

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVONTAE WHEELER,)	SUPREME COURT NO. 81374
)	
Appellant,)	
)	
vs.)	APPEAL
)	
STATE OF NEVADA,)	
)	
Respondent.)	
)	DISTRICT COURT NO. C-17-328587-3
)	
)	

APPELLANT'S APPENDIX

(VOL. 2 OF 14)

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10:02 1 Q. What was the name of your cousin?

2 A. Gabriel George Valenzuela. But the family
3 refers to him as Kevin most of the time.

4 Q. So he, on that day he lived with you at

10:02 5 5536 West Dewey?

6 A. Yes, ma'am.

7 Q. In the early morning hours of August 9th
8 did something happen that caused you to call the police?

9 A. Yes, I found him laying on the floor, he
10 had, of the driveway in front of the house. There was a
11 wound on his left, yeah his left I guess cranium, head,
12 and there was like, there was bleeding. I just saw

13 him -- well, before that I heard gunshots and, yeah, I
14 didn't, I didn't really want to like, I was not sure

10:03 15 whether or not to check but I saw like, so I went
16 upstairs, looked out through the window, I found, I
17 found something like shining but it turned out to be the
18 blood so. And then I went out like, well, I didn't know
19 it was blood when I checked upstairs so I kind of went
10:03 20 out through the front door and I saw him laying there.

21 Q. So you heard gunshots, you were inside your
22 house at the time you heard gunshots?

23 A. Yes, ma'am.

24 Q. And then you looked outside and decided to
10:03 25 go outside?

10:03 1 A. Yeah.

2 Q. When you saw your cousin laying on the
3 ground?

4 A. Yes.

10:03 5 Q. When you went outside, what happened at
6 that point?

7 A. I, all I saw, well, first of all like, like
8 I use the front door because at the time the front door
9 was jammed and it did, it sounded like gunshots so I was
10:04 10 kind of cautious and, you know, when I use the front
11 door it's really hard to open from the outside so if the
12 worse were to happen, if I were to, you know, if I were
13 to get shot or whatever, like anyone won't just be like
14 able to barge in through the front door. Anyways I saw
10:04 15 him laying there, I turned on the flashlight on my
16 phone. I first looked around, looked around, cause the
17 front door, there was like, just kind of like a little
18 dip in the house where someone could be hiding. So I
19 was looking around, I looked behind the wall into the
10:04 20 street and then there was like no one and then I, while
21 I was doing that with the flashlight I was calling 911
22 to get emergency responders.

23 Q. At any point while you were doing that did
24 you see anybody in the area?

10:04 25 A. I did not.

10:04 1 Q. Did you ever see who shot your cousin?
2 A. No, I did not. This was, well, I heard the
3 gunshots like two minutes before I went outside and I
4 made the call I guess, so between the whole two minute
10:05 5 gap I checked upstairs, went -- yeah, I checked
6 upstairs, went out and found him and called 911.
7 Q. I'm going to show you a photograph. It's
8 Grand Jury Exhibit Number 16. Is that your home?
9 A. Yes, ma'am.
10:05 10 Q. 5536 West Dewey?
11 A. Yes.
12 Q. Can you see on this photograph where your
13 cousin was laying when you went outside?
14 A. Can I get up?
10:05 15 Q. If you want to, sure, that's fine.
16 A. Around right here where the blood was.
17 Q. So you're pointing to the middle of the
18 picture just to the right of that retaining wall; is
19 that correct?
10:06 20 A. Yes. Because that is his car right there
21 and usually he gets the mail which is over here, comes
22 back, sits on that little structure there and opens up
23 the mail and I found him on the floor there.
24 Q. Okay. You can have a seat. So the mailbox
10:06 25 that you're referring to, it's not depicted in this

10:06 1 photograph?

2 A. No, it's not.

3 Q. But it would be to the bottom left of this
4 picture?

10:06 5 A. Yes, it's just down the street.

6 Q. Okay. Now I'm going to show you a
7 photograph, and I apologize in advance because it is
8 going to be sensitive, but I need you to tell me, this
9 is Grand Jury Number 6, if you recognize the person in
10 that photograph?

11 A. That is my cousin.

12 Q. That is your cousin Gabriel Valenzuela?

13 A. Yes, ma'am.

14 MS. O'HALLORAN: I have no further

10:06 15 questions for this witness. Do the members of the Grand
16 Jury have any questions?

17 THE FOREPERSON: By law, these proceedings
18 are secret and you are prohibited from disclosing to
19 anyone anything that has transpired before us, including
10:06 20 evidence and statements presented to the Grand Jury, any
21 event occurring or statement made in the presence of the
22 Grand Jury, and information obtained by the Grand Jury.

23 Failure to comply with this admonition is a
24 gross misdemeanor punishable up to 364 days in the Clark
10:06 25 County Detention Center and a \$2,000 fine. In addition,

10:06 1 you may be held in contempt of court punishable by an
2 additional \$500 fine and 25 days in the Clark County
3 Detention Center.

4 Do you understand this admonition?

10:07 5 THE WITNESS: I understand.

6 THE FOREPERSON: Thank you very much and
7 you are excused.

8 MR. PESCI: State calls Detective Mitch
9 Dosch.

10:08 10 THE FOREPERSON: Please raise your right
11 hand.

12 You do solemnly swear the testimony you are
13 about to give upon the investigation now pending before
14 this Grand Jury shall be the truth, the whole truth, and
10:08 15 nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE FOREPERSON: Please be seated.

18 THE WITNESS: Thank you.

19 THE FOREPERSON: You are advised that you
10:08 20 are here today to give testimony in the investigation
21 pertaining to the offenses of burglary while in
22 possession of a firearm, conspiracy to commit robbery,
23 robbery with use of a deadly weapon, attempt robbery
24 with use of a deadly weapon, and murder with use of a
10:08 25 deadly weapon, involving Demario Robinson, Raekwon

10:08 1 Robertson and Davontae Wheeler.

2 Do you understand this advisement?

3 THE WITNESS: I do.

4 THE FOREPERSON: Please state your first

10:08 5 and last name and spell both for the record.

6 THE WITNESS: My name is Mitchell,

7 M-I-T-C-H-E-L-L, Dosch, D-O-S-C-H.

8 MITCHELL DOSCH,

9 having been first duly sworn by the Foreperson of the

10:08 10 Grand Jury to testify to the truth, the whole truth,

11 and nothing but the truth, testified as follows:

12

13 EXAMINATION

14

10:08 15 BY MR. PESCI:

16 Q. Sir, what do you do for a living?

17 A. I'm a detective with the Las Vegas

18 Metropolitan Police Department currently assigned to the

19 homicide section.

10:08 20 Q. Did you catch a homicide last night and

21 early this morning?

22 A. I did.

23 Q. You and your squad?

24 A. It was.

10:09 25 Q. Do you work together with Detective Ryan

10:09 1 Jaeger?

2 A. He is my partner.

3 Q. And then also with a Detective Lora Cody?

4 A. Yes, she is on my squad.

10:09 5 Q. Did the three of you and other members of
6 your squad work a homicide that occurred early in the
7 morning hours of August the 9th here at 5536 West Dewey
8 Drive?

9 A. Yes, we did.

10:09 10 Q. Do you know when the first call came in for
11 service to that location?

12 A. At 12 minutes after midnight, otherwise
13 known as 0012 hours.

14 Q. In the course of investigations do you,
10:09 15 meaning the Metropolitan Police Department, assign a
16 unique event number to a particular investigation?

17 A. We do.

18 Q. And what was the event number or do you
19 recall the event number in this case?

10:09 20 A. I do. The first portion, if you think of
21 the event number in two halves, is your first half is
22 essentially the date. This particular event number was
23 170809-0029. If you'll look at those first six digits,
24 it's the year, followed by the month, 08, and the date,
10:10 25 09. As far as the other half, the second half, the 0029

10:10 1 is basically interactions by law enforcement, whether
2 proactive or reactive with respect to our department.
3 So if our officers are conducting a traffic stop, that
4 could be 0001, if somebody is calling in an incident
10:10 5 that could be 0200 and so on and so forth through the
6 course of the entire day, however many numbers we're
7 going to get to.

8 Q. Speaking of an event number, in the course
9 of your investigation do sometimes other incidents
10:10 10 become involved in your investigation of your original
11 murder?

12 A. Absolutely.

13 Q. In this particular case did you receive
14 information from a briefing in relation to individuals
10:10 15 that might have fit the description given by the jogger
16 being at a convenience store somewhat nearby?

17 A. We did.

18 Q. And did you and your team follow-up on that
19 convenience store incident?

10:11 20 A. We did.

21 Q. And was an individuals by the name of
22 Nikolaus Spahn spoken to?

23 A. He was.

24 Q. Did he fill out a handwritten voluntary
10:11 25 statement?

10:11 1 A. What is otherwise known as a handwritten
2 voluntary statement.

3 Q. Showing you Grand Jury Exhibit 43, do you
4 recognize that?

10:11 5 A. I do.

6 Q. And what do you recognize that to be?

7 A. It is the Las Vegas Metropolitan Police
8 Department voluntary statement.

9 Q. What's the event number?

10:11 10 A. 170809-0029.

11 Q. Now I want to display over your left
12 shoulder so the Grand Jury can see Exhibit 43. We had
13 testimony from the actual individual who filled out this
14 portion, the details, and also his personal information.

10:11 15 Is it customary for the top information to be filed out
16 by a Metropolitan Police officer, a patrol officer?

17 A. It is.

18 Q. Does the event number at the top of this
19 voluntary statement, does it relate to the murder
10:12 20 investigation?

21 A. It does.

22 Q. Okay. And then it has a time as far as
23 when it occurred. Is this referring to the murder or is
24 it referring to Mr. Spahn's incident on a different
10:12 25 time?

10:12 1 A. It's referring to the murder.

2 Q. Okay. So when we see this date and time,
3 that's associated with your murder investigation, and
4 the details that Mr. Spahn gave was about 11:30 p.m. on
10:12 5 August the 8th?

6 A. That's correct.

7 Q. Okay. Just so it's clear as to why we have
8 those numbers on the same piece of paper.

9 A. Yes.

10:12 10 Q. Okay. Now in the course of your
11 investigation did you first go out to the murder scene?

12 A. We did.

13 Q. And did you work the scene as far as --
14 what's the division of labor at the scene? I apologize.

10:12 15 A. Well, it's just that, because we
16 essentially approach these investigations almost in a
17 wolf pack mentality. What I mean by that is we will
18 roll out as many available detectives from our squad who
19 is the squad assigned to investigate this particular
10:13 20 incident. So we could have as many as six detectives
21 that will come out and obviously six detectives don't
22 perform the same singular task, there is a division of
23 labor that occurs. In this case, my partner, Detective
24 Jaeger, he was assigned to document the scene with the
10:13 25 crime scene analyst while I perform ancillary tasks such

10:13 1 as locating video surveillance, speaking with witnesses
2 and conducting whatever follow-up needs to be related
3 outside of the crime scene itself.

4 Q. And then in that investigation outside of
10:13 5 the crime scene itself, because you said Detective
6 Jaeger did that, was there recovery of surveillance from
7 the location where Mr. Spahn was working?

8 A. There was.

9 Q. And do you remember the name of that store
10:13 10 and where it was located?

11 A. The Short Line Express. And as far as the
12 distance from the actual crime scene, it's close but I
13 can't tell you that distance.

14 Q. Is it something where you could get to by
10:14 15 car in a matter of minutes?

16 A. Matter of minutes, absolutely.

17 Q. Showing you Grand Jury Exhibit 4. Have you
18 reviewed the surveillance from the Short Line Express?

19 A. I am intimately familiar with this video,
10:14 20 yes.

21 Q. And then this video depicts events from
22 August the 8th of 2017; correct?

23 A. Correct.

24 Q. In the course of your investigation, you
10:14 25 being your collective team, did you have information

10:14 1 about a white vehicle that looked like a Crown Vic?

2 A. Or a, kind of the sister vehicle to that of
3 a Grand Marquis which is manufactured by Mercury.

4 Q. And did the jogger relay information about
10:14 5 four individuals being in that vehicle?

6 A. Yes, he did.

7 Q. Did it match the surveillance that we
8 looked at, did it match the color and the type of
9 vehicle described?

10:15 10 A. Yes.

11 Q. And in fact did you receive a plate number
12 from the jogger?

13 A. We did.

14 Q. And does that plate show up in this
10:15 15 surveillance footage?

16 A. Not in its entirety, but if you'll notice
17 the front license plate of the vehicle, that is a Grand
18 Marquis and it's depicted in the middle of the other two
19 white vehicles. There's some folds to it, some bending,
10:15 20 and by the placement of the camera angle with that bend
21 in the license plate you can actually see the numbers,
22 the first three numbers of the license plate, 473.

23 Q. And then based on this surveillance did you
24 and your team obtain copies of this surveillance from
10:15 25 the Short Line Express?

10:15 1 A. We did.

2 Q. And then based on the information gathered
3 during the course of your investigation did you try to
4 ascertain who these individuals were?

10:15 5 A. Without question.

6 Q. And then in the process of figuring out who
7 they were, did you also try to find specific items of
8 clothing that was unique to the individuals depicted in
9 the surveillance?

10:16 10 A. We did.

11 Q. Did you receive information from the
12 gentleman working the convenience store, Mr. Spahn,
13 about one of the individuals carrying a firearm on his
14 hip?

10:16 15 A. Yeah, what is otherwise known as open
16 carry, meaning that firearm is visible to other people
17 and is not concealed in any manner.

18 Q. And based on the course of your
19 investigation, the reviewing of surveillance and talking
10:16 20 to witnesses, were search warrants obtained to try to
21 find evidence associated with this incident?

22 A. Correct.

23 Q. Specifically was there a search warrant
24 obtained for a Bagpipe address?

10:16 25 A. Yes, there was.

10:16 1 Q. Do you remember the address?
2 A. 919 Bagpipe. It's in North Las Vegas.
3 Q. Was a 45 handgun found during the execution
4 of that warrant?
10:16 5 A. Yes, there was.
6 Q. When we speak of a warrant, that's when you
7 get permission from the court to search a location?
8 A. That's correct.
9 Q. Did you obtain permission from a court by
10:16 10 way of a search warrant to also search the area of West
11 Tropicana, a specific address?
12 A. 6647 West Tropicana, unit 104, I did.
13 Q. And in the course of your investigation who
14 did you have associated with that location?
10:17 15 A. An individual by the name of Raekwon
16 Robertson.
17 Q. And was a firearm found at that location?
18 A. Yes, a 22 caliber semi-automatic firearm
19 was in fact recovered from that residence.
10:17 20 Q. And backing up to the residence on Bagpipe.
21 What information from the course of your investigation
22 did you have as far as who was associated with that
23 address?
24 A. There were two individuals of particular
10:17 25 concern to us that were associated with that address,

10:17 1 that being Demario Lofton-Robinson and his younger
2 brother.

3 Q. Do you know his younger brother's name?

4 A. Yes, it is DeShawn Robinson. So there is
10:17 5 no Lofton hypen portion to his last name.

6 Q. Is his younger brother a juvenile thus we
7 don't have him in this proceeding?

8 A. That is correct.

9 Q. But he was a part of your investigation?

10:18 10 A. Yes, he was.

11 Q. Now we talked about two addresses. I want
12 to switch to an address on Civic Center. Can you tell
13 us about that?

14 A. Yes, it's 3300 Civic Center, apartment 2F
10:18 15 as in Frank.

16 Q. And was a firearm found at that location?

17 A. Yes, a third firearm was recovered in
18 addition to the first two which was a 45 caliber
19 semi-automatic handgun.

10:18 20 Q. All right. And then why were a 45 and a 22
21 of interest to you and your team?

22 A. They were important to us because of the
23 physical evidence that's left at the crime scene, that
24 being 5536 Dewey. Specifically when a firearm is
10:18 25 discharged and ammunition has been discharged with a

10:18 1 semi-automatic handgun the cartridge case, that being
2 the, basically the body of a bullet is discharged out of
3 the firearm, the projectile is shot forward or in the
4 direction of wherever the firearm is being pointed,
10:18 5 those are known as cartridge cases, what's essentially
6 left over after a bullet has been fired, and at the
7 scene we had three 45 caliber cartridge cases and a
8 22 caliber cartridge case.

9 Q. Did those specific cases have unique head
10:19 10 stamps as far as the type of 45 caliber and the type of
11 22 caliber?

12 A. That's correct.

13 Q. Specifically on the 22, did it have a head
14 stamp of C?

10:19 15 A. C as in Charlie, yes, it did.

16 Q. In the course of the search warrant you've
17 just spoken of, did you find or recover ammunition in
18 one of those locations with the head stamp C type?

19 A. Going back to the 6647 West Tropicana
10:19 20 address, next to the gun there was a box of ammunition,
21 22 caliber ammunition with a head stamp of C as in
22 Charlie.

23 Q. At the murder scene was there a 45 caliber
24 cartridge case head stamped with R-P?

10:19 25 A. One of, there are three different head

10:19 1 stamps on the 45 cart cases, yes.

2 Q. And in the course of the search warrants
3 you've spoken of, did you recover firearm evidence for a
4 RP 45 head stamp cartridge?

10:20 5 A. Yes.

6 Q. Where was that?

7 A. I believe that's found in both of the
8 45 caliber handguns, the RP 45 auto.

9 Q. Do you remember which location that was?

10:20 10 A. Yes. I apologize. The first one is going
11 to be at 919 Bagpipe and the second one is at the last
12 address which is 3300 Civic Center, apartment 2F as in
13 Frank.

14 Q. What was your information as far as who was
10:20 15 associated with the Civic Center address?

16 A. The Civic Center was an individual by the
17 name of Davontae Wheeler.

18 Q. And then did you also find at the murder
19 scene a 45 caliber cartridge case with a head stamp

10:20 20 NFCR?

21 A. Correct.

22 Q. Did you find any of that evidence in your
23 searches?

24 A. Yes, I believe that particular, a cartridge
10:20 25 with that same head stamp had come up in the process of

10:20 1 all the searches that were performed.

2 Q. And then at the murder scene was there also
3 a 45 head stamp Winchester 45 auto?

4 A. That's the final 45 caliber cartridge case.

10:21 5 Q. Were you able to find any cartridge case
6 head stamped like that in any of your other searches?

7 A. I was not.

8 Q. Now let's make it clear. Do you have
9 training and experience with firearms?

10:21 10 A. Yes.

11 Q. And based on your training and experience,
12 if I have a 45 caliber handgun, can I load multiple 45
13 cartridges that have different head stamps?

14 A. Absolutely.

10:21 15 Q. So can one firearm shoot all three of
16 those?

17 A. It can.

18 Q. It could also, one 45 shoot one type and
19 another 45 shoot a different type?

10:21 20 A. Based on the preference of the gun owner.

21 Q. Speaking of firearms evidence, have you
22 submitted the cartridge cases that were found at the
23 murder scene to be analyzed with the firearms that have
24 been recovered from these various search warrants?

10:21 25 A. We have.

10:21 1 Q. Has that analysis been completed?
2 A. It has not.
3 Q. And to date we don't know if they match up
4 yet?
10:21 5 A. No, we do not.
6 Q. But you do know that the calibers match up
7 and then the head stamps match up?
8 A. Correct.
9 Q. Speaking of some other forensic evidence,
10:22 10 in the course of the search warrants we spoke of, we
11 also had a search warrant, or did you have a search
12 warrant for the vehicle that's been depicted in the
13 surveillance?
14 A. We did.
10:22 15 Q. And in the course of that were there items
16 of evidence recovered from inside the vehicle?
17 A. There were.
18 Q. Did you make requests as far as certain
19 pieces of evidence inside that vehicle to be tested for
10:22 20 DNA?
21 A. I did, a limited amount of items.
22 Q. And is there a limit based on how much you
23 can ask to be done by the lab?
24 A. There is. Because these investigations are
10:22 25 lengthy, but understand at the same time there are lots

10:22 1 of investigations going on simultaneous in this valley
2 as it relates to the investigations performed by LVMPD
3 members and as a result there's been a limit placed on
4 the amount of evidence that can be analyzed and/or
10:22 5 compared relative to the crime that it is. Meaning the
6 more serious crime the more items, but even in the cases
7 of murder there is a limit to how much evidence that can
8 be submitted and then there are a few exceptions to
9 those limits as well. So yes.

10:23 10 Q. Based on that limit, did you look at some
11 of the items and say okay, this could be our best
12 opportunity to maybe find DNA evidence?

13 A. We did.

14 Q. And submit some items?

10:23 15 A. Correct.

16 Q. And later on potentially you can ask to
17 have other items checked; is that correct?

18 A. We can.

19 Q. Now results from the DNA, your experience
10:23 20 with DNA, do they have to have the known DNA of a
21 particular individual to compare to whatever could be
22 recovered from a piece of evidence?

23 A. Absolutely. It's like a fingerprint.

24 Q. All right. And in this particular case
10:23 25 have the results come back as to some of the items that

10:23 1 were found inside of that vehicle?

2 A. Yes, based on the limited number of items
3 that were submitted for analysis.

4 Q. Now when those limited numbers were
10:23 5 submitted, did you get or have the known DNA samples of
6 Demario Lofton-Robinson and Davontae Wheeler and Raekwon
7 Robertson?

8 A. Yes.

9 Q. Did any of the items that you requested
10:24 10 from the vehicle come back to those three individuals?

11 A. They did not.

12 Q. Kind of jumping around, I apologize, we're
13 kind of going all over the place. But at some point
14 with these locations that you searched, did you come
10:24 15 into contact with suspects in the case?

16 A. Yes.

17 Q. And throughout your investigation did you
18 come into contact with suspects that we've spoken of
19 here today, specifically Demario Lofton-Robinson?

10:24 20 A. Yes.

21 Q. Raekwon Robertson?

22 A. Yes.

23 Q. And Davontae Wheeler?

24 A. Yes.

10:24 25 Q. Did you see photographs of them?

10:24 1 A. I have.

2 Q. Have you seen them in person?

3 A. I have.

4 Q. Have you spent time with them?

10:24 5 A. I have.

6 Q. Okay. Based on having spent time with

7 these individuals and spoken with these individuals,

8 have you reviewed some of the surveillance video from

9 the location of, at the Short Line Express?

10:24 10 A. I have.

11 Q. Did you also review, or in the course of

12 your investigation did you also find out about an

13 incident that occurred earlier on August the 2nd?

14 A. Yes, specifically an armed robbery.

10:25 15 Q. And did you recover or were you a part of

16 the process of recovering some surveillance from that

17 incident?

18 A. The video surveillance was actually

19 recovered by the robbery detectives who had the

10:25 20 investigation initially and then once that case was

21 transferred to me and my partner Detective Jaeger, then

22 we received said video surveillance from the detective.

23 Q. Now we a moment ago reviewed surveillance

24 from Grand Jury Exhibit 4. Was that surveillance from

10:25 25 the Short Line Express?

10:25

1 A. It was.

2 Q. And from reviewing that surveillance and
3 still footage, did you recognize individuals from that
4 surveillance to individuals from your investigation?

10:25

5 A. Without question.

6 Q. Okay. And specifically I want to show you
7 Grand Jury Exhibits 7 through 15. Take a moment to
8 review those.

9 A. I am familiar with these stills.

10:26

10 Q. Are these fair and accurate depictions of
11 the video surveillance and the stills from that
12 surveillance?

13 A. Yes, they are.

14 Q. When we say still, is that like a little
15 snapshot of the video?

10:26

16 A. Essentially a still frame from the video.

17 Q. Okay. Showing you Grand Jury Exhibit 7.
18 Do you recognize that -- oh, that's not going to be
19 recognizable is it. Sorry about that.

10:26

20 Do you recognize that?

21 A. I do.

22 Q. What do you recognize that to be?

23 A. That is the parking lot of the Short Line
24 Express.

10:26

25 Q. And then showing you Grand Jury Exhibit 8,

10:27 1 what do you recognize that to be?

2 A. That is just inside the front door to the
3 Short Line Express.

4 Q. And then do you see an individual with some
10:27 5 red shoes on?

6 A. I do.

7 Q. In the course of your investigation were
8 red shoes something that you were looking for?

9 A. We were.

10:27 10 Q. Did you find them in the various search
11 warrants executed at the locations we mentioned earlier?

12 A. We actually found two pair of red shoes.

13 Q. Now this is just a still, not the greatest
14 quality, but when you look at the video itself is it a
10:27 15 better quality?

16 A. Yes.

17 Q. And the individual depicted in State's 8,
18 do you recognize that individual?

19 A. The one in the foreground or in the
10:27 20 background?

21 Q. In the foreground, the one drinking a
22 bottle of some liquid.

23 A. I do. The individual that's in the
24 foreground as he's depicted in red shoes, blue jeans and
10:27 25 what appears to be a long sleeve green shirt, that is

10:27 1 Demario Lofton-Robinson.

2 Q. Showing you Grand Jury Exhibit 14. Do you
3 recognize that individual?

4 A. I do.

10:28 5 Q. Who is that?

6 A. That is Demario Lofton-Robinson.

7 Q. And he is the individual shown in Grand
8 Jury Exhibit 8 drinking from that bottle?

9 A. He is.

10:28 10 Q. Now let me ask you, did you actually make
11 contact with Demario Lofton-Robinson?

12 A. I did.

13 Q. Did you talk to him?

14 A. I did.

10:28 15 Q. Did you provide him his Miranda warnings
16 before speaking to him?

17 A. Yes, I did.

18 Q. Did he indicate that he understood those
19 warnings and wished to speak to you?

10:28 20 A. And was willing to speak with us, yes, he
21 did.

22 Q. Did you talk to him about what happened?

23 A. Indeed.

24 Q. What did he tell you?

10:28 25 A. There was a couple variations of his

10:28 1 statement. Do you want the first variation or the final
2 one?

3 Q. Go with the first.

4 A. The first version was he is, that is him
10:28 5 depicted in those stills from the convenience store.

6 Q. Let me stop you. So did you have the
7 surveillance to show him?

8 A. Absolutely.

9 Q. And did you ask him if he recognized
10:29 10 himself in this photograph?

11 A. He did, he identified himself from the
12 still frames.

13 Q. Okay. Now just as far as him identifying
14 just himself, what else did he say that he did?

10:29 15 A. He was there. They left that location in a
16 vehicle that he was driving. He had just purchased a
17 white Mercury Grand Marquis only days before this
18 incident. They went to a nearby neighborhood and other
19 occupants within the vehicle told him to stop as they
10:29 20 were driving down a residential street, those
21 individuals got out, got into a confrontation with an
22 individual and ended up shooting him.

23 Q. So in his first version did he say he did
24 not get out of the car?

10:29 25 A. Yes, he stated he remained in the car in

10:29 1 the driver's seat.

2 Q. And speaking of the car while on this
3 little tangent, did you utilize that surveillance from
4 that car and show it to James Newman, the person who
10:29 5 sold the car to Demario, and ask him if he recognized
6 the person in the surveillance?

7 A. Absolutely.

8 Q. Did he indicate that he did recognize?

9 A. Yes.

10:30 10 Q. That being Demario who you're speaking of?

11 A. He referred to him as DJ which is Demario
12 Lofton-Robinson's moniker.

13 Q. Is a moniker a nickname?

14 A. Yes.

10:30 15 Q. Now you said that there was a subsequent
16 rendition of facts from Mr. Demario. What was that?

17 A. Yes. The final version of what happened
18 that night was they left the convenience store, they
19 responded to that nearby neighborhood, he along with
10:30 20 three other occupants from the vehicle exited the
21 vehicle, confronted the victim in an attempted robbery
22 and the victim fought back and during that process he
23 was shot.

24 Q. So does Demario indicate whether he shot?

10:30 25 A. Yes. Demario indicated that he was one of

10:30 1 the shooters.

2 Q. Did he indicate what kind of weapon he had?

3 A. He had a 45 semi-automatic handgun and he

4 told us that that firearm would be found at his

10:30 5 residence which was 919 Bagpipe.

6 Q. Did you find a 45 caliber handgun at that
7 residence?

8 A. We did.

9 Q. A moment ago you said this was an attempted
10 robbery. Was that something that Demario told you as
11 far as the purpose of stopping the individual?

12 A. Yes, it was.

13 Q. What did he say?

14 A. That they attempted to rob the individual
10:31 15 in front of the house for whatever property and/or money
16 he may have had.

17 Q. Now going back to Grand Jury Exhibit 8th,
18 do you recognize what's depicted there?

19 A. Yes. In this particular photograph there's
10:31 20 two other individuals that have now come into the
21 foreground and I recognize both of those individuals.

22 Q. I want to show you Grand Jury Exhibit 13.
23 Who do you recognize that individual to be?

24 A. Davontae Wheeler.

10:31 25 Q. And did you recognize him based on your

10:31 1 interactions with him as being depicted in Grand Jury
2 Exhibit 9?

3 A. Yes. Specifically he is the individual in
4 the foreground wearing what appears to be a white and
10:31 5 black cap, a maroon top, black pants and maroon shoes.

6 Q. Speaking of that hat, did that hat get your
7 attention?

8 A. Yes.

9 Q. Why?

10:32 10 A. Because it's going to be one of those
11 notable items of evidence that we are going to search
12 for when granted permission through a judge.

13 Q. Showing you Grand Jury Exhibits 34 through
14 42. Do you recognize those?

10:32 15 A. I do.

16 Q. Okay. Are they fair and accurate
17 depictions of that evidence?

18 A. Yes.

19 Q. And looking at Grand Jury Exhibit 35, what
10:32 20 are we looking at?

21 A. This is an exterior photo of 6647 West
22 Rainbow, excuse me, West Tropicana, I apologize,
23 apartment, or excuse me, unit 104.

24 Q. And State's 36, was a firearm found at that
10:32 25 location?

10:32 1 A. Yes.

2 Q. A moment ago in the video surveillance from

3 the Short Line Express you were talking about a hat;

4 correct?

10:33 5 A. Correct.

6 Q. Showing you Exhibit 37. What do we have

7 there?

8 A. That is a ball cap that is affiliated with

9 one of the NHL teams.

10:33 10 Q. Going back to the actual surveillance and

11 zooming in, does the brim appear to be, well, what color

12 does the brim appear to be?

13 A. The brim appears to be black but it has a

14 circular sticker that is viewable from the camera angle.

10:33 15 Q. And what about the, not the brim but the

16 remainder of the hat?

17 A. It almost looks like white but it's clear

18 in the actual real time video as opposed to the rather

19 pixilated stills.

10:33 20 Q. State's 37, does that appear to match the

21 hat on the individual inside the Short Line Express?

22 A. Yes, it does.

23 Q. As far as the brim being black, the cap

24 being a white or gray, and then that sticker still on

10:34 25 the center of the brim?

10:34 1 A. Correct.

2 Q. Also in that same location, was it 6647?

3 A. Well, it should be noted that this hat was

4 recovered at 3300 Civic Center, apartment 2F. The

10:34 5 previous photo was at 6647 West Tropicana, unit 104. We

6 served search warrants at both of those locations on the

7 same day but one after the other.

8 Q. Okay. So looking at State's 38, what are

9 we looking at?

10:34 10 A. That's in the interior home of 3300 Civic

11 center, apartment 2F.

12 Q. And what did you gather from there?

13 A. Down in the lower left hand corner of that

14 photograph you'll notice a pair of, I guess it could be

10:34 15 described as red, I've described them as maroon tennis

16 shoes which closely resemble the shoes worn by

17 Mr. Wheeler in the video surveillance.

18 Q. Showing you State's 39. What is that?

19 A. That is a 45 caliber semi-automatic

10:35 20 handgun.

21 Q. Where was that located?

22 A. The Taurus was recovered from the living

23 room area of 3300 Civic Center.

24 Q. Showing you State's 40. Were the

10:35 25 cartridges removed from the magazine from that firearm?

10:35 1 A. Yes, that photo depicts the magazine and
2 then the bullets retrieved or recovered from the
3 magazine.
4 Q. And that firearm was a 45 caliber?
10:35 5 A. Correct.
6 Q. Showing you State's 41. What are we
7 looking at?
8 A. These are going to be different, or a
9 different angle on those photographs, or, excuse me, on
10:35 10 the ammunition, but it depicts the head stamp which we
11 had covered previously.
12 Q. Does this match a head stamp from the
13 murder scene?
14 A. Yes, RP 45 auto.
10:35 15 Q. And showing you State's 42, ask you if you
16 recognize that.
17 A. Now we are going back to 6647 West
18 Tropicana where the 22 caliber semi-automatic handgun is
19 found. Next to it is a box of ammunition which is that
10:35 20 ammunition that's depicted in that picture right there
21 which has a head stamp of C as in Charlie.
22 Q. Okay. And then I believe, just to be sure,
23 State's 13, did you indicate who that was?
24 A. Yes, that is Davontae Wheeler.
10:36 25 Q. And that is the individual that you believe

10:36 1 you recognize as the one with the ball cap?

2 A. Correct.

3 Q. Shifting over to State's 10. Do you
4 recognize that?

10:36 5 A. Yes. Again the interior of the Short Line
6 Express. The two individuals which were in that
7 previous photo of coming in are a little bit closer to
8 where the camera is located within the business and the
9 trailing individual I do recognize.

10:36 10 Q. Who do you recognize that to be?

11 A. That is Raekwon Robertson.

12 Q. Showing you State's 15. What is that?

13 A. It's a picture of Raekwon Robertson.

14 Q. And did you review some surveillance from
10:37 15 the convenience store incident from August the 2nd?

16 A. Yes, located at 7010 West Charleston.

17 Q. And from reviewing that did you recognize
18 an individual in that surveillance?

19 A. Yes.

10:37 20 Q. Showing you Grand Jury Exhibit 3. Are you
21 aware of video surveillance being obtained from the
22 incident on August the 2nd at the location -- what was
23 the name of it?

24 A. The name of it is the Fiesta Discount
10:37 25 Market and Smoke Shop.

10:37 1 Q. And where was it located?

2 A. 7010 West Charleston.

3 Q. And then from reviewing this surveillance,

4 and you said this was a robbery investigation that you

10:38 5 picked up from the robbery detail; is that correct?

6 A. That's correct.

7 Q. Within Metro that is.

8 A. Yes.

9 Q. Because you felt that it was connected to

10:38 10 this incident?

11 A. Yes.

12 Q. And then are there stills from the video of

13 the incident outside and inside the location?

14 A. Yes. This particular business had cameras

10:38 15 set up both inside the store and inside the store

16 looking toward the front door out into the parking lot

17 area and there's a unique process that occurs as the

18 individuals go from outside to inside the business.

19 Q. Showing you the outside. Does the outside

10:38 20 depict video where the face of the individuals is still

21 uncovered?

22 A. Correct.

23 Q. Inside had the individuals covered their

24 faces?

10:39 25 A. Yes, as they entered the store and gone in,

10:39 1 the particular individuals involved in this particular
2 robbery cover their faces to conceal their identity.

3 Q. And now switching back to Grand Jury
4 Exhibit 15. Who do you recognize that to be?

10:39 5 A. Raekwon Robertson.

6 Q. And when we switch back over to the video,
7 who do you recognize that to be in the still?

8 A. Raekwon Robertson.

9 Q. And showing you the actual surveillance
10:39 10 from inside, are there multiple camera angles inside of
11 this location?

12 A. Yes, there were.

13 Q. And then in the course of your
14 investigation did you come to find out -- let me stop
10:39 15 it -- who the individual is that's working there?

16 A. Yes.

17 Q. What's her name?

18 A. Agnes -- is it Stein I believe is her last
19 name. But I know her first name is Agnes. She was the
10:40 20 clerk on duty that particular night.

21 Q. And is there a stamp to this particular
22 video?

23 A. Yes.

24 Q. What date is that?

10:40 25 A. If I can draw your attention to the top

10:40 1 left corner of that video, it's dated August 2nd, 2017
2 and there is a military time of 23:50 hours and 44
3 seconds.

4 Q. And based on your investigation and
10:40 5 reviewing the statement from Agnes, does that fit as far
6 as the time frame?

7 A. Yes.

8 Q. And a moment ago we just saw an individual
9 come in and did they have something in their hand?

10:40 10 A. Yes. As they moved from right to left in
11 this particular video clip they produce a firearm.

12 Q. The person that's producing the firearm, is
13 that the individual with the black hoodie?

14 A. Yes.

10:40 15 Q. A moment ago we looked at surveillance from
16 outside. Was the person coming in from the outside that
17 you identified as Raekwon wearing a black hoodie?

18 A. He was.

19 Q. Is this location, or is the till of the
10:41 20 register opened and money given to the individual?

21 A. Yes.

22 Q. And was an item taken from the display
23 case?

24 A. To the left there was a particular item of
10:41 25 property that was stolen.

10:41 1 Q. Was there also another individual in this
2 video?

3 A. Yes.

4 Q. And I apologize. For a moment there we
10:41 5 were able to see, was the person's face masked, the one
6 with the black hoodie?

7 A. Yes, and that's the difference that occurs.
8 Outside of the store the individual's face is revealed,
9 but as he crosses into the business that's when there is
10:41 10 an attempt to conceal his identity that occurs and then
11 how Agnes would be viewing that individual is his face
12 is partially covered.

13 Q. So the approach of the store, there was a
14 camera fixed to see outside that appears to have been
10:41 15 unknown to the individuals as they walked in?

16 A. Yes, I would believe that they did not know
17 that cameras was going to be there.

18 Q. Do we see a second individual?

19 A. Yes.

10:41 20 Q. Do you know who that is?

21 A. Yes. On the right hand side there was
22 another individual, she happened to be a customer, her
23 name is Mariah. She was seated in the gaming area and
24 is not connected to the store as an employee in the case
10:42 25 of Agnes.

10:42 1 Q. And you just spoke of a gaming area; is
2 that correct?

3 A. That is correct.

4 Q. I'm showing you what's referred to as
10:42 5 channel 15 and then the last four digits are 5016; is
6 that correct?

7 A. Correct.

8 Q. There's an internal stamping that the video
9 footage has?

10:42 10 A. Yes. And then you'll also notice in the
11 lower right corner it says camera 15, but in the top
12 left corner in white numbering is 5016 is the last four
13 numbers. It might not be visible all the way back
14 there.

10:42 15 Q. Is there an individual seated at the gaming
16 machines?

17 A. Yes. If I can draw your attention to the
18 upper right hand corner of the monitor, you'll see an
19 individual at a gaming machine, appears to be gambling.

10:42 20 Q. Okay. Showing you channel 16 or camera 16.
21 Is that another angle of the gaming area?

22 A. Yes.

23 Q. Can we actually see a better view of, you
24 said that's Mariah?

10:43 25 A. Yes. I can't pronounce her last name. I

10:43 1 apologize.

2 Q. What did you think it was?

3 A. I -- I'm not sure on the pronunciation of
4 her last name.

10:43 5 Q. Does it still have the same date and time
6 stamp?

7 A. Correct. And on the left hand side of this
8 particular camera angle it's just a clear view or a
9 different view of the same gaming area and you can see
10 Mariah at the machine.

11 Q. Does the last name of Romatko ring a bell?

12 A. Yes, that is her last name.

13 Q. Detective, is the surveillance still moving
14 forward?

10:44 15 A. It is.

16 Q. Doe Mariah look over her right shoulder?

17 A. She does, which would be back toward the
18 interior of the business, the other area where the clerk
19 would be located.

10:44 20 Q. And what occurred there?

21 A. And from her possession, her purse, which
22 consisted of a cell phone and a wallet and other
23 miscellaneous items, was taken against her, she is now a
24 victim of an armed robbery akin to the victim who is
10:44 25 behind the counter, the clerk.

10:44 1 Q. The person that took that, was that the
2 person dressed in the black hoodie or was it a person
3 dressed differently?

4 A. No, there is a second individual, a second
10:44 5 suspect that enters the store trailing the first
6 individual who acts as a lookout, somebody that's going
7 to monitor the door while the main robbery is occurring
8 at the clerk's station, that particular lookout moves to
9 the gaming area and takes the property against her will.

10:45 10 Q. And do you have information as to a name
11 associated with that second individual, the one that
12 took the purse from --

13 A. Who was acting as the lookout?

14 Q. Yes.

10:45 15 A. Yes. Antonio Jones.

16 Q. That took the actual purse from Mariah?

17 A. Correct.

18 Q. Indulgence for a moment.

19 I'm checking my notes really fast,

10:45 20 Detective, before we're done.

21 Were other detectives involved with the
22 interview of some of the other individuals?

23 A. Some of the other individuals?

24 Q. Some of the other suspects.

10:46 25 A. Yes.

10:46 1 Q. And specifically did Detective Jaeger speak
2 with Davontae Wheeler?

3 A. He did.

4 Q. Were you part of that interview?

10:46 5 A. I was not part of that interview until the
6 very end. So the bulk of that interview was performed
7 by Detective Jaeger.

8 MR. PESCI: That concludes the questioning
9 of this witness. Does anybody from the Grand Jury have
10 any questions?

11 BY A JUROR:

12 Q. Were any of these guns recovered registered
13 to anybody?

14 A. We no longer, Las Vegas Metropolitan Police
10:46 15 Department no longer keeps registrations on firearms so
16 if they were once registered that's unknown to me.

17 BY MR. PESCI:

18 Q. Is the blue card requirement no longer a
19 requirement?

10:46 20 A. It's no longer in effect.

21 MR. PESCI: Ma'am.

22 BY A JUROR:

23 Q. In several of the earlier questions that
24 you addressed to the officer you referred to a jogger.

10:46 25 In particular in one of them you said a jogger saw four

10:47 1 individuals in what's come to be known as the suspect
2 vehicle. Who is that person? Who is that jogger?

3 MR. PESCI: Detective.

4 THE WITNESS: I apologize. His name just
10:47 5 escapes me. I forget -- he's the person --

6 BY MR. PESCI:

7 Q. Is his name Robert Mason?

8 A. Robert Mason. Thank you. Sorry.

9 Q. Let me ask you this way. Have you seen
10:47 10 that person here today in the halls outside of the Grand
11 Jury room?

12 A. Yes, we chatted briefly before he
13 testified.

14 MR. PESCI: All right. Does that answer
10:47 15 your question?

16 BY A JUROR:

17 Q. A follow-up. So Robert Mason testified
18 that he saw the four individuals depicted in the video
19 inside the white suspect vehicle?

10:47 20 A. I do not know what he testified to.

21 Q. Okay.

22 BY MR. PESCI:

23 Q. Let me ask you this.

24 I'll try to follow-up.

10:47 25 Did you have information from Robert Mason

10:47 1 about four individuals being associated with a white
2 vehicle in the area of the murder scene?

3 A. Absolutely.

4 Q. Have you done any identifications by Robert
10:48 5 Mason with any surveillance footage or stills from the
6 surveillance?

7 A. There was a still frame of the vehicle that
8 was shown to Mr. Mason. I did not perform that. It was
9 performed by a different detective.

10:48 10 Q. So you're not aware of Robert Mason making
11 any identification of any of the four individuals?

12 A. Absolutely not.

13 Q. However did you utilize the information you
14 received from Robert Mason for a general description in
10:48 15 the course of your investigation?

16 A. Yes, we did.

17 Q. And then specifically he gave you a license
18 plate to a particular car?

19 A. That's correct.

10:48 20 MR. PESCI: Are there any further
21 follow-up?

22 A JUROR: No.

23 MR. PESCI: Thank you. I think there's
24 some more questions.

25

10:48 1 BY A JUROR:

2 Q. You testified that a limited number of
3 items were submitted for analysis to the labs and they
4 came back, they yielded negative results. What was
10:48 5 submitted that returned negative results?

6 BY MR. PESCI:

7 Q. Detective, would reviewing the actual
8 report assist you?

9 A. Please.

10:49 10 So on the limited number of items that were
11 submitted for analysis and comparison to the known DNA
12 samples from the aforementioned individuals, there were
13 two cigarette butts that were recovered from the
14 vehicle, they were submitted for comparison. Excuse me.
10:49 15 The first firearm that was recovered at 919 Bagpipe was
16 also swabbed for potential DNA and compared. And then
17 finally there are stains, there are stains, one of which
18 was consistent with apparent blood within the vehicle
19 that were submitted for comparison. And then finally
10:49 20 the decedent's fingernails were swabbed for potential
21 DNA, meaning a transfer, in the event there was a
22 physical confrontation with another human being we would
23 have foreign DNA. So those are the limited items that
24 were compared.

10:49 25 A JUROR: Thank you. That answers my

10:49

1 question.

2

MR. PESCI: Kind of follow up on that.

3

Q. Was there an actual identification of an individual on some of these items?

4

10:50

5

A. Yes.

6

Q. Who was that?

7

A. That was DeShawn Robinson.

8

Q. Is he the juvenile that is not part of this proceeding?

9

10:50

10

A. Yes, and the younger brother of Demario.

11

Q. So some of that DNA was found in the vehicle?

12

13

A. Yes.

14

MR. PESCI: Does that answer --

10:50

15

A JUROR: Yes. Thank you.

16

BY A JUROR:

17

Q. Just to keep that question going. Did you test the clothing that you took out of the apartment or home for gunshot residue at all?

18

19

10:50

20

A. No.

21

BY MR. PESCI:

22

Q. What would be some of the rationale as far as gunshot residue and why you would or would not test -- first before you go there. Does the

23

24

10:50

25

Metropolitan Police Department have the capacity

10:50 1 internally to do gunshot residue testing?

2 A. Yes.

3 Q. And when they do it, do they send it off
4 somewhere to have it analyzed?

10:50 5 A. Yes. The crime scene analyst will perform
6 the testing, but the actual results are then sent away
7 for another company, a lab, to perform the analysis.

8 Q. And when you say testing, is that really
9 the recovery of trying to see if an area has it and then
10:50 10 the item that's recovered is sent off for someone in a
11 lab to test?

12 A. Potentially, because there's not an
13 immediate indication that there is the presence of
14 gunshot residue, also known as GSR, or not. Basically
10:51 15 the test is conducted and then it's sent off and then
16 whatever results are made known to us later on.

17 Q. From your training and experience is there
18 a time frame, a window frame as to when you need to get
19 something tested in relation to the shooting in order to
10:51 20 have it be effective?

21 A. Yes. And if I could just draw a quick
22 distinction. There is gunshot residue testing that can
23 be performed on garments and then there's also testing
24 that can be performed on the hands of an individual.

10:51 25 There are a great deal of restrictions regarding hands

10:51 1 because there are some false positives in the world and
2 through police work that will occur just as a natural
3 occurrence.

4 Q. And so was there a reason why you didn't
10:51 5 use gunshot or haven't yet submitted for gunshot residue
6 on some of these items?

7 A. In the particular case of their hands or on
8 items of clothing?

9 Q. I'm not sure --

10:52 10 A JUROR: Clothing.

11 THE WITNESS: Items of clothing. It just
12 hasn't been submitted for analysis. We do believe that
13 there was firearms discharged, but as far as do we have
14 all of the clothes the men were wearing at the
10:52 15 particular time, it's unclear. Because somebody might
16 be in the area of where a gunshot or a gun is fired,
17 they may not have the residue on them, but in fact if
18 there was a camera over them filming it we would say
19 yeah, he shot. It's just one of the those circumstances
10:52 20 that it's just not known.

21 BY MR. PESCI:

22 Q. As far as the hands though, is there a time
23 requirement as far as how soon after shooting a firearm
24 you're supposed to get a sample?

10:52 25 A. Yes.

10:52 1 Q. What time frame?

2 A. I believe it's either two or four hours.

3 The crime scene analyst section, they're the ones that
4 are responsible for making that determination if they're
10:52 5 within the window.

6 Q. The call for service was at 0012?

7 A. Correct.

8 Q. And then your contact with these various
9 individuals that you identified, how long after 0012 was
10:53 10 that on August 9th?

11 A. Almost 24 hours later.

12 Q. Can that also explain why testing or
13 non-testing was done in this case?

14 A. Without questioning because that individual
10:53 15 will go throughout the day and there could be the
16 transfers occurring and that residue maybe was on the
17 garment could be now lost. Those are possibilities.

18 MR. PESCI: Any further questions?

19 BY A JUROR:

10:53 20 Q. You said at one point that Demario in the
21 interview did confess to shooting or firing a weapon at
22 the Dewey residence.

23 A. Yes.

24 Q. Did he mention any other names of persons
10:53 25 that may or may not have been there or had --

10:53 1 MR. PESCI: I apologize. I have to
2 interrupt. Unfortunately you're not allowed to hear
3 testimony from one suspect about what another suspect
4 said, so it's not admissible evidence. So whether he
10:54 5 may or may not have said that, it's not something we can
6 present to you.

7 Any other questions?

8 THE FOREPERSON: By law, these proceedings
9 are secret and you are prohibited from disclosing to
10:54 10 anyone anything that has transpired before us, including
11 evidence and statements presented to the Grand Jury, any
12 event occurring or statement made in the presence of the
13 Grand Jury, and information obtained by the Grand Jury.

14 Failure to comply with this admonition is a
10:54 15 gross misdemeanor punishable up to 364 days in the Clark
16 County Detention Center and a \$2,000 fine. In addition,
17 you may be held in contempt of court punishable by an
18 additional \$500 fine and 25 days in the Clark County
19 Detention Center.

10:54 20 Do you understand this admonition?

21 THE WITNESS: I do.

22 THE FOREPERSON: Thank you very much and
23 you are excused.

24 A JUROR: Thank you for your time.

10:54 25 MR. PESCI: Ladies and gentlemen, we have

10:54 1 two or three more witnesses. Does anyone need a break
2 at this point?

3 THE FOREPERSON: Yes. You want to take a
4 ten minute break?

10:54 5 (Recess.)

6 MR. PESCI: State call Detective Lora Cody.

7 THE FOREPERSON: Please raise your right
8 hand.

9 You do solemnly swear the testimony you are
11:07 10 about to give upon the investigation now pending before
11 this Grand Jury shall be the truth, the whole truth, and
12 nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE FOREPERSON: Please be seated.

11:07 15 You are advised that you are here today to
16 give testimony in the investigation pertaining to the
17 offenses of burglary while in possession of a firearm,
18 conspiracy to commit robbery, robbery with use of a
19 deadly, attempt robbery with use of a deadly weapon,
11:07 20 murder with use of a deadly weapon, involving Demario
21 Robinson, Raekwon Robertson, Davontae Wheeler.

22 Do you understand this advisement?

23 THE WITNESS: I do.

24 THE FOREPERSON: Please state your first
11:08 25 and last name and spell both for the record.

11:08 1 THE WITNESS: It's Lora Cody. L-O-R-A,
2 C-O-D-Y.

3 LORA CODY,
4 having been first duly sworn by the Foreperson of the
11:08 5 Grand Jury to testify to the truth, the whole truth,
6 and nothing but the truth, testified as follows:

7

8 EXAMINATION

9

11:08 10 BY MR. PESCI:

11 Q. What do you do for a living?

12 A. I'm a detective.

13 Q. Is there a particular detail within Metro
14 that you work for?

11:08 15 A. Yes, I'm currently assigned to the homicide
16 section.

17 Q. Do you work together with Mitch Dosch and
18 Ryan Jaeger?

19 A. Yes, I do.

11:08 20 Q. Did you and your squad work a homicide that
21 occurred on August the 9th, 2017 at the location of 5536
22 West Dewey Drive?

23 A. Yes, we did.

24 Q. What was your responsibility in this
11:08 25 investigation as far as the division of labor?

11:08 1 A. I was assigned to go and get surveillance
2 video from that particular event.

3 Q. Where did that bring you to?

4 A. To the Short Line Express. It's the 7000
11:08 5 block of South Jones.

6 Q. Is that close or somewhat close to 5536
7 West Dewey?

8 A. Yes, sir.

9 Q. And when you went there, was that based on
11:08 10 information that you had received in the briefing from
11 patrol officers?

12 A. Yes.

13 Q. And did you also have information from
14 witnesses that gave you specific things that you were
11:09 15 looking for in the surveillance?

16 A. Yes.

17 Q. When you got to that location were you able
18 to obtain the surveillance?

19 A. Yes, I did.

11:09 20 Q. Is that the surveillance that we have and
21 we've shown to the Grand Jury?

22 A. Yes.

23 Q. And what were you looking for and what did
24 you find?

11:09 25 A. We were specifically looking for a white in

11:09 1 color Grand Marquis that may have been occupied by four
2 black male adults and we also knew that the license
3 plate, at least the first three letters of that license
4 plate of that Grand Marquis was 473.

11:09 5 Q. Did you obtain copies of that surveillance
6 so you could utilize it in your investigation?

7 A. Yes, I did.

8 Q. And then subsequently did you figure out
9 the registration of that vehicle?

11:09 10 A. Yes.

11 Q. And did your investigation eventually lead
12 you to a 919 Bagpipe in North Las Vegas?

13 A. Yes.

14 Q. What happened there?

11:09 15 A. I responded out to 919 Bagpipe Court in
16 order to conduct surveillance and at that point I saw
17 that specific vehicle, the white Grand Marquis, with the
18 first four of the license plate 473 parked in the
19 driveway of 919 Bagpipe Court.

11:10 20 Q. Did you see anyone get into that vehicle
21 from that location, that address you just mentioned?

22 A. Yes.

23 Q. What did you and other officers do based on
24 seeing that?

11:10 25 A. I observed two black male adults that kind

11:10 1 of resembled similar physical features from the previous
2 surveillance video get into that Grand Marquis and at
3 that point they actually left in a southbound direction
4 from 919 Bagpipe Court, so I conducted basically rolling
11:10 5 surveillance until we could get that vehicle stopped.

6 Q. When it was stopped were the occupants of
7 the vehicle removed from the car?

8 A. Yes, they were.

9 Q. Who were the occupants?

11:10 10 A. One was Demario Robinson and an Anthony or
11 Tony Robinson.

12 Q. And later on did Demario Robinson give a
13 statement to the officers?

14 A. Yes.

11:10 15 Q. Were you involved with Detective Mitch
16 Dosch in the interview of Demario?

17 A. Yes, I was.

18 Q. Separate from what you've just described,
19 were you also involved in the searches of certain areas
11:11 20 of interest in this case?

21 A. Yes, sir.

22 Q. Particularly did you find or were you
23 involved in the finding of a 22 caliber handgun?

24 A. Yes, I was.

11:11 25 Q. Tell us about where that was found, the

11:11 1 address and then where within the location?

2 A. We had a search warrant for 6647 West
3 Tropicana and I believe it was apartment 104. We
4 conducted the search warrant and I located in the

11:11 5 northeast bedroom, kind of hidden underneath a chest of
6 drawers if you will, someone had hollowed out a
7 compartment kind of close to the carpet area underneath
8 this chest of drawers and in that little hollowed out
9 area I located a 22 caliber firearm as well as various
11:11 10 ammunition.

11 Q. Was the 22 and the ammunition of interest
12 to you based on your investigation?

13 A. Yes, sir.

14 Q. Why was that?

11:11 15 A. We knew that our victim in this case or the
16 decedent had been shot possibly with a 22 caliber,
17 specifically with a specific head stamp that was
18 recovered from the actual cartridge cases from the
19 initial scene.

11:12 20 Q. When you say the initial scene, is that the
21 murder scene?

22 A. Yes, it is.

23 Q. Is there anything that you found in your
24 search of that location other than a 22 that was of
11:12 25 interest based on identification of individuals?

11:12 1 A. Yes.

2 Q. What was that?

3 A. We found a lot of paperwork in the name of,
4 I believe it's Raeqeem, and I'm sorry, I forgot his last

11:12 5 name, but kind of like an upper shelf area in that
6 northeast area.

7 Q. Does the name Raekwon --

8 A. Raekwon.

9 Q. -- ring a bell? Okay. And then that 22

11:12 10 that was found, was that impounded by a crime scene
11 analyst?

12 A. Yes, sir, it was.

13 MR. PESCI: Grand Jury's indulgence.

14 That concludes the questions that I have do

11:12 15 the grand jurors have any questions for this witness?

16 THE FOREPERSON: By law, these proceedings
17 are secret and you are prohibited from disclosing to
18 anyone anything that has transpired before us, including
19 evidence and statements presented to the Grand Jury, any
11:12 20 event occurring or statement made in the presence of the
21 Grand Jury, and information obtained by the Grand Jury.

22 Failure to comply with this admonition is a
23 gross misdemeanor punishable up to 364 days in the Clark
24 County Detention Center and a \$2,000 fine. In addition,
11:12 25 you may be held in contempt of court punishable by an

11:12 1 additional \$500 fine and 25 days in the Clark County
2 Detention Center.

3 Do you understand this admonition?

4 THE WITNESS: Yes, sir.

11:13 5 THE FOREPERSON: Thank you very much and
6 you are excused.

7 MR. PESCI: State calls Detective Ryan
8 Jaeger.

9 THE FOREPERSON: Please raise your right
11:13 10 hand.

11 You do solemnly swear the testimony you are
12 about to give upon the investigation now pending before
13 this Grand Jury shall be the truth, the whole truth, and
14 nothing but the truth, so help you God?

11:14 15 THE WITNESS: Yes.

16 THE FOREPERSON: Please be seated.

17 You are advised that you are here today to
18 give testimony in the investigation pertaining to the
19 offenses of burglary while in possession of a firearm,
11:14 20 conspiracy to commit robbery, robbery with use of a
21 deadly weapon, attempt robbery with use of a deadly
22 weapon, and murder with use of a deadly weapon,
23 involving Demario Robinson, Raekwon Robertson and
24 Davontae Wheeler.

11:14 25 Do you understand this advisement?

11:14 1 THE WITNESS: Yes, I do.

2 THE FOREPERSON: Please state your first
3 and last name and spell both for the record.

4 THE WITNESS: First name is Ryan, R-Y-A-N
11:14 5 last name of Jaeger, J-A-E-G-E-R.

6 RYAN JAEGER,
7 having been first duly sworn by the Foreperson of the
8 Grand Jury to testify to the truth, the whole truth,
9 and nothing but the truth, testified as follows:

11:14 10
11 EXAMINATION

12
13 BY MR. PESCI:

14 Q. Sir, are you a detective with homicide?

11:14 15 A. I am.

16 Q. Did you work with Detectives Cody and Dosch
17 on an investigation from August the 9th of this year on
18 Dewey address?

19 A. Yes, I did.

11:15 20 Q. And were you assigned specifically to the
21 crime scene itself as far as your responsibilities at
22 the scene of the murder?

23 A. Yes, I was.

24 Q. Showing you Grand Jury Exhibit 16. Do you
11:15 25 recognize that?

11:15 1 A. Yes, I do.

2 Q. What do you recognize that to be?

3 A. That is the address where the murder
4 occurred.

11:15 5 Q. And then specifically looking at Grand Jury
6 Exhibit 17. What items of evidence are depicted there?

7 A. We have the large blood pool where our
8 victim was picked up by medical staff and there's a
9 bunch of mail that is spread out on the ground.

11:15 10 Q. And then looking at State's Exhibit 18.
11 What do we have depicted by the placards?

12 A. Next to the placards are spent cartridge
13 cases.

14 Q. Were these cartridge cases of note to you
11:15 15 and your subsequent investigation?

16 A. They were.

17 Q. There has been testimony already, but did
18 you find in various searches of other locations
19 cartridge cases that were of the same make as some of
11:16 20 these at the scene?

21 A. Yes. At the scene there was 45 caliber
22 cartridge cases and 22 caliber cartridge cases.

23 Q. Was there one 22 caliber?

24 A. That's correct.

11:16 25 Q. And three 45 caliber?

11:16 1 A. That's correct.

2 Q. Did you find at these different locations
3 things that matched those, the 22 and the 45?

4 A. We did.

11:16 5 Q. And speaking of these other searches, were
6 you a part of the process of actually authorizing and
7 drafting the search warrants and asking the court for
8 permission to search those locations?

9 A. Yes, I was.

11:16 10 Q. And in the process of doing that were you
11 involved in the search warrant for 1327 H Street?

12 A. I was.

13 Q. And also a Mercury Grand Marquis vehicle?

14 A. I was.

11:16 15 Q. And 919 Bagpipe Court in North Las Vegas?

16 A. I was.

17 Q. And in the process of those things, of
18 those locations being searched, were there items of
19 evidentiary value that were recovered?

11:17 20 A. There was.

21 Q. And we've already heard about that so we
22 won't go through all of that. In the course of your
23 investigation did you come into contact with an
24 individual by the name of Davontae Wheeler?

11:17 25 A. I did.

11:17 1 Q. Showing you Exhibit 13. Who is that?

2 A. That's Davontae Wheeler.

3 Q. And when you came into contact with him,
4 did you deal with him personally?

11:17 5 A. I did.

6 Q. Did you conduct an interview with him?

7 A. I did.

8 Q. Did you provide him with his Miranda
9 warnings prior to that interview?

11:17 10 A. I did.

11 Q. Did he indicate that he understood those
12 warnings and that he was going to speak with you?

13 A. Yes, he did.

14 Q. Did you ask him questions about the events
11:17 15 of the night of the 9th and some other events as well?

16 A. I did.

17 Q. And what did he tell you after you gave him
18 his Miranda warnings?

19 A. He admitted to owning a 45 caliber handgun.

11:17 20 He admitted to being in the vehicle but he stated he was
21 not involved in any murder.

22 Q. And when you say a vehicle, specifically
23 did you show him or was he shown still photographs of
24 the Grand Marquis?

11:18 25 A. He was shown still photographs collected

11:18 1 from the surveillance system of the Short Line Express
2 that depicted the Grand Marquis.

3 Q. Did he admit that he had been in the
4 vehicle?

11:18 5 A. Yes, he did.

6 Q. Did he deny that he was involved in any
7 sort of killing?

8 A. Yes.

9 Q. Okay. And did you ask him about what his
11:18 10 comings and goings were of August the 8th and August the
11 9th?

12 A. I did.

13 Q. What did he say he had done?

14 A. He said that he was in the vehicle, he was
11:18 15 trying to negotiate to buy a Beretta handgun, he
16 couldn't reach a price for the gun that he liked so he
17 got out of the vehicle and took a bus home.

18 Q. And then you just talked about the purchase
19 or attempt to purchase a Beretta. Did he indicate
11:19 20 whether or not he had a firearm or firearms or how he
21 would carry them?

22 A. He said he did have a firearm and he said
23 that any time he didn't feel safe he carried the firearm
24 on his right hip in an open carry fashion.

11:19 25 Q. Was he, or did you show him any of the

11:19 1 surveillance footage from inside of the Express --

2 A. I did.

3 Q. Did he indicate that was him or not?

4 A. He denied that that was him inside the

11:19 5 Short Line Express.

6 Q. However in the course of your investigation

7 did you find pieces of evidence that were similar or

8 appeared to be similar to the clothing, the shoes, of

9 the people inside the surveillance of that Short Line

11:19 10 Express?

11 A. We did.

12 Q. And also involving a hat?

13 A. I don't know if they've seen the picture.

14 Q. Yes. You're speaking of the hat. Was

11:20 15 there something you were focusing on with the hat?

16 A. The hat in the surveillance pictures, it's

17 a white baseball hat with a black bill and there's a

18 holographic sticker that can be seen on the bill of the

19 cap.

11:20 20 Q. Did you ask him about that?

21 A. I did and he said he does not have any

22 clothing that would resemble the person seen in the

23 surveillance footage. If you see the hat that's there,

24 that's actually a Chicago Blackhawks hat with the same

11:20 25 sticker that was found in his apartment.

11:20 1 Q. All right. That's the next question I was
2 going to ask you. You were involved with the search
3 when this hat was found. Where was it found?

4 A. I did not search his apartment. I was with
11:20 5 him doing the interview when his apartment was searched.

6 Q. Are you aware that this was found in his
7 apartment?

8 A. Yes.

9 Q. Was there information in your investigation
11:21 10 that associated Mr. Wheeler with that apartment?

11 A. Yes.

12 Q. Do you know offhand what some of that
13 information was?

14 A. He lived in apartment F and his sister
11:21 15 lived in apartment G. That was verified by the complex
16 security.

17 MR. PESCI: Indulgence for a moment.

18 That concludes the questions for this
19 detective. Do the ladies and gentlemen of the jury have
11:21 20 any questions?

21 THE FOREPERSON: By law, these proceedings
22 are secret and you are prohibited from disclosing to
23 anyone anything that has transpired before us, including
24 evidence and statements presented to the Grand Jury, any
11:21 25 event occurring or statement made in the presence of the

11:21 1 Grand Jury, and information obtained by the Grand Jury.

2 Failure to comply with this admonition is a
3 gross misdemeanor punishable up to 364 days in the Clark
4 County Detention Center and a \$2,000 fine. In addition,

11:21 5 you may be held in contempt of court punishable by an
6 additional \$500 fine and 25 days in the Clark County
7 Detention Center.

8 Do you understand this admonition?

9 THE WITNESS: I do.

11:22 10 THE FOREPERSON: Thank you and you are
11 excused.

12 THE WITNESS: Thank you.

13 MR. PESCI: Ladies and gentlemen, we're
14 going to ask you to just give us a couple minutes and
11:22 15 then we'll come right back in. Okay?

16 A JUROR: Cool.

17 (Recess.)

18 THE FOREPERSON: Please raise your right
19 hand.

11:26 20 Please raise your right hand. Thank you.

21 You do solemnly swear the testimony you are
22 about to give upon the investigation now pending before
23 this Grand Jury shall be the truth, the whole truth, and
24 nothing but the truth, so help you God?

11:26 25 THE WITNESS: Yes.

11:26 1 THE FOREPERSON: You are advised that you
2 are here today to give testimony in the investigation
3 pertaining to the offenses of burglary while in
4 possession of a firearm, conspiracy to commit robbery,
11:26 5 robbery with use of a deadly weapon, attempted robbery
6 with use of a deadly weapon, murder with use of a deadly
7 weapon, involving Demario Robinson --

8 THE WITNESS: Correct, yes.

9 THE FOREPERSON: -- Raekwon Robertson and
11:27 10 Davontae Wheeler.

11 Do you understand this advisement?

12 THE WITNESS: Yes.

13 THE FOREPERSON: Please state your first
14 and last name and spell both for the record.

11:27 15 THE WITNESS: Agnes Stein. A-G-N-E-S,
16 S-T-E-I-N.

17 AGNES STEIN,

18 having been first duly sworn by the Foreperson of the
19 Grand Jury to testify to the truth, the whole truth,
11:27 20 and nothing but the truth, testified as follows:

21

22 EXAMINATION

23

24 BY MR. PESCI:

11:27 25 Q. Ma'am, I want to direct your attention to

11:27 1 August the 2nd of 2017. Were you working late that
2 evening?

3 A. Yes.

4 Q. And where did you work?

11:27 5 A. Fiesta Discount Market.

6 Q. Where is that located?

7 A. 7010 West Charleston, Las Vegas, Nevada.

8 Q. Does your location have video surveillance?

9 A. Yes, it does.

11:27 10 Q. Showing you Grand Jury Exhibit 3. Do you
11 recognize this location?

12 A. Yes.

13 Q. Do you recognize someone in this video?

14 A. Yes.

11:27 15 Q. Who is it?

16 A. Me.

17 Q. All right. Is it the ordinary course of
18 your business to have your video surveillance set up?

19 A. Yes.

11:28 20 Q. Is it something that's been in place before
21 you started working there?

22 A. Yes.

23 Q. And it's still in place now?

24 A. Yes.

11:28 25 Q. There is an incident that occurred on this

11:28 1 day that brings you here to court; correct?

2 A. Correct.

3 Q. Was it captured on the video surveillance?

4 A. Yes.

11:28 5 Q. Was that surveillance then provided to
6 police?

7 A. Yes.

8 Q. Is that a fair and accurate copy of that
9 surveillance?

11:28 10 A. Yes.

11 Q. Tell the Grand Jury what happened to you.

12 A. I was sitting there watching TV. I just,
13 we just did the shift change. About five to 12:00 these
14 two came in and the guy that came behind the counter
11:28 15 told me to get the money out of the cash register and he
16 was yelling at me to hurry up, hurry up, waving the gun
17 at me, and then they took the money and they left.

18 Q. Were there two individuals?

19 A. There was two individuals, yes, but I

11:28 20 didn't see what the other guy was doing because I was
21 behind the counter.

22 Q. Were you focused on the one with the gun?

23 A. Yes.

24 Q. Was there a customer in the store?

11:29 25 A. Yes.

11:29 1 Q. Do you know that customer?

2 A. Yes.

3 Q. What's the customer's name?

4 A. Mariah.

11:29 5 Q. And I'm going to play this video and ask
6 you if this is what occurred to you that day. It's
7 going to take a minute.

8 It's playing. While it's playing, is
9 Mariah in the gaming area of your store?

11:29 10 A. Yes.

11 Q. Is she seated at the -- what kind of game
12 was it, do you know?

13 A. It's multiple choice of games that we have.

14 Q. Is she seated at the one furthest to the
15 left?

16 A. Yes.

17 Q. Is the door located on the left hand side
18 of the video that's dated August 2, 2017?

19 A. Yes.

11:30 20 Q. Is this at 2350, is that when the
21 individuals walk in?

22 A. Yes.

23 Q. What's occurring now, is that what you just
24 described to the ladies and gentlemen of the Grand Jury?

11:30 25 A. Yes.

11:30 1 Q. Did you provide the money to the individual
2 because there was a gun pointed at you?

3 A. Yes.

4 Q. Were you, it sounds silly, but were you
11:30 5 concerned?

6 A. Yes.

7 Q. Were you scared?

8 A. Yes.

9 Q. Did you comply with his demands?

11:30 10 A. Yes, I did.

11 Q. All right. What are you doing right there?
12 You're leaning down under the counter.

13 A. Right -- uhm --

14 Q. Is there an alarm?

11:30 15 A. Yes.

16 Q. And then did Mariah come over to you after?

17 A. Yes, and she told me that --

18 Q. You can't say what she said. I apologize.

19 Did you see anything happen to her when all
11:30 20 of this happened?

21 A. Did I what?

22 Q. Did you see anything happen to her while
23 all of this happened?

24 A. No.

11:30 25 Q. But she did come and speak to you?

11:31 1 A. Yes.

2 Q. And then the surveillance, we just looked
3 at one, there are multiple angles that was provided to
4 the police?

11:31 5 A. Correct.

6 MR. PESCI: Rachel?

7 Any questions from the ladies and gentlemen
8 of the Grand Jury?

9 That concludes the testimony.

11:31 10 THE FOREPERSON: By law, these proceedings
11 are secret and you are prohibited from disclosing to
12 anyone anything that has transpired before us, including
13 evidence and statements presented to the Grand Jury, any
14 event occurring or statement made in the presence of the
15 Grand Jury, and information obtained by the Grand Jury.

16 Failure to comply with this admonition is a
17 gross misdemeanor punishable up to 364 days in the Clark
18 County Detention Center and a \$2,000 fine. In addition,
19 you may be held in contempt of court punishable by an
11:31 20 additional \$500 fine and 25 days in the Clark County
21 Detention Center.

22 Do you understand this admonition?

23 THE WITNESS: Yes.

24 THE FOREPERSON: Thank you. You are
11:31 25 excused.

11:31

1

THE WITNESS: Thank you.

2

MR. PESCI: Thank you.

3

THE WITNESS: Sorry about being late.

4

MR. PESCI: It's okay. Thank you.

11:32

5

6

Ladies and gentlemen, we're going to ask
you to stay these proceedings and to not deliberate at
this time. And that concludes our presentation today.

7

8

(Proceedings adjourned, to reconvene at a later,

9

undetermined time.)

11:32

10

--oo0oo--

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11:32

1

REPORTER'S CERTIFICATE

2

3

STATE OF NEVADA)

$$: \quad SS$$

4

COUNTY OF CLARK)

11:32

5

6

I, Danette L. Antonacci, C.C.R. 222, do

7

hereby certify that I took down in Shorthand (Stenotype)

8

all of the proceedings had in the before-entitled matter

9

at the time and place indicated and thereafter said

11:32

10

shorthand notes were transcribed at and under my

11

direction and supervision and that the foregoing

12

transcript constitutes a full, true, and accurate record

13

of the proceedings had.

14

Dated at Las Vegas, Nevada,

11:32

15

December 30, 2017.

16

17

/s/ Danette L. Antonacci

18

Danette L. Antonacci, C.C.R. 222

19

11:32

20

21

22

23

24

25

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER
17BGJ017A-C:

X Does not contain the social security number of any
person,

-OR-

___ Contains the social security number of a person as
required by:

A. A specific state or federal law, to-
wit: NRS 656.250.

-OR-

B. For the administration of a public program
or for an application for a federal or
state grant.

/s/ Danette L. Antonacci

Signature

12-30-17

Date

Danette L. Antonacci

Print Name

Official Court Reporter

Title

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event # 170809-0029

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>MURDER WDW</u>	Date Occurred <u>8/9/17</u>	Time Occurred <u>0012</u>
Location of Occurrence <u>5536 W. DEWEY DR. LVN</u>	Sector/Beat <u>S4</u>	<input type="checkbox"/> City <input checked="" type="checkbox"/> County

Your Name (Last / First / Middle) <u>J. Dahn</u> <u>Niklaus C.</u>						Date of Birth <u>6-13-89</u>	Social Security # <u>604-64-7685</u>	
Race <u>W</u>	Sex <u>M</u>	Height <u>5</u>	Weight <u>6</u>	Hair <u>brwn</u>	Eyes <u>brwn</u>	Work Schdl. (Hours) 	(Days Off) 	Business / School
Residence Address: (Number & Street) <u>7325 S. Jones</u>		Bldg./Apt.# 	City <u>Las Vegas</u>	State <u>NV</u>	Zip Code <u>89129</u>	Res. Phone: <u>702-307-7325</u>		
Bus. (Local) Address: (Number & Street) 		Bldg./Apt.# 	City 	State 	Zip Code 	Occupation <u>Cashier</u>		Depart Date (if visitor)
Best place to contact you during the day 				Best time to contact you during the day 			Can You Identify the Suspect? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

DETAILS 11:30 PM suspect came in store looking suspicious ⁽¹⁾ One had a black gun holster on right hip used the restroom for 15 minutes he had black curly hair black sweater dark jeans description 5'7 155 driving a white crown vic blue four doors then sat at the time outside for 10-15 minutes they bought two deys blue water

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) 7325 S. JONES BLVD LVN 89139

ON THE 9TH DAY OF AUG AT 0135 (AM/PM), 2017

Witness/Officer: [Signature]
(SIGNATURE)
Witness/Officer: J. Tromboni P# 9331
(PRINTED)

[Signature]
SIGNATURE OF PERSON GIV

Grand Juror Case # 17BGJ017A-C

Exhibit # 43

Date 11-29-17

INSTRUCTION NO. _____

Every person who, by day or night, enters any home, store or other building, with the intent to commit robbery and/or a felony therein is guilty of Burglary.

INSTRUCTION NO. _____

In the State of Nevada, the crime of robbery is a felony.

INSTRUCTION NO. _____

It is not necessary that the State prove the defendant actually committed a robbery or a felony inside the home, store or other building after he entered in order for you to find him guilty of burglary. The gist of the crime of burglary is the unlawful entry with criminal intent. Therefore, a burglary was committed if the defendant entered the home, store or other building with the intent to commit a robbery or a felony regardless of whether or not that crime occurred.

INSTRUCTION NO. _____

The intention with which entry was made is a question of fact which may be inferred from the defendant's conduct and all other circumstances disclosed by the evidence.

INSTRUCTION NO. _____

Every person who commits the crime of burglary, who has in his possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, is guilty of burglary while in possession of a firearm.

INSTRUCTION NO. _____

Every person who, in the commission of a burglary, commits any other crime, may be prosecuted for each crime separately.

INSTRUCTION NO. _____

Any person who conspires to commit Robbery is guilty of Conspiracy to Commit Robbery.

INSTRUCTION NO. _____

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property. Such force or fear must be used to overcome resistance to the taking, in either of which case the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

INSTRUCTION NO. _____

If more than one person commits a robbery, and one of them uses a deadly weapon in the commission of that robbery, each may be convicted of Robbery With Use of a Deadly Weapon, even though he did not personally himself use the weapon.

INSTRUCTION NO. _____

The elements of an attempt to commit a crime are:

- 1) the intent to commit the crime;
- 2) performance of some act towards its commission; and
- 3) failure to consummate its commission.

In determining whether or not such an act was done, it is necessary to distinguish between mere preparation, on the one hand, and the actual commencement of the doing of the criminal deed, on the other. Mere preparation, which may consist of planning the offense or of devising, obtaining or arranging the means for its commission, is not sufficient to constitute an attempt; but acts of a person who intends to commit a crime will constitute an attempt where they themselves clearly indicate a certain, unambiguous intent to commit that specific crime, and, in themselves, are an immediate step in the present execution of the criminal design, the progress of which would be completed

unless interrupted by some circumstance not intended in the original design.

INSTRUCTION NO. _____

Conspiracy is an agreement or mutual understanding between two or more persons to commit a crime. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

INSTRUCTION NO. _____

It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

INSTRUCTION NO. _____

Whenever there is slight evidence that a conspiracy existed, and that the defendant was one of the members of the conspiracy, then the statements and the acts by any person likewise a member may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

INSTRUCTION NO. _____

A statement offered against the defendant which is a statement made by a co-conspirator of the defendant during the course and in furtherance of the conspiracy may be considered by the jury.

INSTRUCTION NO. _____

Any evidence of a statement, which is not made during the course and in the

furtherance of the conspiracy, made by one defendant may be considered by you only in assessing the evidence for or against the defendant making the statement. You shall not consider it against any other defendant.

INSTRUCTION NO. _____

You are instructed that to aid and abet is defined as follows: aid means to help, assist, or strengthen; abet means to encourage, counsel, induce or assist.

INSTRUCTION NO. _____

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

INSTRUCTION NO. _____

The participation of a defendant not actually in possession of the weapon, but who has knowledge that a weapon would be used, by aiding or abetting the actual user in the unlawful use of the weapon, makes a defendant equally subject to the added weapon enhancement available to the user who commits a crime through the use of a deadly weapon.

INSTRUCTION NO. _____

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

You are instructed that a firearm is a deadly weapon.

INSTRUCTION NO. _____

Mere presence at the scene of a crime or knowledge that a crime is being committed is not sufficient to establish that a defendant is guilty of an offense, unless you find beyond reasonable doubt that the defendant was a participant and not merely a knowing spectator.

However, the presence of a person at the scene of a crime and companionship with another person engaged in the commission of the crime and a course of conduct before and after the offense are circumstances which may be considered in determining whether such person aided and abetted the commission of that crime.

INSTRUCTION NO. _____

In order to "use" a deadly weapon, there need not be conduct which actually produces harm but only conduct which produces a fear of harm or force by means or display of the deadly weapon in aiding the commission of the crime.

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

INSTRUCTION NO. _____

Murder is the unlawful killing of a human being with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

INSTRUCTION NO. _____

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

INSTRUCTION NO. _____

Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

INSTRUCTION NO. _____

Murder of the first degree can include murder which is: A) perpetrated by means of willful, deliberate and premeditated killing; or B) committed in the perpetration or attempted perpetration of robbery.

INSTRUCTION NO. _____

Murder of the first degree which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements -- willfulness, deliberation, and premeditation -- must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and

considering the consequences of the actions.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

INSTRUCTION NO. _____

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

INSTRUCTION NO. _____

There is a kind of murder which carries with it conclusive evidence of premeditation, deliberation, and malice aforethought. This class of murder is committed in the perpetration or attempted perpetration of robbery. Therefore a killing which is

committed in the perpetration or attempted perpetration of robbery is deemed to be murder of the first degree whether the killing was intentional or unintentional or accidental. This is called the Felony Murder Rule.

Grand Jury Case # 17BG1017A-C

Exhibit # 2

Date 11-29-17

1 **IND**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI,
6 Chief Deputy District Attorney
7 Nevada Bar #007135
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
11 Plaintiff,

CASE NO:

11 -vs-

DEPT NO:

12 DEMARIO LOFTON-ROBINSON, aka,
13 Demario Loftonrobinson, #5318925
14 RAEKWON SETREY ROBERTSON,
15 aka, Raekwon Robertson, #8252804
16 DAVONTAE AMARRI WHEELER,
17 #5909081

INDICTMENT

Defendant(s).

17 STATE OF NEVADA }
18 COUNTY OF CLARK } ss.

19 The Defendant(s) above named, DEMARIO LOFTON-ROBINSON, aka, Demario
20 Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson,
21 DAVONTAE AMARRI WHEELER, accused by the Clark County Grand Jury of the crime(s)
22 of BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS
23 205.060 - NOC 50426); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS
24 200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF A DEADLY WEAPON
25 (Category B Felony - NRS 200.380, 193.165 - NOC 50138); ATTEMPT ROBBERY WITH
26 USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC
27 50145) and MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS
28

1 200.010, 200.030, 193.165 - NOC 50001), committed at and within the County of Clark, State
2 of Nevada, on or between August 2, 2017 and August 9, 2017, as follows:

3 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

4 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
5 about August 2, 2017 willfully, unlawfully, and feloniously enter, with intent to commit a
6 felony, to wit: robbery, that certain business occupied by FIESTA DISCOUNT MARKET
7 AND SMOKE SHOP, located at 701 West Charleston Boulevard, Las Vegas, Clark County,
8 Nevada, while possessing and/or gaining possession of a handgun, a deadly weapon, during
9 the commission of the crime and/or before leaving the structure.

10 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

11 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
12 about August 2, 2017 willfully, unlawfully, and feloniously conspire with ANTONIO JONES
13 to commit a robbery, by the conspirators committing the acts as set forth in Counts 3 and 4,
14 said acts being incorporated by this reference as though fully set forth herein.

15 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

16 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
17 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
18 personal property, to wit: a wallet, cellular telephone, and makeup case, from the person of
19 MARIAH ROMATKO, or in her presence, by means of force or violence, or fear of injury to,
20 and without the consent and against the will of MARIAH ROMATKO, with use of a deadly
21 weapon, to wit: a handgun, the Defendant being criminally liable under one or more of the
22 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
23 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
24 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
25 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
26 crime, with the intent that this crime be committed.

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28 //

1 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
3 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
4 personal property, to wit: U.S. Currency, from the person of AGNES STEIN, or in her
5 presence, by means of force or violence, or fear of injury to, and without the consent and
6 against the will of AGNES STEIN, with use of a deadly weapon, to wit: a handgun, the
7 Defendant being criminally liable under one or more of the following principles of criminal
8 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
9 commission of this crime, with the intent that this crime be committed, by counseling,
10 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
11 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
12 crime be committed.

13 COUNT 5 - CONSPIRACY TO COMMIT ROBBERY

14 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
15 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
16 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, and feloniously conspire
17 with each other and/or unknown co-conspirators to commit a robbery, by the Defendants
18 and/or unknown co-conspirators committing the acts as set forth in Count 6, said acts being
19 incorporated by this reference as though fully set forth herein.

20 COUNT 6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

21 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
22 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
23 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, and feloniously attempt to
24 take personal property, to wit: U.S. Currency and/or property, from the person of GABRIEL
25 VALENZUELA, or in his presence, by means of force or violence, or fear of injury to, and
26 without the consent and against the will of GABRIEL VALENZUELA, by pointing a firearm
27 at the said GABRIEL VALENZUELA and demanding said U.S. Currency and/or property,
28 with use of a deadly weapon, to wit: a firearm, the Defendants being criminally liable under

one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendant and/or DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON and/or unknown co-conspirators aiding or abetting and/or conspiring by Defendant and/or DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON and/or unknown co-conspirators acting in concert throughout.

COUNT 7 - MURDER WITH USE OF A DEADLY WEAPON

Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, on or about August 9, 2017, willfully, unlawfully, feloniously and with malice aforethought, kill GABRIEL VALENZUELA, a human being, with use of a deadly weapon, to wit: a firearm, by shooting at and into the body of the said GABRIEL VALENZUELA, the said killing having been (1) willful, deliberate, and premeditated, and/or (2) committed during the perpetration or attempted perpetration of a robbery, the Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring,

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1 commanding, inducing, and/or otherwise procuring the other to commit the crime; and/or (3)
2 pursuant to a conspiracy to commit murder and/or robbery; Defendants and/or unknown co-
3 conspirators aiding or abetting and/or conspiring by Defendants and/or unknown co-
4 conspirators acting in concert throughout.

5 DATED this ____ day of November, 2017.

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

9 BY

10 GIANCARLO PESCI
11 Chief Deputy District Attorney
12 Nevada Bar #007135

13 ENDORSEMENT: A True Bill
14

15 Foreperson, Clark County Grand Jury
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1 Names of Witnesses and testifying before the Grand Jury:

3 Additional Witnesses known to the District Attorney at time of filing the Indictment:

4 CHARLTON, NOREEN – LVMPD #13572

5 CODY, LORA – LVMPD #7294

6 CUSTODIAN OF RECORDS - CCDC

7 CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

8 CUSTODIAN OF RECORDS - LVMPD RECORDS

9 CUSTODIAN OF RECORDS – SHORTLINE EXPRESS – 7325 S. JONES BLVD, LV NV

10 DOSCH, MITCHELL – LVMPD #7907

11 FLETCHER, SHAWN – LVMPD #5221

12 JAEGER, RYAN – LVMPD #5587

13 MASON, ROBERT – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

14 NEWMAN, JAMES – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

15 RELATO, JOHN – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

16 ROMATKO, MARIAH – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

17 SIMMS, DR. LARY – ME#0002

18 SPAHN, NICKOLAUS – SHORT LINE EXPRESS – 7325 S. JONES BLVD, LV NV

19 SPEAS, WILLIAM – LVMPD #5228

20 STEIN, AGNES – FIESTA DISCOUNT MARKET – 7010 W. CHARLESTON BLVD, LV

21 NV

22 TAPAY, GLEZZELLE, LVMPD #15709

27 17BGJ017A-C/17F14369A-C/ed - GJ

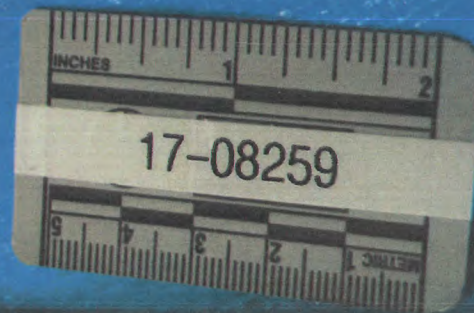
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(TK3)

Grand Jury Case # 17BGJ017 A-C

Exhibit #

Date 11/29/17



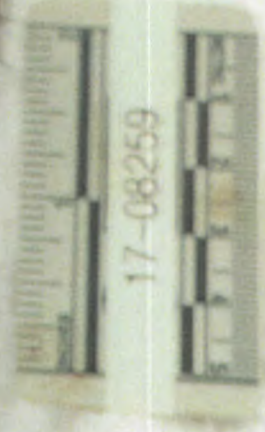
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CLARK COUNTY CORONER CASE # 17-8259
NAME: Valenzuela, Gabriel (TENT)
Date of Death: 8/9/17 Time of Death: 0055
R-S-A: H.M. 24 CASE TYPE: LUMPB-920- multiple GSIO's
HT: 70 WT: 215 TIME IN: 0355
CCCO Investigator: [Signature] EMPL# 144

Grand Jury Case # 17BGJ017A-C

Exhibit # 5

Date 11/29/17



Grand Jury Case # 17BGJ017A-C

Exhibit # 6

Date 11/29/17



Grand Jury Case # 17BGJ017A-C

Exhibit # 7

Date 11/29/17



Grand Jury Case # 17BGJ017A-C

Exhibit # 8

Date 11/29/17



Grand Jury Case # 17BGJ017A-C

Exhibit # 9

Date 11/29/17



Grand Jury Case # ~~17BGJ017A-C~~

Exhibit # 10

Date 11/29/17



Grand Jury Case # 17BGJ017 A-C

Exhibit # 11

Date 11/29/17



Grand Jury Case # 17BGJ017A-C

Exhibit # 12

Date 11/29/17

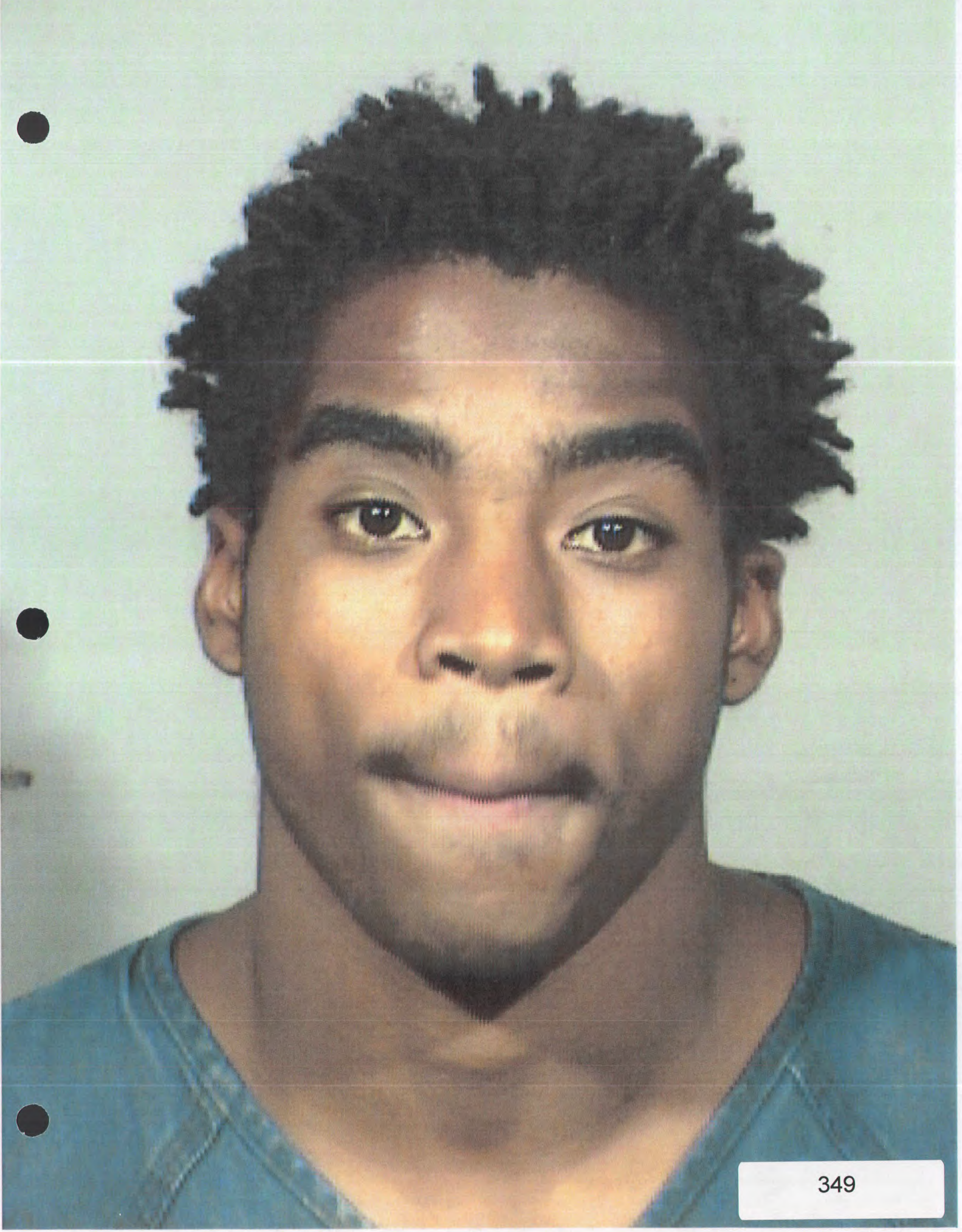


348

Grand Jury Case # 17BGJ017A-C

Exhibit # 13

Date 11/29/17



Grand Jury Case # 17BGJ017A-(

Exhibit # 14

Date 11/29/17



Grand Jury Case # 17BGJ017A-C

Exhibit # 15

Date 11/29/17

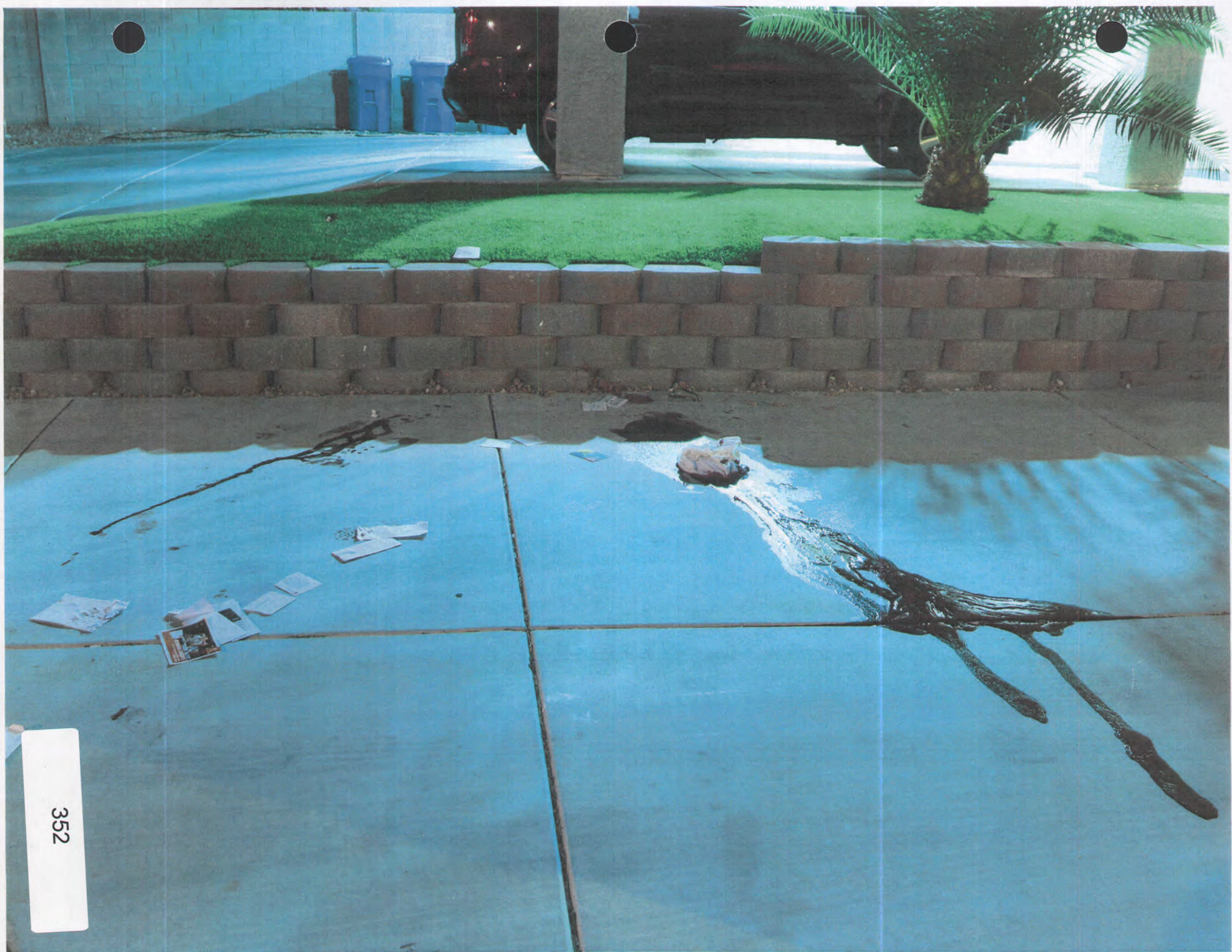
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Grand Jury Case # 17BGJ017A-C

Exhibit # 16

Date 11/29/17

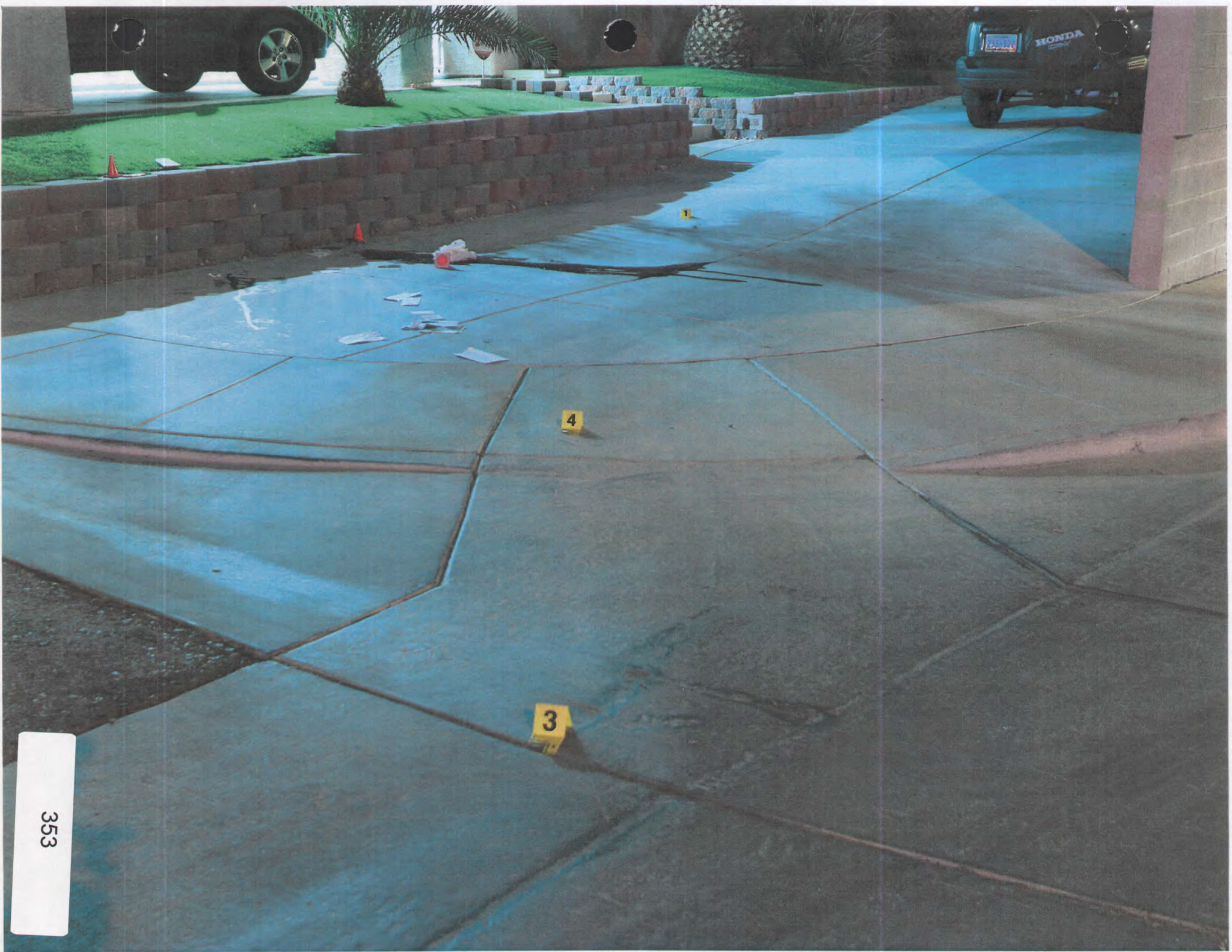


352

Grand Jury Case # 17BGJ017 A-C

Exhibit # 17

Date 11/29/17



353

Grand Jury Case # 17BGJ017A-C

Exhibit # 18

Date 11/29/17



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Grand Jury Case # 17BGJ017A-C

Exhibit # 19

Date 11/29/17



355

Grand Jury Case # 786J017 A-C

Exhibit # 20

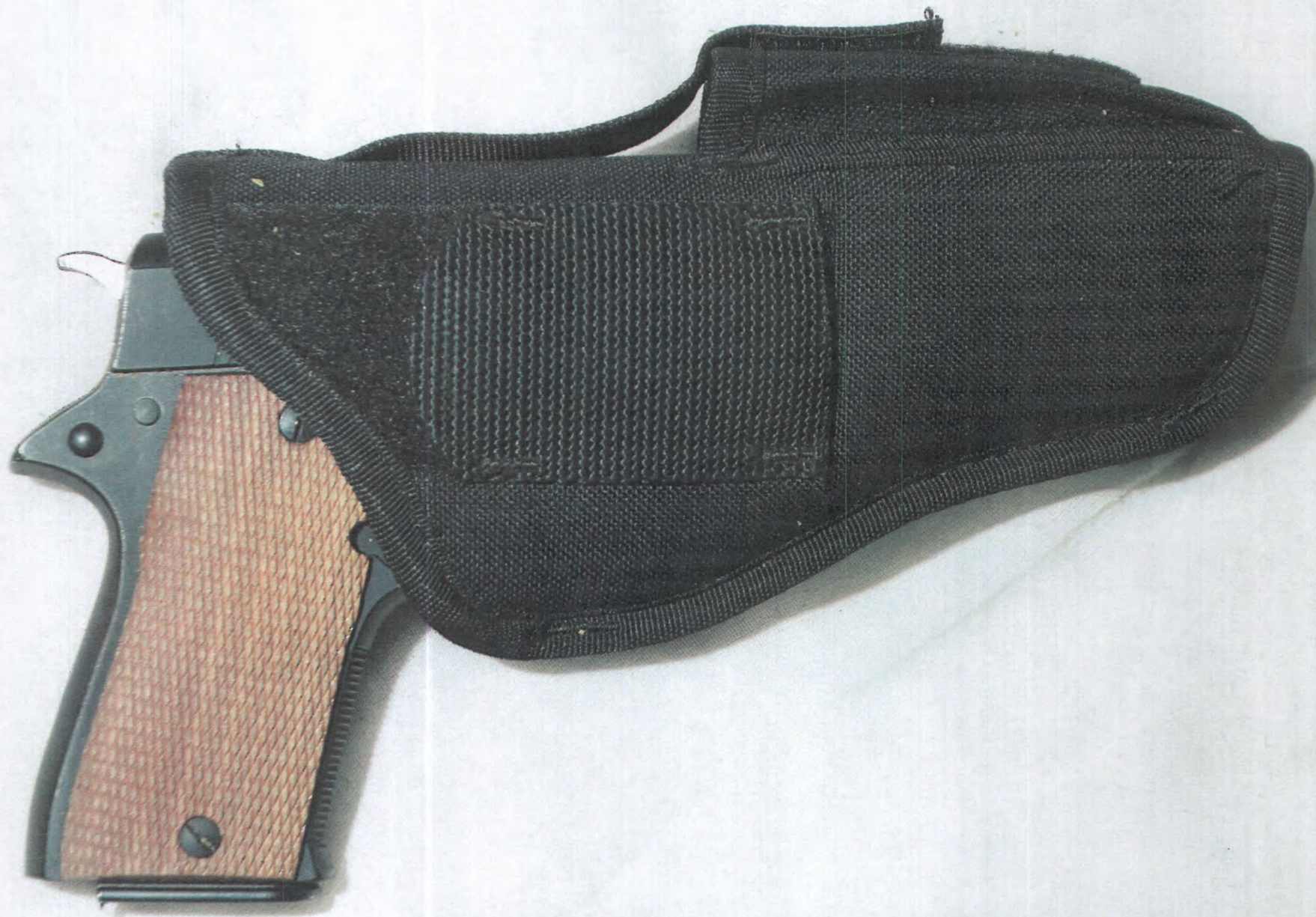
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Grand Jury Case # 17BGJ 017A-C

Exhibit # 21

Date 11/29/17



Grand Jury Case # 17BGJ017A-C

Exhibit # 22

Date 11/29/17



W SPEAS 5228

358

Grand Jury Case # 17BGJ017A-C

Exhibit # 23

Date 11/29/17



359

Grand Jury Case # 17BGJ 017A-C

Exhibit # 24

Date 11/29/17

360



Grand Jury Case # 17BSJ017A-C

Exhibit # 25

Date 11/29/17

361



Grand Jury Case # 17BGJ017A-C

Exhibit # 26

Date 11/29/17



Grand Jury Case # 17BGJ017A-C

Exhibit # 27

Date 11/29/17



363

Grand Jury Case # 17BGJ017A-C

Exhibit # 28

Date 11/29/17



364

Grand Jury Case # 17BGJ017A-C

Exhibit # 29

Date 11/29/17

EXIT

Gas Reference Center

365



Grand Jury Case # 17BGJ017A-C

Exhibit # 30

Date 11/29/17



Grand Jury Case # 17BGJ017A-C

Exhibit # 31

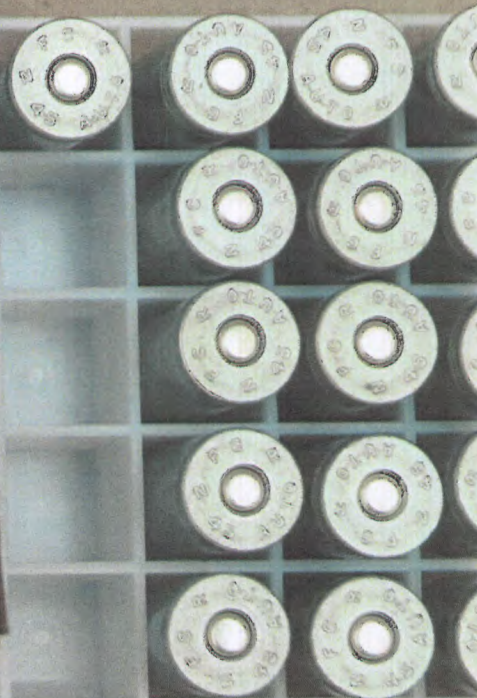
Date 11-29-17

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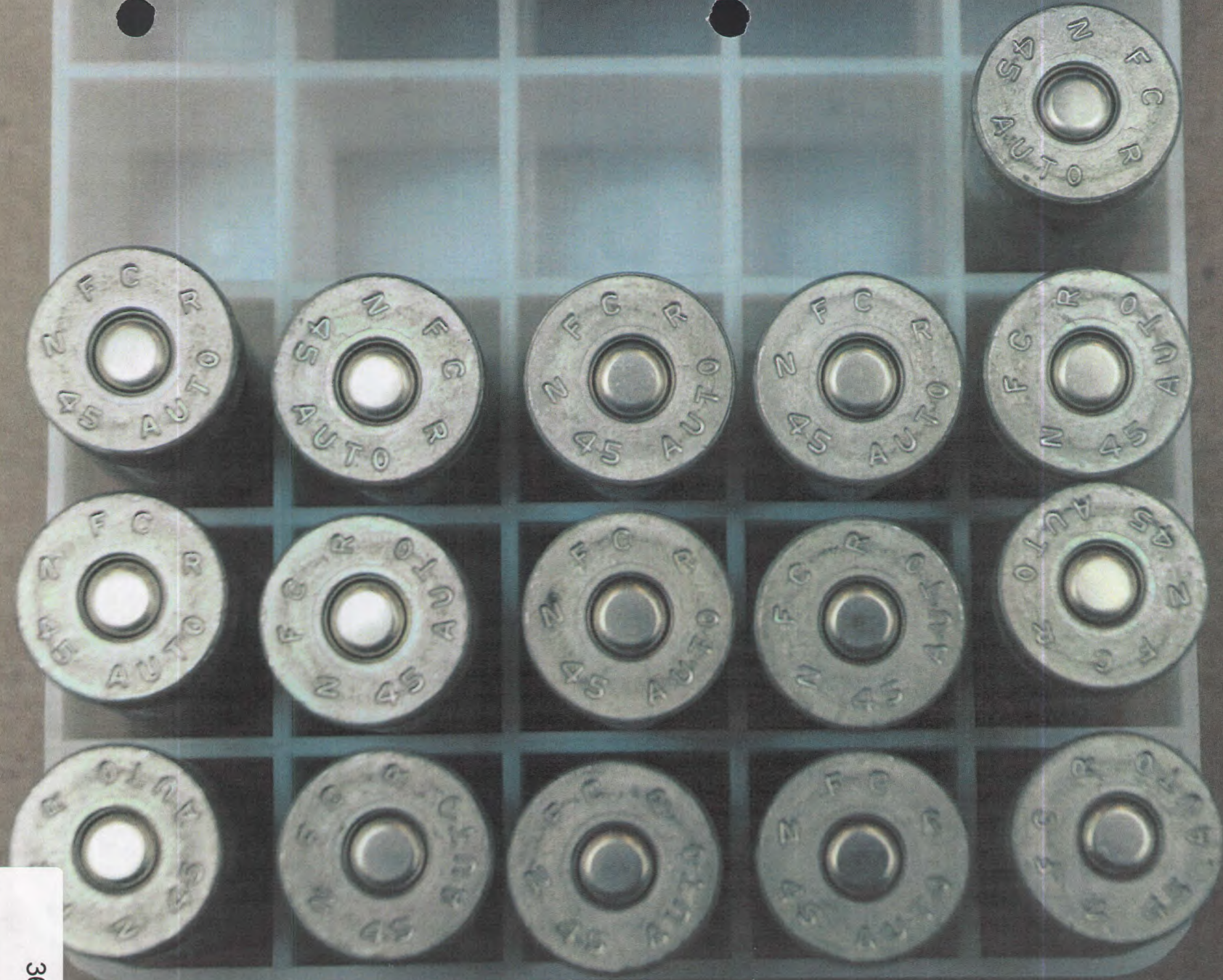


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Grand Jury Case # 17BGJ017A-C

Exhibit # 32

Date 11-29-17



Grand Jury Case # 17BGJ017A-C

Exhibit # 33

Date 11-29-17



Grand Jury Case # 17BGJ017A-C

Exhibit # 34

Date 11-29-17



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Grand Jury Case # 17BGJ017A-C

Exhibit # 35

Date 11-29-17



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Grand Jury Case # 17BGJ017A-C

Exhibit # 36

Date 11-29-17

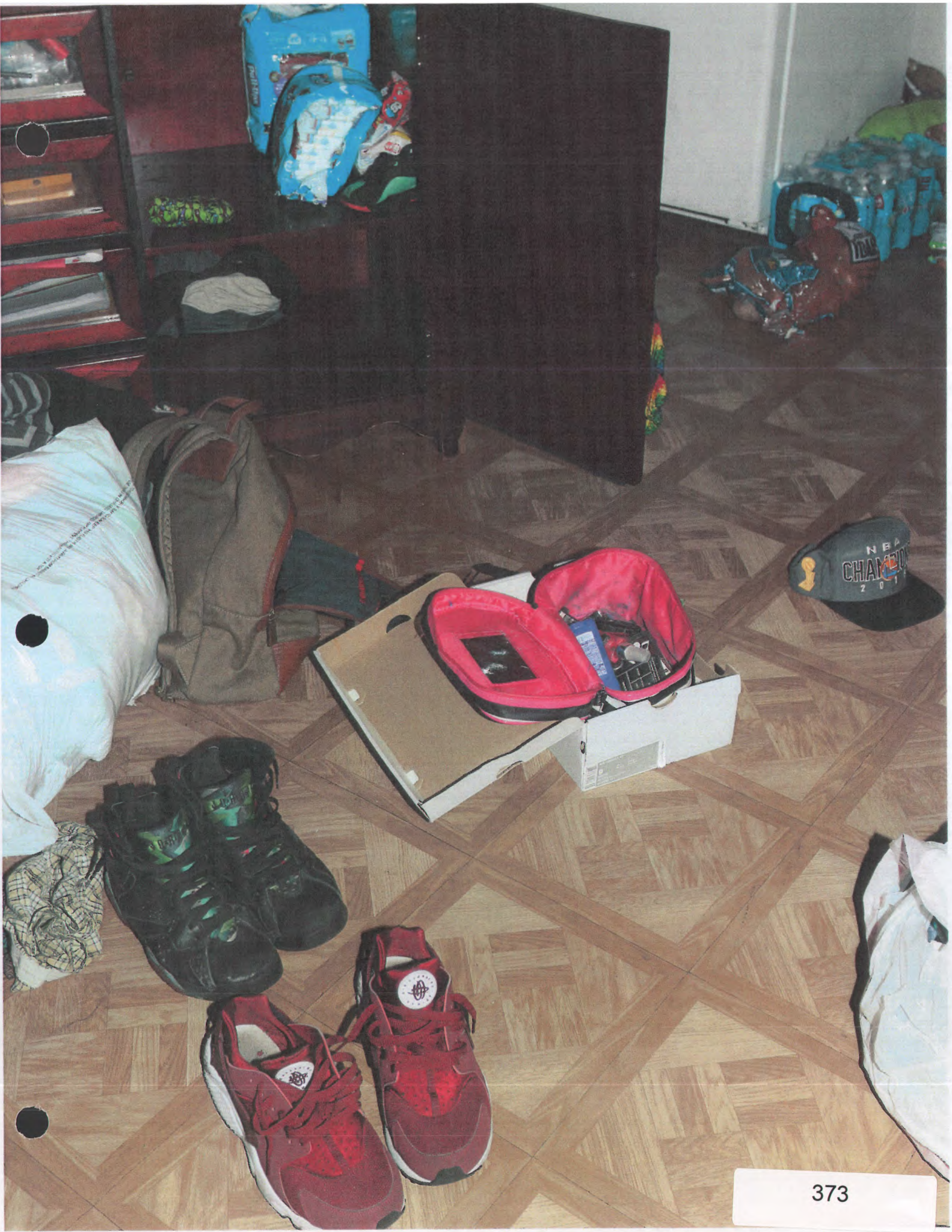


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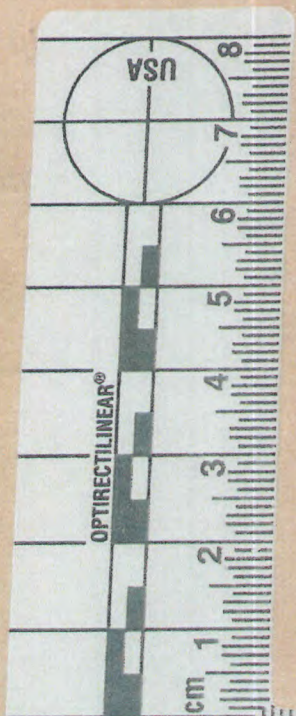
Grand Jury Case # 1706Jo17A-C

Exhibit # 37

Date 11-29-17



Grand Jury Case # 17B6J017A-C
Exhibit # 38
Date 11-29-17



374

Grand Jury Case # 17BGJ017A-C

Exhibit # 39

Date 11-29-17

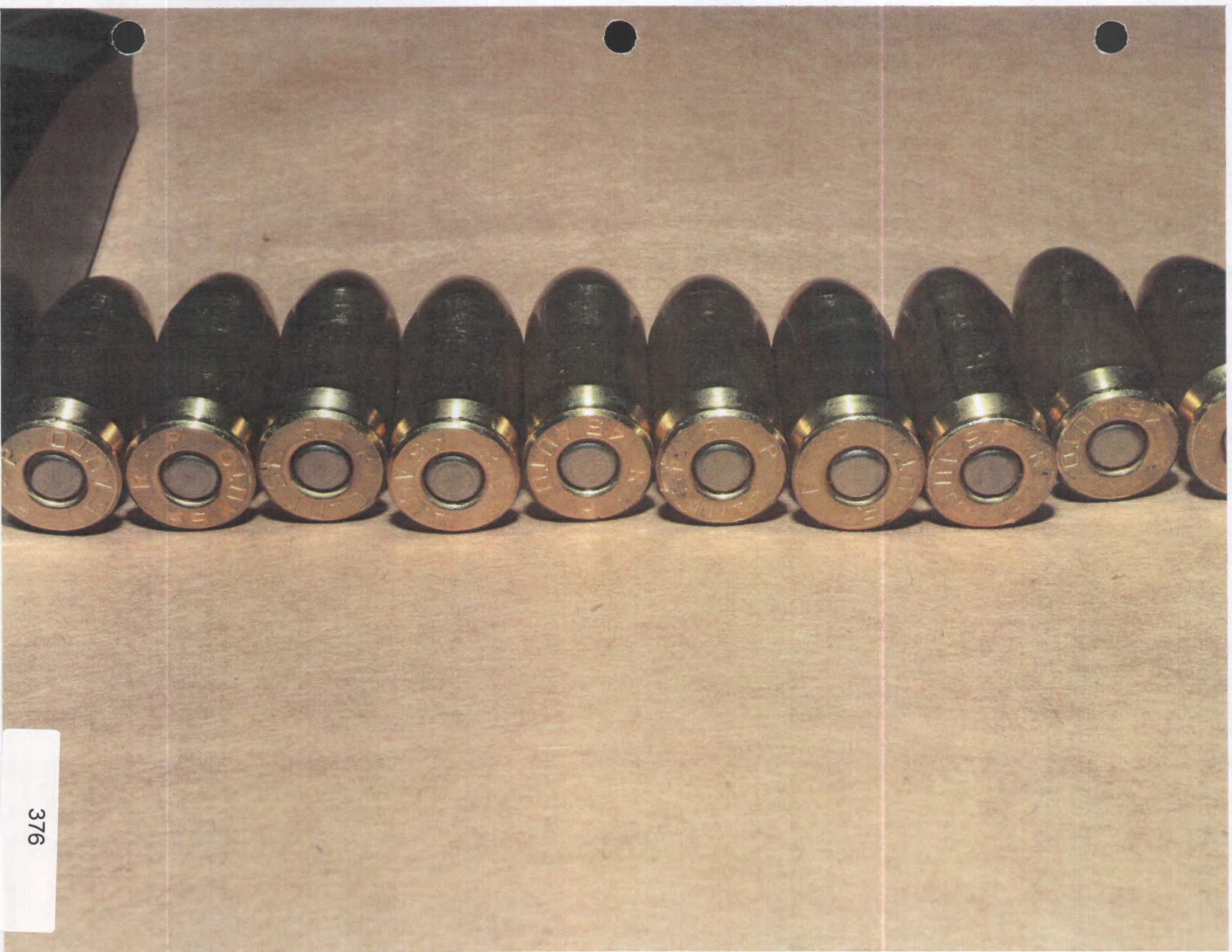


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Grand Jury Case # 17BGJ057-A-C

Exhibit # 40

Date 11-29-17



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Grand Jury Case # 17BGJ017A-C

Exhibit # 41

Date 11-29-17

100 CARTRIDGES / CARTOUCHES

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40 GRAIN



Grand Jury Case # 17BGJ017A-C
Exhibit # 42
Date 11-29-17

Steven D. Grierson

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DEMARIO LOFTON-ROBINSON, aka
Demario Loftonrobinson, RAEKWON
SETREY ROBERTSON, aka Raekwon
Robertson, DAVONTAE AMARRI
WHEELER,

Defendants.

GJ No. 17BGJ017A-C
DC No. C328587

Taken at Las Vegas, Nevada

Wednesday, December 13, 2017

8:19 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 2

Reported by: Danette L. Antonacci, C.C.R. No. 222

12:00 1 GRAND JURORS PRESENT ON DECEMBER 13, 2017

2

3 HOWARD BASCH, Foreperson

4 CHARLES STANKOSKY, Deputy Foreperson

12:00 5 TOBIE SPERRY, Secretary

6 ANGELA MOORE, Assistant Secretary

7 LINDA COHN

8 FRANK COOMBS

9 WILLIAM DUMKE

12:00 10 LADYHAWK FREEMAN

11 VICTORIA GUY

12 CATHERINE HARABURDO

13 MARGARET LAAS

14 ROJEAN LOGAN

12:00 15 NANCY SCHERER

16 EDWARD WAGNER

17 COURTNEY WILLIAMS

18

19

12:00 20 Also present at the request of the Grand Jury:

21 Giancarlo Pesci, Chief Deputy District Attorney

22

23

24

25

12:00

1

LAS VEGAS, NEVADA, DECEMBER 13, 2017

2

* * * * *

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4

DANETTE L. ANTONACCI,

12:00

5

having been first duly sworn to faithfully

6

and accurately transcribe the following

7

proceedings to the best of her ability.

8

9

THE FOREPERSON: Let the record reflect

08:11

10

that I have canvassed the waiting area and no one has

11

appeared in response to Notice of Intent to Seek

12

Indictment.

13

MR. PESCI: Ladies and gentlemen of the

14

Grand Jury, that concludes the presentation of the

08:19

15

evidence on behalf of the State of Nevada in the case

16

against Demario Lofton-Robinson, Raekwon Robertson and

17

Davontae Wheeler. I'll submit it for your deliberation.

18

(At this time, all persons, other than

19

members of the Grand Jury, exit the room at 8:19 a.m.

08:20

20

and return at 8:29 a.m.)

21

THE FOREPERSON: Mr. District Attorney, by

22

a vote of 12 or more grand jurors a true bill has been

23

returned against Demario Lofton-Robinson, Raekwon

24

Robertson, Davontae Wheeler, the crimes of burglary

08:29

25

while in possession of a firearm, conspiracy to commit

08:29

1 robbery, robbery with use of a deadly weapon, attempt
2 robbery with use of a deadly weapon, murder with use of
3 a deadly weapon, in Grand Jury case number 17BGJ017AB&C.
4 We instruct you to prepare an Indictment in conformance
5 with the proposed Indictment previously submitted to us.

08:29

6 MR. PESCI: Thank you very much.

7 (Proceedings concluded.)

8 --oo0oo--
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08:29

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
 : SS
COUNTY OF CLARK)

08:29

I, Danette L. Antonacci, C.C.R. 222, do hereby certify that I took down in Shorthand (Stenotype) all of the proceedings had in the before-entitled matter at the time and place indicated and thereafter said shorthand notes were transcribed at and under my direction and supervision and that the foregoing transcript constitutes a full, true, and accurate record of the proceedings had.

08:29

Dated at Las Vegas, Nevada,
December 31, 2017.

08:29

/s/ Danette L. Antonacci

Danette L. Antonacci, C.C.R. 222

08:29

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER 17BGJ017A-C:

X Does not contain the social security number of any person,

-OR-

___ Contains the social security number of a person as required by:

A. A specific state or federal law, to-wit: NRS 656.250.

-OR-

B. For the administration of a public program or for an application for a federal or state grant.

/s/ Danette L. Antonacci

Signature

12-31-17
Date

Danette L. Antonacci
Print Name

Official Court Reporter
Title

WARR

ORIGINAL

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

DEC 14 2017

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAVONTAE AMARRI WHEELER,
ID#5909081

Defendant.

BY: Nancy Maldonado
NANCY MALDONADO, DEPUTY

CASE NO: C-17-328587-3

DEPT NO: III

WARRANT FOR ARREST

INDICTMENT WARRANT

THE STATE OF NEVADA,

To: Any Sheriff, Constable, Marshall, Policeman, or Peace Officer in This State:

An Indictment having been found on the 14th day of December, 2017, in the above entitled Court, charging Defendant DAVONTAE AMARRI WHEELER, above named, with the crime(s) of: (1) CT - CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); (1) CT - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC 50145) and (1) CT - MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001).

YOU ARE, THEREFORE, COMMANDED forthwith to arrest and bring said Defendant before the Court to answer the Indictment. If the Court is not in session, you are to deliver Defendant into the custody of the Sheriff of Clark County, or if requested by Defendant, take Defendant before any Magistrate in the County where arrested that bail may be given to answer to the Indictment. Defendant shall be admitted to bail in the sum of \$ 250,000.

I HEREBY AUTHORIZE THE SERVICE OF THE WITHIN WARRANT BY TELETYPE, PURSUANT TO NRS 171.148. The Warrant may be served at any hour day or night.

GIVEN under my hand this 14th day of December, 2017.

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

BY

GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #007135

Elizabeth Gonzalez
DISTRICT JUDGE
ELIZABETH GONZALEZ
BAIL \$ 250,000

DA# 17BGJ017A-C/17F14369A-C/ed
LVMPD EV#170824571; 1708090029
4/27/1995; BMA; 275-89-8303;
(TK3)

C-17-328587-3
WARR
Warrant
4705338



CONFIDENTIAL

1 **IND**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **GIANCARLO PESCI**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #007135**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

DEC 14 2017

BY, Nancy Maldonado
NANCY MALDONADO, DEPUTY

C-17-328587-3
IND
Indictment
4706312



DISTRICT COURT
CLARK COUNTY, NEVADA

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

CASE NO: C-17-328587-3

DEPT NO: III

12 **DEMARIO LOFTON-ROBINSON, aka,**
13 **Demario Loftonrobinson, #5318925**
14 **RAEKWON SETREY ROBERTSON,**
15 **aka, Raekwon Robertson, #8252804**
16 **DAVONTAE AMARRI WHEELER,**
17 **#5909081**

18 **Defendant(s).**

INDICTMENT

17 **STATE OF NEVADA** }
18 **COUNTY OF CLARK** } ss.

19 **The Defendant(s) above named, DEMARIO LOFTON-ROBINSON, aka, Demario**
20 **Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson,**
21 **DAVONTAE AMARRI WHEELER, accused by the Clark County Grand Jury of the crime(s)**
22 **of BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS**
23 **205.060 - NOC 50426); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS**
24 **200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF A DEADLY WEAPON**
25 **(Category B Felony - NRS 200.380, 193.165 - NOC 50138); ATTEMPT ROBBERY WITH**
26 **USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC**
27 **50145) and MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS**
28

1 200.010, 200.030, 193.165 - NOC 50001), committed at and within the County of Clark, State
2 of Nevada, on or between August 2, 2017 and August 9, 2017, as follows:

3 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

4 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
5 about August 2, 2017 willfully, unlawfully, and feloniously enter, with intent to commit a
6 felony, to wit: robbery, that certain business occupied by FIESTA DISCOUNT MARKET
7 AND SMOKE SHOP, located at 701 West Charleston Boulevard, Las Vegas, Clark County,
8 Nevada, while possessing and/or gaining possession of a handgun, a deadly weapon, during
9 the commission of the crime and/or before leaving the structure.

10 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

11 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
12 about August 2, 2017 willfully, unlawfully, and feloniously conspire with ANTONIO JONES
13 to commit a robbery, by the conspirators committing the acts as set forth in Counts 3 and 4,
14 said acts being incorporated by this reference as though fully set forth herein.

15 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

16 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
17 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
18 personal property, to wit: a wallet, cellular telephone, and makeup case, from the person of
19 MARIAH ROMATKO, or in her presence, by means of force or violence, or fear of injury to,
20 and without the consent and against the will of MARIAH ROMATKO, with use of a deadly
21 weapon, to wit: a handgun, the Defendant being criminally liable under one or more of the
22 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
23 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
24 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
25 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
26 crime, with the intent that this crime be committed.

27 //

28 //

1 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
3 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
4 personal property, to wit: U.S. Currency, from the person of AGNES STEIN, or in her
5 presence, by means of force or violence, or fear of injury to, and without the consent and
6 against the will of AGNES STEIN, with use of a deadly weapon, to wit: a handgun, the
7 Defendant being criminally liable under one or more of the following principles of criminal
8 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
9 commission of this crime, with the intent that this crime be committed, by counseling,
10 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
11 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
12 crime be committed.

13 COUNT 5 - CONSPIRACY TO COMMIT ROBBERY

14 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
15 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
16 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, and feloniously conspire
17 with each other and/or unknown co-conspirators to commit a robbery, by the Defendants
18 and/or unknown co-conspirators committing the acts as set forth in Count 6, said acts being
19 incorporated by this reference as though fully set forth herein.

20 COUNT 6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

21 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
22 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
23 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, and feloniously attempt to
24 take personal property, to wit: U.S. Currency and/or property, from the person of GABRIEL
25 VALENZUELA, or in his presence, by means of force or violence, or fear of injury to, and
26 without the consent and against the will of GABRIEL VALENZUELA, by pointing a firearm
27 at the said GABRIEL VALENZUELA and demanding said U.S. Currency and/or property,
28 with use of a deadly weapon, to wit: a firearm, the Defendants being criminally liable under

1 one or more of the following principles of criminal liability, to wit: (1) by directly committing
2 this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that
3 this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or
4 otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to
5 commit this crime, with the intent that this crime be committed, Defendant and/or DEMARIO
6 LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON
7 and/or unknown co-conspirators aiding or abetting and/or conspiring by Defendant and/or
8 DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON
9 ROBERTSON and/or unknown co-conspirators acting in concert throughout.

10 COUNT 7 - MURDER WITH USE OF A DEADLY WEAPON

11 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
12 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
13 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, feloniously and with
14 malice aforethought, kill GABRIEL VALENZUELA, a human being, with use of a deadly
15 weapon, to wit: a firearm, by shooting at and into the body of the said GABRIEL
16 VALENZUELA, the said killing having been (1) willful, deliberate, and premeditated, and/or
17 (2) committed during the perpetration or attempted perpetration of a robbery, the Defendants
18 being criminally liable under one or more of the following principles of criminal liability, to
19 wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission
20 of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring,

21 //

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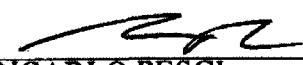
28 //

1 commanding, inducing, and/or otherwise procuring the other to commit the crime; and/or (3)
2 pursuant to a conspiracy to commit murder and/or robbery; Defendants and/or unknown co-
3 conspirators aiding or abetting and/or conspiring by Defendants and/or unknown co-
4 conspirators acting in concert throughout.

5 DATED this 13th day of December, 2017.

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

9 BY


10 GIANCARLO PESCI
11 Chief Deputy District Attorney
12 Nevada Bar #007135

13 ENDORSEMENT: A True Bill

14 
15 Foreperson, Clark County Grand Jury
16

Names of Witnesses and testifying before the Grand Jury:

CODY, LORA – LVMPD #7294

DOSCH, MITCHELL – LVMPD #7907

FLETCHER, SHAWN – LVMPD #5221

JAEGER, RYAN – LVMPD #5587

MASON, ROBERT – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

NEWMAN, JAMES – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

RELATO, JOHN – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

SIMMS, DR. LARY – ME#0002

SPAHN, NICKOLAUS – SHORT LINE EXPRESS – 7325 S. JONES BLVD, LV NV

SPEAS, WILLIAM – LVMPD #5228

STEIN, AGNES – FIESTA DISCOUNT MARKET – 7010 W. CHARLESTON BLVD, LV
NV

TAPAY, GLEZZELLE, LVMPD #15709

Additional Witnesses known to the District Attorney at time of filing the Indictment:

CHARLTON, NOREEN – LVMPD #13572

CUSTODIAN OF RECORDS - CCDC

CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS - LVMPD RECORDS

CUSTODIAN OF RECORDS – SHORTLINE EXPRESS – 7325 S. JONES BLVD, LV NV

ROMATKO, MARIAH – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

17BGJ017A-C/17F14369A-C/ed - GJ
LVMPD EV#1708024571; 1708090029
(TK3)

LAS VEGAS METRO POLICE DEPARTMENT
TEMPORARY CUSTODY RECORD
(* DENOTES OFFICER REQUIRED FIELD)

PAGE 1 OF 1 UOF ☐ BODY CAM ☐ NEW ID ☐ DNA SAMPLE TAKEN ☐ DNA NOT REQ'D
*ID/CS# 5909081
*ARREST DATE: 12/14/2017 *ARREST TIME: 1725
*EVENT #:
*CO-DEF:
*DETAINER:
*REBOOK ☐ ABSENTIA ☐ FORM 6 ☐ NDOC ☐ EXT TO LAS VEGAS ☐ LVC ☐ HND ☐ NLV ☐ COURTESY HOLD ☐

*INTAKE NAME (AKA, ALIAS, ETC.)		LAST WHEELER		FIRST DAVONTAE		MIDDLE AMARRI															
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*LOCATION OF CRIME (STREET ADDRESS, CITY, STATE, ZIP) CC <input type="checkbox"/> LV <input type="checkbox"/>																					
WARRANT LAS VEGAS, NV 89101																					
*ARR #																					
*COURT JURIS		*WARRANT # / CASE #		*# CNTS		*NOC CODE		*M GM F		*CHARGE LITERAL		*ORD / NRS		*BAIL		*EVENT# / NIC#					
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RET
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #007135
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

Electronically Filed
12/15/2017

Heather S. Hemin
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

DAVONTAE AMARRI WHEELER,
ID#5909081

Defendant.

CASE NO: C-17-328587-3
DEPT NO: III

INDICTMENT WARRANT RETURN

An Indictment having heretofore been found on the 14th day of December, 2017, in the above entitled Court, charging Defendant DAVONTAE AMARRI WHEELER, above named, with the crime(s) of: (1) CT - CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); (1) CT - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC 50145) and (1) CT - MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 00.030, 193.165 - NOC 50001), and upon finding the said Indictment, the court issued a warrant for the arrest of said Defendant.

I hereby certify that I received a certified copy of the Indictment Warrant and served the same by arresting the within Defendant on the 14 day of December 2017.

JOSEPH LOMBARDO
Sheriff, Clark County, Nevada

BY: S. Loumakis, 7922 gm
Deputy LUMPD

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

December 19, 2017

C-17-328587-3 State of Nevada
 vs
 Davontae Wheeler

December 19, 2017 09:00 AM All Pending Motions

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

COURT CLERK: Kidd, Lauren; Miller, Deborah

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Davontae Amarri Wheeler	Defendant
Giancarlo Pesci	Attorney for Plaintiff
James J. Ruggeroli	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Also present: Codefendant Lofton-Robinson, present in custody, represented by Scott Bindrup, Esq.
Codefendant Robertson, present in custody, represented by Mace Yampolsky, Esq.

DEFT. WHEELER ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT ORDERED, counsel has 21 days after receipt of copy of any transcripts for the filing of any Writs. Pursuant to EDRC 1.30 and 1.31 this COURT ORDERS the cases C328587-1, C328587-2 and C328587-3 reassigned to Department 20, matter SET for Status Check.

1/9/18 8:30 AM STATUS CHECK: TRIAL SETTING (DEPT 20)



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,
7 Plaintiff,

CASE#: C-328587-1
C-328587-2
C-328597-3

8 vs.

DEPT: III

9 DEMARIO LOFTON-
10 ROBINSON; RAEKWON
11 SETREY ROBERTSON;
12 DAVONTAE AMARRI
13 WHEELER,

Defendants.

14 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE
15 TUESDAY, DECEMBER 19, 2017

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**
17 **INITIAL ARRAIGNMENT**

18 APPEARANCES:

19 For the State:

GIANCARLO PESCI, ESQ.,
Chief Deputy District Attorney

20 For Defendant Lofton-Robinson: SCOTT L. BINDRUP, ESQ.,
21 Deputy Special Public Defender

22 For Defendant Robertson: MACE J. YAMPOLSKY, Esq.

23 For Defendant Wheeler: JAMES J. RUGGEROLI, Esq.

24
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 TUESDAY, DECEMBER 19, 2017 AT 9:29 A.M.

2

3 THE COURT: Do we have everybody that we need on
4 that?

5 UNKNOWN SPEAKER: Yes, everybody's here.

6 THE COURT: Okay. Demario Lofton-Robinson, Raekwon
7 Robertson, and Davonte Wheeler, that's 328587, Defendants 1, 2, and
8 3. Okay. So, I believe I have all three of the gentlemen present in
9 custody now. Mr. Yampolsky, you have Mr. Robertson --

10 MR. YAMPOLSKY: I do.

11 THE COURT: -- correct? Okay. And which one of the
12 gentleman is Demario Lofton-Robinson? Okay. And then in the back
13 we have Mr. Wheeler.

14 MR. RUGGEROLI: Good morning, Your Honor. James
15 Ruggeroli on his behalf.

16 THE COURT: All right. And, Mr. Bindrup, you're here on
17 behalf of Mr. Lofton-Robinson?

18 MR. BINDRUP: Yes, sir.

19 THE COURT: Okay. These are all on for initial arraignment.
20 Did you all get a copy of the Indictment?

21 DEFENDANT LOFTON-ROBINSON: Yes, sir.

22 DEFENDANT ROBERTSON: Yes, Your Honor.

23 DEFENDANT WHEELER: Yes, Your Honor.

24 THE COURT: And did you all each have a chance to discuss
25 it with your clients?

1 MR. YAMPOLSKY: Yes, Your Honor.
2 MR. BINDRUP: Yes, sir.
3 MR. RUGGEROLI: Yes, sir.
4 THE COURT: Okay. Starting with Mr. Lofton-Robinson, sir, is
5 Demario Lofton-Robinson your true name?
6 DEFENDANT LOFTON-ROBINSON: Yes, sir.
7 THE COURT: And how old are you, Demario?
8 DEFENDANT LOFTON-ROBINSON: Eighteen.
9 THE COURT: And you read, write, and understand the
10 English language; correct?
11 DEFENDANT LOFTON-ROBINSON: Yes, sir.
12 THE COURT: You've had a chance to discuss the Indictment
13 on file and the charges you're facing in that Indictment with your
14 attorney?
15 DEFENDANT LOFTON-ROBINSON: Yes, sir.
16 THE COURT: You're charged in Count 5 with conspiracy
17 robbery; Count 6, attempt robbery with a deadly weapon, and Count 7,
18 murder with use of a deadly weapon. How do you plead to those three
19 charges?
20 DEFENDANT LOFTON-ROBINSON: Not guilty.
21 THE COURT: Are you all going to be invoking or waiving,
22 Scott?
23 MR. BINDRUP: Waiving.
24 UNKNOWN SPEAKER: Waiving, Your Honor.
25 THE COURT: All right. Mr. Lofton-Robinson, is that correct?

1 DEFENDANT LOFTON-ROBINSON: Yes, sir.
2 THE COURT: All right. And then as to Mr. Robertson. Mr.
3 Robertson, is Raekwon Robertson your true name?
4 DEFENDANT ROBERTSON: Yes.
5 THE COURT: Am I pronouncing your first name right?
6 DEFENDANT ROBERTSON: Yeah. you're correct.
7 THE COURT: How old are you?
8 DEFENDANT ROBERTSON: Twenty.
9 THE COURT: And you read, write, and understand English as
10 well?
11 DEFENDANT ROBERTSON: Yes.
12 THE COURT: Have you had a chance to discuss the charges
13 that you're facing in the Indictment with your attorney, Mr. Yampolsky?
14 DEFENDANT ROBERTSON: Yes, I have.
15 THE COURT: You are charged in Count 1, burglary with a
16 deadly weapon; Count 2, conspiracy robbery; Count 3 and Count 4,
17 robbery with a deadly weapon; Count 5, conspiracy robbery; Count 6,
18 attempt robbery with a deadly weapon, and Count 7, murder with use of
19 a deadly weapon. How do you plead to those seven charges?
20 DEFENDANT ROBERTSON: Not guilty.
21 THE COURT: Are you all going to invoke or waive your right
22 to speedy trial?
23 DEFENDANT ROBERTSON: Waive.
24 THE COURT: All right. Thank you. And then as to Mr.
25 Wheeler, Mr. Wheeler, is Devontae Wheeler your true name, sir?

1 DEFENDANT WHEELER: Yes, sir.
2 THE COURT: How old are you?
3 DEFENDANT WHEELER: Twenty-two.
4 THE COURT: You read, write, and understand the English
5 language?
6 DEFENDANT WHEELER: Yes, I do.
7 THE COURT: Have you had a chance to discuss the charges
8 you're facing in the Indictment with your attorney, Mr. Ruggeroli?
9 DEFENDANT WHEELER: Yes, sir.
10 THE COURT: You're charged in Count 5 with conspiracy
11 robbery; Count 6, attempt robbery with a deadly weapon, and Count 7
12 murder with a deadly weapon. How do you plead to those three
13 charges?
14 DEFENDANT WHEELER: I plead not guilty.
15 THE COURT: Are you all going to waive or invoke your right
16 to speedy trial?
17 MR. RUGGEROLI: We're waiving.
18 THE COURT: Is that correct, Mr. Wheeler?
19 DEFENDANT WHEELER: Yes.
20 THE COURT: All right. Thank you. Are there any transcripts
21 available from the Indictment proceedings yet?
22 MR. PESCI: I don't think so because we don't even have the
23 Indictment actually filed in Odyssey.
24 THE COURT: Okay. Well, I got it filed as of yesterday, I
25 guess. I know it was filed December 14th but I know it didn't show up in

1 Odyssey.

2 MR. BINDRUP: I'm sure Mr. Pesci wouldn't mind if we had 30
3 days to file a writ in this matter.

4 MR PESCI: I would say 21 from the filing of the transcripts.
5 It's the statute.

6 THE COURT: Well, we don't know when the transcripts are
7 going to get filed yet. So, it may end up being more than 30 days. So,
8 why don't we just say 30 days. But I'll say for now that it will be 21 days
9 after receipt of copy of the transcripts. If you need to put it back on to
10 request more time you can certainly do so.

11 Are the matters going in front of the Death Review
12 Committee?

13 MR. PESCI: No.

14 THE COURT: Okay. And we will get you assigned out to
15 Department 20. They're going to set a status check on for trial setting
16 and that will be on?

17 THE COURT CLERK: January 9 at 8:30.

18 THE COURT: All right, guys. Thank you.

19 MR. RUGGEROLI: Thank you, Judge.

20

21 [Hearing concluded at 9:33 a.m.]

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

25


PATRICIA SLATTERY
Court Transcriber

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

C-17-328587-3 State of Nevada
 vs
 Davontae Wheeler

January 09, 2018 08:30 AM Status Check: Trial Setting

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Skinner, Linda

RECORDER: Calvillo, Angie

REPORTER:

PARTIES PRESENT:

Davontae Amarri Wheeler	Defendant
Giancarlo Pesci	Attorney for Plaintiff
James J. Ruggeroli	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Upon Court's inquiry, Mr. Pesci advised the arrest date for Defendants was in August. Colloquy as to trial date. Mr. Ruggeroli advised the only month he is not available is April. Mr. Bindrup requested October 15th for trial. Mr. Yampolsky requested at least May. Court noted it likes to set the trial a year from the arrest. Counsel feel the trial will take 2 weeks. Following colloquy, COURT ORDERED, matter SET for trial in July with a status check in April.

As to discovery, Mr. Pesci advised he has provided everything he has. Mr. Ruggeroli stated he has requested ballistic testing on the firearm that was allegedly obtained from Deft Wheeler's residence or a family members. Mr. Pesci advised forensics have been requested. Mr. Yampolsky stated Deft Robertson wants to have an Evidentiary Hearing, however, he does not know what it would be on. Court advised that can be addressed as the need arises. Mr. Bindrup will try and have vault review and file review done by status check. Court expects the ballistics done or a specific schedule as to when those are going to be done by April and also expects the vault and file reviews to be done as well.

Mr. Bindrup advised he barely received the Grand Jury Transcript and requested 30 days from today to file any writs. COURT SO ORDERED, as to all Defendants.

CUSTODY

4/5/18 8:30 AM STATUS CHECK: HOMICIDE TRIAL

7/24/18 8:30 AM CALENDAR CALL

7/30/18 9:00 AM JURY TRIAL



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-17-328587
DEPT. XX

10 vs.

11 DEMARIO LOFTON-ROBINSON,
12 AKA, DEMARIO LOFTONROBINSON,
13 RAEKWON SETREY ROBERTSON,
14 AKA, RAEKWON ROBERTSON,
15 DAVONTAE AMARRI WHEELER,

16 Defendants.

17 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE
18 TUESDAY, JANUARY 09, 2018

19 **RECORDER'S TRANSCRIPT OF HEARING:**
20 **STATUS CHECK: TRIAL SETTING**

21 SEE APPEARANCES ON PAGE 2

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25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

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APPEARANCES:

For the State: GIANCARLO PESCI
Deputy District Attorney

For Defendant
Lofton-Robinson: SCOTT L. BINDRUP
Chief Deputy Special Public Defender

For Defendant Robertson: MACE J. YAMPOLSKY, ESQ.

For Defendant Wheeler: JAMES J. RUGGEROLI, ESQ.

1 [Las Vegas, Nevada, Tuesday, January 09, 2018, at 9:52 a.m.]

2

3 THE COURT: State of Nevada versus Demario Lofton-
4 Robinson, Raekwon Robertson, and Davonte Wheeler, case number
5 C328587. Counsel, please note your appearances for the record.

6 MR. RUGGEROLI: Good morning, Your Honor. James
7 Ruggeroli appearing on behalf of Mr. Wheeler. He's present in custody.

8 MR. YAMPOLSKY: Mace Yampolsky appearing with
9 Raekwon Robertson. He's present in custody.

10 MR. BINDRUP: Scott Bindrup on behalf of Lofton-Robinson.

11 MR. PESCI: Giancarlo Pesci on behalf of the State.

12 THE COURT: Okay, I'm showing this as the time to do a trial
13 setting. This was indicted in December, is that correct?

14 MR. PESCI: Yes, Your Honor.

15 THE COURT: Okay. How long had the defendants been in
16 custody prior to the indictment?

17 MR. PESCI: I think the arrest date was in August.

18 THE COURT: Okay. All right, have the parties talked at all as
19 to a trial setting date?

20 MR. BINDRUP: No.

21 MR. RUGGEROLI: No.

22 THE COURT: Okay. Well let me hear -- Mr. Ruggeroli, you're
23 standing at the desk and closest to me, I'll let you -- do you have any
24 thoughts?

25 MR. RUGGEROLI: Judge, other than April, my calendar is

1 pretty open.

2 THE COURT: Okay. Mr. Bindrup.

3 MR. BINDRUP: I'd ask for an October 15th trial setting. I have
4 another matter, it's a capital case on that same date. And, quite frankly,
5 I think this particular case will be trial ready. And the other one I have a
6 question on at this juncture, but I'd like to at least be in a posture if -- for
7 something to go on that date.

8 THE COURT: Mr. Yampolsky.

9 MR. YAMPOLSKY: I'm reasonably flexible, but I would
10 request at least May.

11 THE COURT: Okay. All right, what's your schedule during
12 the summer, Mr. Bindrup?

13 MR. BINDRUP: Not good unless you set something like
14 September, maybe, which is only -- I mean, realistically, with the
15 October 15th work for other Counsel.

16 THE COURT: Okay. I mean --

17 MR. PESCI: Fine with the State.

18 THE COURT: I'm generally like to -- with these cases not do
19 anything more out than a year from when they're arrested, which is
20 August. What's your calendar look like in June -- or July or August, Mr.
21 Bindrup?

22 MR. BINDRUP: Not good. But give me a date, and I'll try to
23 make it work.

24 THE COURT: How many days do we think this one will take?

25 MR. BINDRUP: Two weeks.

1 MR. PESCI: I agree with that.

2 THE COURT: Okay.

3 THE CLERK: How about July 30th for trial?

4 THE COURT: Mr. Ruggeroli?

5 MR. RUGGEROLI: Judge, that's fine.

6 THE COURT: Mr. Yampolsky?

7 MR. YAMPOLSKY: Sounds okay for me.

8 THE COURT: All right.

9 MR. BINDRUP: You know my response already, Judge.

10 THE COURT: I'm concerned about, you know, getting the
11 defendants. If their Counsel indicate they're going to be ready to trial
12 especially since -- like I said, it's a general rule; I'd like to keep it.
13 People are in custody, and I hate things to drag past a year unless it's
14 necessary. And, obviously, sometimes it is but let's go ahead and we'll
15 work on that basis.

16 How are we doing with discovery?

17 MR. PESCI: We provided everything that we have.

18 THE COURT: Okay. Any issues that you guys have right now
19 with the discovery that's been provided, Mr. Ruggeroli?

20 MR. RUGGEROLI: Judge, I know that we've requested
21 ballistics' testing specifically on a firearm that was allegedly obtained
22 from either my client's residence or a family member's. I haven't heard
23 back; I'm sure the State is working on it, but that is something that's very
24 important to us.

25 MR. PESCI: I don't have it completed.

1 THE COURT: Okay, but are you working on it?

2 MR. PESCI: I believe that the forensic request had been
3 done. I can't speak specifically to which thing he's asking for, but I
4 believe forensics had been requested.

5 THE COURT: All right, forensics; ballistics.

6 Mr. Yampolsky, your perspective?

7 MR. YAMPOLSKY: Right now, I'm fine. I know my client
8 wanted to discuss a quote unquote evidentiary hearing. I'm happy to
9 discuss that with him. At this stage of the game, I don't know of any
10 evidentiary hearings that I would request. But I'm always working --

11 THE COURT: Okay. Well, I mean -- obviously, if something
12 comes up, you can file a motion and we'll deal with it. Any issues you
13 got with discovery?

14 MR. YAMPOLSKY: No.

15 THE COURT: All right. Mr. Bindrup, what's your perspective?

16 MR. BINDRUP: If you give us enough time for a status check
17 date, I'll try to -- again, got 3 or 4 individuals, plus a homicide detective
18 to do the vault, and then also with Mr. Pesci to do the file review. So if
19 you -- I know you like to set these within a month, but I don't think we'll
20 be able to coordinate schedules that quickly. So if you could put it out a
21 little bit longer, the status check.

22 THE COURT: What I'm going to do with this one is based
23 upon what I'm hearing, I'll put it out to the April stack for a status check.
24 I'll expect us to have the ballistics done, or a specific schedule as to
25 when those are going to be done by the April status check; that we do

1 any vault or evidence review with the State by that time; gives you plenty
2 of time to schedule it.

3 MR BINDRUP: So that would be April 4th, Your Honor?

4 THE CLERK: Will be April 5th at 8:30.

5 MR. BINDRUP: I ask for April 4th. It'll be -- no, I just have -- I
6 have other matters set April 4th, that's all.

7 THE CLERK: April 4th is a Wednesday.

8 THE COURT: No, no.

9 MR. BINDRUP: Oh, really? Okay, so it is -- it would be the
10 5th?

11 THE COURT: Yeah.

12 MR. BINDRUP: Okay, that's fine.

13 THE CLERK: In here.

14 MR. PESCI: Could we get a calendar call date?

15 THE CLERK: Not yet.

16 THE COURT: All right, go ahead and give everybody the
17 dates that they need.

18 THE CLERK: Okay. Calendar call is July 24th at 8:30; jury
19 trial, July 30th at nine a.m., and the status check is April 5th at 8:30.

20 MR. PESCI: Thank you very much.

21 MR. BINDRUP: And, Your Honor, the grand jury transcript, I
22 just barely got it. I got the copy to my client this morning. May I request
23 that we have 30 days from today in which to file a writ if we deem it
24 necessary?

25 THE COURT: Well, usually, it's 21 days. I mean, I can't

1 imagine there's a lot of surprise. What's the State's position?

2 MR. PESCI: I'll submit it, Judge.

3 MR. BINDRUP: So could we have 30 days from today?

4 THE COURT: All right, 30 days.

5 MR. BINDRUP: Thank you. I appreciate it.

6 MR. RUGGEROLI: That will apply to all defendants?

7 THE COURT: That will apply to all defendants.

8 MR. RUGGEROLI: Thank you, Judge.

9 THE COURT: Anything else?

10 MR. RUGGEROLI: No, Judge.

11 MR. PESCI: No. Thank you.

12 MR. RUGGEROLI: Thank you.

13 MR. BINDRUP: Thanks.

14 THE COURT: All right. Thank you, guys.

15 [Hearing concluded at 9:59 a.m.]

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

24

25



Angie Calvillo
Court Recorder/Transcriber

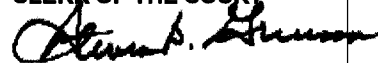
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Attorney for Defendant

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Steven D. Grierson
CLERK OF THE COURT



**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of the Application

OF DAVONTAE AMARRI WHEELER,
#5909081

For a Writ of Habeas Corpus

Case No. C-17-328587-3

Dept No. XX

DATE OF HEARING: _____

TIME OF HEARING: _____

PETITION FOR WRIT OF HABEAS CORPUS

**TO: THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK**

The Petition of DAVONTAE AMARRI WHEELER, by and through his attorney,
JAMES J. RUGGEROLI, ESQ., respectfully shows:

1. That he is a duly qualified, practicing and licensed attorney in the City of Las Vegas, County of Clark, and State of Nevada.

2. That Petitioner is the defendant in the above entitled matter.

3. Petitioner makes application on behalf of his client for a Writ of Habeas Corpus; that the place where the client of Petitioner is restrained of his liberty in the County of Clark, State of Nevada; that the officer by whom he is restrained is, JOSEPH LOMBARDO SHERIFF, Las Vegas Metropolitan Police Department, Las Vegas, Clark County, Nevada in that there was insufficient evidence presented to the grand jury to restrain the Defendant.

1 4. That Petitioner waives the sixty (60) day limitation for brining said client to trial.

2 5. That Petitioner consents that if the Petition is not decided within fifteen (15) days
3 before the date set for trial, the Court may without notice of hearing, continue the trial
4 indefinitely to a date designated by the Court.

5 6. That Petitioner consents that if any party appeals the Court's ruling and the appeal
6 is not determined before the date set for trial, the trial date be automatically vacated and the trial
7 postponed unless the Court otherwise orders.

8 7. That no other Petition for Writ of Habeas Corpus has heretofore been filed on
9 behalf of said client of Petitioner on this particular issue.

10 8. This Petition is based upon the records and pleadings on file herein, the
11 Memorandum of Points and Authorities attached hereto, and upon such other grounds and
12 evidence as may be adduced at a hearing on this Writ.

13 **WHEREFORE**, Petitioner prays that this Honorable Court make an Order directing the
14 County Clerk to issue a Writ of Habeas Corpus directed to said **SHERIFF OF CLARK**
15 **COUNTY, NEVADA**, commanding him to bring the above-mentioned client of Petitioner
16 before your Honor, and return the cause of his imprisonment.

17 Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State
18 of Nevada that the foregoing is true and correct

19 DATED this 6th day of February, 2018.

20 **JAMES J. RUGGEROLI**

21 By: /s/ James Ruggeroli
22 James J. Ruggeroli, Esq.
23 Nevada Bar No. 7891
24 601 South 7th Street
25 Las Vegas, Nevada 89101
26 Attorneys for Defendant
27
28

NOTICE

TO: THE HONORABLE JUDGE, District Court Department XX; and
TO: STEVEN B. WOLFSON, ESQ., Attorney for Plaintiff.

PLEASE TAKE NOTICE that the Petition for Writ of Habeas Corpus will be heard in
Department XX before the District Court Judge on the 27 day of
Feb., 2018 at the hour of 8:30 a.m. or as soon thereafter as
counsel can be heard.

DATED this 6th day of February, 2018.

JAMES J. RUGGEROLI

By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
601 South 7th Street
Las Vegas, Nevada 89101
Attorneys for Defendant

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

JAMES J. RUGGEROLI, ESQ., being first duly sworn, deposes and says:

That I am the attorney for Defendant in the above-entitled action; that I have read the
foregoing Petition, know the contents thereof, that the same are true and correct to the best of my
knowledge, information and belief, except for those matters therein stated on information and
belief, and as for those matters, JAMES J. RUGGEROLI believes them to be true; that the
Defendant personally authorized me to commence this Petition for Writ of Habeas Corpus.

Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State
of Nevada that the foregoing is true and correct

DATED this 6th day of February, 2018.

JAMES J. RUGGEROLI

By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.
Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

There was insufficient evidence against Mr. Wheeler presented to the grand jury to support the charges and Indictment. The Indictment must therefore be dismissed.

II. STATEMENT OF THE CASE / STATEMENT OF THE FACTS

1. The State has charged Mr. Wheeler by way of Indictment with: COUNT 5 CONSPIRACY TO COMMIT ROBBERY; COUNT 6 ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON; COUNT 7 MURDER WITH USE OF A DEADLY WEAPON. See Indictment on file herein.

2. The allegations and testimony presented to the grand jury related to Mr. Wheeler are essentially as follows:

3. Lary Simms, a forensic pathologist testified that the decedent (Gabriel Valenzuela) had four gunshot wounds (Grand Jury Transcript ("GJT") on file herein at 13:21) that Mr. Simms determined to be the cause of death (GJT 17:21-25-18:1) and the manner of death being homicide (GJT 18:1-2).

4. Nikolaus Spahn, an employee at Short Line Express on Jones and Warm Springs (hereinafter the "Short Line Express"), testified that during the late night/early morning of August 8/9, 2017 (GJT21:13-19):

a. Four individuals that caused him concern came into his store. (GJT 21:23-25-23:14).

b. One of the customers had an open carry gun in a holster on the right side of his hip when he entered the store. (GJT 23:8-23).

c. The store was equipped with video surveillance inside and outside of the establishment. (GJT 24:8-13).

d. Mr. Spahn noticed that the care the individuals were in was a four-door white Mercury "Crown Vic." (GJT 26:12-15).

e. The four individuals had been in the store at "about 11:20, 11:25" p.m. on

1 August 8, 2017. (GJT 27:8-11).

2 f. Police later came to the store seeking information about the four
3 individuals at about 12:15 a.m. on August 9, 2017. (GJT 27:15-16).

4 g. The Short Line Express manager later provided the video surveillance
5 from the store to police. (GJT 29:23-25).

6 5. Robert Mason, a witness that lives in Las Vegas on Zachary Street, testified that:

7 a. He had gone for a jog after returning home from work close midnight.
8 (GJT 46:5-15).

9 b. While jogging, Mr. Mason noticed four suspicious individuals in his
10 neighborhood. (GJT 46:16-20).

11 c. Mr. Mason was not able to personally identify any of the individuals,
12 however, he was able to notice that the race of the four individuals were all "dark skin,
13 black individuals." (GJT 47:11-23).

14 d. Mr. Mason continued jogging and noticed a white "Crown Vic style
15 vehicle on ... Lindell" and took notes about the vehicle on his phone, including the
16 license plate number 473YZB. (GJT 50:1-20).

17 e. Later, while still jogging, Mr. Mason called his wife and informed her to
18 lock the house and call 311 to report "some suspicious guys in the neighborhood." (GJT
19 51:18-25).

20 6. Shawn Fletcher, Las Vegas Metropolitan Police Department ("Metro") senior
21 crime scene analyst testified that:

22 a. He documented the white Crown Vic's search and took photographs on
23 August 9, 2017. (GJT 54-61).

24 b. A pair of red Air Jordan shoes were recovered. (Id.)

25 c. A box of 45 caliber ammunition head-stamped "FC" for "Federal and "N"
26 for NATO was found. (Id.).

27 7. William Speas, Metro senior crime scene analyst testified:

28 a. He had been called to assist in searching and documenting aspects of the

1 investigation relating to the crime scene at 5536 West Dewey Drive (the “Dewey Scene”)
2 and other locations (including the Short Line Express, 919 Bagpipe Court (“Bagpipe”),
3 on August 9, 2017. (GJT 65:6-10).

4 b. A number of cartridge cases were impounded at the Dewey Scene (GJT
5 68).

6 c. There were three 45 caliber cartridges with three different head stamps
7 and a 22 caliber cartridge found at the Dewey Scene. (GJT 70-71).

8 d. One of the 45 caliber cartridge cases was an R-P 45 auto. (GJT14-19).

9 8. Glezzelle Tapay, a Metro crime scene analyst testified:

10 a. On August 15, 2017, she responded to 6647 West Tropicana (the
11 “Tropicana Address”) to photograph and document a residence searched pursuant to a
12 search warrant. (GJT 77-82).

13 b. A Taurus 22 caliber firearm and 22 caliber ammunition with “C” head
14 stamp was located at the Tropicana Address. (GJT 78-79).

15 9. Mitchell Dosch, a Metro Detective, testified:

16 a. On August 9, 2017, he went to the Short Line Express and observed the
17 surveillance video. (GJT 95).

18 b. Det. Dosch obtained a search warrant for Bagpipe and found a 45 handgun
19 at that address. (GJT 97-98).

20 c. During the course of his investigation, he determined that Raekwon
21 Robertson was associated with the Tropicana Address. (GJT 98).

22 d. During the course of his investigation, he determined that Demario
23 Lofton-Robinson and DeShawn Robinson were associated with the Bagpipe Address.
24 (GJT 98-99).

25 e. During the course of his investigation, Det. Dosch was aware of a search
26 at 3300 Civic Center, apartment 2f (the “Civic Center Address”) where police recovered
27 a third firearm, a 45 caliber semi-automatic handgun. (GJT 98-99).

28 f. Police recovered 45 caliber cartridge cases with head stamp “R-P” in a 45

1 handgun at the Bagpipe and at the Civic Center address. (GJT 100-101).

2 g. Det. Dosch testified that he had information” that Mr. Wheeler was
3 associated with the Civic Center Address. (GJT 101).

4 h. 45 caliber cartridges with a head stamp “NFCR” and “Winchester 45
5 Auto” were found at the murder scene. (GJT 101-102).

6 i. No “Winchester 45 Auto” head stamp cartridges were found during any of
7 the searches in this case. (GJT 101-102) (emphasis added).

8 j. During the investigation, Det. Dosch came in contact with Raekwon
9 Robertson and Davontae Wheeler. (GJT 105).

10 k. Based on Det. Dosch’s time with Mr. Wheeler, testified that he could
11 identify Mr. Wheeler as the individual with the open-carry firearm in the Short Line
12 Express surveillance video. (GJT 106).

13 l. Det. Dosch interviewed Demario Lofton-Robinson, who admitted to being
14 one of the shooters and that he used the 45 semi-automatic handgun found at the Bagpipe
15 Address. (GJT 110-112).

16 m. A Taurus 45 caliber handgun and “RP 45 Auto” head stamped cartridges
17 were located at the Civic Center Address. (GJT 115-116).

18 10. Detective Ryan Jaeger with Metro testified that:

19 a. During the course of his investigation he came into contact with and
20 interviewed Mr. Wheeler. (GJT 144).

21 b. According to Det. Jaeger, Mr. Wheeler admitted to owning a 45 caliber
22 handgun, to being in the vehicle (the white Grand Marquis) and to being in the Short Line
23 Express on August 8, 2017. (GJT 145-146).

24 c. However, according to Det. Jaeger, ***Mr. Wheeler denied being involved in***
25 ***any killing*** and that Mr. Wheeler said that he had been in the vehicle “trying to negotiate
26 to buy a Beretta handgun, he couldn’t reach a price for the gun that he liked ***so he got out***
27 ***of the vehicle and took a bus home.***” (GJT146:14-17) (emphasis added).
28

III. LAW AND ARGUMENT

A. LEGAL STANDARD

A defendant charged with an offense may challenge the probable cause to hold him to answer through a petition for writ of habeas corpus. Gary v. Sheriff, Clark County, 96 Nev. 78, 605 P.2d 212 (1980); Cook v. State, 85 Nev. 692, 462 P.2d 523 (1969). NRS 171.206 requires the magistrate to determine if probable cause exists to believe that an offense has been committed and that the defendant has committed it. To establish probable cause to bind a defendant over for trial, the State must show that (1) a crime has been committed, and (2) there is probable cause to believe the defendant committed it. See NRS 171.206.

A suspect may not be bound over for trial unless the state demonstrates that the suspect committed the charged crime. Sheriff, Clark County v. Richardson, 103 Nev. 180, 734 P.2d 735 (1987). It is recognized that the finding of probable cause to support a criminal charge may be based on slight, even marginal, evidence because it does not involve a determination of the guilt or innocence of an accused. Sheriff, Clark County v. Richardson, 103 Nev. 180, 734 P.2d 735 (1987). However, finding of probable cause requires far more than a trace of evidence; the facts must be such as would lead a person of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that the defendant committed the crime in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972). Moreover, a finding of probable cause may not rest on other than "legal evidence," See Tetrou v. Sheriff, 89 Nev. 166, 169 (1973), and "due process of law requires adherence to the adopted and recognized rules of evidence." Goldsmith v. Sheriff, 85 Nev. 295, 303 (1969).

For the reasons set forth below, the Indictment here must be dismissed because the State failed to present sufficient evidence against Mr. Wheeler to support the Indictment.

A. INSUFFICIENT EVIDENCE

The evidence connecting Mr. Wheeler to the charged crimes presented to the grand jury essentially amounts to:

1. The white, Crown Vic/Mercury and four individuals, including Mr. Wheeler are on surveillance video from the Short Line Express on August 8, 2017 at approximately 11:20. (GJT 27).

2. The Short Line Express video shows one individual with an open carry firearm (GJT 23), later identified as Mr. Wheeler (GJT 106).

3. Mr. Mason observed four “dark skin, black individuals” near midnight. (GJT 47).

4. There were three 45 caliber cartridges with three different head stamps and a 22 caliber cartridge found at the Dewey Scene. (GJT 70-71).

5. One of the 45 caliber cartridge cases was an “R-P” 45 auto. (GJT14-19).

6. 45 caliber cartridges with a head stamp “NFCR” and “Winchester 45 Auto” were also found at the murder scene. (GJT 101-102).

7. No “Winchester 45 Auto” head stamp cartridges were found during any of the searches in this case. (GJT 101-102) (emphasis added).

8. Det. Dosch testified that he had information” that Mr. Wheeler was associated with the Civic Center Address. (GJT 101).

9. Based on Det. Dosch’s time with Mr. Wheeler, testified that he could identify Mr. Wheeler as the individual with the open-carry firearm in the Short Line Express surveillance video. (GJT 106).

10. Detective Ryan Jaeger with Metro testified that:

a. During the course of his investigation he came into contact with and interviewed Mr. Wheeler. (GJT 144).

b. According to Det. Jaeger, Mr. Wheeler admitted to owning a 45 caliber handgun, to being in the vehicle (the white Grand Marquis) and to being in the Short Line

1 Express on August 8, 2017. (GJT 145-146).

2 c. However, according to Det. Jaeger, *Mr. Wheeler denied being involved in*
3 *any killing* and that Mr. Wheeler said that he had been in the vehicle “trying to negotiate
4 to buy a Beretta handgun, he couldn’t reach a price for the gun that he liked *so he got out*
5 *of the vehicle and took a bus home*.” (GJT146:14-17) (emphasis added).

6 It is recognized that the finding of probable cause to support a criminal charge may be
7 based on slight, even marginal, evidence because it does not involve a determination of the guilt
8 or innocence of an accused. Sheriff, Clark County v. Richardson, 103 Nev. 180, 734 P.2d 735
9 (1987). However, finding of probable cause requires far more than a trace of evidence; the facts
10 must be such as would lead a person of ordinary caution and prudence to believe and
11 conscientiously entertain a strong suspicion that the defendant committed the crime in question.
12 See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972). Moreover, it is
13 respectfully submitted that a finding of probable cause may not rest on other than “legal
14 evidence,” See Tetrou v. Sheriff, 89 Nev. 166, 169 (1973), and “due process of law requires
15 adherence to the adopted and recognized rules of evidence.” Goldsmith v. Sheriff, 85 Nev. 295,
16 303 (1969).

17
18 In the case at hand, there is simply not enough evidence against Mr. Wheeler in this case
19 to support the charges and the Indictment. Finding probable cause requires far more than the
20 “trace of evidence” the State presented to the grand jury. Moreover, the facts here against Mr.
21 Wheeler are not such as would lead a person of ordinary caution and prudence to believe and
22 conscientiously entertain a strong suspicion that Mr. Wheeler committed the crimes in question.
23 See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972).

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1 **IV. CONCLUSION**

2 For the reasons stated herein, it is respectfully requests that this Court dismiss the
3 Indictment against Mr. Wheeler.

4 DATED this 8th day of February, 2018.

5 **JAMES J. RUGGEROLI**

6 By: /s/ James Ruggeroli
7 James J. Ruggeroli, Esq.
8 Nevada Bar No. 7891
9 601 South 7th Street
Las Vegas, Nevada 89101
Attorney for Defendant

10 **DECLARATION OF JAMES J. RUGGEROLI, ESQ.**

11 JAMES J. RUGGEROLI, ESQ., being first duly sworn under oath, deposes and states:

12 1. I am an attorney at law duly licensed to practice before this Court and make this
13 Declaration of facts from personal knowledge which is known to me, except for those matters
14 stated upon information and belief, and as to those matters, I believe same to be true.

15 2. I am counsel of record for the Defendant, DAVONTAE AMARRI WHEELER.

16 3. Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of
17 the State of Nevada that the foregoing is true and correct.

18 DATED this 8th day of February, 2018.

19 **JAMES J. RUGGEROLI**

20 By: /s/ James Ruggeroli
21 James J. Ruggeroli, Esq.
22 Nevada Bar No. 7891

23 **CERTIFICATE OF SERVICE**

24 I hereby certify that on the 8th day of February 2018, I emailed a copy of the foregoing
25 Petition to them at the following address:

26 motions@clarkcountyda.com

27 By: /s/ James Ruggeroli
28 James J. Ruggeroli, Esq.

JAMES J. RUGGEROLI, ESQ.

601 South 7th Street
Las Vegas, Nevada 89101
TEL: (702) 258-2022 | FAX: (702) 258-2021

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EXHIBIT A

Steven D. Grierson

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

12:00

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3

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12:00

5

THE STATE OF NEVADA,

)

6

Plaintiff,

)

7

vs.

)

GJ No. 17BGJ017A-C

)

DC No. C328587

8

DEMARIO LOFTON-ROBINSON, aka
Demario Loftonrobinson, RAEKWON

)

9

SETREY ROBERTSON, aka Raekwon
Robertson, DAVONTAE AMARRI

)

12:00

10

WHEELER,

)

11

Defendants.

)

12

13

14

Taken at Las Vegas, Nevada

12:00

15

Wednesday, November 29, 2017

16

8:30 a.m.

17

18

19

12:00

20

REPORTER'S TRANSCRIPT OF PROCEEDINGS

21

22

VOLUME 1

23

24

12:00

25

Reported by: Danette L. Antonacci, C.C.R. No. 222

Felony/Gross Misdemeanor

COURT MINUTES

February 27, 2018

C-17-328587-3 State of Nevada
 vs
 Davontae Wheeler

February 27, 2018 08:30 AM Petition for Writ of Habeas Corpus

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Kearney, Madalyn; Skinner, Linda

RECORDER: Calvillo, Angie

REPORTER:

PARTIES PRESENT:

Davontae Amarri Wheeler	Defendant
James J. Ruggeroli	Attorney for Defendant
Megan Thomson	Attorney for Plaintiff
State of Nevada	Plaintiff


JOURNAL ENTRIES

Mr. Ruggeroli advised the State contacted him and requested more time for their reply; however, Mr. Ruggeroli noted Deft. wants him to go forward with the Writ today. COURT ORDERED, the following briefing schedule:

State to respond by: 3/2/18
Mr. Ruggeroli's reply by: 3/9/18

COURT FURTHER ORDERED, matter CONTINUED.

CONTINUED TO: 3/20/18 9:00 AM



1 RTRAN

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3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-17-328587-3
DEPT. XX

10 vs.

11 DAVONTAE AMARRI WHEELER,
12 Defendant.

13
14 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE
15 TUESDAY, FEBRUARY 27, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

18
19 APPEARANCES:

20 For the State:

MEGAN S. THOMSON
Chief Deputy District Attorney

21
22 For the Defendant:

JAMES J. RUGGEROLI, ESQ.

23
24
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, February 27, 2018, at 9:45 a.m.]

2

3 THE COURT: State of Nevada versus Davontae Wheeler,
4 case number C328587. Counsel, please note your appearances for the
5 record.

6 MS. THOMSON: Megan Thomson for the State.

7 MR. RUGGEROLI: Good morning, Your Honor. James
8 Ruggeroli for Mr. Wheeler. He's present in custody.

9 THE COURT: Okay, I've got a Petition for Writ of Habeas
10 Corpus, but I don't have a response.

11 MR. RUGGEROLI: Judge, if I may. The State contacted me
12 and asked for additional time. I wanted to make note that, Mr. Wheeler
13 was not aware that they needed more time and he would've wanted to
14 go forward this morning. However, based on your previous extension of
15 time, you gave us 30 days to do the writ instead of the normal 21.

16 I have no objection, but Mr. Wheeler did want me to
17 make note that he would've preferred to go forward today. We just need
18 some additional time for the State to finish their reply, and then I may
19 need a week to respond as well.

20 THE COURT: How much more time does the State need?

21 MR. RUGGEROLI: I think they were going to file it, a
22 possibility, today.

23 MS. THOMSON: Whatever Mr. Ruggeroli is willing to agree
24 to.

25 THE COURT: All right. Well I'll say the State has to file by

1 Friday of this week.

2 MS. THOMSON: Thank you.

3 THE COURT: And give you until the Friday of the next week,
4 and then we'll set this on the next date that we can consider it.

5 MR. RUGGEROLI: Thank you, Judge.

6 THE CLERK: Okay, so one is to file by the 2nd, and then the
7 9th, and then March 29th at nine a.m.

8 MR. RUGGEROLI: Is there any way -- I know you're really
9 stacked, but on the 20th or any earlier; earlier than the 29th?

10 THE CLERK: We can do it on the 20th.

11 MR. RUGGEROLI: Okay. And, Judge, I'm going to be filing a
12 bail reduction motion at the same time and that's why.

13 THE COURT: Okay.

14 MR. RUGGEROLI: Thank you.

15 THE COURT: Alrighty.

16 MR. RUGGEROLI: The 20th. Thank you, Judge.

17 [Hearing concluded at 9:48 a.m.]

18

19


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

22

23

24

25



Angie Calvillo
Court Recorder/Transcriber

FILED

MAR - 7 2018

John J. Williams
CLERK OF COURT

1 **NOTC**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **GIANCARLO PESCI**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #007135**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

C-17-328587-3
NOTC
Notice
4728749



**DISTRICT COURT
CLARK COUNTY, NEVADA**

12 **THE STATE OF NEVADA,**

13 **Plaintiff,**

14 **-vs-**

15 **DAVONTAE AMARRI WHEELER,**
16 **#5909081**

17 **Defendant.**

CASE NO: C-17-328587-3

DEPT NO: XX

**STATE'S NOTICE OF EXHIBITS
FOR STATE'S RETURN TO WRIT OF HABEAS CORPUS**

18 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County**
19 **District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and files**
20 **this Notice of Exhibits.**

21 **EXHIBIT 1: DVD**

22 **//**
23 **//**
24 **//**
25 **//**
26 **//**
//
//

RECEIVED
MAR 7 - 2018
CLERK OF THE COURT

W:\2017\2017F\14369\17F14369-NOTC-(WHEELER_DAVONTAE)-001.DOCX



1 **JAMES J. RUGGEROLI**
2 James J. Ruggeroli, Esq.
3 Nevada Bar No. 7891
4 601 South 7th Street
5 Las Vegas, Nevada 89101
6 Telephone: (702) 258-2022
7 Facsimile: (702) 258-2021
8 *Attorney for Defendant*

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 STATE OF NEVADA

Case No. C-17-328587-3

9
10 Plaintiff,

Dept No. XX

11 vs.

DATE OF HEARING: March 20, 2018

12 DAVONTAE AMARRI WHEELER,
13 #5909081,

14 Defendant.

15 **REPLY TO STATE'S RETURN TO WRIT OF HABEAS CORPUS**

16 COMES NOW, the Defendant, DAVONTAE AMARRI WHEELER, by and through his
17 attorney of record, JAMES J. RUGGEROLI, ESQ., and submits the following Reply to State's
18 Return to Writ of Habeas Corpus. This supplement and reply is made and based upon the
19 attached points and authorities and the Declaration of James J. Ruggeroli, the papers and
20 pleadings on file herein, together with the arguments of counsel to be heard at the time of the
21 hearing on this matter.

22 DATED this 8th day of March 2018.

23 **JAMES J. RUGGEROLI**

24 By /s/ James J. Ruggeroli
25 James J. Ruggeroli, Esq.
26 Nevada Bar No. 7891
27 601 South 7th Street
28 Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After filing the Petition for Writ of Habeas Corpus, the State provided the defense with a Forensic Laboratory Report of Examination for Firearms & Toolmarks (the "Report") which shows that Mr. Wheeler's firearm was not used in this case. See a true and correct copy attached hereto as **Exhibit A**. (The Report was not available prior to the grand jury proceedings.)

In contrast to the State's Return, there is clearly insufficient evidence against Mr. Wheeler, especially in light of the new evidence contained in the Report, to support the charges and Indictment, and the Indictment must therefore be dismissed. In the alternative, at the very minimum, because the forensic examination's results constitute exculpatory evidence, the State must return to the grand jury to present this evidence. See NRS 172.145(2)

II. STATE'S STATEMENT OF THE FACTS SUPPORTING THE INDICTMENT

In the Return, the State makes clear that the gun found in Mr. Wheeler's home constitutes the most important piece of "circumstantial" evidence supporting the Indictment. In the Return, the State essentially argues that the evidence amounts to the following:

1. On the night of August 8, 2017, the Defendant was inside the Shortline Express between 11:20-11:38 and was captured on surveillance wearing a firearm on his right hip. See State's Return ("SR") at 11:14-20.

2. The convenience store is only a matter of minutes away from the scene of the murder. Id.

3. Defendant admitted that he owns a .45 caliber firearm and that he wears it in an open carry fashion. Id.

4. During the execution of a search warrant at 3300 Civic Center Drive (an address

1 associated with Defendant.), officers found a pair of maroon shoes and a white hat which
2 constitute an exact match to those worn by Defendant in the surveillance footage. SR at 11:20-
3 24.

4 5. While Defendant was inside the store, he was with three other black males who
5 were all seen in a white Mercury Grand Marquis bearing a license plate beginning with the
6 numbers 473. SR 11:25-28.

7 6. Less than 30 minutes later, at around midnight, Mr. Mason saw four black men
8 standing in front of the victim's home, near a vehicle that he described as a white Crown Victoria
9 with license plate number 473YZB. SR 11:27-12:1.

10 7. Mr. Newman testified that he sold that exact car to Co-Defendant Lofton-
11 Robinson four days before Mr. Valenzuela's murder. SR 12:2-3.

12 8. Based on the surveillance footage from the Shortline Express in conjunction with
13 the testimony of Mr. Mason (the jogger) Mr. Spahn (the convenience store clerk) and Mr.
14 Newman (the vehicle's prior owner), there can be no dispute that the vehicle seen by Mr. Mason
15 in front of the victim's house is the same vehicle captured on surveillance footage at the
16 Shortline Express. SR 3-7.

17 9. Not only does this evidence create a reasonable inference Defendant was at the
18 scene of the murder, it places him there in very close proximity to the murder. SR 12:8-11.

19 10. The first call to 911 was made at 12:11, just minutes after Mr. Mason saw four
20 black men and the white vehicle in front of the victim's home. Id.

21 11. Additionally, Defendant was seen in possession of a firearm approximately 30
22 minutes before the killing. Id.

23 12. Furthermore, in a search warrant of 3300 Civic Center Drive officers located a .45
24 caliber firearm with ammunition bearing the headstamp RP-45 auto. This headstamp matches
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1 one of the .45 caliber shell cases found at the scene of the murder. SR 11:14-12:7.

2 In conclusion, the State argues that based on these facts, “the State demonstrated a
3 reasonable inference that Defendant committed the crime of Murder with Use of a Deadly
4 Weapon.” SR at 12:18-20.

5 **III. EXCULPATORY EVIDENCE**

6 Mr. Wheeler began requesting that a forensic examination be performed on his at least as
7 far back as November 21, 2017. The State made its presentment to the grand jury prior to the
8 Report being issued. The Report and its findings demonstrate that Mr. Wheeler’s firearm (a
9 Taurus 45 caliber handgun and located during the search of Mr. Wheeler’s home at the Civic
10 Center address (GJT 115-116) had not been used in the murder in this case. See Exhibit A. The
11 evaluation excluded Mr. Wheeler’s gun as having fired any of the bullets that killed the victim or
12 discharged and of the cartridges found at the scene. Id.

13 **IV. LAW AND ARGUMENT**

14 (A) There is not probable cause establishing that Mr. Wheeler committed the crime, and,
15 in the alternative, (B) the State must return to the grand jury to present the exculpatory evidence
16 that Mr. Wheeler’s gun reveals no connection to the shooting.

17 **A. INSUFFICIENT EVIDENCE**

18 To establish probable cause to bind a defendant over for trial, the State must show that
19 (1) a crime has been committed, and (2) there is probable cause to believe the defendant
20 committed it. See NRS 171.206. Finding of probable cause requires far more than a trace of
21 evidence; the facts must be such as would lead a person of ordinary caution and prudence to
22 believe and conscientiously entertain a strong suspicion that the defendant committed the crime
23 in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972).
24

25 The relevant evidence presented to the grand jury here can be summarized essentially as
26 (1) *at least* three other individuals were at the Shortline Express approximately 30-40 minutes
27 prior to the shooting (GJT 27); (2) Mr. Wheeler claimed to have gotten out of the car after being
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1 at the Shortline Express and taken a bus home (GJT 146:14-17); (3) the jogger saw the White
2 Grand Marquis and four dark skinned individuals near the victim's home near midnight, but he
3 provided only general descriptions and there was no actual identification (GJT 47); (4) a
4 "Winchester 45 Auto" was found at the murder scene. (GJT 101-102); but, (6) no "Winchester
5 45 Auto" head stamp cartridges were found during any of the searches in this case (GJT 101-
6 102); and (7) *we now know that the*

8 *linchpin of the State's evidence against Mr. Wheeler (the .45 caliber gun found at his*
9 *residence) was not used in the shooting. See Exhibit A.*

10 The State's evidence simply does not provide enough evidence to support the charges.
11 The facts here against Mr. Wheeler are not such as would lead a person of ordinary caution and
12 prudence to believe and conscientiously entertain a strong suspicion that Mr. Wheeler committed
13 the crimes in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972).
14 Moreover, the State's contention that the evidence provides a reasonable inference that
15 Defendant committed the crime of Murder with Use of a Deadly Weapon (SR at 12:18-20) has
16 no support.

17 There was no proof that there were *only* four individuals present at the Shortline Express.
18 The video simply shows four individuals in the store. Additionally, the evidence demonstrates
19 that Mr. Wheeler claimed to have gotten out of the vehicle shortly after being at the convenience
20 store, and there were no identifications of any of the individuals present just before the shooting.
21 Thus, there's no evidence that Mr. Wheeler was present, and there is evidence that Mr. Wheeler
22 was not present at the time of the shooting.

23 This fact is based not only on Mr. Wheeler's statements, but it is also supported by the
24 Winchester shell casings recovered at the scene. No Winchester casings were found at the
25 codefendants' residences or at Mr. Wheeler's addresses. Thus, the evidence would certainly
26 demonstrate that there is another individual (*a fifth man*) that had been present at the Shortline
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1 Express but not seen on the video, and that individual had been the *fourth man* at the scene
2 observed by the jogger. That fourth, unknown man would be the one that used the Winchester
3 cartridges. Thus, on the one hand, the State failed to present evidence that Mr. Wheeler was one
4 of the individuals actually present at the scene.

5 On the other hand, even if there were an inference that Mr. Wheeler may have been
6 present, there is no evidence supporting a conspiracy to rob, lying in wait, or felony murder, nor
7 is there any evidence that Mr. Wheeler aided or abetted the crime. There is no inference from the
8 evidence actually presented that Mr. Wheeler was part of a preconceived plan. There are simply
9 gaps in the evidence into which the State is creating the notion of inference but without facts to
10 support the inference. Simply saying that "the most reasonable explanation is . . ." cannot be
11 constituted as evidence. Again, there is no evidence or inference-supported-by-the-evidence
12 establishing a conspiracy, a robbery or an attempt to rob, period. This court should therefore
13 dismiss the Indictment as having insufficient evidence to support it.

14
15 **B. IN THE ALTERNATIVE, THE STATE MUST PRESENT THE**
16 **EXCULPATORY EVIDENCE TO THE GRAND JURY PURSUANT TO**
17 **BASIC NOTIONS OF JUSTICE AND NRS 172.145(2)**

18 Despite the fact that the district attorney was not aware of the Report at the time of the
19 grand jury proceedings, good cause supports requiring the State to return to the grand jury and
20 present the exculpatory evidence it is now undeniably aware of. The State has a special duty
21 pursuant to NRS 172.145(2): "If the district attorney is aware of any evidence which will explain
22 away the charge, the district attorney shall submit it to the grand jury." Exculpatory evidence
23 has been defined as that evidence "which has a tendency to explain away the charge against the
24 target of the grand jury's investigation." Lane v. District Court, 104 Nev. 427, 463, 760 P.2d
25 1245, 1269 (1988) (Steffen, J., concurring) (citing Sheriff v. Frank, 103 Nev. 157 at 160, 734
26 P.2d 1241 at 1244 (1987)).

27 "In construing a statute, [the] primary goal is to ascertain the [L]egislature's intent in
28

1 enacting it, and we presume that the statute's language reflects the [L]egislature's intent." Moore
2 v. State, 117 Nev. 659, 661, 27 P.3d 447, 449 (2001). "Generally, when the words in a statute are
3 clear on their face, they should be given their plain meaning unless such a reading violates the
4 spirit of the act." Speer v. State, 116 Nev. 677, 679, 5 P.3d 1063, 1064 (2000) (quoting Anthony
5 Lee R., A Minor v. State, 113 Nev. 1406, 1414, 952 P.2d 1, 6 (1997)). As a general rule, courts
6 are to construe inconsistencies or ambiguities in criminal provisions in the defendant's favor. See
7 Bergna v. State, 120 Nev. 869, 873, 102 P.3d 549, 551 (2004).

9 Here, Mr. Wheeler contends that since the State is now aware of the evidence (and
10 arguably either could have been aware of the evidence or should have been aware of the
11 evidence prior to the proceedings), it must now return and present this evidence to the grand jury.
12 The statute, on its face, is silent as to whether the State's obligation to present exculpatory
13 evidence ends at the time of the initial presentment to the grand jury. However, such a
14 requirement would not be inconsistent with NRS 172.145(2), and justice and fundamental
15 fairness certainly support ordering the State to present this evidence to the grand jury.

17 This court has jurisdiction to require resubmission.

18 Grand juries have traditionally been within the control of the courts, In re Grand
19 Jury Subpoena to Central 1252 States, 225 F. Supp. 923 (N.D.Ill. 1964); In re
20 Ormsby Grand Jury, 74 Nev. 80, 322 P.2d 1099 (1958); and the trial judge should
21 exercise his powers when appropriate. United States v. Doulin, 538 F.2d 466 (2d
22 Cir.1976), cert. denied, 429 U.S. 895 [97 S.Ct. 256, 50 L.Ed.2d 178]. Moreover,
23 our constitutional and statutory scheme contemplate reasonable judicial control of
24 our grand juries. Thus, the court presides at the impanellment of the grand jury
(Art. 6, § 5, Nev. Const.; NRS 6.110-140), receives presentments and indictments
(Art. 6, § 5, Nev. Const.; NRS 172.255, 172.285), determines when a grand jury
shall be impanelled (NRS 6.110, 6.130), charges the grand jury as to its
authorities and responsibilities (NRS 172.095), and determines when a grand jury
is to be discharged, recessed (NRS 6.145), or a juror excused (NRS 172.275).

25 In re Report Washoe Co. Grand Jury, 95 Nev. 121, 126-27, 590 P.2d 622, 625-26 (1979)
26 (emphasis added).

27 Moreover, the district court's supervisory powers over the grand jury extend beyond those
28

1 declared specifically by statute:

2 A grand jury has no existence aside from the court which calls it into existence
3 and upon which it is attending. A grand jury does not become, after it is
4 summoned, impaneled, and sworn, an independent planet, as it were, in the
5 judicial system, but still remains an appendage of the court on which it
6 attending... It is and remains a grand jury attending on the court, and does not,
after it is organized, become an independent body, functioning at its uncontrolled
will, or the will of the district attorney or special assistant... A supervisory duty,
not only exists, but is imposed upon the court, to see that its grand jury and its
process are not abused, or used for purposes of oppression and injustice.

7 See Lane v. District Court, 104 Nev. 427, 463, 760 P.2d 1245, 1269 (1988) citing, People v.
8 Sears, 49 Ill.2d 14, 273 N.E.2d 380, 387-88 (1971) (quoting In re National Window Glass
9 Workers, 287 F. 219 (N.D. Ohio 1922)); see also Annotation, Power of Court to Control
10 Evidence or Witnesses Going Before Grand Jury, 52 A.L.R.3d 1316 (1973).

11 In the case at hand, should this court find that sufficient evidence exists to support the
12 Indictment, it would be a gross miscarriage of justice not to require the State to return to the
13 grand jury and satisfy its obligations by providing the grand jury with evidence that Mr.
14 Wheeler's gun was not used in the shooting. Despite the fact that the State did not apparently
15 know of the evidence at the time, it does know now, and it arguably either could have known or
16 should have known about this evidence before it went to the grand jury.

17 Mr. Wheeler will be irreparably prejudiced if the State is not required to return and
18 present this evidence. The State's case is circumstantial and is supported merely by inferences
19 and conjectures. The exculpatory evidence could have explained away the charges here. Had this
20 evidence been presented during the proceedings, there is a reasonable probability grand jury
21 would not have found sufficient evidence against Mr. Wheeler.

22 This court has jurisdiction to grant Mr. Wheeler's request. Resubmission, comports with
23 the grand jury's function to "investigate and act as an informed body throughout the entire
24 course of the proceedings." See Sheriff v. Frank, 103 Nev. At 165, 734 P.2d at 1244. Moreover,
25 resubmission and presentment of this exculpatory evidence is required here in order to fulfill the
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1 grand jury's "mission to clear the innocent, no less than to bring to trial those who may be
2 guilty." Id. quoting United States v. Dionisio, 410 U.S. 1, 16-17, 93 S.Ct. 764, 772-773, 35
3 L.Ed.2d 67 (1973). For these reasons, should this court find sufficient evidence without the
4 exculpatory evidence contained in the Report, Mr. Wheeler argues in the alternative that this
5 court order the State to return to the grand jury and provide proof that Mr. Wheeler's gun was
6 not used in tragic crime.

8 **IV. CONCLUSION**

9 For the reasons stated herein, it is respectfully requests that this Court dismiss the
10 Indictment against Mr. Wheeler or, in the alternative, require the State to return the grand jury as
11 provided above.

12 DATED this 8th day of March, 2018.

14 **JAMES J. RUGGEROLI**

15 By: /s/ James Ruggeroli
16 James J. Ruggeroli, Esq.
17 Nevada Bar No. 7891
18 601 South 7th Street
19 Las Vegas, Nevada 89101
20 *Attorney for Defendant*

DECLARATION OF JAMES J. RUGGEROLI, ESQ.

JAMES J. RUGGEROLI, ESQ., being first duly sworn under oath, deposes and states:

1. I am an attorney at law duly licensed to practice before this Court and make this Declaration of facts from personal knowledge which is known to me, except for those matters stated upon information and belief, and as to those matters, I believe same to be true.

2. I am counsel of record for the Defendant, DAVONTAE AMARRI WHEELER.

3. Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 8th day of March, 2018.

JAMES J. RUGGEROLI

By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March, 2018, I emailed a copy of the foregoing Reply to them at the following address:

motions@clarkcountyda.com

By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.

JAMES J. RUGGIERO, ESQ.

601 South 7th Street
Las Vegas, Nevada 89101

TEL: (702) 258-2022 | FAX: (702) 258-2021

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EXHIBIT A

Las Vegas Metropolitan Police Department Forensic Laboratory Report of Examination Firearms & Toolmarks		Distribution Date: January 22, 2018 Agency: LVMPD Location: Homicide & Sex Crimes Bureau Primary Case #: 170809-0029 Incident: Robbery WDW , Homicide Requester: Ryan M Jaeger Lab Case #: 17-07217.5 Supplemental 1
Subject(s):	None Listed	

The following evidence was examined and results are reported below.

Lab Item #	Impound Pkg #	Impound Item #	Description
1*	005158-1	1	One "C" .22 Long / Long Rifle cartridge case
2*	005158-1	2	One "R-P" .45 Auto cartridge case
3*	005158-1	3	One "FC NR" .45 Auto cartridge case
4*	005158-1	4	One "WINCHESTER" .45 Auto cartridge case
11	015709-1	1	One Taurus model PT-22 .22 Long Rifle caliber semiautomatic pistol, serial number: ANC29177
12	015709-1	1A	One magazine
14	013572-1	1	One Taurus model PT145 PRO Millennium .45 Auto caliber semiautomatic pistol, serial number: NCY05584
15	013572-2	1A	One magazine
17	005158-2	5	One bullet
20	005228-1	1	One Star unknown model .45 Auto caliber semiautomatic pistol, serial number: 1949428
21	005228-1	2	One magazine
22	009618-6	12	Metal fragments
23	009618-6	13	One bullet
24	009618-6	14	One bullet

*Items previously examined; see the laboratory report generated under this event number for further information.

Results and Conclusions:

Firearms

The Taurus pistol (Lab Item 11) was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 2 ¾ inches, an overall length of approximately 5 ¾ inches and a trigger pull of 7 ¾ - 8 ¼ pounds. The submitted magazine (Lab Item 12) fits and functions in this pistol and has a capacity of ten cartridges. This pistol and magazine were swabbed for DNA prior to test firing and two swabs were booked into the evidence vault.

The Taurus pistol (Lab Item 14) was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 3 ¼ inches and an overall length of approximately 6 ¼ inches. It has trigger pulls of 5 - 5 ½ pounds single action and 8 - 8 ¼ pounds double action. The submitted magazine (Lab Item 15) fits and functions in this pistol has a capacity of ten cartridges.

The Star pistol was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 4 inches, an overall length of approximately 7 ¼ inches and a trigger pull of 6 ¾ - 7 pounds. The submitted magazine (Lab Item 21) fits and functions in this pistol has a capacity of six cartridges.

Comparisons

The evidence cartridge cases and bullets were examined and microscopically compared to the test fired cartridge cases and bullets with the following results:

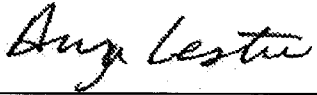
- The cartridge case (Lab Item 1) was identified as having been fired by the Taurus pistol (Lab Item 11).
- The three cartridge cases (Lab Items 2-4) were identified as having been fired by the Star pistol.
- The two bullets (Lab Items 17 and 24) were identified as having been fired by the Star pistol.
- The bullet (Lab Item 23) shared similar general rifling characteristics with the Taurus pistol (Lab Item 11). Damage to this bullet and a lack of microscopic information preclude an identification to or elimination from this pistol.
- The metal fragments are of no value for microscopic comparisons.

NIBIN

Representative images of a test fired cartridge case from the Taurus pistol (Lab Item 14) were entered into the National Integrated Ballistic Information Network (NIBIN). Associations to other events in the network will be reported separately.

The evidence is returned to secure storage.

---This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.---



Anya Lester, #13771
Forensic Scientist II

- END OF REPORT -

Steven D. Grierson

ENTERED
[Signature]

JAMES J. RUGGEROLI
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
601 South 7th Street
Las Vegas, Nevada 89101
Telephone: (702) 258-2022
Facsimile: (702) 258-2021
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Case No. C-17-328587-3

Plaintiff,

Dept No. XX

vs.

DATE OF HEARING: March 20, 2018

DAVONTAE AMARRI WHEELER,
#5909081,

Defendant.

**DEPARTMENT XX
NOTICE OF HEARING
DATE 3/20/18 TIME 8:00 AM
APPROVED BY *[Signature]***

**MOTION OR OWN RECOGNIZANCE RELEASE WITH HOUSE ARREST, OR, IN
THE ALTERNATIVE, TO SET REASONABLE BAIL**

COMES NOW, the Defendant, DAVONTAE AMARRI WHEELER, by and through his attorney of record, JAMES J. RUGGEROLI, ESQ., and moves this honorable court to release the Defendant on his own recognizance or, in the alternative, to set bail in a reasonable amount in this case. This motion is made and based upon the attached points and authorities and the Declaration of James J. Ruggeroli, the papers and pleadings on file herein, together with the arguments of counsel to be heard at the time of the hearing on this matter.

DATED this 25th day of August, 2017.

JAMES J. RUGGEROLI

By /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
601 South 7th Street
Las Vegas, Nevada 89101

Attorney for Defendant

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and

TO: STEVEN B. WOLFSON, Clark County District Attorney

YOU AND EACH OF YOU will please take notice that a **MOTION OR OWN
RECOGNIZANCE RELEASE WITH HOUSE ARREST, OR, IN THE ALTERNATIVE,
TO SET REASONABLE BAIL** hearing before the above-entitled Court shall take place on the
20th day of March, 2018, at the hour of 8:30a.m. in Department 20.

DATED this 9th day of March, 2018.

JAMES J. RUGGEROLI

By /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
601 South 7th Street
Las Vegas, Nevada 89101
Attorney for Defendant

POINTS AND AUTHORITIES

I. INTRODUCTION

The minimal, circumstantial and speculative evidence alleged against Mr. Wheeler in this matter, coupled with Mr. Wheeler's "moderate" pretrial risk assessment, justifies an own recognizance release with house arrest or bail being set in a minimal amount.

II. ARGUMENT

A. LAW

"Except as otherwise provided in this section, a person arrested for an offense other than murder of the first degree must be admitted to bail." NRS 178.484. The Eight Amendment to the United States Constitution specifically provides that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Nevada

1 Constitution specifically holds that: "Excessive bail shall not be required." Nev. Const. Art. 1,
2 § 6. Moreover, section 7 of the Nevada Constitution holds that: "All persons shall be bailable by
3 sufficient sureties, unless for Capital Offenses or murders punishable by life imprisonment
4 without possibility of parole when the proof is evident or the presumption great." Nev. Const.
5 Art. 1, § 7. The words used in this provision favor bail and are consonant with the presumption
6 of innocence; the central thought is that punishment should follow conviction, not precede it.
7 Accordingly, all offenses are bailable, including capital offenses, as a matter of right; that right is
8 absolute in a noncapital case, but limited if a capital offense is involved. In re Wheeler, 81 Nev.
9 495, 406 P.2d 713 (1965).

11 Section 8 of NRS 178.484 provides:

12 Before releasing a person arrested for any crime, the court may impose such
13 reasonable conditions on the person as it deems necessary to protect the health,
14 safety and welfare of the community and to ensure that the person will appear at
15 all times and places ordered by the court, including, without limitation:

- 16 (a) Requiring the person to remain in this state or a certain county within this
17 state;
- 18 (b) Prohibiting the person from contacting or attempting to contact a specific
19 person or from causing or attempting to cause another person to contact that
20 person on his behalf;
- 21 (c) Prohibiting the person from entering a certain geographic area; or
- 22 (d) Prohibiting the person from engaging in specific conduct that may be harmful
23 to his own health, safety or welfare, or the health, safety or welfare of another
24 person.

25 NRS 178.4851 provides: "(1) Upon a showing of good cause, a court may release
26 without bail any person entitled to bail if it appears to the court that it can impose conditions on
27 the person that will adequately protect the health, safety and welfare of the community and
28 ensure that he will appear at all times and places ordered by the court. (2) In releasing a person
without bail the court may impose such conditions as it deems necessary to protect the health,
safety and welfare of the community and to ensure that he will appear at all times and places
ordered by the court, including, without limitation, any condition set forth in subsection 8 of

1 NRS 178.484.

2 NRS 178.4853 provides the relevant factors to consider before releasing without bail:

3 In deciding whether there is good cause to release a person without bail, to court
4 as a minimum shall consider the following factors concerning the person:

- 5 1. The length of his residence in the community.;
- 6 2. The status and history of his employment;
- 7 3. His relationships with his spouse and children, parents or other members
8 of his family and with his close friends;
- 9 4. His reputation, character and mental condition;
- 10 5. His prior criminal record, including, without limitation, any record of his
11 appearing or failing to appear after release on bail or without bail;
- 12 6. The identity of responsible members of the community who would vouch
13 for the reliability of the person;
- 14 7. The nature of the offense with which he is charged, the apparent
15 probability of conviction and the likely sentence, insofar as these factors relate to
16 the risk of not appearing;
- 17 8. The nature and seriousness of the danger to the alleged victim, any other
18 person or the community that would be posed by the person's release;
- 19 9. The likelihood of more criminal activity by him after he is released; and
- 20 10. Any other factors concerning his ties to the community or bearing on the
21 risk that he may willfully fail to appear.

22 B. APPLICATION OF LAW AND ARGUMENT

23 In the case at hand, the State has charged Mr. Wheeler with CONSPIRACY TO
24 COMMIT ROBBERY; ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON; and
25 MURDER. However, the evidence against Mr. Wheeler amounts to nothing more than
26 circumstantial evidence, speculation and conjecture. See Defendant Wheeler's Petition for Writ
27 of Habeas Corpus and Reply to State's Return to Petition for Writ of Habeas Corpus. Little if any
28 evidence justifies holding Mr. Wheeler at the amount of bail presently set prior to the trial in this
matter. Although this case involves the tragic death of Mr. Gabriel Valenzuela, no direct
evidence known to the defense links Mr. Wheeler to this terrible crime.

Furthermore, the factors to be taken into consideration in setting bail or releasing an
individual without bail strongly support Mr. Wheeler's request for an "OR" release or a minimal
bail:

1. Mr. Wheeler is 22 years old and has lived in Las Vegas for over 8 years.
2. He has been employed but has spent the last several years caring for his disabled mother, Nicole Hill.
3. Mr. Wheeler has a child, Davontae Wheeler, Jr. that lives with Mr. Wheeler's girlfriend, Ember, in Las Vegas, and all of Mr. Wheeler's significant relationships and family members, including mother, sister, and uncle, reside in Las Vegas.
4. Upon information and belief, Mr. Wheeler enjoys a good reputation; he has good character and has no mental health conditions.
5. He has a minimal criminal record (a couple of misdemeanor arrests) but no failures to appear.
6. Mr. Wheeler's entire family would vouch for Mr. Wheeler's reliability.
7. Although the nature of the offense is of the most serious, in light of the minimal evidence against Mr. Wheeler, it is more than fair to say that the probability of conviction and sentence at this time result in a *low risk* (See argument regarding the NPR below) of Mr. Wheeler not appearing for all subsequent hearings if he is released.
8. There is sadly no further danger that Mr. Valenzuela can face, and Mr. Wheeler represents no danger to any other person or to the community if he is released.
9. There is no likelihood that Mr. Wheeler would be engaged in any criminal activity if he is released, especially since any alleged criminal conduct would result in incarceration for the duration of these proceedings, which could very well expand over several years.
10. Mr. Wheeler's pretrial risk assessment (NPR) has concluded that Mr. Wheeler represents a "moderate" risk. Although he has a couple of misdemeanor arrests, he has no felony or gross misdemeanor convictions and importantly has no failures to appear. See NPR attached as **Exhibit A**.

1 As such, it is respectfully requested that this Court set a reasonable bail on all counts in
2 this case.

3 DATED this 9th day of March, 2018.

4 JAMES J. RUGGEROLI

5 By /s/ James J. Ruggeroli
6 James J. Ruggeroli, Esq.
7 Nevada Bar No. 7891
8 601 South 7th Street
9 Las Vegas, Nevada 89101
Attorney for Defendant

10 DECLARATION OF JAMES J. RUGGEROLI, ESQ.

11 JAMES J. RUGGEROLI, ESQ., being first duly sworn under oath, deposes and states:

- 12 1. I am an attorney at law duly licensed to practice before this Court and make this
13 Declaration of facts from personal knowledge which is known to me, except for those matters
14 stated upon information and belief, and as to those matters, I believe same to be true.
- 15 2. I am counsel of record for the Defendant, DAVONTAE AMARRI WHEELER.
- 16 3. Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of
17 the State of Nevada that the foregoing is true and correct.

18 DATED this 9th day of March, 2018.

19 JAMES J. RUGGEROLI

20 By: /s/ James Ruggeroli
21 James J. Ruggeroli, Esq.
Nevada Bar No. 7891

22 CERTIFICATE OF SERVICE

23 I hereby certify that on the 9th day of March, 2018, I emailed a copy of the foregoing
24 Reply to them at the following address:

25 motions@clarkcountynvda.com

26 By: /s/ James Ruggeroli
27 James J. Ruggeroli, Esq.

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EXHIBIT A

NEVADA PRETRIAL RISK (NPR) ASSESSMENT

UPDATED NPR

Assessment Date: 8/17/2017

Assessor: Bianca Caridine

County: Clark

Defendant's Name: Davontae Wheeler

DOB:

AGE: 22

Case/Booking #: 17F14782X

4/27/1995

Dept #: 12

Address: 5107 GARDEN LANE B

Contact Phone #:

of Current Charges: 3

City: LAS VEGAS

State: NV Zip: 89121

Most Serious Charge: Open murder, e/dw

Initial Total Bail Set: NO BAIL

SCORING ITEMS

SCORE

1. Does the Defendant Have a Pending Pretrial Case at Booking?

No If yes, list case # and jurisdiction:

0

2. Age at First Arrest (Include juvenile arrests)

First Arrest Date 07/04/2013

20 yrs and under

2

3. Prior Misdemeanor Convictions (past 10 years)

Six or more

2

4. Prior Felony/Gross Misd. Convictions (past 10 years)

None

0

5. Prior Violent Crime Convictions (past 10 years)

None

0

6. Prior FTAs (past 24 months)

None

0

7. Substance Abuse (past 10 years)

Prior multiple arrests-drug use or poss/alcohol/drunkenness

2

8. Mitigating Verified Stability Factors (limit of -2 pts. total deduction)

If more than 1, 2 or 3 are applicable

-2

TOTAL SCORE:

4

Risk Level: Moderate Risk, 4 Points

OVERRIDE?: ☐ Yes

☒ No

Override Reason(s):

If Other, explain:

Final Recommended Risk Level:

☐ LOW

☒ MODERATE

☐ HIGHER

Supervisor/Designee Signature _____

Date: 8/17/2017

17F14782X

NPR

Nevada Risk Assessment Tool

8383317

Revised 2.2017

447



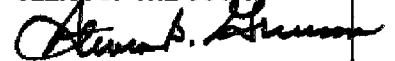
Felony convictions:

YEAR	STATE	CHARGE
NONE		

Misdemeanor Convictions: 6

Detainers: NONE

Pending Cases: NONE



1 STEVEN B. WOLFSON
2 Clark County District Attorney
3 Nevada Bar #1565
4 GIANCARLO PESCI
5 Chief Deputy District Attorney
6 Nevada Bar #7135
7 RACHEL O'HALLORAN
8 Nevada Bar #12840
9 200 Lewis Avenue
10 Las Vegas, Nevada 89155-2212
11 (702) 671-2500
12 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 DEMARIO LOFTON-ROBINSON, aka,
14 Demario Loftonrobinson, #5318925
15 RAEKWON SETREY ROBERTSON,
16 aka, Raekwon Robertson, #8252804
17 DAVONTAE AMARRI WHEELER,
18 #5909081

19 Defendant(s).

CASE NO: C-17-328587-3

DEPT NO: XX

18 STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR OWN
19 RECOGNIZANCE RELEASE WITH HOUSE ARREST, OR, IN THE
20 ALTERNATIVE, TO SET REASONABLE BAIL

21 DATE OF HEARING: 02-20-2018
22 TIME OF HEARING: 8:30 A.M.

23 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
24 District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and hereby
25 submits the attached Points and Authorities in opposition to Defendant's Motion for Own
26 Recognizance Release with House Arrest, or, in the Alternative, to Set Reasonable Bail.

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

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On December 14, 2017, Defendant, Davontae Wheeler ("Defendant") was charged by
4 way of Indictment as follows: COUNT 5 – CONSPIRACY TO COMMIT ROBBERY
5 (Category B Felony – NRS 200.380, 199.480); COUNT 6 – ATTEMPT ROBBERY WITH
6 USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.330, 193.165); and
7 COUNT 7 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS
8 200.010, 200.030, 193.165).

9 On December 19, 2017, Defendant pled not guilty and waived his right to a speedy
10 trial. On February 8, 2018, Defendant filed a pre-trial Petition for Writ of Habeas Corpus. On
11 March 2, 2018 the State filed its Return; and on March 8, 2018, Defendant filed a Reply. On
12 March 13, 2018, Defendant filed the instant Motion for Own Recognizance Release with
13 House Arrest, or, Setting of Reasonable Bail. Defendant's motion is to be heard on the same
14 date and time as Defendant's Petition for Writ of Habeas Corpus.

15 Defendant's bail was previously addressed in Justice Court Department 12. On
16 September 1, 2017, after considering the written pleadings of both parties, the Honorable
17 Diana Sullivan set bail at \$250,000.00 with the added condition of house arrest. At the Grand
18 Jury Indictment on December 14, 2017, the Honorable Elizabeth Gonzales ordered that bail
19 remain at \$250,000.00.

20 The State hereby opposes Defendant's Motion for Own Recognizance Release with
21 House Arrest, or, Setting of Reasonable Bail.

22 **STATEMENT OF FACTS**

23 In the early morning hours of August 9, 2017, Gabriel Valenzuela ("Mr. Valenzuela")
24 was shot in the driveway of his own home, located at 5536 Dewey Drive, in Las Vegas,
25 Nevada. Immediately prior to the shooting, Robert Mason was jogging in the neighborhood
26 of Mr. Valenzuela's home and he noticed four suspicious individuals standing in front of Mr.
27 Valenzuela's home. Mr. Mason described these individuals as black males wearing dark
28 colored clothing. After observing the four suspicious individuals standing in Mr. Valenzuela's

1 driveway, Mr. Mason saw an unoccupied white Mercury Grand Marquis with NV license plate
2 of 473YZB. Mr. Mason informed his wife of this information and at 12:11 a.m. she called
3 police to report the suspicious individuals.

4 One minute later, at 12:12 a.m., Mr. Valenzuela's cousin, John Relato called 911 to
5 report that Mr. Valenzuela had been shot. Mr. Valenzuela was pronounced dead at 12:55 a.m.
6 Three .45 caliber cartridge cases and one .22 caliber cartridge case were found at the scene of
7 the murder. The .45 caliber cartridge cases bore three separate head-stamps: R-P 45 AUTO,
8 NFCR, and WINCHESTER 45 AUTO. The .22 caliber cartridge case bore a head stamp of
9 "C."

10 During the investigation, detectives learned that on August 8, 2017, immediately
11 preceding the murder, the same Mercury Grand Marquis seen by Mr. Mason at the scene of
12 the murder was captured on surveillance footage at a convenience store located at 7325 S.
13 Jones Boulevard. This convenience store is located less than one mile from the Mr.
14 Valenzuela's residence. The vehicle was seen on surveillance footage arriving to the store at
15 approximately 11:25 p.m. and leaving the store at approximately 11:45 p.m., roughly 25
16 minutes before the murder. Surveillance footage also shows four black males arriving in the
17 vehicle. One of the black males was carrying a handgun in a holster on his right hip. This
18 individual was later identified as Defendant. In the surveillance footage, he was wearing a red
19 hoodie type shirt, a white baseball hat with an unknown symbol, torn black jeans, and red
20 high-top shoes.

21 As part of their initial investigation, Detectives were able to determine the identities of
22 two suspects based on an investigation stemming from the license plate of the Mercury Grand
23 Marquis. Those two suspects are Co-Defendant Demario Lofton-Robinson and his younger
24 brother. Both of these suspects admitted their involvement in the murder and admitted that
25 two other individuals were involved. However, both suspects had limited information
26 regarding the identities of the two additional suspects.

27 During his confession, Co-Defendant Lofton-Robinson indicated that the original plan
28 was to rob Mr. Valenzuela but when he fought back, Mr. Valenzuela was shot multiple times.

1 Co-Defendant Lofton-Robinson indicated that he was in possession of a .45 caliber firearm
2 and fired one shot at Mr. Valenzuela. He also told detectives that the other two suspects would
3 be listed in his phone under the names of "Rae" and "Sace."

4 In searching Co-Defendant Lofton-Robinson's phone, Detectives were able to locate a
5 recent text message between Lofton-Robinson and "Sace." "Sace's" phone number was
6 associated with a Facebook account of "Young Sace Versace" who officers were able to
7 identify as Defendant, Devonte Wheeler. "Rae" was later identified as Co-Defendant
8 Raekwon Robertson.

9 The Criminal Apprehension Team of the Las Vegas Metropolitan Police Department
10 ("LVMPD") later apprehended Defendant at his address of 3300 Civic Center Drive,
11 apartment F. During a search of the residence, officers located a .45 caliber firearm. The
12 magazine of the firearm contained 6 rounds of live ammunition bearing the head stamp of R-
13 P 45 AUTO (the same head stamp as one of the .45 cartridges found at the scene of the murder).
14 Detectives also recovered a pair of red tennis shoes and a black and white baseball cap which
15 appeared to be the items worn by Defendant in the surveillance footage from the convenience
16 store. Defendant's sister and his fiancé both identified Defendant as the person in the
17 surveillance footage carrying the firearm.

18 Officers with LVMPD executed several additional search warrants at various locations.
19 During those search warrants, a .22 caliber semi-automatic firearm was located at 6647 West
20 Tropicana, an address associated with Co-Defendant Raekwon Robertson. While searching
21 6647 West Tropicana, officers also located ammunition bearing the headstamp "C." This
22 ammunition matches the .22 caliber cartridge case found at the murder scene. Ballistic testing
23 revealed that the .22 caliber cartridge case found at the scene of the murder was fired from this
24 firearm. See Firearms and Toolmark Report, attached as Exhibit 1.

25 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
26 Co-Defendant Lofton-Robinson. During the search of that residence, officers located a .45
27 caliber firearm and ammunition bearing a headstamp of R-P 45, which matched one of .45
28 caliber cartridge cases found at the scene of the murder. Ballistic testing revealed that three

1 .45 caliber cartridge cases found at the scene of the murder were fired from this firearm. See
2 id.

3 ARGUMENT

4 **I. DEFENDANT HAS NOT SHOWN GOOD CAUSE FOR RELEASE ON HIS** 5 **OWN RECOGNIZANCE.**

6 Pursuant to NRS 178.4853, a defendant may be released without bail upon a showing
7 of good cause. NRS 178.4853(1). When evaluating whether such good cause exists, a court
8 is required to consider the following factors:

- 9 1. The length of his residence in the community;
- 10 2. The status and history of his employment;
- 11 3. His relationships with his spouse and children, parents or other members
12 of his family and with his close friends;
- 13 4. His reputation, character and mental conditions;
- 14 5. His prior criminal record, including any record of his appearing or failing
15 to appear after release on bail or without bail;
- 16 6. The identity of responsible members of the community who would vouch
17 for the defendant's responsibility;
- 18 7. The nature of the offense with which he is charged, the apparent
19 probability of conviction and the likely sentence, insofar as these facts
20 relate to the risk of his not appearing;
- 21 8. The nature and seriousness of the danger to any person or the community
22 that would be posed by the person's release;
- 23 9. The likelihood of more criminal activity by the person after he is
24 released; and
- 25 10. Any other factors concerning his ties to the community or bearing on the
26 risk that he may willfully fail to appear.

27 NRS 178.4853(1).

28 In this case, the factors listed in NRS 178.4853(1) have not been met and this Court
should deny Defendant's motion. First and foremost, Defendant has provided minimal
information regarding his ties to the community. Per the instant motion, which is vague as to
most of the above factors, Defendant has lived in Las Vegas for 8 years. However, he has not
specified one job that he's held during that time; just that he takes care of his mother full time;
or that he did prior to being arrested in August 2017.

1 And while Defendant indicates that he "enjoys a good reputation" and his "entire family
2 would vouch for [his] reliability," Defendant has not provided a single name of any family
3 member or any person in the community who would vouch for his responsibility.

4 Additionally, a review of Defendant's criminal record shows why Defendant is not a
5 good candidate for an own recognizance release with house arrest or a reduction in bail.

6 **Defendant's Criminal History**

7 Defendant turned 18 years old in 2013, and continued his contact with law enforcement,
8 just as he did while a minor. On July 4, 2013, Defendant was driving and rear-ended a bus.
9 Both Defendant and his passenger fled the scene of the crash on foot, without making any
10 attempts to check on the other driver/occupants or exchange information. Defendant was
11 driving without a license, insurance, or registration. He was cited for all the above as well as
12 hit and run under LVJC Case E10330150. Defendant had been cited just a month prior for
13 speeding 20 mph over the limit in the same vehicle, again, driving without a license under
14 Case E10327708. Defendant failed to address either and allowed both to go into warrant, after
15 several collections attempts and late notices. In E10327708, a bench warrant was issued on
16 10/02/2013, and in E10330150, on 11/06/2013. Both remained in warrant until Defendant
17 was arrested on 02/03/2014, when he was then granted credit for time served in both cases.

18 Defendant didn't just fail to appear for traffic citations; he also failed to appear in cases
19 where he was charged with felonies and misdemeanors. On 07/11/2013, Defendant was
20 arrested by Henderson Police for Attempted Burglary when he broke into an apartment by
21 breaking a window. See Case 13FH1064X. In that case, Defendant was granted an O.R.
22 release. He later failed to appear at his preliminary hearing on 10/15/2013, and another bench
23 warrant was issued for his arrest. He remained in warrant until, as above, he was arrested on
24 02/03/2014. Thereafter, he pled guilty to one count of misdemeanor Trespass on 02/05/2014,
25 was granted another O.R release, and was given various requirements to complete such as
26 staying out of trouble and community service. However, instead of taking advantage of this
27 favorable negotiation, Defendant failed to appear at his very next status check on 05/07/2014,
28 and another bench warrant was issued. Defendant again remained in warrant in this case until

1 arrested on additional charges. On 01/14/2015, Defendant appeared and was given another
2 chance to remain out of custody. His fine was increased (his bail money was used) and
3 Defendant was warned that if his counseling was not completed, his 120-day suspended
4 sentence would be imposed. Defendant failed to appear at his next status check on 04/16/15,
5 was late and had not completed his counsel at his 05/07/15 status check, and then failed to
6 appear again at his 05/19/15 status check. Yet another bench warrant was issued and Defendant
7 remained in warrant until 05/13/16, when he was again arrested on new charges. The case
8 was finally closed out 05/19/16 when Defendant was given credit for time served.

9 On 02/03/2014, Defendant was stopped for jaywalking and gave false information to
10 police, stating his name was Devonare Alexander. Finally, after several changes to his story,
11 Defendant admitted his true identity and stated that he knew he had warrants outstanding and
12 didn't want to go back to jail. He was booked on all of his warrants and was charged under
13 14M03180X with False Statement/Obstructing a Public Officer. He posted bail and was
14 released. However, he failed to appear at his arraignment on 06/05/2014, and a bench warrant
15 was issued for his arrest. This warrant remained outstanding until Defendant was arrested on
16 01/06/2015. Defendant then pled guilty to the charge and was granted credit for time served.

17 On 04/13/2014 at almost 1:00 a.m., officers observed Defendant standing on a
18 pedestrian bridge wearing a heavy jacket in warm weather conditions and attempting to get
19 the attention of those walking by him. Defendant saw the officers and immediately began
20 walking away. When the officers stopped Defendant, he said he was a tourist from Chicago
21 named Sace Whilson who had been in town for three days. Defendant had varying amounts
22 of currency on him along with several small baggies filled with marijuana, each weighing
23 about half a gram. While searching Defendant at CCDC, officers found an additional 3.5
24 grams of marijuana in 5 additional plastic baggies concealed in his groin area. Defendant was
25 charged with felony Possession of Controlled Substance with Intent to Sell under LVJC Case
26 14F05943X. His O.R. motion was denied and Defendant pled guilty at his preliminary hearing
27 to one count of Possession of Dangerous Drug, with various requirements such a counseling,
28 ///

1 fine, stay out of trouble. To Defendant's credit, he completed the requirements and his case
2 was closed on 09/30/2014.

3 On 01/06/2015, Defendant was stopped for jaywalking and officers discovered his
4 active warrants from Las Vegas and Henderson Justice Courts. During a search incident to
5 arrest, officers located 2.5 grams of Marijuana on Defendant's person. He was charged with
6 PCS Marijuana, 1 oz. or less under LVJC Case 15M00478X. On 03/24/2015, Defendant pled
7 guilty to a lesser Possession of Dangerous Drug and was sentenced to minimal conditions of
8 short term drug counseling, fine or community service, and to stay out of trouble. Yet
9 Defendant failed to fulfill any of his requirements and failed to appear at his 06/23/2015 status
10 check, when another bench warrant was issued. The warrant remained active for almost a
11 year, until Defendant was arrested on 05/13/2016 and was granted credit for time served in
12 15M00478X.

13 According to reports under LVMPD Event 160511-2590, on 05/11/2016, Defendant's
14 son, Davontae Wheeler, Jr. who was 3 years old at the time, was being watched by his
15 godmother, Shameyla Pollard. Shameyla lived there with Davontae Wheeler Jr.'s mother,
16 Ember Currington (the same person that in the instant motion, Defendant claims is his
17 girlfriend). Ember was working but Shameyla's boyfriend, Damien Walton, was at the
18 residence also. Defendant and his friend, Leon Walton (Damien's brother) knocked at the
19 front door and demanded to take Davontae Wheeler, Jr. Shameyla reported that Ember told
20 her this might happen as Ember was having problems with Defendant. Defendant then broke
21 into Shameyla's residence through a window, grabbed his son, and opened the front door so
22 Leon could enter. Defendant then began beating Damien, causing Damien to fall to the ground,
23 and then Leon began beating Damien. Shameyla began yelling for the police and Defendant,
24 his son, and Leon fled. Police contacted a vehicle after Shameyla pointed it out and stopped
25 it. Leon was driving the vehicle with his infant in a car seat and Defendant's son sitting
26 unbelted in the backseat. Defendant was not in the vehicle. Leon told police that he came
27 with Defendant to get Defendant's son when Defendant entered the residence through a
28 window and began battering Damien. Leon stated that Defendant was getting out of control

1 so they took the toddler and left. Leon also stated that he didn't know why but Defendant
2 jumped out of the car and ran just prior to being pulled over, as did Defendant's girlfriend,
3 Ashley. Ashley's purse with her ID was located in the vehicle, which had been reported stolen.
4 While it doesn't appear that Defendant was ever charged for the above incident, it certainly
5 does not support his claim of having a good reputation.

6 About three months later, just after midnight on 08/13/2016, officers were patrolling
7 the Las Vegas Strip area in plain clothes. As LVMPD Detective Brigandi walked by
8 Defendant, he asked if Defendant had any trees. Defendant said he did and walked the
9 detective to a place out of public view. Defendant stated it was \$20 for 1 gram of marijuana.
10 Officers then confronted Defendant, who admitted to having marijuana on his person. Officers
11 found 14.7 grams in a jar in Defendant's pocket. Defendant was charged with one count of
12 PCS with Intent to Sell under 16F13314X. On 08/17/2016, Defendant was released O.R. with
13 intensive supervision, and his prelim date was set. His Supervision Progress Report dated
14 09/19/2016 shows that Defendant failed to report to ISU as instructed. On 10/19/2016,
15 Defendant pled guilty to Possession of Dangerous Drug and was sentenced to complete
16 community service and stay out of trouble. On 04/19/2017, Defendant still had not completed
17 his community service. Finally, on 07/21/2017, Defendant's case was closed.

18 Less than one month later, Defendant was back in court on the instant case.

19 In summary, the factors outlined in NRS 178.4853(1) do not favor an own recognizance
20 released and the State requests that Defendant's motion be denied.

21 II. BAIL SETTING

22 In Nevada, a person charged with Murder is not entitled to bail. In fact, the statute on
23 point, denies bail to an individual charged with murder where the proof is evident or the
24 presumption is great. NRS 178.484(4) states, in relevant part:

25 A person arrested for murder of the first degree may be admitted to
26 bail unless the proof is evident or the presumption great by any
27 competent court or magistrate authorized by law to do so in the
28 exercise of discretion, giving due weight to the evidence and to the
nature and circumstances of the offense.

1 (emphasis added). While the proof necessary for the quantum of proof which is needed has
2 not been specifically defined, it is at least higher than probable cause. See Hanley v. State, 85
3 Nev. 154, 451 P.2d 852 (1969). However, the dying declaration of the victim has been deemed
4 to be sufficient under the statute. See In re Wheeler, 81 Nev. 495, 406 P.2d 713 (1965).
5 Moreover, the Court is granted broad discretion in determining the amount of proof necessary
6 to the determination. *Id.*

7 As far back as 1917, the Nevada Supreme Court held that an affidavit was sufficient
8 for purposes of denying bail. See Ex parte Nagel, 41 Nev. 86, 88-89 (1917) ("The true rule
9 upon the subject of bail or discharge after indictment for murder undoubtedly is for the judge
10 to refuse to bail or discharge upon any affidavit or proof that is susceptible of being
11 controverted on the other side."). This is conformance with the practice of courts in other
12 contexts as well. The confrontation clause is a trial right, not a right at every proceeding. See
13 Sheriff v. Witzenburg, 122 Nev. 1056, 145 P.3d 1002 (2006). Hearsay is admissible at a
14 sentencing hearing. See Summers v. State, 122 Nev. 1326, 148 P.3d 778 (2006). Likewise,
15 at evidentiary hearings, the evidentiary rules are relaxed. See Univ. of Tex. V. Camenisch,
16 451 U.S. 390, 395 (1981).

17 NRS 178.498 provides that if the defendant is admitted to bail, the bail must be set an
18 appropriate amount to secure a defendant's presence and the safety of the community with
19 regard to the following factors:

- 20 1. The nature and circumstances of the offense charged;
- 21 2. The financial ability of the defendant to give bail;
- 22 3. The character of the defendant; and
- 23 4. The factors listed in NRS 178.4853.

23 NRS 178.498.

24 Defendant's is currently being held at \$250,000.00. Based on the factors outlined
25 above as well as the nature of the instant crime in combination with the evidence against
26 Defendant, the State requests that this bail remain.

27 Here, Defendant contends that the evidence against him is minimal, circumstantial and
28 speculative. In his Reply to the State's Return to Writ of Habeas Corpus, Defendant further

1 contends that the ballistics report in the instant case somehow exonerates Defendant. While
2 the State concedes that the firearm located at Defendant's apartment was not linked to one of
3 the cartridge cases found at the scene of the murder, the proof against Defendant is still very
4 significant. First, the firearms found at both of the co-defendant's homes were determined to
5 have been shot at the scene of the murder. This evidence implicates Defendant in the instant
6 crime because Defendant was seen on surveillance footage with his co-defendants
7 approximately 25 minutes before the murder and just one mile from the murder scene. Shortly
8 thereafter, Mr. Mason saw four black men at the scene of the murder. This is incredibly strong
9 evidence that Defendant was in fact at the scene of the murder.

10 Defendant's argument that a fifth mystery man exists is complete speculation and not
11 based on any reliable fact. In fact, the surveillance footage demonstrates that there was not a
12 fifth individual present with Defendant and his co-defendants at the convenience store.
13 Defendant wants the court to believe that within a matter of minutes, following Defendant's
14 departure from the convenience store with his co-defendants, he got out of Co-Defendant
15 Lofton-Robinson's vehicle and took a bus home, while his co-defendants simultaneously
16 picked up another mystery person before committing the murder of Mr. Valenzuela. The
17 Court should not put any credence into Defendant's self-serving statement especially in light
18 of the fact that in Defendant's interview with police he altogether denied that he was captured
19 on the surveillance. Defendant's statement that he was not inside the convenience store with
20 his co-defendants is in direct contradiction to all of the evidence in this case which clearly
21 indicates that he was one of the four individuals captured in the surveillance footage.

22 Furthermore, Defendant is charged under a barren pleading theory. The State need not
23 prove that Defendant actually pulled the trigger in order for him to be found guilty of the
24 instant crimes. The fact remains that the circumstantial evidence places Defendant at the scene
25 of the murder; he was seen on surveillance footage wearing a firearm immediately prior to the
26 murder; and ammunition matching one of the shell casings found at the murder was located at
27 Defendant's home.

28 ///

1 Given the factors outlined, in NRS 178.498, Defendant's bail should not be reduced in
2 the instant case.

3 CONCLUSION

4 Defendant has not given this Court good reason to grant him a release on his own
5 recognizance even with the condition of House Arrest. Accordingly, the State requests this
6 Court to deny Defendant's motion be DENIED and that Defendant's bail remain the same.

7 DATED this 19th day of March, 2018.

8 Respectfully submitted,

9 STEVEN B. WOLFSON
10 Clark County District Attorney
Nevada Bar #1565

11 BY 
12

13 RACHEL O'HALLORAN
14 Deputy District Attorney
15 Nevada Bar #12840
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing was made this 19th day of
March, 2018, by facsimile transmission to:

JAMES RUGGEROLI, ESQ.
FAX: (702) 258-2021

BY: C. Garcia
C. Garcia
Secretary for the District Attorney's Office

Las Vegas Metropolitan Police Department Forensic Laboratory Report of Examination Firearms & Toolmarks		Distribution Date: January 22, 2018 Agency: LVMPD Location: Homicide & Sex Crimes Bureau Primary Case #: 170809-0029 Incident: Robbery WDW , Homicide Requester: Ryan M Jaeger Lab Case #: 17-07217.5 Supplemental 1
Subject(s):	None Listed	

The following evidence was examined and results are reported below.

Lab Item #	Impound Pkg #	Impound Item #	Description
1*	005158-1	1	One "C" .22 Long / Long Rifle cartridge case
2*	005158-1	2	One "R-P" .45 Auto cartridge case
3*	005158-1	3	One "FC NR" .45 Auto cartridge case
4*	005158-1	4	One "WINCHESTER" .45 Auto cartridge case
11	015709-1	1	One Taurus model PT-22 .22 Long Rifle caliber semiautomatic pistol, serial number: ANC29177
12	015709-1	1A	One magazine
14	013572-1	1	One Taurus model PT145 PRO Millennium .45 Auto caliber semiautomatic pistol, serial number: NCY05584
15	013572-2	1A	One magazine
17	005158-2	5	One bullet
20	005228-1	1	One Star unknown model .45 Auto caliber semiautomatic pistol, serial number: 1949428
21	005228-1	2	One magazine
22	009618-6	12	Metal fragments
23	009618-6	13	One bullet
24	009618-6	14	One bullet

*Items previously examined; see the laboratory report generated under this event number for further information.

Results and Conclusions:

Firearms

The Taurus pistol (Lab Item 11) was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 2 ¾ inches, an overall length of approximately 5 ¾ inches and a trigger pull of 7 ¾ - 8 ¼ pounds. The submitted magazine (Lab Item 12) fits and functions in this pistol and has a capacity of ten cartridges. This pistol and magazine were swabbed for DNA prior to test firing and two swabs were booked into the evidence vault.

The Taurus pistol (Lab Item 14) was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 3 ¼ inches and an overall length of approximately 6 ¼ inches. It has trigger pulls of 5 - 5 ½ pounds single action and 8 - 8 ¼ pounds double action. The submitted magazine (Lab Item 15) fits and functions in this pistol has a capacity of ten cartridges.

The Star pistol was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 4 inches, an overall length of approximately 7 ¼ inches and a trigger pull of 6 ¾ - 7 pounds. The submitted magazine (Lab Item 21) fits and functions in this pistol has a capacity of six cartridges.

Comparisons

The evidence cartridge cases and bullets were examined and microscopically compared to the test fired cartridge cases and bullets with the following results:

- The cartridge case (Lab Item 1) was identified as having been fired by the Taurus pistol (Lab Item 11).
- The three cartridge cases (Lab Items 2-4) were identified as having been fired by the Star pistol.
- The two bullets (Lab Items 17 and 24) were identified as having been fired by the Star pistol.
- The bullet (Lab Item 23) shared similar general rifling characteristics with the Taurus pistol (Lab Item 11). Damage to this bullet and a lack of microscopic information preclude an identification to or elimination from this pistol.
- The metal fragments are of no value for microscopic comparisons.

NIBIN

Representative images of a test fired cartridge case from the Taurus pistol (Lab Item 14) were entered into the National Integrated Ballistic Information Network (NIBIN). Associations to other events in the network will be reported separately.

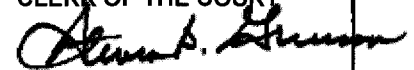
The evidence is returned to secure storage.

---This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.---



Anya Lester, #13771
Forensic Scientist II

- END OF REPORT -



1 **RET**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **GIANCARLO PESCI**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #007135**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

CASE NO: C-17-328587-3

11 **-vs-**

DEPT NO: XX

12 **DEMARIO LOFTON-ROBINSON, aka,**
13 **Demario Loftonrobinson, #5318925**
14 **RAEKWON SETREY ROBERTSON,**
15 **aka, Raekwon Robertson, #8252804**
16 **DAVONTAE AMARRI WHEELER,**
17 **#5909081**

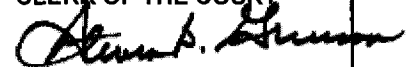
18 **Defendant(s).**

19 **STATE'S RETURN TO WRIT OF HABEAS CORPUS**

20 **DATE OF HEARING: March 20, 2018**
21 **TIME OF HEARING: 8:30 A.M.**

22 **COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent,**
23 **through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through**
24 **GIANCARLO PESCI, Chief Deputy District Attorney, in obedience to a writ of habeas corpus**
25 **issued out of and under the seal of the above-entitled Court on the 8th day of February, 2017,**
26 **and made returnable on the 27th day of February, 2017, at the hour of 8:30 A.M., before the**
27 **above-entitled Court, and states as follows:**

- 28
1. Respondent admits the allegations of Paragraphs 1, 2, 7.
 2. Respondent denies the allegations of Paragraph 3.
 3. Paragraph numbers 4, 5, 6, 8 do not require admission or denial.



1 **RET**
2 **STEVEN B. WOLFSON**
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1 November 29, 2017 and December 13, 2017, Defendant was held to answer on all three counts.
2 On December 14, 2017, Defendant was formally charged by way of Indictment, charging
3 Defendant as follows: COUNT 5 – CONSPIRACY TO COMMIT ROBBERY; COUNT 6 –
4 ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON; and COUNT 7 – MURDER
5 WITH USE OF A DEADLY WEAPON. On December 19, 2017, Defendant pled not guilty
6 and waived his right to a speedy trial.

7 The Grand Jury transcripts were filed on January 1, 2018. At a status check on January
8 9, 2018, the Court granted defense counsel an additional 30 days from that day to file any
9 writs. Accordingly, the instant Petition for Writ of Habeas Corpus was timely filed on
10 February 8, 2018.

11 Defendant is charged with the Murder and Attempt Robbery of Gabriel Valenzuela on
12 August 9, 2017. The State also alleges that Defendant conspired with his co-defendants to
13 commit a robbery against Mr. Valenzuela on that day.

14 II. STATEMENT OF FACTS

15 The following is a summary of the relevant portions of testimony elicited during the
16 presentation of evidence to the Grand Jury.

17 John Relato

18 On August 9, 2017, John Relato (“Mr. Relato”) resided with his cousin, Gabriel
19 Valenzuela at 5536 Dewey Drive in Las Vegas Nevada. See Preliminary Hearing Transcript
20 (Nov. 29, 2017) (“PHT”) 84:18-85:6. In the early morning hours of August 9, 2017, Mr.
21 Relato was inside his home when he heard gunshots. PHT 85:7-23. Mr. Relato looked out his
22 window and saw his cousin, Gabriel Valenzuela laying in the driveway to their home. Id. Mr.
23 Relato went outside and realized that Mr. Valenzuela was bleeding from his head. Id. As Mr.
24 Relato proceeded outside, he called 911. PHT 86:21-22, 87:6. The initial call to 911 was
25 placed at 12:11 a.m.¹ Mr. Relato did not see anyone in the area and he did not see who shot
26 his cousin. PHT 86:23-87:2. Mr. Relato testified that it was customary for his cousin to check

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¹ This fact was testified to by Detective Mitch Dosch. PHT 91:10:13

1 the mail and sit on the retaining wall in front of his home while he opened the mail. PHT
2 87:20-23.

3 **Lary Simms**

4 Larry Simms ("Dr. Simms") is a forensic pathologist with the Clark County Coroner's
5 Office. PHT 8:17-18, 9:11-13. Dr. Simms conducted the autopsy on Gabriel Valenzuela.
6 PHT 9:22-10:1. Dr. Simms determined that Mr. Valenzuela suffered four gunshot wounds.
7 One shot entered the right side of Mr. Valenzuela's head and exited on the left side of Mr.
8 Valenzuela's forehead; another shot entered Mr. Valenzuela's left abdomen and did not exit;
9 another shot entered the outside of Mr. Valenzuela's right ankle, exiting on the inside of Mr.
10 Valenzuela's right ankle; the fourth shot entered the back of Mr. Valenzuela's left ankle and
11 came to rest in his leg. PHT 13:21-23, 15:20-24, 17:6-20. Dr. Simms concluded that the cause
12 of Mr. Valenzuela's death was multiple gunshot wounds and the manner of Mr. Valenzuela's
13 death was homicide. PHT 17:21-18:6.

14 **Robert Mason**

15 At the time of Mr. Valenzuela's murder, Robert Mason lived in the same neighborhood
16 as the victim. PHT 45:20-25. At approximately midnight on the night of August 8, 2017, into
17 the morning of August 9, 2017, Mr. Mason went for a jog in his neighborhood. PHT 46:2-15.
18 During his jog, Mr. Mason saw four black males standing on the corner of Lindell and Dewey
19 in front of 5536 Dewey Drive.² PHT 46:16-48:2-18. Shortly after Mr. Mason ran past the
20 four individuals standing in front of Mr. Valenzuela's home, he saw what he described as a
21 white Crown Vic, bearing Nevada license plate number 473YZB. PHT 50:3-21. The vehicle
22 was parked approximately 20-50 feet from where the four black males were standing. PHT
23 50: 22-25. When shown Grand Jury Exhibit 28 (attached as Exhibit 5), Mr. Mason identified
24 it as the vehicle he saw when he jogged past the victim's house. PHT 51:1-15. Mr. Mason

25 //

26
27 ² See Grand Jury Exhibit 16, attached as Exhibit 2. When shown Exhibit 16, Mr. Mason indicated that the photograph
28 captured the area where he saw the four individuals standing. PHT 48:3:18. During Mr. Relato's testimony, he
identified Exhibit 16 as a photograph of his home located at 5536 Dewey Drive. PHT 87:7-11. Exhibit 16 was also
identified by Crime Scene Analyst William Speas and Detective Ryan Jaeger as being the residence on Dewey Drive.
PHT 66:5-9, PHT 142:24-143:4.

1 felt these individuals were suspicious so he called his wife and told her to lock the doors to
2 their house and he asked her to call 311 to report the suspicious individuals. PHT 51:18-52:1.

3 **Nikolaus Spahn**

4 On the night of Mr. Valenzuela's murder (August 8, 2017 into the morning of August
5 9, 2017), Nikolaus Spahn ("Mr. Spahn") was working as a cashier at the Short Line Express
6 located at the intersection of Warm Springs Road and Jones Boulevard at 7325 South Jones
7 Boulevard. PHT 21:13-19, 24:2-7. On that night, Mr. Spahn's shift began at 10:00 p.m. PHT
8 21:24-25. Between 11:20-11:38 p.m., four individuals entered the store. PHT 22, 27:7-29:13.
9 Mr. Spahn believed these individuals were behaving suspiciously and he was concerned
10 because one of the individuals was wearing a firearm on his hip.³ PHT 22:1-23:25.

11 After the four individuals exited the store, they sat down at a table outside of the store.
12 PHT 25:22-26:11. Mr. Spahn continued to observe the individuals at which point he went
13 outside and saw the vehicle the four individuals were driving. Id. Mr. Spahn described the
14 vehicle as a white four door Mercury that looked like a Crown Victoria. PHT 26 12:15. Later
15 that night, police officers came into the store and told Mr. Spahn they were investigating a
16 murder; at that time he told officers about the four individuals he observed. PHT 27:15-23.

17 During Mr. Spahn's testimony, the State introduced surveillance footage from the
18 Shortline Express capturing the four individuals as well as the vehicle in which they arrived.
19 PHT 29:20-31:15. The surveillance footage showed that the vehicle had paint damage on the
20 roof of the car that the first three numbers on the license plate number were 473. PHT 31:6-
21 9, 96:11-22.

22 **James Newman**

23 James Newman testified that on August 4, 2017 (four days before Mr. Valenzuela was
24 murdered), he sold his white Mercury Grand Marquis to Co-Defendant Lofton-Robinson.
25 PHT 38:22-39:14. The vehicle had a Nevada license plate number of 473-YZB, the same
26 license plate observed by Mr. Mason in front of the victim's. See PHT 37:10-13, 50:3-21.
27 When Mr. Newman sold the vehicle, he allowed Co-Defendant Lofton-Robinson to keep the

28 ³ Surveillance footage reveals that the individual wearing the firearm is the person Detective Dosch identified as Defendant Wheeler. Portions of the surveillance footage introduced at Grand Jury are attached hereto as Exhibit 1.

1 license plates with the understanding they would be returned at a later time. PHT 39:25-40:1,
2 41:9-17. James Newman identified the vehicle in Grand Jury Exhibits 28 and 30 (attached as
3 Exhibits 5 and 6, respectively) as the vehicle he sold to Co-Defendant Lofton-Robinson.⁴ Mr.
4 Newman was able to identify the vehicle based on its license plate number of 473-YZB which
5 was depicted in Grand Jury Exhibit 28 and because of the paint damage to the roof of the car
6 which was depicted in Grand Jury Exhibit 30. PHT 37:10-24.

7 **Lora Cody**

8 Lora Cody ("Detective Cody") is a homicide detective with the Las Vegas Metropolitan
9 Police Department. PHT 135:11-19. Detective Cody was assigned to assist in the
10 investigation of Mr. Valenzuela's murder. PHT 135:20-22. A portion of her responsibilities
11 involved obtaining surveillance footage. PHT 135:24-3. As a result, Detective Cody
12 responded to the Shortline Express convenience store located near Dewey Drive. PHT 136:3-
13 19. In viewing the surveillance, detectives observed a white Mercury Grand Marquis with a
14 NV license plate bearing the first three numbers of 473. PHT 136:25-137:13. Based on an
15 investigation into the registration of the vehicle, officers were able to locate the vehicle. PHT
16 137:11-19. Ultimately, a traffic stop was conducted, at which time Co-Defendant Lofton-
17 Robinson was inside the car. PHT 137:20-138:11.

18 **Mitch Dosch**

19 Mitch Dosch ("Detective Dosch") is a homicide detective with the Las Vegas
20 Metropolitan Police Department. PHT 90:16-19. Along with other detectives, Detective
21 Dosch was assigned to investigate Mr. Valenzuela's murder. PHT 91:5-9. Detective Dosch
22 testified that four cartridge casings were located at the scene of the murder: one .22 caliber
23 cartridge case and three .45 caliber cartridge cases. PHT 99:22-100:8. The .22 caliber
24 cartridge case bore a head stamp of "C." PHT 13:15. The .45 caliber cartridge cases bore
25 three separate head-stamps: R-P 45, NFCR, and WINCHESTER 45 AUTO. PHT 100:23-
26 101:1, 101:18-21, 102:2-7.

27
28 ⁴ Grand Jury Exhibits 28 and 30 are photographs of the white Mercury Grand Marquis taken inside LVMPD's lab after it was towed to that location. PHT 55:25-56:3. Grand Jury Exhibit 28 was also identified by Robert Mason as the vehicle he saw near the victim's home right before the murder occurred.

1 Additionally, Detective Dosch testified regarding the substance of the surveillance
2 video retrieved from the Shortline Express convenience store depicting the events of which
3 Nikolas Spahn testified. PHT 95:17-23. Significantly, Detective Dosch testified that if one
4 were driving a vehicle from the Short Line Express to the scene of the murder, it would only
5 take a matter of minutes. PHT 95:9-16.

6 With respect to the vehicle that the four individuals were driving, the surveillance
7 footage revealed that the first three numbers on the license plate were 473. PHT 95:24-96:22.
8 Because this information matched the description of the vehicle at the scene of the crime and
9 because the four individuals in the surveillance footage were consistent with the four
10 individuals seen at the scene of the crime, detectives attempted to identify the individuals in
11 the footage. See id., PHT 96:23-97:21.

12 Following an investigation, Detective Dosch was able to identify the four individuals
13 depicted in the surveillance footage from the Shortline Express on August 8, 2017. Based on
14 his prior interactions with each of the defendants, Detective Dosch identified one of the
15 individuals in the surveillance footage as Co-Defendant Lofton-Robinson; in the surveillance
16 footage, Lofton-Robinson was wearing red shoes, blue jeans, and a long-sleeved green shirt.
17 PHT 105:17-106:5, 108:23-109:9. Detective Dosch also identified Co-Defendant Robertson
18 as one of the individuals in the surveillance footage. PHT 117:3-11. Finally, Detective Dosch
19 identified one of the individuals as Defendant Wheeler. PHT 112:22-113. In the surveillance
20 footage, Defendant Wheeler was wearing a white and black hat; a maroon top, and maroon
21 shoes. PHT 113:3-5, see Grand Jury Exhibits 9 and 10 (attached as Exhibits 7 and 8,
22 respectively).

23 After identifying these individuals, detectives obtained multiple search warrants. Id.
24 During execution of the various search warrants, officers located multiple items of evidentiary
25 value.

26 A .22 caliber semi-automatic firearm was located at 6647 West Tropicana, an address
27 associated with Co-Defendant Raekwon Robertson. PHT 98:12-19, 100:16-22. While

28 //

1 searching 6647 West Tropicana, officers also located ammunition bearing the headstamp "C."
2 Id. This ammunition matches the .22 caliber cartridge case found at the murder scene. Id.

3 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
4 Co-Defendant Lofton-Robinson. PHT 97:23-98:2, 98:24-99:2. During the search of that
5 residence, officers located a .45 caliber firearm and ammunition bearing a headstamp of R-P
6 45, which matched one of .45 caliber cartridge cases found at the scene of the murder, PHT
7 98:3-5, PHT 100:16-22.

8 A search warrant was also obtained to search Apartment F located at 3300 Civic Center
9 Drive. PHT 99:11-15. Detective Dosch testified that Defendant was associated with this
10 address. PHT 101:14-17. At that residence, officers located a .45 caliber firearm loaded with
11 ammunition bearing a headstamp of RP-45 auto. PHT 15:18-116:14. This ammunition
12 matches one of the .45 caliber cartridge cases found at the scene of the murder. Id.
13 Additionally, officers recovered a hat and a pair of maroon shoes both of which matched the
14 items worn by the individual in the surveillance footage who Detective Dosch identified as
15 being the Defendant. PHT 114:2-115:17, see Grand Jury Exhibit 37 and 38 (attached as
16 Exhibits 9 and 10 respectively). This is the same individual who is also seen on the
17 surveillance footage wearing a firearm. See Exhibits 1, 7 and 8.

18 **Ryan Jaeger**

19 Ryan Jaeger ("Detective Jaeger") is a homicide detective with the Las Vegas
20 Metropolitan Police Department assigned to assist in investigating the murder of Mr.
21 Valenzuela. PHT 142:14-25.

22 Detective Jaeger testified that at the area where the victim was picked up by medical
23 personnel, there was mail scattered about the ground. PHT 143:5-9, see Grand Jury Exhibits
24 16-18 (attached as 2-4, respectively). Detective Jaeger also testified that he interviewed the
25 Defendant after advising him of his Miranda warnings. PHT 145:1-16. In his interview,
26 Defendant was shown a photograph of the vehicle captured in the surveillance at the Short
27 Line Express and he admitted to having been in the vehicle on August 8, 2017. PHT 145:25-
28 146:2. He also admitted that he owed a .45 caliber firearm and that he would carry the firearm

1 in open carry fashion on his right hip. PHT 145:19-21, 146:22-24. However, when shown
2 footage from inside the Shortline Express, Defendant denied that he had been present inside
3 the store. PHT 146:25-147:5.

4 LEGAL ARGUMENT

5 I. STANDARD OF REVIEW

6 It is well settled that a district court's function in reviewing a pretrial writ of habeas
7 corpus challenging the sufficiency of probable cause is to determine whether enough
8 competent evidence was presented to establish a reasonable inference that the accused
9 committed the offenses. State v. Fuchs, 78 Nev. 63 (1962). The finding of probable cause to
10 support a criminal charge may be based on "slight, even 'marginal' evidence . . . because it
11 does not involve a determination of the guilt or innocence of the accused." Sheriff v. Hodes,
12 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). "To commit an accused for trial, the State is not
13 required to negate all inferences which might explain his conduct, but only to present enough
14 evidence to support a reasonable inference that the accused committed the offense." Kinsey
15 v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971). Sheriff v. Miley, 99 Nev. 377
16 (1983). Thus, the court need not consider whether the evidence presented to a Grand Jury, or
17 presented at a preliminary hearing, may, by itself, sustain a conviction, because the State need
18 not produce the quantum of proof required to establish the guilt of the accused beyond a
19 reasonable doubt. See Hodes, 96 Nev. at 186, 606 P.2d at 180; Miller v. Sheriff, 95 Nev. 255,
20 592 P.2d 952 (1979); McDonald v. Sheriff, 87 Nev. 361, 487 P.2d 340, (1971).

21 The Nevada Supreme Court has explicitly held that a probable cause determination is
22 "not a substitute for trial," and that the "full and complete exploration of all facets of the case"
23 should be reserved for trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969);
24 Robertson v. Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969). If the evidence produced
25 establishes a reasonable inference that the defendant committed the crime, the probable cause
26 to order the defendant to answer in the district court has been established. Morgan v. Sheriff,
27 86 Nev. 23, 467 P.2d 600 (1970). Accordingly, the issue of guilt or innocence is not involved
28 and "the evidence need not be sufficient to support a conviction." Kinsey, 87 Nev. at 363

1 (citing Masklay v. State, 85 Nev. 111, 450 P.2d 790 (1969)); Hodes, 96 Nev. at 184, 606 P.2d
2 at 180.

3 II. ANALYSIS

4 The State presented sufficient evidence at the grand jury to hold Defendant to answer
5 to COUNT 5 - Conspiracy to Commit Robbery; COUNT 6 - Attempt Robbery with Use of a
6 Deadly Weapon; and COUNT 7 – Murder with Use of a Deadly Weapon.

7 In his Petition for Writ of Habeas Corpus, Defendant fails to address any of the specific
8 crimes alleged in the Indictment and he fails to address how the State's presentation of
9 evidence was insufficient to establish probable cause for the crimes charged. Instead,
10 Defendant makes a blanket statement that "there is simply not enough evidence against
11 [Defendant] in this case to support the charges and the Indictment." Def.'s PWHC at 10.
12 Contrary to Defendant's claim and as set for below, the State provided sufficient evidence to
13 hold Defendant to answer on all counts.

14 A. Sufficient, Legal, Evidence was Presented to the Grand Jury to Establish 15 Probable Cause that Defendant Unlawfully Killed Gabriel Valenzuela and to 16 hold Defendant to answer to the charged of Murder with Use of a Deadly 17 Weapon

18 An open murder charge includes murder in the first degree and all necessarily included
19 offenses, such as manslaughter where less than all the elements of first degree murder are
20 present. See Miner v. Lamb, 86 Nev. 54, 464 P.2d 451 (1970); Parsons v. State, 74 Nev. 302,
21 329 P.2d 1070 (1958); State v. Oschoa, 49 Nev. 194, 242 P.2d 582 (1926); NRS 175.501. First
22 degree murder and second degree murder are not separate and distinct crimes which must be
23 pleaded accordingly. See Thedford v. Sheriff, 86 Nev. 741, 476 P.2d 25 (1970); Howard v.
24 Sheriff, 83 Nev. 150, 425 P.2d 596 (1967). Thus, there need not be evidence of first degree
25 murder to support an open charge. See Wrenn v. Sheriff, 87 Nev. 85, 482 P.2d 289 (1971).

26 "[T]he presence of malice is a question of fact which bears directly on the guilt or
27 innocence of a defendant and upon the degree of the crime charged. It is not a question to be
28 determined by the magistrate at a preliminary examination--it is a question to be determined

1 by the trier of fact at the trial of the case.” Thedford v. Sheriff, 86 Nev. 741, 476 P.2d 25 (1970)
2 (citing State v. Acosta, 49 Nev. 184, 242 P.2d 316 (1926)). “Neither a preliminary hearing,
3 nor a hearing upon a petition for a writ of habeas corpus is designed as a substitute for this
4 function (a trial).” Id at 28 (quoting State v. Fuchs, 78 Nev. 63, 368 P.2d 869 (1962)).

5 Additionally, pursuant to NRS 200.030, a murder which is committed during the
6 perpetration or attempted perpetration of a robbery is murder of the first degree. Pursuant to
7 the Felony Murder Rule, if one conspires to commit a robbery, he is liable for the murder
8 perpetrated during the course of the attempted robbery. Garner v. State, 116 Nev. 770, 782
9 (2000).

10 Defendant and his co-defendants are charged alternatively with open murder and felony
11 murder. Additionally, under the felony murder, the State alleged multiple theories, i.e., that
12 Defendant directly committed the crime; that Defendant aided and abetted in the commission
13 of the crime; and/or that Defendant conspired to commit the crime of robbery and/or murder.

14 The evidence presented at Grand jury establishes that on the night of August 8, 2017
15 the Defendant was inside the Shortline Express convenience store sometime between 11:20-
16 11:38 p.m. At that time, the Defendant was captured on surveillance wearing a firearm on his
17 right hip. The convenience store where Defendant was seen wearing a firearm is only a matter
18 of minutes away from the scene of the murder. Although Defendant denied that he was inside
19 the Shortline Express on August 8, 2017, he did admit that owns a .45 caliber firearm and that
20 he wears it in an open carry fashion. Additionally, Defendant was identified by Detective
21 Dosch as the individuals wearing the firearm. This identification was corroborated by items
22 found during execution of a search warrant at 3300 Civic Center Drive (an address associated
23 with Defendant). Specifically, officers found a pair of maroon shoes and a white hat which
24 constitute an exact match to those worn by Defendant in the surveillance footage.

25 In addition, while Defendant was inside the store, he was with three other black males
26 who were all seen in a white Mercury Grand Marquis bearing a license plate beginning with
27 the numbers 473. Less than 30 minutes later, at around midnight, Mr. Mason saw four black
28 men standing in front of the victim’s home. Mr. Mason saw the four men standing near a

1 vehicle that he described as a white Crown Victoria with license plate number 473YZB. Mr.
2 Newman testified that he sold that exact car to Co-Defendant Lofton-Robinson four days
3 before Mr. Valenzuela's murder. Based on the surveillance footage from the Shortline Express
4 in conjunction with the testimony of Mr. Mason (the jogger), Mr. Spahn (the convenience store
5 clerk) and Mr. Newman (the vehicle's prior owner), there can be no dispute that the vehicle
6 seen by Mr. Mason in front of the victim's house is the same vehicle captured on surveillance
7 footage at the Shortline Express.

8 Not only does this evidence create a reasonable inference Defendant was at the scene
9 of the murder, it places him there in very close proximity to the murder. The first call to 911
10 was made at 12:11; just minutes after Mr. Mason saw four black men and the white vehicle in
11 front of the victim's home. Additionally, Defendant was seen in possession of a firearm
12 approximately 30 minutes before the killing. Furthermore, in a search warrant of 3300 Civic
13 Center Drive (an address associated with Defendant), officers located a .45 caliber firearm
14 with ammunition bearing the headstamp RP-45 auto. This headstamp matches one of the .45
15 caliber shell cases found at the scene of the murder.

16 At this stage, the State is not required to negate all possible scenarios surrounding the
17 death of Mr. Valenzuela. The State is only required to demonstrate a reasonable inference that
18 the defendant committed the crime. Based on the evidence presented, the State demonstrated
19 a reasonable inference that Defendant committed the crime or Murder with Use of a Deadly
20 Weapon.

21 **B. Sufficient Evidence was Presented to the Grand Jury to Establish Probable**
22 **Cause that Defendant committed the Crimes of Conspiracy to Commit**
23 **Robbery and Attempt Robbery with Use of a Deadly Weapon**

24 Conspiracy is "an agreement between two or more persons for an unlawful purpose."
25 Doyle v. State, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996). The conspiracy agreement may
26 be inferred by a "coordinated series of acts" in furtherance of the underlying offense. Doyle,
27 112 Nev. at 894; see also Gaitor v. State, 106 Nev. 785, 790 n.1, 801 P.2d 1372, 1376 n.1
28 (1990); overruled on other grounds by, Barone v. State, 109 Nev. 1168, 1171, 866 P.2d 291,

1 292 (1993). Nevada adheres to the Pinkerton theory of conspiracy liability which holds that
2 the overt act of one is the act of all even without a specific new agreement, so long as the
3 "partnership in crime" continues. See, State v. Wilcox, 105 Nev. 434, 436, 776 P.2d 549, 550
4 (1989); Pinkerton v. United States, 328 U.S. 640, 646-647, 66 S.Ct. 1180, 1183-1184 (1946);
5 see also, Goldsmith v. Sheriff, 85 Nev. 295, 306, 454 P.2d 86, 93 (1969); citing, VanRiper v.
6 United States, 13 F.2d 961, 967 (2nd Cir. 1926), cert. denied sub nom., Ackerson v. United
7 States, 273 U.S. 702, 47 S.Ct. 102 (1926). Therefore, in Nevada the acts of one conspirator in
8 furtherance of the conspiracy are the acts of all, and each and every individual will be held
9 criminally responsible for the acts of the other.

10 While the standard at trial is much greater than before the Grand Jury, what the Nevada
11 Supreme Court believes is necessary for conviction in a conspiracy is illustrative of the instant
12 case:

13 [C]onspiracy is seldom susceptible of direct proof and is usually
14 established by inference from the conduct of the parties." Gaitor v.
15 State, 106 Nev. 785, 790 n. 1, 801 P.2d 1372, 1376 n. 1 (1990)
16 (quoting State v. Dressel, 85 N.M. 450, 451, 513 P.2d 187, 188
17 (1973)). In particular, a conspiracy conviction may be supported by
18 "a coordinated series of acts," in furtherance of the underlying
19 offense, "sufficient to infer the existence of an agreement." Id.

20 Doyle, 112 Nev. at 894 (overruled on other grounds by Kaczmarek v. State, 120 Nev. 314,
21 91 P.3d 16 (2004)).

22 Robbery is defined as the unlawful taking of the personal property of another by means
23 of force or violence. NRS 200.380. An act done with intent to commit a crime, and tending
24 but failing to accomplish it, is an attempt to commit that crime. State v. Verganadis, 50 Nev.
25 1, 4 (1926) (internal citation omitted). The act done must be an overt act and must go beyond
26 mere preparation to commit the crime and tend to accomplish it. Id. at 4-5.

27 Accordingly, as to COUNT 5 – Conspiracy to Commit Robbery, the State must produce
28 slight or marginal evidence that Defendant entered into an agreement with his co-conspirators
to rob Mr. Valenzuela. As to COUNT 6 - Attempt Robbery with Use of a Deadly Weapon,
the State to produce slight or marginal evidence that the Defendant committed an overt act
with the intent to take personal property from Gabriel Valenzuela and that said act was

1 committed with a firearm. As COUNT 6 is Barren pled, the State need not prove that
2 Defendant is the person who directly committed the crime. Rather, Defendant can also be held
3 to answer if he aided and abetted in the attempted robbery of Mr. Valenzuela or if he conspired
4 to commit the crime.

5 Here, the evidence to establish that Defendant conspired to commit a robbery against
6 Mr. Valenzuela largely overlaps with the evidence that he attempted to rob Mr. Valenzuela.
7 Accordingly, the State will address these counts two together. For obvious reasons, the victim
8 in the instant case did not testify that Defendant attempted to take property from him.
9 However, the attendant circumstances indicate by slight or marginal evidence that Defendant
10 did attempt to rob Mr. Valenzuela and that he did so with using a deadly weapon. First, it is
11 undisputed that a deadly weapon was used in the commission of the crimes committed against
12 Mr. Valenzuela as he was shot and killed with a firearm. Second, as to the conspiracy and
13 attempted robbery, the evidence shows that Defendant and his co-defendants were lying in
14 wait in a residential neighborhood in the middle of the night. The most reasonable explanation
15 for this fact is that the Defendant and his co-defendants were looking for a victim to rob.
16 Especially given the time of night, there is no other logical explanation for the Defendant to
17 be standing outside the victim's home and there is absolutely no evidence that the Defendant
18 or any of the co-defendants knew Mr. Valenzuela. Additionally, Mr. Valenzuela's items were
19 strewn about the ground. This infers that the Defendant and or his co-defendant's struggled
20 with the victim in an attempt to obtain his property. Furthermore, the Defendants all arrived
21 on scene together and presumably left together as Mr. Relato did not see anyone in the area
22 after his cousin was shot. Although there may be other explanations for the evidence
23 presented, the State is not required to negate all possible inferences to explain away the
24 Defendant's behavior. The State simply must show an inference that Defendant committed
25 the crimes alleged.

26 ///

27 ///

28 ///

1 In Bails v. State, 92 Nev. 95, 545 P.2d 1155 (1976), the Nevada Supreme Court
2 elaborated further on circumstantial evidence in citing to Holland v. United States, 348 U.S.
3 121, 75 S. Ct. 127 (1955), a wholly circumstantial evidence case:

4 Circumstantial evidence in this respect is intrinsically no different
5 from testimonial evidence. Admittedly, circumstantial evidence
6 may in some cases point to a wholly incorrect result. Yet this is
7 equally true of testimonial evidence. In both instances, a jury is
8 asked to weigh the chances that the evidence correctly points to
9 guilt against the possibility of inaccuracy or ambiguous inference.
10 In both, the jury must use its experience with people and events in
11 weighing the probabilities. If the jury is convinced beyond a
12 reasonable doubt, we can require no more.

13 Bails, 92 Nev. at 97, 545 P.2d at 1156.

14 While the evidence as to COUNTS 5 and 6 is circumstantial, when considered in its
15 totality, it leads to an inference that the Defendant and his co-defendants attempted to rob Mr.
16 Valenzuela and that they conspired to do so in advance. Such evidence is enough to establish
17 probable cause in the instant case.

18 CONCLUSION

19 Based on the foregoing, the State respectfully requests that Defendant's Petition for
20 Writ of Habeas Corpus be DENIED in its entirety.

21 DATED this 2 day of March, 2018.

22 Respectfully submitted,

23 STEVEN B. WOLFSON
24 Clark County District Attorney
25 Nevada Bar # 001565

26 BY *Giancarlo Pesci* #12840
27 GIANCARLO PESCI
28 Chief Deputy District Attorney
Nevada Bar #Deputy Bar

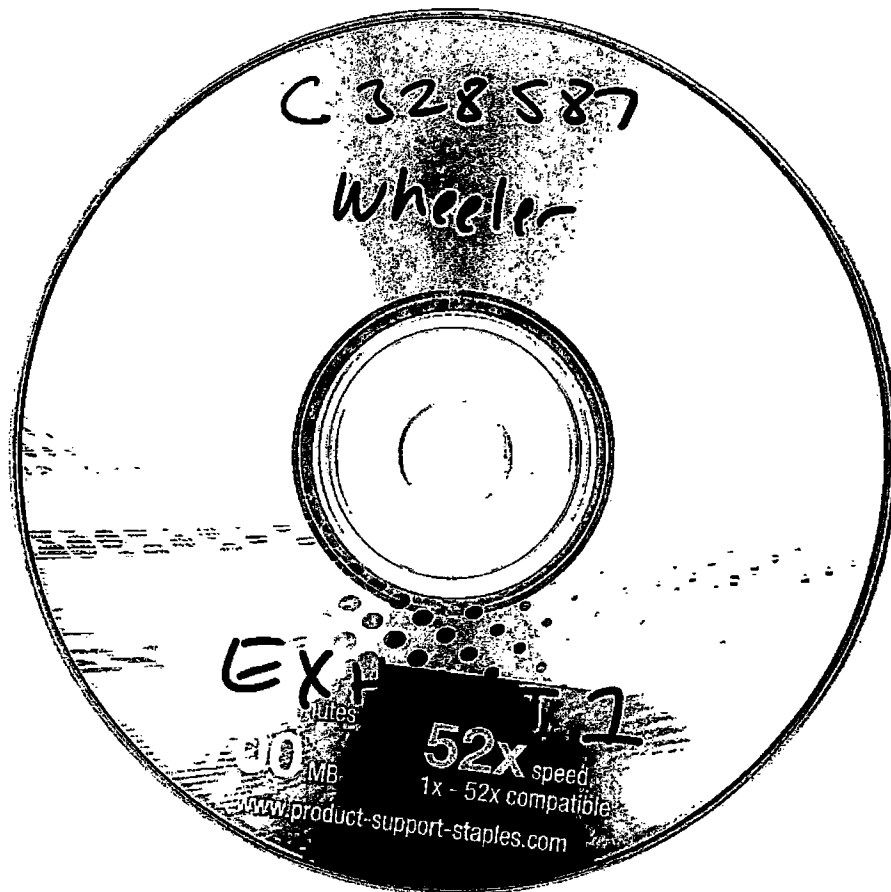
1 **CERTIFICATE OF ELECTRONIC FILING**

2 I hereby certify that service of Return to Writ of Habeas Corpus, was made this 2nd day
3 of March, 2018, by Electronic Filing to:

4
5 JAMES RUGGEROLI, ESQ.
6 ruggeroli@icloud.com

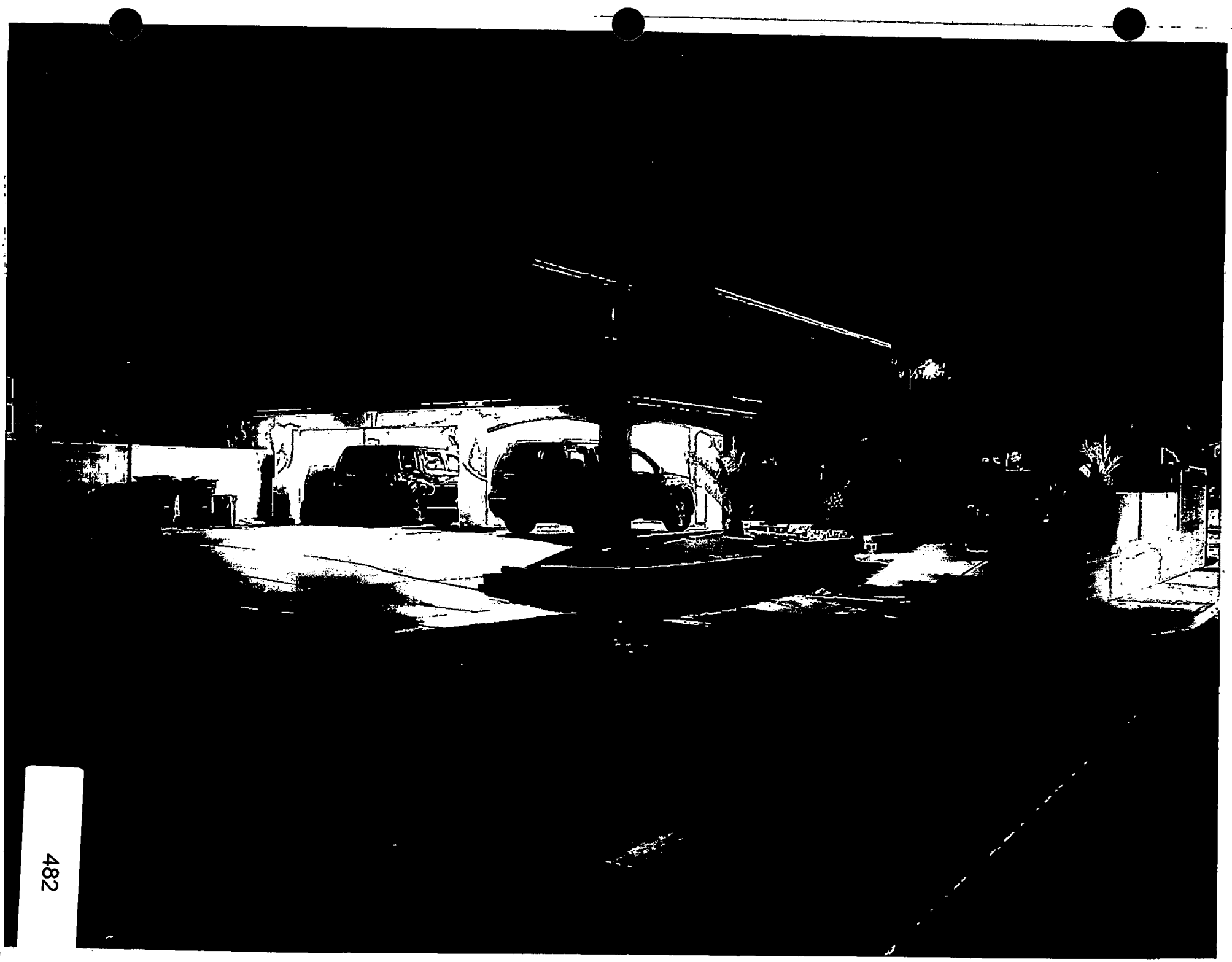
7 BY: Carina Garcia
8 C. Garcia
9 Employee of the District Attorney's Office

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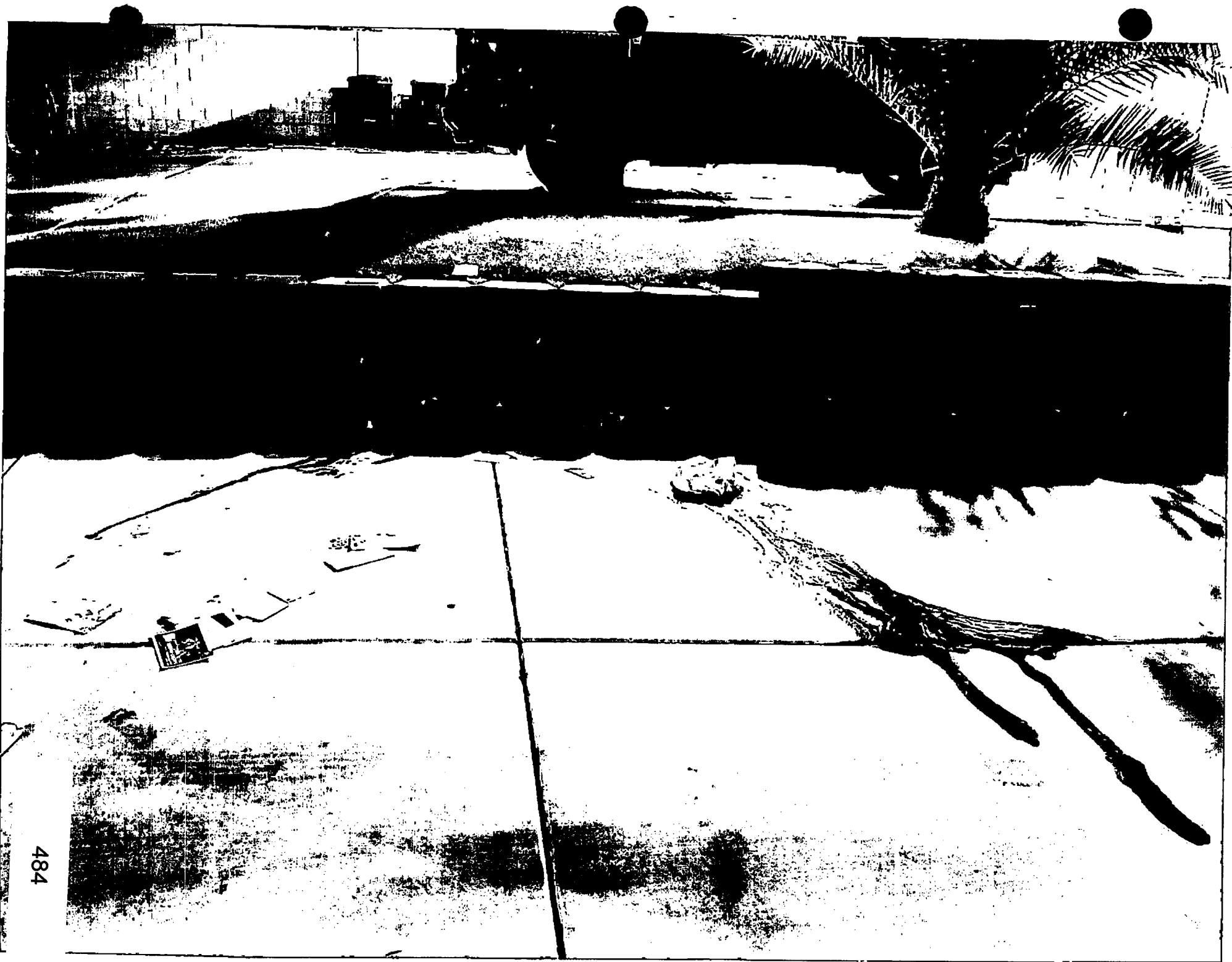
“EXHIBIT 1”

“EXHIBIT 2”



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“EXHIBIT 3”



“EXHIBIT 4”



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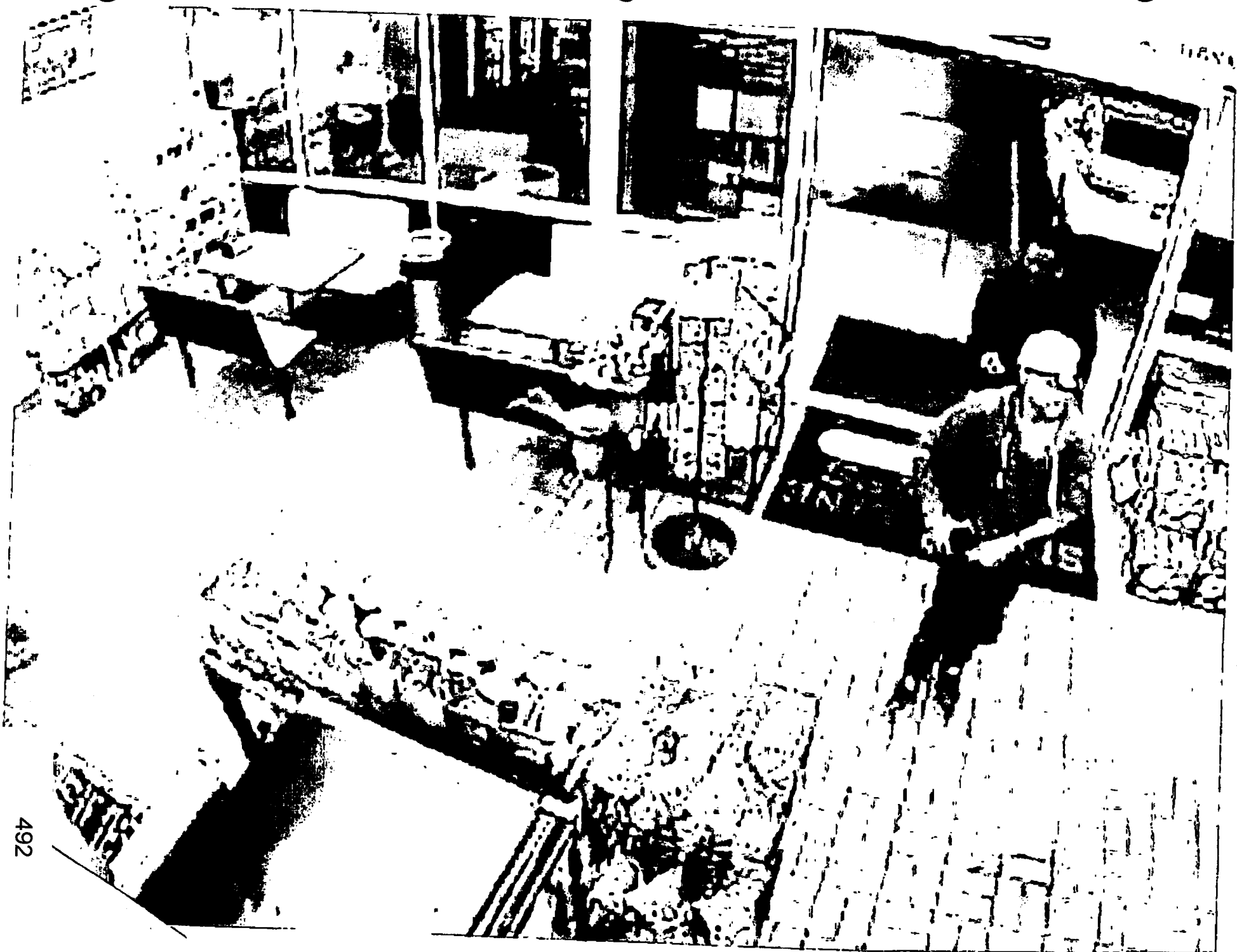
“EXHIBIT 5”



“EXHIBIT 6”



“EXHIBIT 7”



“EXHIBIT 8”



“EXHIBIT 9”



“EXHIBIT 10”



FILED

MAR - 7 2018

John J. Blum
CLERK OF COURT

1 **NOTC**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **GIANCARLO PESCI**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #007135**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

C-17-328587-3
NOTC
Notice
4728743



**DISTRICT COURT
CLARK COUNTY, NEVADA**

12 **THE STATE OF NEVADA,**

13 **Plaintiff,**

14 **-vs-**

15 **DAVONTAE AMARRI WHEELER,**
16 **#5909081**

17 **Defendant.**

CASE NO: C-17-328587-3

DEPT NO: XX

**STATE'S NOTICE OF EXHIBITS
FOR STATE'S RETURN TO WRIT OF HABEAS CORPUS**

18 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County**
19 **District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and files**
20 **this Notice of Exhibits.**

21 **EXHIBIT 1: DVD**

22 //

23 //

24 //

25 //

26 //

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CLERK OF COURT
MAR 7 - 2018
RECEIVED

1 These Exhibits are in addition to any other Exhibits for which a separate Notice has
2 been filed.

3 DATED this 2 day of March, 2018.

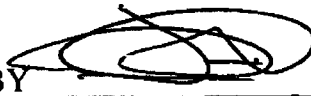
4 STEVEN B. WOLFSON
5 Clark County District Attorney
6 Nevada Bar #001565

7 BY  #12840 to
8 GIANCARLO PESCI
9 Chief Deputy District Attorney
10 Nevada Bar #007135
11
12
13
14

15 **RECEIPT OF COPY**

16 RECEIPT OF COPY of the above and foregoing State's Return to Writ of Habeas
17 ^{and DUB Exhibit} Corpus is hereby acknowledged this 7th day of March, 2018.

18 JAMES J. RUGGEROLI
19 ATTORNEY FOR DEFENDANT

20 
21 BY _____
22 JAMES J. RUGGEROLI
23 601 S. 7th St.
24 Las Vegas, Nevada 89101
25 Phone: 702-258-2022
26 Fax: 702-258-2021
27
28

cg/L3

1 These Exhibits are in addition to any other Exhibits for which a separate Notice has
2 been filed.

3 DATED this 2 day of March, 2018.


4 STEVEN B. WOLFSON
5 Clark County District Attorney
6 Nevada Bar #001565

7 BY Francis J. Pesci #12840
8 GIANCARLO PESCI
9 Chief Deputy District Attorney
10 Nevada Bar #007135

11
12
13
14
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18 JAMES J. RUGGEROLI
19 ATTORNEY FOR DEFENDANT

20
21 BY 
22 JAMES J. RUGGEROLI
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28 cg/L3