your affidavit, you put that  
12 you drove to where your brother was and then your brother dropped you  
13 off at Lindell?

14 A Well, I got the streets mixed up. I know it was one of the two.

15 Q Okay. But do you know where your sister lives?

16 A On Tenaya.

17 Q So, she doesn't live on Lindell?

18 A No.

19 Q So, who lives in Lindell that you get dropped off there?

20 A Where I'd get dropped to? I went to a female friend house.

21 Q So, who is this female that lives at Lindell?

22 A Antoinette [phonetic].

23 Q Antoinette what?

24 A I don't know her last name.

25 Q Do you still know her?



1 A No -- yeah, but I don't talk to her.

2 Q Okay. So, after you guys went to Lindell that's where you got  
3 dropped off?

4 A Correct.

5 Q Okay. So, then in your statement it says that after you picked  
6 up your brother at some residence he and you drove to Lindell and that's  
7 -- you were referring to that as Romeka's house, but that wasn't  
8 Romeka's house it was a female, Antoinette's house?

9 Q Correct. So, your affidavit is incorrect; correct?

10 A Correct. No, my affidavit is correct. That's correct; that's  
11 facts.

12 Q So, when it says that you got out of the car at your sister's  
13 house on Lindell at Romeka's that's correct?

14 A Correct.

15 Q So, she lives on Lindell not Tenaya?

16 A That's I don't -- I don't know.

17 Q You don't know?

18 A She don't live there no more.

19 Q But you were you staying there for above five or six weeks in  
20 the fall of 2016?

21 A I wasn't just at her house, correct.

22 Q Okay. But you said previously that you knew she lived on  
23 Tenaya, but now you're saying that it's Lindell?

24 A I guess.

25 Q You guess. You don't know?

1           A     Ma'am, it was three years ago. I was on Xanax. I don't know  
2     you're trying to make me remember stuff.

3           Q     Okay. So, what you're saying is you were high on Xanax and  
4     you just can't remember what happened back in November 28, 2016?

5           A     Pretty much, yes.

6           Q     Pretty much. Okay. So, do you even know if you did this  
7     residential burglary?

8           A     I know for a fact I did.

9           Q     Okay. So, you're not just coming in to help your brother out  
10    since he's looking at habitual criminal treatment?

11          A     I wouldn't even do that. I wouldn't jeopardize my life for  
12    nobody.

13          Q     Did you go to an address on Viking?

14          A     That's where I picked the car up if I'm not mistaken.

15          Q     Okay. So, let me go back. You don't know where you picked  
16    up the car; you think it's Viking?

17          A     If I'm not mistaken.

18          Q     Okay. Do you -- and you said that when you got the car at  
19    midnight you went straight over to the east side of town to Henderson;  
20    correct?

21          A     Somewhat.

22          Q     Okay. What does somewhat mean, sir?

23          A     'Cause I didn't go straight to Henderson. I went to the east  
24    side first to go get the gas and then drove toward the Henderson area.

25          Q     Okay. So, define what you mean by east side?

1 A Like the eastside of Las Vegas.

2 Q Okay. So, where?

3 A Where was that? I don't even know so I can't even say. I'm

4 not familiar with --

5 Q Okay.

6 A If this was California I would be telling you.

7 Q Okay. So, you just went to the generic eastside and then you

8 ended up in Henderson?

9 A Correct.

10 Q Do you remember how you got to Henderson?

11 A What do you mean how I got there? I drove, ma'am.

12 Q I know you drove. But did you take the street, did you take the

13 freeway?

14 A I took the freeway.

15 Q What freeway did you take?

16 A Whatever freeway it is on GPS.

17 Q Okay. So, why did you GPS to go to Henderson?

18 A Because there's big houses.

19 Q In Henderson?

20 A In Henderson.

21 Q And who told you there were big houses in Henderson?

22 A I actually been over there and I seen houses.

23 Q Well, there's big houses on the westside too; correct?

24 A Correct.

25 Q But you wanted to go to the big houses in Henderson?

1           A     I was trying to go out of my -- you know, I wasn't trying to do  
2 where I be at.

3           Q     Okay. So, after you did the residential burg you then went to  
4 your sister's house and it's now on Lindell; correct?

5           A     Correct.

6           Q     And when you went to get the car the night before from your  
7 brother it was on Viking?

8           A     If I'm not mistaken, correct.

9           Q     After you got dropped off at your sister's house on Lindell, you  
10 were done with the car and you didn't go anywhere else with your  
11 brother?

12          A     Correct.

13          Q     But he left?

14          A     Yes.

15                MS. DIGIACOMO: Court's indulgence.

16                THE COURT: Sure.

17                BY MS. DIGIACOMO:

18          Q     You said you tried to report to the female attorney. Your  
19 brother's had multiple attorneys. Did you ever try and talk to any of the  
20 other attorneys?

21          A     Just this one and the first one I tried to.

22          Q     Okay. Did you -- so -- but it's fair to say though a few days  
23 after the crime your brother knew you were the one that did it because  
24 you told him that on the phone; correct?

25          A     Correct.

1 Q And you were never subpoenaed to come to Court in May of  
2 2017; correct?

3 A Correct. I tried to come to Court, but the attorney didn't -- she  
4 didn't want to listen to what I have to say.

5 Q And when was it that you first met with an investigator before  
6 your brother's attorney?

7 A I don't recall, but I know it was this year.

8 Q I'm sorry, this year?

9 A This year.

10 Q So, it wasn't last year like you said before, it was this year?

11 A I know with his people?

12 Q Yes.

13 A Yes. And I think the affidavit was last year.

14 Q Who did you write the affidavit with?

15 A I actually, like, typed it up, like, you know, I typed it up, and I  
16 had like the original agreement I wrote by myself and I went to get it  
17 notarized.

18 MS. DIGIACOMO: Your Honor, may I approach?

19 THE COURT: Sure.

20 MS. DIGIACOMO: Thank you. And may I also approach the  
21 witness?

22 THE COURT: Sure.

23 BY MS. DIGIACOMO:

24 Q All right. So, I'm going to show you, sir, what's been marked  
25 as State's Exhibit -- excuse me -- Defendant's proposed Exhibit B. It is

1 a three page document. I'll show you page three first.

2 A Correct.

3 Q Is that your signature?

4 A Yes.

5 Q Okay. And page two that's your --

6 A Yes.

7 Q You got to let me finish. Sorry. This is being recorded so we

8 can't talk on top of each other. So, the bottom of page two, are these

9 your initials?

10 A Yes.

11 Q And the bottom of page one this is your initials?

12 A Yes.

13 Q And looking at this document, this is the one that you typed

14 up?

15 A No.

16 Q Okay. What -- are these -- it might be in the form, but are

17 these the words that you typed up?

18 A Yeah, but no. I have wrote, like, I typed -- on the screen I

19 typed it.

20 Q So, where is that original typed statement you made?

21 A I have no clue now.

22 Q Who did you give it to you?

23 A I don't know, I don't know.

24 Q So, you typed it up but you don't know who you gave it to?

25 So, it wasn't your brother's counsel that's sitting in the courtroom here

1 today?

2 A Yes, I think -- yeah, that's what happened, yeah, oh, yeah.

3 Q Okay. So, you typed something up and gave it to this attorney  
4 that's in Court?

5 A Probably still got it as a matter of fact.

6 Q Okay. Where would it be?

7 A At my mom's house or something like that or something.

8 Probably still got it.

9 Q Okay. But that statement you typed up, is what this was made  
10 from?

11 A Correct, correct.

12 Q So, you would have had to have given that statement to  
13 whoever typed this up?

14 A Actually when -- I don't know about when this was typed up,  
15 but I actually went to his office and talked to him about it, talked to his  
16 investigators about it.

17 Q Mm-hmm.

18 A And that's probably where all this -- this came from.

19 Q So, that's where Defendant's proposed Exhibit B came from.  
20 They took your words and wrote it down?

21 A Yeah.

22 Q Okay. And were you the one that crossed out your address?

23 A No, the investigator did.

24 Q Okay.

25 A He did that.

1 Q Okay. Because you told him that that --

2 A That's not my address no more. This is where I was living --

3 Q Mm-hmm.

4 A -- at the time, but then this is where I was at when I was  
5 talking to the investigator. That's where we pulled up to. That's where I  
6 was at.

7 Q Now, is it fair to say you didn't remember dates of the crime,  
8 that they would have filled that in for you? You just knew when your  
9 brother got arrested?

10 A Yeah.

11 Q Okay. Is it also fair to say that you didn't remember the exact  
12 address; they filled that in for you?

13 A No, I knew the, like, not the area but Henderson I knew that.

14 Q You knew it was in Henderson. And who's your cell phone  
15 provider that you had back in 2016?

16 A Metro.

17 Q You said the house was a two-story; what color was it?

18 A I don't recall.

19 MS. DIGIACOMO: I have nothing further.

20 MR. MODAFFERI: Nothing further. Thank you, Mr. Dorsey.

21 THE COURT: Thank you, sir.

22 MR. MODAFFERI: Judge, I do have one more witness, but  
23 I'm not sure how the Court is --

24 THE COURT: Of course. So, if it's estimated about the same  
25 length, I assume, probably?



1 MS. DIGIACOMO: Yes, Your Honor.  
2 THE COURT: Okay. Let's take our lunch break and come  
3 back at 1:14.  
4 MR. MODAFFERI: Judge, I have a -- yes, that should be fine.  
5 I have a 1 o'clock before Judge Brown. It'll be in and out.  
6 THE COURT: Well, let's say 1:30 then.  
7 MR. MODAFFERI: Thank you.  
8 MS. DIGIACOMO: Okay. I have -- I'm starting trial so I have  
9 pre-trials this afternoon. All right.  
10 MR. MODAFFERI: I can be here as soon as, you know  
11 probably like 1:15 probably and get her on the stand. I'm not going to  
12 take -- with the other witness, I'm just going to take approximately five or  
13 ten minutes with him.  
14 MS. DIGIACOMO: Right.  
15 THE COURT: Okay.  
16 MS. DIGIACOMO: I'm not going to be longer, Your Honor.  
17 Can we leave our stuff here then, Your Honor?  
18 THE COURT: Yeah, yeah.  
19 MS. DIGIACOMO: Thank you.  
20 MR. MODAFFERI: Thank you, Judge.  
21 [Recess taken at 12:01 p.m.]  
22 [Proceedings resumed at 1:40 p.m.]  
23 THE COURT: Okay. Are we ready for the next witness?  
24 MR. MODAFFERI: Yes, Judge.

25 **TAKIYA CLEMONS**

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[having been called as a witness and  
being first duly sworn, testified as follows]:

THE COURT CLERK: For the record, please state and spell  
your first and last name.

THE WITNESS: Takiya Clemons, T-A-K-I-Y-A, Clemons is  
C-L-E-M-O-N-S.

THE COURT CLERK: Thank you.

THE COURT: Please be seated.

**DIRECT EXAMINATION**

BY MR. MODAFFERI:

Q Good afternoon, Ms. Clemons. Do you know a person by the  
name of Denzel Dorsey?

A Yes.

Q Do you see him in Court today?

A Yes.

Q Can you tell me where he is and what he's wearing?

A Next to you and he's wearing blue.

Q Okay. I can tell you're a little soft spoken. Could you please  
raise your voice so the judge and everyone can hear you. It's being  
recorded as well. Thank you.

A Okay.

Q Ms. Clemons, how do you know -- how do you know Denzel  
Dorsey?

A He's my child's father.

Q Okay. And how long have you known him?

1 A Since I was 17.

2 Q And at one point during the time that you've known him, were  
3 you approach by my investigator to give a statement about some of the  
4 events that occurred during November of 2016?

5 A No.

6 Q Do you remember filing out a declaration by the investigator?

7 A Oh, yes, yes.

8 Q And the events that you described in that declaration they  
9 revolved around November 27<sup>th</sup> and 28<sup>th</sup> of 2016?

10 A Yes.

11 Q Do you recall during that time whether -- where you were  
12 living?

13 A On Viking with a friend.

14 MS. DIGIACOMO: I can't hear her, Your Honor.

15 THE WITNESS: On Viking with a friend.

16 BY MR. MODAFFERI:

17 Q Okay. And who were you living there with?

18 A Aisha Jones [phonetic].

19 Q Okay. And is that an apartment complex there?

20 A Yes.

21 Q And you were dating Denzel Dorsey at that time?

22 A Yes.

23 Q And had you been dating him or had you been -- you've  
24 known him since the time you were 17. Had you been dating him since  
25 that time, on and off?

1 A Yeah, on and off.

2 Q I want to bring your attention to November 27<sup>th</sup> of 2016; were  
3 you working that day or were you off from work?

4 A I was off.

5 Q And can you just describe for me where you were and what  
6 you were doing?

7 A I was at Aisha Jones' apartment and -- on my phone.

8 Q Do you recall being with Denzel Dorsey that day?

9 A Yes.

10 Q And was he with you on the evening of November 27<sup>th</sup>, 2016?

11 A Yes.

12 Q Do you recall during that evening Davey Dorsey coming to the  
13 Viking Street address where you were?

14 A Yes.

15 Q And what happened?

16 A Denzel, he went out and --

17 MS. DIGIACOMO: I can't hear her.

18 THE COURT: Yeah, you really got to speak up because  
19 we've said this three times.

20 MR. MODAFFERI: Can you speak into that microphone  
21 there? It might project your voice a little.

22 BY MR. MODAFFERI:

23 Q What do you recall happening when Mr. -- who is Davey  
24 Dorsey, by the way? Let me ask you that.

25 A He's Denzel Dorsey's brother -- little brother.

1 Q And did you see him on the night of November 27<sup>th</sup>?  
2 A Yes.  
3 Q Tell me what happened when you saw him?  
4 A Denzel Dorsey had gave him the keys to the car he was  
5 driving at the time.  
6 Q The car that he was driving at the time, was that a rental car?  
7 A Yes.  
8 Q And did Denzel -- besides taking the keys, did he actually take  
9 the car?  
10 A Yes.  
11 Q Davey Jones -- Davey Dorsey.  
12 A Yes.  
13 Q Davey Jones is a Monkee. All right. Did Mr. Denzel Dorsey  
14 stay with you that night?  
15 A Yes.  
16 Q Did he stay with you throughout the entire evening?  
17 A Yes.  
18 Q When was the next time that he actually left your presence or  
19 company?  
20 A The next day, the following day, maybe the afternoon around  
21 one or two.  
22 Q And how did he leave? Did his brother bring back his car, did  
23 he walk? How did he actually leave the car?  
24 A No. Davey Dorsey, he did bring back the car and Denzel  
25 Dorsey left with him.

1 MS. DIGIACOMO: I'm sorry. I can't understand -- hear that  
2 last part.

3 THE COURT: Yeah, could you repeat that for us?

4 THE WITNESS: Yes.

5 THE COURT MARSHAL: I have a lapel mic if she wants --

6 THE COURT: Yes, please.

7 BY MR. MODAFFERI:

8 Q So, tell me what you recall happening when they left? Did  
9 they leave together, did they leave in separate cars?

10 A Yes, they did leave together. Davey came and Denzel walked  
11 out. I gave him a hug and he left with Davey Dorsey.

12 Q At 11:55 a.m. on the 28<sup>th</sup>, do you recall whether or not Denzel  
13 was with you?

14 A Yes, he was with me. We didn't wake up until a little after  
15 that.

16 MR. MODAFFERI: At some point did Denzel -- well, I'll  
17 withdraw that. I have nothing further, Judge.

18 THE COURT: Okay.

19 MS. DIGIACOMO: Thank you.

20 MR. MODAFFERI: Judge, may the record reflect I'm returning  
21 what's been marked as Exhibit A to the clerk.

22 THE COURT: Yeah.

23 MR. MODAFFERI: Thank you.

24 THE COURT: Thank you.

25 **CROSS-EXAMINATION**

1 BY MS. DIGIACOMO:

2 Q All right, Ms. Clemons, you said that the Defendant is your  
3 child's father?

4 A Yes.

5 Q And how old is your child?

6 A She's one.

7 Q So, when was she born?

8 A February 20 -- I'm sorry -- February 15, 2018.

9 Q And so it's a girl?

10 A Yes.

11 Q And when is your -- what is your date of birth?

12 A February 25<sup>th</sup>, 1995.

13 Q So, you are 24?

14 A Yes.

15 Q Okay. And you've know Denzel since you were 17 -- you  
16 were 17? Sorry.

17 A Yes.

18 Q Is he older or younger than you?

19 A Older.

20 Q How much older?

21 A Two years.

22 Q Okay. Now, are you still together?

23 A Yes.

24 Q And you been consistently together since about 2012?

25 A Not consistent; on and off.

1 Q Okay. How long have you been consistently together this  
2 time?

3 A Maybe 19, when I turned 19 to now.

4 Q So, five years?

5 A Yes.

6 Q So, the last five years. So, since 2012?

7 A When I was --

8 THE COURT: No, you said five years and then 2012 so that's

9 --

10 MS. DIGIACOMO: Wait, what year is.

11 THE COURT: 2019.

12 BY MS. DIGIACOMO:

13 Q I'm sorry. So, 2014?

14 A Yes.

15 Q Okay. Where -- did you meet him in California or here in Las  
16 Vegas?

17 A Las Vegas.

18 Q Okay. And so did you grow up here?

19 A No. I'm from California. I moved out here back in 2012.

20 Q Okay. And you met him when?

21 A Around the time I moved out here, 2012.

22 Q You met him right after you got here?

23 A Yes.

24 Q Okay. Now, in 2016 you were dating; correct?

25 A Yes.



1 Q And he came over to your house. And why were you living  
2 with Aisha Jones [phonetic]?

3 A Because I didn't have nowhere else to go at the moment.

4 Q How long had you been living with her?

5 A Maybe about six months.

6 Q You said it was on Viking?

7 A Yes.

8 Q Where on Viking?

9 A Wynn -- like Wynn and Viking.

10 Q Wynn and Viking, W-Y-N-N?

11 A Yes.

12 Q So, on the west side of town.

13 A Yes.

14 Q Okay. What were you doing for work back in November of  
15 2016?

16 A I was working for Sutherland Global. It's like a call center.

17 Q I'm sorry. I'm still having a hard time hearing you.

18 A Sutherland Global.

19 Q Southern and Global?

20 A Sutherland Global Call Center.

21 Q Can you spell that?

22 A S-U-T-H-E-R-L-A-N-D Global.

23 Q Now, what kind of business is that?

24 A It's a call center, customer service, and it's with Direct TV.

25 Q Oh, Direct TV. Okay. How long had you worked there in

1 November of 2016?

2 A Maybe four months.

3 Q And how long did you work there total?

4 A About a year.

5 Q What were your days that you worked in shifts?

6 A It was changed a lot but didn't have like a set schedule. It  
7 changed after July when I worked there.

8 Q Did you work full time there?

9 A Yes, it was full time.

10 Q And I'm sorry, if I already asked you this, I don't recall it, but  
11 how long had you been living on the Viking address with Aisha in  
12 November of 2016?

13 A For about six months.

14 Q And how long did you live with her total?

15 A About nine months.

16 Q Did you have your own room or did you sleep on the couch?

17 A I slept on the couch, but she had a two bedroom and her  
18 daughter slept with her a lot of times, but sometimes I'd sleep on the  
19 couch --

20 Q But you didn't have your own --

21 THE COURT: So, hold on. Is the microphone turned off or  
22 something?

23 MS. DIGIACOMO: Yeah, it sounds like it is off.

24 THE COURT: It was coming in crystal loud and now --

25 MS. DIGIACOMO: She adjusted it and then it stopped.

1 THE WITNESS: Yeah, I tried to fix it but it was already off  
2 when I tried to fix it.

3 MS. DIGIACOMO: Oh, okay.

4 THE COURT MARSHAL: Could the batteries be dead? Is  
5 that light supposed to be on?

6 MS. DIGIACOMO: Wait, now the sound is one.

7 THE WITNESS: [Indiscernible].

8 MS. DIGIACOMO: Yeah, that sound's on.

9 THE COURT: Yeah, it's on again.

10 MS. DIGIACOMO: May I, Your Honor?

11 THE COURT: Yes. Thank you.

12 BY MS. DIGIACOMO:

13 Q Okay. Previous to November of 2016, what kind of jobs did  
14 you do? Did you ever go to school? Did you --

15 A No, I worked for -- I worked for Wal-Mart and I worked for  
16 United Health Care, and then I think that's it.

17 THE COURT: We going to try the new batteries.

18 THE WITNESS: Oh, Wal-Mart and then United Health Care  
19 prior to Sutherland Global.

20 BY MS. DIGIACOMO:

21 Q And you said you worked at Sutherland Global for about nine  
22 months?

23 A Mm-hmm.

24 Q And what jobs have you had since?

25 A After that?

1 Q Yes.

2 A After that I don't think I worked for a like two years, maybe a  
3 year and a half.

4 Q Okay. So, 2017 you didn't work?

5 A No.

6 Q And that's when you got pregnant?

7 A Yes.

8 Q Okay. So, you didn't work while you were pregnant?

9 A No.

10 Q And then 2018 you had your girl?

11 A Yeah.

12 Q And when -- so you weren't working at the beginning of 2018?

13 A No.

14 Q And when did you start working again in -- or did you in 2018  
15 start working again?

16 A No, I did not work in 2018 at all. So, 2000 this year is when I  
17 got my -- this job that I have now.

18 Q Okay. And what are you doing now?

19 A DTA Security?

20 Q I'm sorry, UTA?

21 A DTA.

22 Q Oh, I'm sorry, DTA Security. How long have you been there?

23 A Maybe three months.

24 Q All right. Now, in the time that you have known Denzel, just  
25 say from 2014 until 2018, did he ever work?

1 A Yes.

2 Q What did he do?

3 A He did the Herbal Life, it's like a gym thing that he did, and he

4 cut hair. He was like an in-house barber.

5 Q In-house barber where?

6 A Wherever he was staying at on Viking.

7 Q So, people would just come over and --

8 A Get their haircut.

9 Q -- cut hair on Viking?

10 A Yes, on the patio.

11 Q Did he go to school for hair?

12 A No.

13 Q How long did he work for Herbal Life?

14 A Probably like a year, under a year.

15 Q And when was that?

16 A Back in 2016 to '17.

17 Q And that's here in Las Vegas?

18 A Yes.

19 Q And so cutting hair out of the Viking apartment you said where

20 we lived. Did Denzel live with you on Viking?

21 A It was there often.

22 Q And he would cut hair there?

23 A Yes.

24 Q Where was he living at the time?

25 A He was there often, like, a lot so --

1 Q Okay. If he's there often, it's not every night; correct?  
2 A Yes, it's often, like, almost like every night, yeah.  
3 Q Almost every night. So, if he wasn't with you, where was he  
4 living?  
5 A I don't know. He wasn't with me.  
6 Q I'm sorry.  
7 A I don't know.  
8 Q So, you never went over to the place where he lived?  
9 A His sister house. He would go to his sister house or come to  
10 where I'm at.  
11 Q And who's his sister?  
12 A Romeka Dorsey.  
13 Q Romeka Dorsey?  
14 A Yes.  
15 Q And so is that the entire time you've known him since 2014 he  
16 stayed with his sister or did he ever have his own place?  
17 A He stayed with his -- yeah, with his sister.  
18 Q Had you ever been to Romeka's house?  
19 A Yes.  
20 Q Where did she live back in 2016 in November?  
21 A On Tenaya.  
22 Q Where on Tenaya; do you know?  
23 A No.  
24 Q But it was on Tenaya Street?  
25 A Yes.

1 Q Now, do you know a person by the name of Marquisha  
2 Powell? And for the record that's M-A-R-Q-U-I-S-H-A.  
3 A Yes.  
4 Q Who is that?  
5 A A friend of Denzel's.  
6 Q Have you met her before?  
7 A Yeah -- yes.  
8 Q And so they were just friends?  
9 A Yes.  
10 Q Were they pretty close friends?  
11 A Yes.  
12 Q Did you ever know her to do things for Denzel?  
13 A Yes.  
14 Q Like what?  
15 A Anything he asked her to do she'll do.  
16 Q And so what kind of favors would he ask?  
17 A Rides, that he was going to go somewhere or I don't know.  
18 Q Okay.  
19 A A small favor.  
20 Q Okay. Where was Marquisha living back in November of  
21 2016?  
22 A I don't know.  
23 Q Was she in Las Vegas or California?  
24 A I don't know.  
25 Q Did you ever meet her?

1 A Yes.

2 Q When you met her where was she?

3 A Vegas.

4 Q Okay. So, it's fair to say back in November of 2016 you never  
5 saw Marquisha?

6 A I seen her in November 2016, yes, I did.

7 Q You saw her where?

8 A In 2016, I did, I seen her.

9 Q In November?

10 A November, I don't know.

11 Q Okay. When you saw her was it in Las Vegas?

12 A Yes, it was in Las Vegas.

13 Q And where was it physically?

14 A Her house.

15 Q Okay. Where did she live? I thought you said you didn't know  
16 where she lived? Where did she live then?

17 A She lived in Vegas, but I don't -- I don't know.

18 Q But she lived at a house and you had been to the house?

19 A Yes.

20 Q Where was that?

21 A I don't remember.

22 Q Now, from 2014 until 2016 or actually till 2018, did Denzel  
23 ever have his own vehicle?

24 A Yes.

25 Q When?



1 A 2017 he had his vehicle.  
2 Q I'm sorry?  
3 A In 2017 he had a vehicle.  
4 Q Okay. What kind of vehicle was it?  
5 A It was a Benz.  
6 Q A Mercedes Benz?  
7 A Yes.  
8 Q And where did that come from?  
9 A Craig's List.  
10 Q Were you with him when he bought it?  
11 A No.  
12 Q So, he told you he bought on Craig's List?  
13 A Yes.  
14 Q And how long did he have that car for?  
15 A Not long, maybe a month, two months.  
16 Q Was that -- is this the same car he was arrested in in  
17 California?  
18 A No.  
19 Q It was a different Mercedes --  
20 A Yes.  
21 Q -- he was arrested in?  
22 A Arrested in California. I don't remember that, him being  
23 arrested in California.  
24 Q Do you remember being in a Mercedes with him when he was  
25 arrested -- hold on, let me get to the day -- it was July, I think, 11<sup>th</sup> of

1 2000 -- Court's indulgence.

2 THE COURT: Sure.

3 BY MS. DIGIACOMO:

4 Q -- 2000 -- oh, I'm sorry, 2016?

5 A No.

6 Q Okay. So, the only Mercedes you know he owned was in  
7 2017?

8 A Yes.

9 Q What color was it?

10 A Gray.

11 Q Had you ever seen him in a silver Mercedes?

12 A Yes.

13 Q Okay. When was that?

14 A 2017.

15 Q 2017?

16 A Yes.

17 Q Okay. Well, in 2016, July 11, 2016, were you with him in a  
18 silver Mercedes when he was stopped by the police?

19 A No.

20 Q You weren't?

21 A I'm sorry, can you repeat it?

22 Q Sure. In 2016, specifically July 11<sup>th</sup>, were you with Denzel  
23 when he was in a silver Mercedes and arrested in California for stolen  
24 property?

25 A What year was it?

1 Q 2016.

2 A No.

3 Q Okay. So, if he was with a person by the name of Takiya,  
4 TA-K-I-Y-A Clemons, date of birth, 2/25/1995, wouldn't that be you?

5 A Yes.

6 Q Okay. You just don't remember it?

7 A No, I don't.

8 Q Do you remember the police asking you about some stolen --  
9 or excuse me -- stolen jewelry that was found in the car?

10 A I don't even remember that day as far as being pulled over,  
11 no.

12 Q You don't remember the \$22,000 cash that was found in the  
13 car and being asked about that?

14 A Back in 2016, no ma'am.

15 Q Okay. Have you been with Denzel more than once when he's  
16 been arrested?

17 A Maybe twice.

18 Q Okay. What -- let's see -- do you know anybody by the name  
19 of Slick or moniker nicknamed Slick?

20 A No.

21 Q You don't -- never heard of Slick?

22 A No.

23 Q Have you ever heard Denzel refer to somebody as Slick?

24 A No.

25 Q All right. When was it in November of 2016 that you found out

1 that Denzel had been arrested for residential burglary?

2 A It was the 28<sup>th</sup>, maybe that night. He called me.

3 Q So, he called you from the jail?

4 A Yes.

5 Q Okay. Did he tell you what happened?

6 A No.

7 Q Did you ever talk to his brother, Davey, about what had  
8 happened?

9 A No.

10 Q Did you ever talk to his mom about what had happened?

11 A No.

12 Q Okay. Did you continue to talk to Denzel on the jail call or jail  
13 phones for the remainder of his time in custody after his arrest on  
14 November 28<sup>th</sup>?

15 A Yes.

16 Q And you weren't pregnant yet; right?

17 A No.

18 Q Okay. Do you know anyone that lives on Lindell Street in Las  
19 Vegas back then in November of 2016?

20 A I don't recall.

21 Q But it wasn't a place if you had been there you didn't frequent  
22 it?

23 A No.

24 Q Where -- what homes would you go to with Denzel?

25 A His sister house.

1 Q And that's the one on Tenaya?

2 A Yes, that's the one on Tenaya.

3 Q Okay.

4 A I wouldn't even go to people houses like that with him.

5 Q Okay. So, you don't know who lived on Lindell?

6 A No.

7 Q What about Remuda?

8 A What is that? Say that again.

9 Q Remuda, R-E-M-U-D-A, you anyone who lived on Remuda

10 back in November of 2016?

11 A No.

12 Q The car that he was driving, that rental car, do you know how

13 he obtained it?

14 A No.

15 Q Did he have a driver's license back in November of 2016?

16 A No.

17 Q Did he have a credit card back in November of 2016?

18 A I don't know.

19 Q Okay. But had he had rental cars previous to November

20 2016?

21 A I'm trying to think.

22 Q That's okay.

23 A No.

24 Q Okay. Now -- and I'm sorry, I was giving you the wrong date.

25 So, back in -- I wanted to ask you about, did you ever see him with a

1 silver Mercedes on July 11<sup>th</sup> of 2018?

2 A I don't remember now.

3 Q Okay. So, the only one you remember is from 2017?

4 A Yes.

5 Q And you don't recall being in a car where he was arrested in  
6 2018?

7 A I don't remember, ma'am.

8 Q Did you ever have a large amount of cash at one time?

9 MR. MODAFFERI: I'm going to object to relevance, Judge.

10 THE COURT: That -- well --

11 MS. DIGIACOMO: All right. I --

12 THE COURT: So, that's vague too. So, I don't -- sustained.

13 MS. DIGIACOMO: Thank you, Your Honor. Let me ask you a  
14 better question.

15 BY MS. DIGIACOMO:

16 Q I know you don't remember being -- with Defendant when he  
17 was arrested in 2018, but you do remember having \$15,000 cash that  
18 you claimed belonged to you at that time that police asked you about?

19 A Yes.

20 Q Okay. And what were -- how did you get \$15,000 in cash?  
21 What were you -- do you remember telling the police that you were  
22 selling hair and dancing?

23 A I don't remember.

24 Q Okay. But you agree with me you must paid his --

25 A Yeah, yeah, I don't know, that there's 15, yes.

1 Q Oh, wait. You remember having \$15,000?  
2 A Yes, I do.  
3 Q But you also did not work in 2017 and 2018; correct?  
4 A Correct.  
5 Q So, if you said that you got it from selling hair and dancing that  
6 wouldn't be correct?  
7 A That would be correct.  
8 Q You were selling hair and dancing --  
9 A Yeah, and selling hair.  
10 Q When?  
11 A The dancing --  
12 Q So, you made \$15,000 from selling hair?  
13 A That's -- really just from selling hair. I mean, I did save up  
14 from the jobs that I did have.  
15 Q Okay. What jobs did have in 2000 and --  
16 A United Health Care.  
17 Q No, no. But you told me specifically 2017 and 2018 you didn't  
18 work; correct?  
19 A Yeah, I didn't.  
20 Q So, you had \$15,000 saved up?  
21 A Prior to that and my taxes, yes.  
22 Q Okay. Did the police keep that \$15,000?  
23 A Yes, they did.  
24 Q Okay. So, do you now remember being in the car when  
25 Denzel got arrested and your \$15,000 got taken?

1           A     I don't remember the exact date, but something occurred and  
2 they did take it.

3           Q     Okay. So, well tell me what you remember occurred?

4           A     I remember going to talk to the detective, I believe, and I  
5 spoke to them about the money situation and I told him where I got it  
6 from.

7           Q     Okay. Do you remember also being asked about jewelry that  
8 was found?

9           A     No.

10          Q     Okay. So, on the night of November 27<sup>th</sup>, 2016, you were not  
11 working on that date; correct?

12          A     Say the date one more time.

13          Q     November 27<sup>th</sup>, 2016.

14          A     Yes.

15          Q     What about November 28<sup>th</sup>, 2016; did you go to work on that  
16 date?

17          A     No.

18          Q     What was the next date that you went to work?

19          A     The following day after that.

20          Q     Okay. And when Denzel came over you said that he was  
21 there with the rental car initially; correct?

22          A     Yes.

23          Q     And then Davey come over?

24          A     Yes.

25          Q     Do you remember if Denzel got a call from Davey before?



1 A I can't remember the conversation on the phone.  
2 Q Okay. But did you know before Davey got there that Davey  
3 was coming?  
4 A Yes.  
5 Q And that's because Denzel told you?  
6 A Yes.  
7 Q What time did Davey get there?  
8 A Maybe -- it was late, it was, like, night time but it was late.  
9 Q Okay.  
10 A I can't tell you the exact time but I know it was dark outside.  
11 Q Okay. So, it was dark outside. And then Davey leaves with  
12 the car?  
13 A Mm-hmm.  
14 Q Is that a yes for the record?  
15 A Yes, sorry.  
16 Q Okay. Did Davey or Denzel tell you why Davey was  
17 borrowing the car?  
18 A No. During that night -- well, after Davey left, how late did you  
19 and Denzel stay up?  
20 A It be like, I don't know, maybe an hour or two.  
21 Q And then you slept past noon the next day?  
22 A Yes.  
23 Q So, before going to asleep and after getting up, was Denzel  
24 ever worried about the car and where Davey was?  
25 A I don't remember if he was worried about the car.

1 Q So, when the -- when Denzel got arrested you said he called  
2 you from the jail; what was your reaction?

3 A I was in shock because I didn't know why he would be calling  
4 me from jail.

5 Q Okay. And did he tell you what happened, what he was  
6 arrested for?

7 A I don't remember.

8 Q Okay. Did he tell you when the crime occurred for what he  
9 was arrested?

10 A I don't remember.

11 Q Did you talk about the fact that he couldn't have done it  
12 because he was with you all night?

13 A I don't remember -- I don't remember the conversation.  
14 I just know I was shocked that he was in jail.

15 Q Okay. So, that first conversation you're in shock. What about  
16 the conversations you had that next week?

17 A I don't know.

18 Q Okay. So, you don't recall ever talking to Denzel about the  
19 fact that he couldn't have been the one to have committed this crime?

20 A I don't remember.

21 Q You don't --

22 A I just know the conversation was about that I needed to bail  
23 him out because I don't understand what was going on.

24 Q All right. So, you knew you wanted to bail him out but you  
25 don't recall ever discussing the fact that he was with you at the time the

1 crime occurred; correct?

2 A I don't remember.

3 Q Okay. When was the first time you do remember discussing  
4 with Denzel when the crime occurred?

5 A I don't know. When he got out, I don't know.

6 Q Okay.

7 A I don't remember having that conversation when he was in jail.

8 Q All right. Well, what about after he got out of jail. Did you ever  
9 have a discussion about the fact he couldn't have done the crime  
10 because he was with you?

11 A Right.

12 Q I'm sorry?

13 A Right.

14 THE COURT: I think she said right. So, I don't know that she  
15 heard your question.

16 MS. DIGIACOMO: Answered my question. Okay.

17 BY MS. DIGIACOMO:

18 Q My question is, is when was the first time that you remember  
19 you and Denzel discussing the fact that he could not have committed  
20 this crime because he was with you?

21 A When he got out of jail.

22 Q When he got out of jail which time?

23 A When I bailed him out.

24 Q Okay. Bailed him out right after his arrest?

25 A Yes.

1 Q Did you ever speak to his attorney about the fact of this?

2 A Yes, when I did my statement.

3 Q Not this attorney --

4 A Oh.

5 Q -- his original attorney or one of his original attorneys? Did  
6 you ever talk to them about it?

7 A No.

8 Q Did you ever talk to Denzel about the deal that he took?

9 A Yes.

10 Q And what was your discussion?

11 A I was asking him -- I know I was pregnant around the time.

12 So, I was telling him he needed to make it -- I know he needed to make  
13 it to my birth. I just wanted him to be there for my birth. So, I asked him  
14 if he was going to be there. He said he was going to talk to his attorney  
15 and then I did three ways for him a lot of times. So, we were doing a lot  
16 of three ways been in contact with her.

17 Q Okay. So, he was out of custody for the birth?

18 A No, he was not.

19 Q He was not.

20 A No.

21 Q Okay. Do you remember about when it was you got pregnant  
22 or found out you were pregnant, I should say?

23 A 2017 in May, like, May 15<sup>th</sup>, sometime in May 2017.

24 Q Okay. But you had bailed him out in -- shortly after he got  
25 arrested, correct, in November of 2016?

1 A Yes.

2 Q He was out of custody until 2018; correct?

3 A I'm not sure -- yeah, I believe so.

4 Q He went -- is it fair to say he went back into custody right after  
5 or right before your baby was born, maybe the month before?

6 A Yes, we went to the court date and went to jail.

7 Q I'm sorry, say that again.

8 A Yes, he went to court date -- I'm sorry -- a court date in  
9 January and he ended up going to jail.

10 Q Okay. Were you ever subpoenaed to come to Court as a  
11 witness back in 2017?

12 A No.

13 Q When he went back into custody right before your baby was  
14 born, did you still talk on the phone with him?

15 A Yes.

16 Q Did you ever talk about him taking a deal in the case or  
17 pleading guilty?

18 A I talked to him about -- just, I don't know, being there. I don't  
19 know.

20 Q Oh, sorry. So, you talked to him about being there for you and  
21 the baby; correct?

22 A Yes.

23 Q Okay. So, did you remember having conversations about  
24 trying to get him to get out of custody?

25 A Yes.

1 Q Do you remember if he -- if he actually told you or you talked  
2 about the fact he took this deal because he could get out of custody?

3 A Yes. He said something about he just needed to get in  
4 contact with his attorney that was on the case and talk to her about  
5 getting out so he can make it for my birth. So, I told him do what he  
6 have to do as far as to talk to the attorney; get in contact with her so he  
7 can be out before I have her.

8 Q Okay. But he did make it out before you had her?

9 A No, he did not.

10 Q But he did make it out shortly thereafter?

11 A Maybe a few months so she was three or four months.

12 Q Okay. And then he stayed out of custody until he was  
13 arrested in California; is that correct?

14 A Yeah -- yes.

15 Q Did you ever after he was arrested November 28<sup>th</sup>, 2016, did  
16 you ever speak with Davey Dorsey about what Denzel was arrested for?

17 A No.

18 Q Did you ever speak to Denzel's mom about what he was  
19 arrested for?

20 A No.

21 Q Did Denzel ever tell you that Davey is the one that did this?

22 A No.

23 Q How old -- you said your daughter is just over a year?

24 A Yes.

25 Q And how many months of that year or 14 months has or 16

1 months almost has Denzel been out of custody?

2 A Can you repeat that?

3 Q Sure. Sorry, that was a bad question. So, your daughter was  
4 born February 15, 2018. She's now about, what, 15 months?

5 A Mm-hmm.

6 Q Yes?

7 A Yes. I'm sorry.

8 Q Okay. So, how many months of her life has Denzel been out  
9 of custody able to spend with her?

10 A How many months has he been, like, out of custody?

11 Q Yeah, since she's been born.

12 A Let's see, she turned, like, eight months, since she was eight  
13 months, I think, he went back.

14 Q Okay. So, a couple of months he was out of custody and then  
15 he went right back in?

16 A Wait. I'm sorry. Maybe nine months. I'm not sure.

17 Q Okay. And it's fair to say you'd like him back out of custody so  
18 he can be with you and your daughter?

19 A Yes.

20 MS. DIGIACOMO: Court's indulgence.

21 THE COURT: Sure.

22 BY MS. DIGIACOMO:

23 Q And it's fair to say that you had not spoken to any of Denzel's  
24 attorneys until Mr. Modafferi about him being with you that night;  
25 correct?

1           A     Yeah, I didn't speak with her, but Denzel spoke with her.  
2 I did three ways for him.

3           Q     I'm sorry. Say that again.

4           A     I'm sorry. I didn't speak with her, but Denzel I did with a lot of  
5 three ways -- three ways on the jail call for him for us to speak -- I'm  
6 sorry -- for him to speak to his attorney. I did three ways.

7           Q     So, Denzel would call you and then you would three way his  
8 attorney?

9           A     Call, yes.

10          Q     So, you were listening in on what he was talking about with his  
11 attorney?

12          A     Sometimes. A lot of times she wasn't in the office so I couldn't  
13 reach her so --

14          Q     But you never told her, hey, I was with him that whole night;  
15 correct?

16          A     I never spoke with her.

17          Q     Okay.

18                MS. DIGIACOMO: I have nothing further, Your Honor.

19                THE COURT: Okay.

20                MR. MODAFFERI: Nothing further, Judge. Thank you.

21                THE COURT: Thank you.

22                MR. MODAFFERI: Judge, I have three things I'd like to have  
23 the Court consider as part of the record of the Defense's presentation in  
24 this matter; one, is the grand jury transcript in this case that was filed on  
25 May 25<sup>th</sup> of 2017. I have a copy for the Court to have it marked. And



1 I'm not sure of how the Court might want to have it. I don't know if I  
2 attached it. I just want to be, out of an abundance of caution, make sure  
3 that I can reference it.

4 MS. DIGIACOMO: It's actually -- excuse me, Your Honor --

5 THE COURT: Okay.

6 MS. DIGIACOMO: -- it's actually a preliminary hearing  
7 transcript and it's already part of the record.

8 THE COURT: If you want to mark it as an exhibit for the  
9 evidentiary hearing separate, that's fine.

10 MR. MODAFFERI: That's fine, Judge. I'll do that. And then it  
11 will be next in order which I believe --

12 THE COURT: And it is --

13 MR. MODAFFERI: It is. I've looked through it and I think  
14 everything's there.

15 MS. DIGIACOMO: It is attached as Exhibit --

16 THE COURT: C.

17 MS. DIGIACOMO: C, correct.

18 [Colloquy between the Court and the Court Clerk]

19 THE COURT: Thank you. So, the Court gives -- rightfully  
20 telling me -- would like to mark it as an evidentiary

21 MR. MODAFFERI: Okay.

22 THE COURT: -- hearing exhibit and that it is certainly part of  
23 the record already attached as Exhibit C to the actual motion being filed  
24 on February 15<sup>th</sup> of 2019.

25 MR. MODAFFERI: And, finally, Judge, there were two

1 handwritten motions that were attached as Exhibits A and B to my reply  
2 brief in this matter.

3 A is the motion to withdraw plea and even though it's not file  
4 stamped, it was dated May of 2018. And I believe I obtained this from  
5 printing it off of the record. So, I'm not sure why it wasn't filed stamped.  
6 And the other one is a motion to dismiss counsel which was stamped on  
7 June 6<sup>th</sup> and it's attached as Exhibit B to the reply brief in this matter.

8 THE COURT: Okay.

9 MR. MODAFFERI: I think both are relevant for the Court's  
10 consideration of this matter.

11 MS. DIGIACOMO: The State does believe it was file stamped  
12 or filed because I believe we did initially an opposition to the pro per  
13 motion to withdraw the guilt plea.

14 THE COURT: So, bear with me just for a moment.

15 So, Exhibit D, at least on my paper copy of the motion to  
16 withdraw filed February 15<sup>th</sup> as Exhibit D to that is a handwritten motion  
17 to withdraw plea that's not filed stamped but is dated blank day of May  
18 2018. So, that's probably the one you're referring to first.

19 MR. MODAFFERI: Yes, Judge.

20 THE COURT: Okay.

21 MR. MODAFFERI: And I reattached it as Exhibit B to the  
22 reply, but neither one of them I could get was filed stamped. If Ms.  
23 DiGiacomo has one I would prefer, obviously, to have that before the  
24 Court than my unfiled copy.

25 MS. DIGIACOMO: Court's indulgence.

1 THE COURT: Sure.

2 MS. DIGIACOMO: I do have one. It was filed June 6<sup>th</sup>, 2018  
3 at 2:52 p.m.

4 MR. MODAFFERI: So, that would be the same date as the  
5 motion to dismiss counsel, Judge.

6 THE COURT: Bear with me a second. Yeah, B to the reply to  
7 the motion to dismiss counsel was filed June 6<sup>th</sup>, 2018.

8 MR. MODAFFERI: Yes, Judge.

9 THE COURT: Okay.

10 MR. MODAFFERI: And the motion to withdraw that I had  
11 submitted unfiled copies to both the opening motion and the reply brief  
12 are unfiled, but Ms. DiGiacomo has shown me a file stamped

13 --

14 THE COURT: Okay.

15 MR. MODAFFERI: -- which is on the same day.

16 THE COURT: Okay.

17 MR. MODAFFERI: So, if the Court would simply take notice  
18 that it was file stamped the same day.

19 THE COURT: Sure.

20 MR. MODAFFERI: And that concludes our evidence, Judge.

21 THE COURT: Okay. Does the State -- go ahead. Sorry.

22 MR. MODAFFERI: And I have no objection, Judge, if the  
23 Court wants to continue this matter to accommodate Ms. DiGiacomo for  
24 the witness.

25 THE COURT: Do you want --

1 MS. DIGIACOMO: Thank you, Your Honor. But my June is  
2 booked.

3 As I stated, I'm starting trial next Monday and I'm doing two  
4 back to back week and a half, two week trials so -- and I also have a  
5 Supreme Court argument right in the middle. So, I'm not sure I won't --  
6 I'll be able to do this hearing until the beginning of July if that works for  
7 the Court and counsel.

8 [Colloquy between the Court and the Court Clerk]

9 THE COURT: So, we can put you in the week of July 8<sup>th</sup> or  
10 July 15.

11 MR. MODAFFERI: The sooner the better for us, Judge, so  
12 we're ready.

13 MS. DIGIACOMO: July 8<sup>th</sup>. I only have one calendar call that  
14 day so far.

15 THE COURT: Well, I have four trials set for that week. That's  
16 actually not a good week.

17 MS. DIGIACOMO: My portion of the evidence should be  
18 smaller.

19 THE COURT: Okay. Well, why don't we set you -- so we  
20 could probably do you the remainder, I guess, at 10:30 and be done by  
21 lunch time?

22 MS. DIGIACOMO: Yes.

23 MR. MODAFFERI: Yes, Judge.

24 THE COURT: Okay. Can we put them on July 8<sup>th</sup> at 10:30?  
25 So, how about firm evidentiary hearing. So, make sure that whomever

1 we need is available that date.

2 MS. DIGIACOMO: Your Honor, I actually texted him and if he  
3 is not, I will email the Court so that we can -- or I can put it back on  
4 calendar if that's easier.

5 THE COURT: Yeah, probably put it back on.

6 MS. DIGIACOMO: Okay. I'll put it back on calendar --

7 THE COURT: Yeah.

8 MS. DIGIACOMO: -- to change the date if it's not, but it's my  
9 understanding he was good in July.

10 THE COURT: Okay. And then just make sure that Mr.  
11 Dorsey gets transported too like we did today.

12 MS. DIGIACOMO: Yes, Your Honor.

13 THE COURT: Okay. Anything else?

14 MR. MODAFFERI: No, Judge. Thank you.

15 MS. DIGIACOMO: Not by the State.

16 THE COURT: Thank you all.

17  
18 [Proceedings concluded at 2:32 p.m.]  
19  
20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed  
22 the audio/video proceedings in the above-entitled case to the best of my  
23 ability.

24   
25 PATRICIA SLATTERY  
Court Transcriber