

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. 3 OF 14)

SANDRA L. STEWART
Attorney at Law
Nevada Bar No.: 6834
1361 Babbling Brook Court
Mesquite, Nevada 89034
(702) 363-4656
Attorneys for Appellant

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BAIL-STATE OPPOSITION	03-19-2018	0449	002
BAIL-WHEELER MOTION	03-13-2018	0440	002
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BRADY-STATE OPPOSITION	12-27-2019	1015	005
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CONTINUE TRIAL-RT	11-05-2019	0904	004
CONTINUE TRIAL-WHEELER MOTION	12-14-2018	0814	004
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DISCLOSE INFORMANTS-RT	01-15-2020	1085	005
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EXHIBITS	02-18-2020	2814	012
EXHIBITS	02-19-2020	3096	013
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EXPERTS-STATE 3RD SUPP	02-06-2020	1107	005
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HABEAS PETITION-RT	06-14-2018	0661	003
HABEAS PETITION-RT	06-14-2018	0672	003
HABEAS PETITION-RT	08-02-2018	0721	003
HABEAS PETITION-STATE RETURN	03-08-2018	0427	002
HABEAS PETITION-STATE RETURN	03-02-2018	0464	002
HABEAS PETITION-STATE RETURN	05-29-2018	0598	003
HABEAS PETITION-STATE SUPP TO RETURN	06-28-2018	0688	003
HABEAS PETITION-WHEELER PETITION	02-08-2018	0409	002
HABEAS PETITION-WHEELER PETITION	05-17-2018	0587	003
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INFORMATION (ROBINSON)	10-04-2018	2590	011
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JURY INSTRUCTIONS	02-19-2020	1358	006
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JURY LIST	02-12-2020	1354	006
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JURY LIST (2ND AMENDED)	02-19-2020	1357	006
JURY LIST (AMENDED)	02-14-2020	1356	006
JURY TRIAL (DAY 1)-RT	02-11-2020	1114	005
JURY TRIAL (DAY 2)-RT	02-12-2020	1400	006
JURY TRIAL (DAY 3)-RT	02-13-2020	1727	007
JURY TRIAL (DAY 4)-RT	02-14-2020	2121	009
JURY TRIAL (DAY 5)-RT	02-18-2020	2611	011
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SENTENCING-RT	06-11-2020	3303	014
SENTENCING-STIPULATION	02-11-2020	1352	006
SEVER COUNTS-RT	12-31-2019	1068	005
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SUPPRESS JAIL CALLS-RT	12-31-2019	1068	005
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WITNESSES-STATE 3RD SUPP	02-06-2020	1107	005
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HABEAS PETITION-STATE RETURN	03-08-2018	0427	002
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BAIL-STATE OPPOSITION	03-19-2018	0449	002
HABEAS PETITION-RT	03-20-2018	0502	003
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SEVER DEFENDANTS-WHEELER MOTION	12-14-2018	0817-01	004
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SUPPRESS JAIL CALLS-STATE OPPOSITION	12-26-2019	0996	005
BRADY-STATE OPPOSITION	12-26-2019	1002	005
DISCLOSE INFORMANTS-STATE OPPOSITION	12-26-2019	1008	005
BRADY-STATE OPPOSITION	12-27-2019	1015	005
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VIDEO WITNESS (CHARLTON)-STATE MOTION	01-28-2020	1092	005
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JURY LIST	02-12-2020	1354	006
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JURY LIST	02-12-2020	1724	007
JURY TRIAL (DAY 3)-RT	02-13-2020	1727	007
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JURY LIST (AMENDED)	02-14-2020	1356	006
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EXHIBITS	02-14-2020	2385	010
JURY TRIAL (DAY 5)-RT	02-18-2020	2611	011
EXHIBITS	02-18-2020	2814	012
JURY LIST (2ND AMENDED)	02-19-2020	1357	006
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JURY TRIAL (DAY 6)-RT	02-19-2020	2881	012
EXHIBITS	02-19-2020	3096	013
JURY INSTRUCTIONS-WHEELER PROPOSED	02-19-2020	3099	013
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EXHIBITS	02-20-2020	3124	014
VERDICT	02-24-2020	1398	006
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SENTENCING-RT	06-11-2020	3303	014
JUDGMENT OF CONVICTION	06-17-2020	3318	014
NOTICE OF APPEAL	06-18-2020	3321	014

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****March 20, 2018**

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

March 20, 2018 08:30 AM All Pending Motions

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

COURT CLERK: Skinner, Linda

RECORDER: Slattery, Patti

REPORTER:

PARTIES PRESENT:

Davontae Amarri Wheeler Defendant

Giancarlo Pesci Attorney for Plaintiff

James J. Ruggeroli Attorney for Defendant

State of Nevada Plaintiff

JOURNAL ENTRIES

**DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS...DEFENDANT'S MOTION FOR OWN
RECOGNIZANCE RELEASE / SETTING OF REASONABLE BAIL**

Upon Court's inquiry, Mr. Ruggeroli advised he filed a response on 3/8 and requested a continuance for the Court to review it as it contains important arguments. Mr. Pesci had no objection. COURT ORDERED, matter CONTINUED to Thursday.

CUSTODY

... CONTINUED 3/22/18 9:00 AM



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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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, MARCH 20, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS;**
18 **DEFENDANT'S MOTION FOR OWN RECOGNIZANCE**
19 **RELEASE/SETTING REASONABLE BAIL**

20 APPEARANCES:

21 For the State:

GIANCARLO PESCI
Deputy District Attorney

22 For the Defendant:

JAMES J. RUGGEROLI, ESQ.

23
24
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 [Las Vegas, Nevada, Tuesday, March 20, 2018, at 10:31 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. Counsel, note your appearances for the record.

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

7 MR. RUGGEROLI: James Ruggeroli on behalf of Mr. Wheeler
8 who's present in custody.

9 THE COURT: Okay. Let's see, we're here on Defendant's
10 Petition for Writ of Habeas Corpus, and then Defendant's Motion for
11 Own Recognizance Release Setting Reasonable Bail.

12 All right, I received -- I reviewed the petition; I reviewed
13 the State's return. Do you want to respond in any way to the State's
14 return, Mr. Ruggeroli?

15 MR. RUGGEROLI: Judge, I have filed a reply. I hope you
16 received it, it really did have the most important arguments.

17 THE COURT: That, I don't have. When did you file that?

18 MR. RUGGEROLI: I believe --

19 MR. PESCI: It looks like March 8th, Your Honor.

20 MR. RUGGEROLI: That's right.

21 MR. PESCI: Judge, if you want, I can give you a copy.

22 THE COURT: Yeah, go ahead. How long is it?

23 MR. RUGGEROLI: It's 10 pages. I would say that there's a
24 very important aspect that was not included because evidence had not --
25 the State was not aware of a very important forensic examination, my

1 client's firearm. This is really the most important aspect of this writ for
2 us.

3 And so if Your Honor does need more time, I know that
4 this is not what Mr. Wheeler would've preferred, but I really do think that
5 this portion is extremely important for the Court to review.

6 THE COURT: It's going to -- you're saying it's important and
7 unique --

8 MR. RUGGEROLI: Well it is --

9 THE COURT: -- and I don't have time to go through 10 pages
10 here today. And, I apologize, it's -- I don't know why --

11 MR. RUGGEROLI: Judge, do you have a calendar
12 Thursday?

13 THE COURT: We'll do it on Thursday.

14 MR. RUGGEROLI: Thank you, Judge.

15 THE CLERK: March 22nd at nine a.m.

16 MR. PESCI: Thank you, Your Honor.

17 THE COURT: Again, I apologize. Like I said, I don't know -- I
18 can have my clerk get it. Do you want your copy back, Mr. Pesci?

19 MR. PESCI: Thank you.

20 [Hearing concluded at 10:33 a.m.]

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

23 

24 Angie Calvillo
25 Court Recorder/Transcriber

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 22, 2018

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

March 22, 2018 09:00 AM All Pending Motions

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

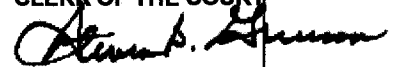
JOURNAL ENTRIES

DEFENDANT'S PRETRIAL PETITION FOR WRIT OF HABEAS CORPUS...DEFENDANT'S MOTION FOR OWN RECOGNIZANCE RELEASE / SETTING REASONABLE BAIL

AS TO PETITION: Arguments by Mr. Pesci and Mr. Ruggeroli in support of their respective positions. Following, COURT ORDERED, GRANTED IN PART in that the State is to return to the Grand Jury to relay the additional information as to the gun and are to return a new vote.

AS TO MOTION: Arguments by Mr. Ruggeroli and Mr. Pesci in support of their respective positions. Following, Court stated its FINDINGS including that he feels Defendant is a flight risk and danger to the community. Therefore, COURT ORDERED, Motion DENIED.

CUSTODY



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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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, MARCH 22, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS;**
18 **DEFENDANT'S MOTION FOR OWN RECOGNIZANCE**
19 **RELEASE/SETTING REASONABLE BAIL**

20 APPEARANCES:

21 For the State:

GIANCARLO PESCI
Deputy District Attorney

22 For the Defendant:

JAMES J. RUGGEROLI, ESQ.

23
24
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 [Las Vegas, Nevada, Tuesday, March 22, 2018, at 10:42 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 MR. PESCI: Giancarlo Pesci on behalf of the State.

7 MR. RUGGEROLI: Good morning, Your Honor. James
8 Ruggeroli on behalf of Mr. Wheeler who is present in custody.

9 THE COURT: Okay, we're here on Defendant's Petition for
10 Writ of Habeas Corpus. Let me -- I read your return; you definitely had
11 not overwhelmed me, but I was leaning your way at the end of your
12 return.

13 But I will tell you that the thing that sort of flipped me in
14 leaning your way on the return was the fact that a 45-calibur handgun
15 was found in the apartment associated with the defendant; looking at the
16 reply, that appears to be a totally different handgun that was involved in
17 this case.

18 Am I right? Or am I reading the reply right? Or is the
19 reply right or wrong?

20 MR. PESCI: Well here's my response to that. What that
21 shows is that 45 did not discharge a projectile at the scene; it does not
22 show that that weapon was not at the scene; you use a deadly weapon
23 without shooting it. If I have one on me right now and I don't shoot
24 anything, I can still commit a crime with a deadly weapon.

25 And so we have an individual who's got that on his hip

1 just 30 minutes before the actual murder; it's on video, so he's in
2 possession of that. He admits that he has that kind of a gun, and then
3 there's ammunition found at his house. The State agrees that the
4 projectiles found at the scene do not match that. But we don't have to
5 prove that he actually fired it in order to use it, and so it doesn't make it
6 such that he's not the individual at that scene.

7 THE COURT: Well, I mean, it doesn't make it that he's at the
8 scene. But, I mean, he does -- it doesn't mean that he doesn't have the
9 firearm at the scene. But I guess -- do we have him -- do we have proof
10 of him at the scene?

11 MR. PESCI: Right. And, I believe, that we do from the
12 inference. And you just said at the beginning that you were leaning that
13 way from the evidence before, which is he's seen at that convenience
14 store just 30 minutes before. The clothes that he's wearing are found at
15 his location. He has the gun on his hip; they get into the very vehicle
16 that sold to the co-defendant, and the witness came in and testified that
17 he sold it to the co-defendant. The license plate matches from the
18 convenience store to the jogger.

19 The jogger says there's four African American males
20 waiting out front of the victim's house at 12:11 a.m. I mean, what on
21 earth are they doing there at that time? And then we have the victim's
22 mail and his belongings just laid out on the ground. The reasonable
23 inference is there; was an attempt to rob him, that's what we've charged.
24 And that, in the process of attempting to rob him, some of the individuals
25 fired a firearm. But the fact that this particular firearm was not fired

1 doesn't mean it wasn't utilized. It doesn't mean that there isn't a
2 reasonable inference that this individual who's seen just 30 minutes
3 before with an open-carry on his hip; in the very car that's seen and
4 matches the license plate at the scene where the jogger said I saw four
5 African American males in that particular car.

6 Now these are great arguments for a jury; this is a
7 wonderful thing to say, but there's been sufficient evidence presented to
8 the grand jury for their true-bill return.

9 THE COURT: You got evidence he was in the car 30 minutes
10 before the murder and you got the car -- how far around the time of the
11 murder?

12 MR. PESCI: The video, I believe, is an half an hour
13 beforehand. And the distance we had; came out during the presentation
14 is not a far distance at all from the convenience store to the actual
15 scene, then the jogger sees four individuals. And then the clothing
16 found at his house matches the clothing in the convenience store
17 surveillance, and the gun is on his hip in there.

18 THE COURT: But the information relating to the gun was
19 never not being -- the weapon was never presented to the grand jury
20 because you didn't have it then?

21 MR. PESCI: Right, the results hadn't come back yet.

22 THE COURT: What's your position as to the defendant's
23 contention that, at a minimum, you should be going back to the -- doing
24 a representment to the grand jury and making sure that they got this
25 information relating to the -- not being the firearm?

1 MR. PESCI: The two responses: first, is what I just
2 articulated, which is you can use a firearm without actually discharging it.
3 The second is is no case law; no statute that he cited to that indicates
4 that we have to go back, Your Honor.

5 The question is, is there probable cause? And looking
6 at all this, there is. And so I don't think he cited to anything that
7 specifically says -- now, there's these general concepts. But not an
8 actual, hey, listen, if you find something that's arguable exculpatory after
9 the presentation, you have to go back and present it.

10 THE COURT: All right, Mr. Ruggeroli.

11 MR. RUGGEROLI: Judge, I don't want to unnecessary
12 convolute this because you had it right at the beginning. When you went
13 from after reading the State's return but going to my reply, it changes
14 everything. Their case against Mr. Wheeler completely turns on an
15 inference that was specifically based on the fact that the gun, that was
16 on the video at the Shortline Express a half an hour prior to the shooting,
17 was the gun or one of the guns that would've been used during the
18 shooting.

19 There is no evidence. And at this point, I think that their
20 inference is not logical based on the fact that the gun was clearly not
21 used. But keep in mind, there's no evidence that the gun was even
22 present because Mr. Wheeler told the officer that he had left the four
23 individuals that were in the car. We believed that there were five
24 individuals. I would also point out that, the eyewitness identification was
25 very, very generalized. But it wasn't just that there were four black male

1 adults, it's that there were four dark-skinned male adults. My client is
2 light skinned.

3 I think that is important because, especially when you
4 add an additional factor, one of the cartridge cases that was recovered
5 at the scene was a Winchester. There was no Winchester cartridges
6 recovered at my client's residence, and there were no Winchester
7 cartridges recovered at the co-defendants' residences.

8 The logical inference from that would be that there was
9 a fourth individual that was present at the time, that was not Mr.
10 Wheeler; that is actually still out there that has the gun that fired that
11 Winchester cartridge. The most important fact though is that, Mr.
12 Pesci's argument is based on an inference, which is based on that gun
13 being used in the shooting. And if you pay attention, he had offered no
14 evidence to support that Mr. Wheeler, or the gun was actually present at
15 the time of the shooting.

16 MR. PESCI: Judge, if I could respond so it's very clear.

17 THE COURT: Sure.

18 MR. PESCI: The State of Nevada did not tell this grand jury
19 this individual shot a gun. We didn't have the results back, we didn't tell
20 them that. What we said is guns were shot. We presented evidence of
21 expended cartridge cases and he had a gun on his hip. It's a different
22 thing if we actually stood up and said, yeah, that gun matched. We
23 didn't do that.

24 THE COURT: I understand, and I'm not accusing you of any
25 bad faith here. But I am going to tell you that when my law clerk read

1 your brief, and I assume it parallels to a large degree your presentation
2 to the grand jury, that was what came to his mind as far as the
3 significance of the gun being found at the house subsequently; is
4 That -- well the guy was shot with -- you know, was shot with 45s. The
5 guy had a 45, and he was in the area with a 45. You know, there's a
6 reasonable basis to believe that there is -- you know, there's a slight or
7 marginal evidence that this guy participated in the murder.

8 I had the same reaction when I read through the
9 paperwork. I have really little'd out that the grand jury, whether you
10 specifically said draw the inference or they sat there and looked at it and
11 did it on their own, drew the inference that the guy had a 45 on his hip
12 and the other person was shot with a 45; it makes sense that there's
13 slight or marginal evidence that this is the guy who did it.

14 And so that's where I have a real concern here and so, I
15 guess, I'm asking you how do I get back to -- do I dismiss it without
16 prejudice for you to go back to the grand jury and resubmit the evidence
17 including the evidence? Or do I simply order you to go back and ask --
18 give the information to the grand jury and have them do a new vote?

19 MR. PESCI: You can order that, Judge. I mean, he's asked
20 that; at least how I read the pleadings was that there was an argument;
21 at least to go back --

22 THE COURT: My preference is not to dismiss it but rather to
23 send it back to the grand jury with that information made to the grand
24 jury, and get a determination from the grand jury as to whether or not it
25 believes in the full context of the information that there is sufficient

1 probable cause to indict the defendant.

2 MR. RUGGEROLI: Judge, if I may and I appreciate that. I
3 think that that is just, however, my main argument is.

4 THE COURT: I understand what your main argument is, but
5 it's -- I'm going to order that the State return to the grand jury; provide
6 them the additional information relating to the forensics on the gun, and
7 have them take a new vote as to the defendant -- a confirming vote as to
8 the defendant's indictment.

9 MR. RUGGEROLI: And, Judge, if I may. My request would
10 additionally be that, because these aspects fit together as a complete
11 story of exculpatory evidence, I would respectfully request that the State
12 remind the grand jury that Mr. -- the video, I think, does not eliminate
13 there were more than four people; it shows four, but it's not the same
14 thing as saying there's only four.

15 Mr. Wheeler -- I think his testimony to the officer should
16 be important when he was interviewed; said that he got out of the car --

17 THE COURT: Well I'm not going to make -- require the State
18 to do anything more than they would be required to do in the
19 presentation of their grand jury case, other than I am going to require
20 that because I do feel whether the State -- and I don't, in any way,
21 suggest that there was any bad faith conduct on the part of the State.
22 But I will tell you, I have very little doubt looking at what was presented;
23 that everybody in the room jumped to that conclusion.

24 Now, I understand your argument in reference to you
25 don't need to use the gun in order to be, you know, to be complicit. And,

1 you know, that's fine if the jury concurs with you on that, we'll go forward
2 from that basis. But I will order that the information relating to the
3 forensics be provided, and the jury do a confirming vote that still believes
4 there's probable cause that the defendant should be found criminally
5 liable.

6 MR. RUGGEROLI: Thank you, Judge. We do -- go ahead.

7 THE COURT: All right. What about the motion for bail?

8 MR. RUGGEROLI: Thank you, Judge.

9 Your Honor, especially in light of the lack of evidence
10 that's now holding Mr. Wheeler, I reiterate that his bail is excessive
11 under the circumstances. He is indigent. I'm Court appointed on this
12 case; his family is present in court, his mother is here in this wheelchair.
13 He provides valuable assistance to her when he's out of custody. He is
14 a tremendous help to her.

15 I know, in the opposition, the State's pointed out a
16 number of misdemeanor occasions where Mr. Wheeler apparently did
17 not show up. I don't intend to get down into the minutia of those details,
18 but I would point out that the pretrial risk assessment -- and I think that
19 this carries a tremendous amount of weight and this is prior to the
20 information about the ballistics, excluding Mr. Wheeler's firearm being
21 used in this event; this risk assessment found him to be a moderate risk.

22 I'm going to request that you consider bail at \$50,000
23 with house arrest as a condition. I know you've -- I believe you heard
24 arguments earlier today that support the power of house arrest to very
25 significantly monitored individuals. The likelihood, because this is a

1 serious matter as distinguished from those misdemeanor cases, I think
2 also shows that Mr. Wheeler has much more at stake here. If he is
3 released --

4 THE COURT: I mean house arrest has an advantage if you
5 feel someone's background is conducive to following that. In the case I
6 had earlier today, we had an individual who shot his son; not someone
7 who was part of a collective group or criminal conspiracy, and did not
8 have much of a criminal history. So to sit there and say in that situation,
9 you know, making someone stay at home probably, though, complied
10 with it.

11 MR. RUGGEROLI: I understand.

12 THE COURT: It's different than in this situation. What exactly
13 is the criminal history?

14 MR. PESCI: Judge, in the State's opposition, the specific
15 page starting on six, it goes through painstakingly the times where he
16 bench warrants, and then bench warrants --

17 THE COURT: I don't know why, but I didn't get to your
18 opposition.

19 MR. PESCI: Court's indulgence.

20 THE COURT: I apologize.

21 MR. PESCI: May I approach?

22 MR. RUGGEROLI: And, Judge, could we give you the risk
23 assessment?

24 THE COURT: I think you did give me the risk assessment.

25 MR. RUGGEROLI: Okay, if you didn't have it.

1 MR. PESCI: The risk assessment is unbelievably baffling
2 when you consider the fact that the defendant, on his fifth bench warrant
3 gets intensive supervision, and what? No shows. How it is they come
4 up with these recommendations is baffling; bench warrants four or five
5 times, Your Honor.

6 And I never understood the concept that, oh, I'm not
7 going to take a jaywalking seriously, but now I'm going to take it in a
8 robbery and a murder case seriously. He has established repeatedly
9 that he doesn't show up to court. This is where he's actually had a
10 felony reduced to a misdemeanor; given certain requirements to do, and
11 he doesn't do them and then he doesn't show. And then when he gets
12 put on intensive supervision, the next step up from an OR; he doesn't
13 report; this is not someone that we can trust to be out on the street no
14 matter what that risk assessment says.

15 THE COURT: You did get a copy of this though?

16 MR. RUGGEROLI: I did.

17 THE COURT: Okay. What is bail set at currently?

18 MR. RUGGEROLI: I believe it's 250,000.

19 MR. PESCI: I believe that the prior motion for an OR that was
20 denied in Justice Court set bail at 250,000 with an additional house
21 arrest if he were to make that. I don't see any reason to change that.

22 MR. RUGGEROLI: And respectfully, Judge -- and again I
23 want to reiterate, I never --

24 THE COURT: Is this specifically litigated in Justice Court?

25 MR. PESCI: Yes, it was.

1 MR. RUGGEROLI: It was, Judge. Keep it in mind -- and
2 again, I've never alleged that Mr. Pesci did not present this evidence to
3 the grand jury intentionally. In fact, I know he did not have it from
4 everything I've seen. However, we didn't have that information in the
5 Justice Court when I made this motion. And I think it would've gone a
6 far way to make this bail significantly lower, that's why I'm presenting
7 this at a reasonable amount of \$50,000 with house arrest.

8 THE COURT: Okay, I've had a chance to look at the
9 State's -- do you want to add anything further, Mr. Pesci?

10 MR. PESCI: No, I think it's very clear from his record, which
11 we put in our opposition that he repeatedly bench warrants, no shows,
12 and doesn't even comply with intensive supervision so the State
13 opposes.

14 THE COURT: You made some additional comments, Mr.
15 Ruggeroli, but do you want to add anything?

16 MR. RUGGEROLI: Just that he's got no prior felonies; no
17 prior gross misdemeanors; his family is present; he's not a flight risk, or
18 a continued threat to the community with this amount of bail on house
19 arrest.

20 THE COURT: I do find that he represents both the danger to
21 the community and a risk of flight. The nature of the charge here and
22 the underlying facts, and there is some criminal history, does believe
23 that there is a risk to the community. To some degree, that could be
24 moderated with a house arrest, however -- again, the nature of the
25 offense and this is a criminal conspiracy, which humiliates to some

1 degree the effectiveness of house arrest, I think with the addition with
2 bail; that possibly can suffice to protect the community, but I do think
3 there is a real risk of flight. It concerns me when I look at the State's
4 paperwork showing the repeated failure to appears. Also, with the false
5 statements with the police, that doesn't give me a lot of confidence that,
6 if there is an issue that comes up, that the defendant can be expected to
7 cooperate with pretrial services to deal with those issues.

8 So at this point in time -- I appreciate there is a change
9 in the evidence in the case, but nonetheless the defendant is charged
10 with a serious crime. At this point in time, I am going to deny the request
11 to modify bail.

12 MR. PESCI: Thank you, Your Honor.

13 MR. RUGGEROLI: Thank you, Judge.

14 [Hearing concluded at 11:02 a.m.]
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19 ATTEST: I do hereby certify that I have truly and correctly transcribed the
20 audio/video proceedings in the above-entitled case to the best of my ability.

21 

22 Angie Calvillo
23 Court Recorder/Transcriber
24
25

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 05, 2018**

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

April 05, 2018 08:30 AM Status Check: Homicide Trial

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

Mr. Ruggeroli also appeared for Mr. Sanft for Deft. Robertson. Upon Court's inquiry, Mr. Ruggeroli advised the State obtained the ballistics results and that they will be going back to the Grand Jury. Following statements by Deft Wheeler, Mr. Ruggeroli would like to know the time and date for the proceeding as he would like to be there. Mr. Pesci advised Defendant needs to sign a waiver. Upon inquiry, Mr. Pesci advised a Marcum Notice was given.

Mr. Bindrup advised he completed the vault review and needs to do the file review.

Following colloquy, COURT ORDERED, matter CONTINUED to May as to all Defendants.

CUSTODY

... CONTINUED 5/3/18 8:30 AM



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 THURSDAY, APRIL 05, 2018

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21 **RECORDER'S TRANSCRIPT OF HEARING:**
22 **STATUS CHECK: HOMICIDE TRIAL**

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25 SEE APPEARANCES ON PAGE 2

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 Defendants Wheeler
and Robertson:

JAMES J. RUGGEROLI, ESQ.

1 [Las Vegas, Nevada, Thursday, April 05, 2018, at 10:39 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. PESCI: Giancarlo Pesci on behalf of the State.

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

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

11 MR. RUGGEROLI: And, Judge, I can stand in for Mr. Sanft.

12 THE COURT: Okay.

13 MR. RUGGEROLI: If the Court would accept that.

14 THE COURT: All right. I'm showing this as a status check.

15 Mr. Ruggeroli, last time you stated you had requested
16 the ballistic testing on the firearm; Mr. Pesci indicated forensics had
17 been requested. Where do we, sort of, stand with that?

18 MR. RUGGEROLI: Judge, if you recall, we had filed a Petition
19 for Writ of Habeas Corpus. The State subsequently did obtain those
20 ballistic results; you have ordered them to return to the grand jury to
21 provide --

22 THE COURT: Oh, that's right. Okay, I remember this now, I
23 apologize.

24 MR. RUGGEROLI: Yeah. It's my understanding the State will
25 proceed within the next couple of weeks.

1 MR. PESCI: That's correct. We have time.

2 THE COURT: Okay. All right.

3 THE DEFENDANT WHEELER: Excuse me -- excuse me,
4 Your Honor, may I ask may I get a time exactly, a time to when --

5 THE COURT: I'm sorry, is this your client, Mr. Ruggeroli?

6 MR. RUGGEROLI: It is, Judge.

7 THE DEFENDANT WHEELER: That's my --

8 MR. RUGGEROLI: And we would request the time, date and
9 place of any proceedings so that I can fully advise my client of his right
10 to be present. I discussed that with him this morning. I'm sure Mr. Pesci
11 will provide me with those dates.

12 MR. PESCI: Assuming he signs a waiver and all those things.
13 Defense Counsel told me that his client is discussing the idea of possibly
14 testifying at the grand jury. We'll go through that process assuming
15 that's what he wants to do.

16 THE COURT: Okay. Well, I mean, you know the process in
17 which you need to do.

18 MR. PESCI: Yes.

19 THE COURT: So I'll leave that up -- but I will -- there is no
20 issue with informing them of the date of the proceeding?

21 MR. PESCI: Well he's got to sign a waiver, Judge.

22 THE COURT: Okay.

23 MR. PESCI: And so when he goes through that process -- it's
24 within the next two weeks and so he's got time to do that. He's already
25 been given a Marcum notice, so he's already on notice.

1 THE COURT: Okay, so the Marcum notice has been given?
2 MR. PESCI: That's correct.
3 THE COURT: Okay. All right. So your attorney can explain
4 to you the whole procedure as it relates. The key thing I was concerned
5 about was whether or not the Marcum notice had been provided.
6 MR. PESCI: Yeah, months and months ago.
7 THE COURT: Okay. All right. So you can talk with your
8 attorney in terms of what you want to do as far as appearing before the
9 grand jury.
10 [Colloquy between Mr. Ruggeroli and Defendant Wheeler]
11 MR. RUGGEROLI: Thank you, Judge.
12 THE COURT: Sure. All right.
13 And then, Mr. Bindrup, how's -- were you able to get the
14 vault review in?
15 [Colloquy between Mr. Pesci and Mr. Bindrup]
16 MR. BINDRUP: We did complete the vault review. We have
17 not done a -- we need to follow up with a file review with the DA's office.
18 THE COURT: Okay. All right, so we got the vault review at
19 least done. The file review is still to be done, right?
20 MR. BINDRUP: Right.
21 THE COURT: Okay. All right, any other forensics from the
22 State's side that you're aware of, Mr. Pesci?
23 MR. PESCI: No.
24 THE COURT: Okay, anything else from the Defense side in
25 terms of forensics that you think happened or you want?

1 MR. RUGGEROLI: Not at this point, Judge. We'll be
2 following up with everything.

3 THE COURT: All right, any discovery issues as far as -- with
4 the State at this point?

5 MR. RUGGEROLI: No, Judge.

6 THE COURT: Okay, anything I can help you with in terms of
7 getting records, investigation or anything like that?

8 MR. RUGGEROLI: Not at this point, Judge.

9 THE COURT: All right, we're set for trial at the end of July.
10 Let me hear from you, Mr. Bindrup. Do you concur with all those
11 comments by Mr. Ruggeroli?

12 MR. BINDRUP: Yes. Other than -- if there's going to be a
13 superseding than this, I do not expect that to be a valid trial date but
14 we'll see how it goes.

15 THE COURT: Okay. Well the superseding is not going to
16 dramatically change what's already out there, is it?

17 MR. PESCI: We'll see, Judge.

18 THE COURT: We'll see, okay. All right.

19 MR. PESCI: I mean, I have no new charges are pending. I
20 mean, you've ordered me as far as the firearm's report.

21 THE COURT: Right. Well we'll see what happens. All right,
22 we'll see what happens.

23 MR. PESCI: Things always change in cases especially with
24 co-defendants.

25 THE COURT: No, I understand. All right. So, you know,

1 that's up to the State in terms of how it wants to proceed in terms of the
2 charges, so we'll see what happens with that. All right. And, in fact,
3 because of that, why don't we go ahead; we'll set this then for a status
4 check on the May homicide stack, and that way -- you would anticipate
5 any new indictment by then?

6 MR. PESCI: Yes.

7 THE COURT: Okay, so that way we'll know where we're at, at
8 that point in time.

9 THE CLERK: May 3rd at 8:30.

10 MR. RUGGEROLI: Thank you, Judge.

11 MR. PESCI: Thank you.

12 MR. BINDRUP: Thank you.

13 [Hearing concluded at 10:45 a.m.]
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16 ATTEST: I do hereby certify that I have truly and correctly transcribed the
17 audio/video proceedings in the above-entitled case to the best of my ability.

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19 Angie Calvillo
20 Court Recorder/Transcriber
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Electronically Filed
4/28/2018 7:38 AM
Steven D. Grierson
CLERK OF THE COURT

Albert B. Hanson

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID

DISTRICT COURT

THE STATE OF NEVADA,

Plaintiff,

VS.

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

Defendants.

) GJ Case No. 17BGJ017A-C
) DC Case No. C328587-**3**

Taken at Las Vegas, Nevada

Wednesday, April 18, 2018

11:11 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SUPERSEDING INDICTMENT

Reported by: Donna J. McCord, C.C.R. No. 337

1 GRAND JURORS PRESENT ON APRIL 18, 2018:

2

3 WILLIAM DUMKE, Foreperson

4 CHARLES STANKOSKY, Deputy Foreperson

5 TOBIE SPERRY, Secretary

6 ANGELA MOORE, Assistant Secretary

7 RODNEY ALLISON

8 GEORGE CHEESMAN

9 FRANK COOMBS

10 LADYHAWK FREEMAN

11 VICTORIA GUY

12 MARGARET LAAS

13 ROJEAN LOGAN

14 NANCY SCHERER

15 EDWARD WAGNER

16 COURTNEY WILLIAMS

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21 Also present at the request of the Grand Jury:

22 Giancarlo Pesci

23 Chief Deputy District Attorney

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MITCHELL DOSCH

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INDEX OF EXHIBITS

GRAND JURY EXHIBITS

IDENTIFIED

EXHIBIT 2 - REPORT

7

1 LAS VEGAS, NEVADA, APRIL 18, 2018

2 * * * * *

3
4 DONNA J. McCORD,

5 having been first duly sworn to faithfully
6 and accurately transcribe the following
7 proceedings to the best of her ability.
8

9 MR. PESCI: Ladies and gentlemen of the
10 Grand Jury, my name is Giancarlo Pesci. I'm here on
11 Grand Jury number 17BGJ017A through C. I'm not sure if
12 you have transcripts from your prior proceedings,
13 specifically on November 29th, 2017, and then also
14 December 13th, 2017.

15 At the conclusion of those presentations
16 you found probable cause as to all of the defendants and
17 all of the charges. Subsequent to that presentation
18 some additional evidence was processed by the forensic
19 lab. I'm now going to present witnesses associated with
20 that subsequent information and then ask you to then
21 determine if there is probable cause for the defendants
22 and those charges.

23 State calls Anya Lester.

24 THE FOREPERSON: Please raise your right
25 hand.

1 You do solemnly swear that the testimony
2 that you're about to give upon the investigation now
3 pending before this Grand Jury shall be the truth, the
4 whole truth, and nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE FOREPERSON: Please be seated.

7 You're advised that you're here today to
8 give testimony in the investigation pertaining to the
9 offenses of burglary while in possession of a firearm,
10 conspiracy to commit robbery, robbery with use of a
11 deadly weapon, attempt robbery with the use of a deadly
12 weapon, murder with use of a deadly weapon involving
13 Demario Lofton-Robinson, Raekwon Robertson and Davontae
14 Wheeler.

15 Do you understand this advisement?

16 THE WITNESS: I do.

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

19 THE WITNESS: My name is Anya Lester,
20 A-N-Y-A, Lester, L-E-S-T-E-R.

21

22 ANYA LESTER,

23 having been first duly sworn by the Foreperson of the
24 Grand Jury to testify to the truth, the whole truth
25 and nothing but the truth, testified as follows:

EXAMINATION

1
2 BY MR. PESCI:

3 Q Ma'am, I want to show you Grand Jury
4 Exhibit Number 2 and ask you if you recognize that?

5 A Yes, I do.

6 Q Would you mind if I sit over here?

7 A Not at all.

8 Q And how do you recognize that?

9 A This is a copy of a report that I wrote on
10 this event.

11 Q Were you asked to examine some firearms and
12 some firearms-related evidence in relation to the event
13 number 170809-0029?

14 A Yes, I was.

15 Q And did you generate this report on January
16 the 22nd of 2018?

17 A Yes, I did.

18 Q In this report did you give results of your
19 examination?

20 A Yes, I did.

21 Q And what exactly do you do with Metro?

22 A I am a forensic scientist in the forensic
23 laboratory in the firearms and toolmarks analysis unit.

24 Q And somewhat quickly, what's your training
25 and experience that brings you to this position?

1 A I have a bachelor of science degree in
2 forensic science. I was hired with Metro in 2008 as a
3 forensic lab aid, and in 2009 I promoted into the
4 forensic scientist position. I performed a two-year
5 training program there when I got promoted into that
6 position, and when I successfully completed that program
7 I began my own independent case work and that was in the
8 spring of 2011.

9 Q Have you testified as a firearms expert or
10 in regards to firearms testimony here at the Grand Jury,
11 in Justice Court and in District Court?

12 A Yes, I have.

13 Q Okay. Now, directing your attention to
14 this particular report, in this particular investigation
15 did you review and look into three firearms?

16 A Yes, I did.

17 Q What were the three firearms?

18 A I was asked to examine a Taurus model PT-22
19 .22 long rifle caliber semiautomatic pistol, also one
20 Taurus model PT-145 Pro Millennium .45 auto caliber
21 semiautomatic pistol, and one Star .45 auto caliber
22 semiautomatic pistol and that one had an unknown model
23 number.

24 Q Those are the firearms; is that correct?

25 A That is correct.

1 Q Were you asked also to look at
2 firearm-related evidence being cartridge cases and
3 bullets?

4 A Yes, I was.

5 Q I'm going to retrieve State's 2. Do you
6 see over your left shoulder that particular document?
7 So now the Grand Jurors can see it.

8 A Yes.

9 Q Okay. When you reviewed those three
10 firearms, did you test fire them and see that they were
11 operable?

12 A Yes, I did.

13 Q And then did you take some cartridge cases
14 and some bullets and bullet fragments and see if they
15 came from any of these three firearms?

16 A Yes. I took the test fired cartridge cases
17 and test fired bullets that I fired from the submitted
18 firearms and performed a microscopic comparison to the
19 evidence bullets and cartridge cases to make a
20 determination as to which, if any, of those firearms
21 that those items were fired from.

22 Q When a firearm shoots a bullet, for lack of
23 a better term, are there unique characteristics or
24 markings that are left behind on the bullet and on the
25 cartridge case from a particular firearm?

1 A Yes.

2 Q And did you make those comparisons with
3 these three firearms to those cartridge cases and the
4 bullets in this case?

5 A Yes, I did.

6 Q What were your results, your
7 determinations?

8 A In my results I had one cartridge case that
9 was identified as having been fired from the Taurus
10 model PT-22 .22 long rifle caliber.

11 Q Let me stop you there for a second.

12 A Yes.

13 Q So on the actual report, for the benefit of
14 the Grand Jurors, does this correspond to what's
15 referred to as lab item number 11?

16 A Yes, that was the one I was just referring
17 to.

18 Q Okay. And then proceed, I'm sorry.

19 A Yes. So I did identify one cartridge case
20 as having been fired by that Taurus pistol, the one that
21 is lab item 11, the PT-22 .22 long rifle caliber pistol.

22 Q So it's a .22 caliber pistol?

23 A That is correct.

24 Q And that's item number 11?

25 A Yes, sir.

1 Q All right. So one of those cartridge cases
2 was fired by that particular firearm?

3 A I did identify it as so, yes.

4 Q Okay. Then moving to what's referred to as
5 number 14, tell us about that firearm and what your
6 results were.

7 A So number 14, which was the Taurus model
8 PT-145 Pro Millennium .45 auto caliber pistol, I test
9 fired that firearm as well, compared those test fired
10 bullets and cartridge cases to the bullets and cartridge
11 cases that I had received as evidence and I determined
12 that none of the evidence bullets and cartridge cases
13 were fired from that particular firearm.

14 Q Then moving to what's referred to as lab
15 item number 20, what firearm is that and what were the
16 results as far as your comparison?

17 A Yes, that was the Star .45 auto caliber
18 semiautomatic pistol. I was able to identify three
19 submitted evidence cartridge cases as having been fired
20 from that pistol as well as two submitted bullets that I
21 also identified as having been fired from that pistol.

22 Q Okay. And then did you also have some
23 metal fragments that you were looking at?

24 A I had some metal fragments, yes.

25 Q And what were your results?

1 A Those metal fragments, they were
2 inconclusive. I had the very small fragments that are
3 listed up there as lab item 22. They were just very
4 small pieces of metal and had no marks on them for me to
5 compare. I did also have the one additional bullet and
6 that bullet was item 23. And due to the damage on that
7 bullet I was able to say that it was similar to the test
8 fired bullets from the Taurus model PT-22 .22 long rifle
9 caliber pistol, but I was unable to identify it
10 conclusively due to the damage.

11 Q So the damage that the bullet receives from
12 hitting an item can make it such that you cannot make a
13 comparison?

14 A That I could not make a comparison, yes, or
15 not make a conclusion depending on the damage.

16 Q I apologize, you can make a comparison but
17 you might not necessarily be able to make a conclusion.

18 A That's correct. I would say its
19 inconclusive.

20 MR. PESCI: Are there any questions from
21 the ladies and gentlemen of the Grand Jury?

22 BY A JUROR:

23 Q You testified that you compared it to
24 bullets, shell casings and fragments which you had
25 received as evidence. You received these from where?

1 A I received the evidence from my evidence
2 technicians at our evidence vault directly in our
3 laboratory.

4 Q Thank you. The next question is the
5 firearms you were comparing them to, you received the
6 firearms from where?

7 A From that same place, our evidence
8 technicians at our evidence vault securely move those to
9 me.

10 Q Thank you.

11 A You're welcome.

12 THE FOREPERSON: Any other questions?

13 By law these proceedings are secret and you
14 are prohibited from disclosing to anyone anything that
15 transpired before us including any evidence presented to
16 the Grand Jury, any event occurring or a statement made
17 in the presence of the Grand Jury or any information
18 obtained by the Grand Jury.

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

25 Do you understand this admonition?

1 THE WITNESS: Yes, I do.

2 THE FOREPERSON: Thank you. You're
3 excused.

4 THE WITNESS: Thank you.

5 MR. PESCI: State calls Detective Dosch.

6 THE FOREPERSON: Please raise your right
7 hand.

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

12 THE WITNESS: I do.

13 THE FOREPERSON: Please be seated.

14 THE WITNESS: Thank you.

15 THE FOREPERSON: You're advised that you're
16 here today to give testimony in the investigation
17 pertaining to the offenses of burglary while in
18 possession of a firearm, conspiracy to commit robbery,
19 robbery with use of a deadly weapon, attempt robbery
20 with use of a deadly weapon and murder with the use of a
21 deadly weapon involving Demario Lofton-Robinson, Raekwon
22 Robertson and Davontae Amarri Wheeler.

23 Do you understand this advisement?

24 THE WITNESS: I do.

25 THE FOREPERSON: Please state your first

1 and last name and spell both for the record.

2 THE WITNESS: My name is Mitchell,
3 M-I-T-C-H-E-L-L, Dosch, D-O-S-C-H.

4

5 MITCHELL DOSCH,

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

9

10 EXAMINATION

11 BY MR. PESCI:

12 Q Sir, are you a detective with the homicide
13 detail of the Metropolitan Police Department?

14 A Yes, I am.

15 Q Were you involved in the investigation of a
16 homicide that occurred on August 9th of 2017?

17 A Yes, I was.

18 Q Are you familiar with the event number
19 170809-0029?

20 A Yes, I am.

21 Q Over your left shoulder is Grand Jury
22 Exhibit Number 2 being displayed for the Grand Jurors to
23 see as well as you. Do you recognize that particular
24 report?

25 A Yes, I do.

1 Q Did this particular report come in after a
2 presentation had previously been done to this Grand
3 Jury?

4 A That's correct.

5 Q And this reflects firearms evidence that
6 was impounded during the course of this investigation?

7 A Yes, it does.

8 Q Do you recognize the impounding P numbers
9 or personnel numbers of the individuals that were
10 involved in this investigation?

11 A I do.

12 Q And do those indicate that these are
13 associated with this particular incident?

14 A Yes, it was.

15 Q When a piece of evidence is impounded, does
16 it get put into the Metropolitan Police Department's
17 vault?

18 A It does.

19 Q And then for a forensic analyst like Anya
20 Lester who just left, can she call that evidence up
21 which means it gets transported from your Metro vault to
22 her laboratory to examine?

23 A Yes, she can.

24 Q Are you familiar with that process?

25 A I am.

1 Q And in speaking of this particular report,
2 are you familiar with the firearms that were examined?

3 A I am.

4 Q I want you to look and see what's referred
5 to as lab item number 11. If you need to you can
6 actually retrieve that and look at it up close. It that
7 a .22 firearm that was found during the course of this
8 investigation?

9 A Yes, a .22 caliber semiautomatic pistol.

10 Q Was that recovered during an investigation
11 in this case at 6647 West Tropicana?

12 A Yes, it was.

13 Q And what individuals were associated with
14 that particular address?

15 A As far as that particular address it's Mr.
16 Robertson.

17 Q And then moving to lab item number 14, is
18 that in relation to a Taurus model .45 caliber handgun?

19 A It is.

20 Q And was that obtained during the course of
21 your investigation pursuant to a search warrant at a
22 Civic Center address?

23 A Yes, it was.

24 Q And are you familiar, as far as the
25 previous firearm, was that also pursuant to a search

1 warrant?

2 A Yes.

3 Q I apologize for not saying that earlier.

4 Then moving on to number 20, lab item number 20, is that
5 another .45 caliber handgun?

6 A It is.

7 Q Was that discovered pursuant to a search at
8 Bagpipe address?

9 A Yes, it was.

10 Q I failed to mention this earlier, the Civic
11 Center address, which individual of these was associated
12 with that Civic Center address?

13 A Mr. Wheeler.

14 Q And then as far as the Bagpipe address,
15 which individual was associated with that address?

16 A The brothers. I believe one of their last
17 names is hyphenated where as the other name is not, but
18 the brothers, Deshawn (sic) and Demario.

19 Q Now, at the particular scene itself were
20 you aware that there was .22 caliber cartridge cases?

21 A Yes.

22 Q When I say the scene, I apologize, the
23 scene of the murder where the individual was killed.

24 A Yes.

25 Q Were there also .45 caliber cartridge

1 cases?

2 A Yes, there was.

3 Q And pursuant to your investigation were you
4 looking for firearms of those calibers?

5 A Absolutely.

6 Q And is that what you found by way of the
7 search warrant?

8 A And recovered, yes.

9 Q And in your investigation in this case, did
10 you also see some video surveillance at a convenience
11 store just a few, about 30 minutes before the actual
12 murder?

13 A Yes.

14 Q In that video have you personally reviewed
15 it?

16 A Many times.

17 Q And did you see that one of the individuals
18 was open carrying a firearm on his hip?

19 A Yes, he was.

20 Q And then in your investigation was there a
21 vehicle at that convenience store that was notated as
22 far as its license plate and then a vehicle that was
23 told to you by a jogger in the area of the murder that
24 matched?

25 A It did.

1 Q Okay. Thank you very.

2 Any questions from the ladies and gentlemen
3 of the Grand Jury?

4 THE FOREPERSON: No questions.

5 By law these proceedings are secret and you
6 are prohibited from disclosing to anyone anything that
7 transpired before us including any evidence presented to
8 the Grand Jury, any event occurring or a statement made
9 in the presence of the Grand Jury or any information
10 obtained by the Grand Jury.

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

17 Do you understand this admonition?

18 THE WITNESS: I do.

19 THE FOREPERSON: Thank you. You are
20 excused.

21 THE WITNESS: Thank you.

22 MR. PESCI: So ladies and gentlemen of the
23 Grand Jury, I think we need to make a record that I
24 believe George and Rodney, have you been able to read
25 these transcripts?

1 A JUROR: Yes.

2 MR. PESCI: Okay. So I'm leaving with you
3 a copy of those transcripts for your review and ask you
4 to take into consideration what you previously had given
5 to you plus this additional information and ask you if
6 you determine probable cause. Thank you.

7 (At this time, all persons, except the
8 members of the Grand Jury, exited the room at 11:27 and
9 returned at 11:30.)

10 THE FOREPERSON: Mr. District Attorney, by
11 a vote of 12 or more Grand Jurors a true bill has been
12 returned against defendants Demario Lofton-Robinson,
13 Raekwon Robertson, Davontae Amarri Wheeler, charging the
14 crimes of burglary while in possession of a firearm,
15 conspiracy to commit robbery, robbery with use of a
16 deadly weapon, attempt robbery with use of a deadly
17 weapon and murder with use of a deadly weapon in Grand
18 Jury case number 17BGJ017A.

19 We instruct you to prepare an Indictment in
20 conformance with the proposed Indictment previously
21 submitted to us.

22 MR. PESCI: Thank you very much. I'll grab
23 the transcripts. I assume you don't need them anymore.

24 (Proceedings concluded.)

25 --oo0oo--

REPORTER'S CERTIFICATE

STATE OF NEVADA)
 : SS
COUNTY OF CLARK)

I, Donna J. McCord, C.C.R. 337, 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.

Dated at Las Vegas, Nevada,
April 28, 2018.

/S/DONNA J. MCCORD
Donna J. McCord, CCR 337

1 AFFIRMATION

2 Pursuant to NRS 239B.030

3
4 The undersigned does hereby affirm that the preceding
5 TRANSCRIPT filed in GRAND JURY CASE NUMBER 17BGJ017A-C:
6
78 X Does not contain the social security number of any
9 person,

10 -OR-

11 ____ Contains the social security number of a person as
12 required by:13 A. A specific state or federal law, to-wit:
14 NRS 656.250.

-OR-

15 B. For the administration of a public program
16 or for an application for a federal or
17 state grant.18 /S/DONNA J. MCCORD
19 SignatureApril 28, 2018
Date20 Donna J. McCord
21 Print Name22 Official Court Reporter
23 Title
24
25

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

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: XX

SUPERSEDING INDICTMENT WARRANT RETURN

A Superseding Indictment having heretofore been found on the 19th day of April, 2018, 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 Superseding Indictment, the court issued a warrant for the arrest of said Defendant.

I hereby certify that I received a certified copy of the Superseding Indictment Warrant and served the same by arresting the within Defendant on the ____ day of _____ 2018.

JOSEPH LOMBARDO
Sheriff, Clark County, Nevada

BY: _____

Deputy

WARR

ORIGINAL

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

APR 19 2018

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAVONTAE AMARRI WHEELER,
ID#5909081

Defendant.

BY 
DULCE MARIE ROMEA, DEPUTY

CASE NO: C-17-328587-3

DEPT NO: XX

WARRANT FOR ARREST

SUPERSEDING INDICTMENT WARRANT

THE STATE OF NEVADA,

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

A Superseding Indictment having been found on the 19th day of April, 2018, 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).

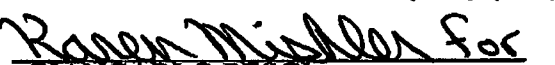
YOU ARE, THEREFORE, COMMANDED forthwith to arrest and bring said Defendant before the Court to answer the Superseding Indictment. If the Court is not in session, you are to deliver Defendant into the custody of the Sheriff of Clark County, or if requested by Defendant, take Defendant before any Magistrate in the County where arrested that bail may be given to answer to the Superseding Indictment. Defendant shall be admitted to bail in the sum of \$ No Bail.

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 19th day of April, 2018.

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

BY

 #13730
GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #007135


DISTRICT JUDGE
DOUGLAS HERNDON
BAIL \$ No Bail

DA# 17BGJ017A-C/17F14369A-C/mc
LVMPD EV#170824571; 1708090029
04271995; BMA; 275898303
(TK3)

C-17-328587-3
WARR
Warrant
4739804



552

4-19-18

ORIGINAL

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

APR 19 2018

BY 
DULCE MARIE ROMEA, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

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).**

CASE NO: C-17-328587-3

DEPT NO: XX

SUPERSEDING
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**

C-17-328587-3
SIND
Superseding Indictment
4738605



W:\2017\2017F\143\69\17F143

553

4-19-18

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,

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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 18th day of April, 2018.

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

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16 Foreperson, Clark County Grand Jury
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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

LESTER, ANYA, LVMPD

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/mc - GJ
LVMPD EV#1708024571; 1708090029
(TK3)

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

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,

15 Plaintiff,

CASE NO:

16 -vs-

DEPT NO:

17 DEMARIO LOFTON-ROBINSON, aka,
18 Demario Loftonrobinson, #5318925
19 RAEKWON SETREY ROBERTSON,
20 aka, Raekwon Robertson, #8252804
21 DAVONTAE AMARRI WHEELER,
22 #5909081

23 Defendant(s).

24 SUPERSEDING
25 INDICTMENT

26 STATE OF NEVADA }
27 COUNTY OF CLARK } ss.

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

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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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,

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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 April, 2018.

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

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

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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

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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/mc - GJ
LVMPD EV#1708024571; 1708090029
(TK3)

Grand Jury Case # 17BGJ017A-C

Exhibit # 1A¹

Date 4-18-18

**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 ⅜ 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:

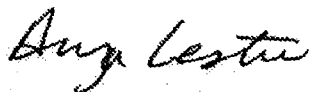
- The cartridge case (Lab Item 1) was identified as having been fired by the Taurus pistol (Lab Item 11).
- The three cartridge cases (Lab Items 2-4) were identified as having been fired by the Star pistol.
- The two bullets (Lab Items 17 and 24) were identified as having been fired by the Star pistol.
- 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 -

Grand Jury Case # 17BGJ017A-C

Exhibit # 2 A

Date 4-18-18

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 03, 2018

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

May 03, 2018 08:30 AM All Pending Motions

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

INITIAL ARRAIGNMENT (SUPERSEDING INDICTMENT)...STATUS CHECK: HOMICIDE TRIAL

Mr. Ruggeroli appeared for Mr. Sanft for Deft. Robertson. Mr. Pesci advised pursuant to the writ by Mr. Ruggeroli, the Court requested this go back to the Grand Jury. Mr. Pesci stated he did that, thus he has a Superseding Indictment, however, it is exactly the same as the original Indictment.

DEFENDANT LOFTON-ROBINSON ARRAIGNED, PLED NOT GUILTY AND WAIVED THE SIXTY DAY RULE.

DEFENDANT ROBERTSON ARRAIGNED AND PLED NOT GUILTY. However, as Defendant has not spoken with Mr. Sanft, COURT ORDERED, matter CONTINUED to next week for Mr. Sanft to be present.

DEFENDANT WHEELER ARRAIGNED, PLED NOT GUILTY AND WAIVED THE SIXTY DAY RULE. Defendant stated that he wanted to INVOKE his rights. Mr. Pesci advised they have already been waived. Mr. Ruggeroli explained to Defendant that if he wanted a writ filed, he needed to waive his rights, if he insisted on invoking, he could not file a writ. Following colloquy, Defendant WAIVED his speedy trial rights.

Mr. Pesci advised a trial date has already been set. Mr. Ruggeroli requested 21 days from today to file a writ. Mr. Bindrup concurred. COURT SO ORDERED, as to ALL Defendants.

Mr. Ruggeroli stated that they had expressed a desire to testify before the Grand Jury. Mr. Pesci concurred, advised Mr. Ruggeroli was notified of the date and time, however, Defendant decided not to testify.

COURT ORDERED, status check CONTINUED to June as to all Defendants. Further, COURT ORDERED, ARRAIGNMENT CONTINUED to next week as to Deft Robertson.

CUSTODY (ALL)

5/8/18 8:30 AM ARRAIGNMENT CONTINUED (ROBERTSON)

Printed Date: 5/4/2018

Page 1 of 2

Minutes Date:

May 03, 2018

Prepared by: Linda Skinner



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-17-328587
DEPT. XX

10 vs.

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

15 Defendants.

16 BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE
17 THURSDAY, MAY 03, 2018

18 **RECORDER'S TRANSCRIPT OF HEARING:**
19 **INITIAL ARRAIGNMENT (SUPERSEDING INDICTMENT);**
20 **STATUS CHECK: HOMICIDE TRIAL**

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 & Wheeler:

JAMES J. RUGGEROLI, ESQ.

1 [Las Vegas, Nevada, Thursday, May 03, 2018, at 10:17 a.m.]

2

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

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

8 MR. RUGGEROLI: Good morning, Your Honor. James
9 Ruggeroli on behalf of Mr. Wheeler who's present in custody. I believe I
10 can stand in for Mr. Sanft for Mr. Robertson.

11 THE COURT: All right.

12 MR. BINDRUP: Scott Bindrup on behalf of Mr. Lofton-
13 Robinson.

14 THE COURT: All right, so we needed to do initial arraignment
15 as to Mr. Sanft's client, is that correct?

16 MR. PESCI: It was somewhat a typical situation, Your Honor.
17 We had previously been here. There was a writ filed by Mr. Wheeler
18 indicating or alleging that the probable cause was unfounded because of
19 a subsequent report came in on the firearm's evidence. You ordered me
20 to go back to the grand jury --

21 THE COURT: I remember that.

22 MR. PESCI: -- to present that firearm's evidence; I did, and
23 they found probable cause again and we're back.

24 THE COURT: All right. Okay. All right, so who needs to be
25 arraigned today?

1 MR. RUGGEROLI: Mr. Wheeler.

2 THE COURT: Mr. Wheeler. What about Mr. Raekwon
3 Robertson?

4 MR. PESCI: Judge, I'm not really sure, it's a superseding
5 indictment. I would assume they all do, but -- I mean, nothing's
6 changed. There's no new charges. There's nothing. We just present to
7 which you ordered us to present.

8 THE COURT: Okay. All right. Well as to Mr. Robertson, are
9 you able to represent him for purposes of doing the arraignment?

10 MR. RUGGEROLI: Yes.

11 THE COURT: Okay. All right, then you're representing Mr.
12 Wheeler?

13 MR. RUGGEROLI: That's correct.

14 THE COURT: Okay. All right. Is everybody charged in every
15 count?

16 MR. PESCI: I don't know. No, because --

17 THE COURT: Okay, I've got --

18 MR. PESCI: Counts 1, 2 and 3 --

19 THE COURT: All right, I think my clerk has got it broken out.

20 MR. PESCI: Yeah, 1 through 4 only involves --

21 THE COURT: Okay, we'll do this one by one.

22 Mr. Bindrup, let's start with your client. All right,
23 Mr. Lofton-Robinson, have you been provided with a copy of the
24 Superseding Indictment against you?

25 MR. BINDRUP: Your Honor, I just received it this morning

1 from Mr. Pesci, just based on his representations that nothing is
2 different. I indicated to him that it's like the Indictment that he pled not
3 guilty to previously.

4 THE COURT: All right.

5 MR. BINDRUP: So he is prepared to proceed, Your Honor.

6 THE COURT: All right. So there's nothing different from what
7 he had read previously?

8 MR. PESCI: Nothing's changed at all.

9 THE COURT: Okay. All right, Mr. Lofton-Robinson, did you
10 previously read the Indictment that was brought against you?

11 THE DEFENDANT LOFTON-ROBINSON: Yes, sir.

12 THE COURT: Okay. And will you waive the reading of the
13 Superseding Indictment here in court today?

14 MR. BINDRUP: Yes, he would, Your Honor.

15 THE COURT: Okay. Now, state your name.

16 THE DEFENDANT LOFTON-ROBINSON: Demario Lofton-
17 Robinson.

18 THE COURT: And how old are you?

19 THE DEFENDANT LOFTON-ROBINSON: Nineteen.

20 THE COURT: How far did you go in school?

21 THE DEFENDANT LOFTON-ROBINSON: Graduated.

22 THE COURT: Do you read, write and understand the English
23 language?

24 THE DEFENDANT LOFTON-ROBINSON: Yes, sir.

25 THE COURT: All right, you've been provided with a true copy

1 of the Superseding Indictment, which has been represented to be
2 exactly the same as the original Indictment brought against you in which
3 you've been charged in Count 1 with burglary while in possession of a
4 deadly weapon --

5 MR. BINDRUP: No, Your Honor, his counts --

6 MR. PESCI: Five.

7 MR. BINDRUP: -- start from Count 5.

8 THE CLERK: Counts 5, 6 and 7.

9 THE COURT: All right. Okay, so he's only in 5, 6 and 7?

10 MR. PESCI: Correct.

11 MR. BINDRUP: Correct.

12 THE COURT: All right. Charged in Count 5 with conspiracy
13 to commit robbery, in violation of category B felony in violation of
14 Nevada Revised Statute 200.380 and 199.480; in Count 6 with attempt
15 robbery with use of a deadly weapon, a category B felony in violation of
16 Nevada Revised Statute 200.380, 193.330 and 193.165, and in Count 7
17 with murder with use of a deadly weapon, a category B felony in
18 violation of Nevada Revised Statute 200.380, 193.330 and 193.165.

19 Do you understand the nature of the charges against
20 you in the Indictment?

21 THE DEFENDANT LOFTON-ROBINSON: Yes, sir.

22 THE COURT: All right. Have you discussed these charges
23 with your attorney sufficient for you to plead here today?

24 THE DEFENDANT LOFTON-ROBINSON: Yes, sir.

25 THE COURT: How then do you plead to the charges in

1 Counts 5, 6 and 7, guilty or not guilty?

2 THE DEFENDANT LOFTON-ROBINSON: Not guilty.

3 THE COURT: All right, not guilty. Have you -- did he
4 previously waive the 60 days?

5 MR. BINDRUP: Yes, he did, Your Honor.

6 THE COURT: All right. I assume -- does he continue to waive
7 the 60-day rule?

8 MR. BINDRUP: Yes, he does.

9 THE COURT: All right. Let's go to Mr. Raekwon Robertson.
10 Mr. Robertson, have you been provided with a copy of the Superseding
11 Indictment, or a copy of the original Indictment?

12 THE DEFENDANT ROBERTSON: The original. He just
13 showed me the superseding one now. But previously, no.

14 THE COURT: All right. You were provided with a copy of the
15 original Indictment against you?

16 THE DEFENDANT ROBERTSON: Yeah, I got plenty of them.

17 THE COURT: All right. And did you have a chance to read
18 that original Indictment?

19 THE DEFENDANT ROBERTSON: Yes.

20 THE COURT: Okay. Will you waive the reading today of the
21 Superseding Indictment here in court?

22 THE DEFENDANT ROBERTSON: Yes.

23 THE COURT: Okay. Thank you. Now, state your true name.

24 THE DEFENDANT ROBERTSON: Raekwon Setrey
25 Robertson.

1 THE COURT: And how old are you?

2 THE DEFENDANT ROBERTSON: Twenty-one.

3 THE COURT: And how far did you go in school?

4 THE DEFENDANT ROBERTSON: The tenth grade.

5 THE COURT: Okay. Do you read, write and understand the
6 English language?

7 THE DEFENDANT ROBERTSON: Yes.

8 THE COURT: Okay. Now you've been provided with a
9 copy -- you previously read the original Indictment against you in this
10 case, which the State has represented is exactly the same as the
11 Superseding Indictment that's before the Court today.

12 And in the original Indictment and the Superseding
13 Indictment, you're charged in Count 1 with burglary while in possession
14 of a deadly weapon, a category B felony in violation Nevada Revised
15 State 205.060; in Count 2 with conspiracy to commit robbery, and in
16 Count 5 with conspiracy to commit robbery; Count 3 and Count 4 with
17 robbery with use of a deadly weapon, a category B felony in violation of
18 Nevada Revised Statute 200.380 and 193.165; Count 6 with attempt
19 robbery with use of a deadly weapon, and in Count 7 with murder with
20 use of a deadly weapon.

21 Do you understand the nature of the charges against
22 you in the Superseding Indictment?

23 THE DEFENDANT ROBERTSON: Yes.

24 THE COURT: Okay. Have you discussed with your attorney
25 the charges sufficient for you to plead here today?

1 THE DEFENDANT ROBERTSON: No. Honestly, my attorney
2 in almost -- since February the 13th, he hasn't come to visit me yet.

3 THE COURT: Okay.

4 MR. RUGGEROLI: Judge, I believe that his prior attorney
5 went over the original Indictment with him, and I'm standing in for Mr.
6 Sanft. But I believe since he has gone over the previous Indictment with
7 Mr. Yampolsky --

8 THE COURT: Did you go over the previous Indictment with
9 Mr. Yampolsky?

10 THE DEFENDANT ROBERTSON: He gave me the paper; I
11 went over it. I went over it, like, with myself. He didn't go over it with me
12 though.

13 THE COURT: Okay. Did you talk to him about it at all?

14 THE DEFENDANT ROBERTSON: No. We just talked about,
15 like, my case and when we're starting trial and stuff like that.

16 THE COURT: Okay, but you did talk about your case with
17 him?

18 THE DEFENDANT ROBERTSON: Yeah, I did.

19 THE COURT: All right. Do you think -- are you able to go
20 forward today and plead to the charges in the Superseding Indictment?

21 THE DEFENDANT ROBERTSON: Yes.

22 THE COURT: All right, how then do you plead to the charges
23 against you in Counts 1, 2, 3, 4, 5, 6 and 7 --

24 THE DEFENDANT ROBERTSON: Not guilty.

25 THE COURT: -- guilty or not guilty?

1 THE DEFENDANT ROBERTSON: Not guilty.

2 THE COURT: Okay. All right, not guilty. Now, do you --
3 where is Mr. Sanft?

4 MR. RUGGEROLI: Judge, I honestly don't know. I expected
5 he's in another court right now.

6 THE COURT: He's entitled to assert the right to a speedy
7 trial. And if he hasn't talked with an attorney, I'm not sure how he can
8 knowingly assert or not assert a speedy trial. I mean, can you reach out
9 to Mr. Sanft at all and see if we can get him in here?

10 MR. RUGGEROLI: Yes.

11 THE COURT: Okay. All right, I'm going to trail as to Mr.
12 Robertson for a while. We'll come back to you in a little bit, okay?

13 THE DEFENDANT ROBERTSON: Okay, thank you.

14 THE COURT: And then let's go to Mr. Wheeler. Is he just
15 charged in 5, 6, 7?

16 MR. RUGGEROLI: Yes. Yes, Judge.

17 THE COURT: Okay. All right. Okay, Mr. Wheeler, have you
18 been provided with a copy of the Superseding Indictment?

19 THE DEFENDANT WHEELER: Yes, I have.

20 THE COURT: Okay. It's my understanding that Indictment is
21 essentially the same -- or is exactly the same as the original Indictment.
22 Were you provided with a copy of the original Indictment?

23 THE DEFENDANT WHEELER: Yeah.

24 THE COURT: Did you read it?

25 THE DEFENDANT WHEELER: Yes, I did, sir.

1 THE COURT: Okay. And will you waive the reading out loud
2 here today in court of the Superseding Indictment?

3 THE DEFENDANT WHEELER: It's basically going over the
4 same charges, sir.

5 THE COURT: Yeah.

6 THE DEFENDANT WHEELER: I'll waive it.

7 THE COURT: Okay. All right. Thank you. State your true
8 name.

9 THE DEFENDANT WHEELER: My name is Davonte
10 Wheeler.

11 THE COURT: All right. And how old are you?

12 THE DEFENDANT WHEELER: I'm twenty-three.

13 THE COURT: And how far did you go in school?

14 THE DEFENDANT WHEELER: I graduated.

15 THE COURT: All right. Do you read, write and understand
16 the English language?

17 THE DEFENDANT WHEELER: Yes, I do.

18 THE COURT: All right, you've been charged in Count 5 of the
19 Superseding Indictment with conspiracy to commit robbery, and Count 6
20 with attempt robbery with use of a deadly weapon, and in Count 7 with
21 murder with use of a deadly weapon.

22 Do you understand the nature of the charges against
23 you in the Superseding Indictment?

24 THE DEFENDANT WHEELER: Yes, I do.

25 THE COURT: Okay. Have you discussed these charges with

1 your attorney sufficient for you to plead here today?

2 THE DEFENDANT WHEELER: Yes. Yes, I am.

3 THE COURT: All right, how then do you plead to the charges
4 in Counts 5, 6 and 7, guilty or not guilty?

5 THE DEFENDANT WHEELER: I plead not guilty.

6 THE COURT: All right. Now you're entitled to a speedy trial
7 within 60 days from the date of arraignment in this case. Do you wish to
8 invoke the 60-day rule?

9 THE DEFENDANT WHEELER: No, I don't.

10 THE COURT: All right. Let's go ahead and set --

11 THE DEFENDANT WHEELER: And can I talk to my lawyer
12 real quick?

13 THE COURT: Go ahead. Has Mr. Robertson previously
14 waived his 60 days?

15 MR. PESCI: Yes. We already had a July 30th date set, so we
16 already went through all those steps to get that date.

17 THE COURT: All right. Mr. Robertson, can I call you back up.
18 Did you talk with your attorney previously about --

19 THE DEFENDANT ROBERTSON: No. No, I didn't. I talk to
20 him about no 60 day nothing. I just spoken to my attorney just February
21 13th, and he wasn't even at my last court date. I called him; I called him,
22 but he don't answer his phone.

23 THE COURT: All right.

24 THE DEFENDANT ROBERTSON: So, like, I don't know
25 about a 60-day waive or -- I don't know.

1 THE COURT: We'll set the trial date as to the other two
2 defendants, and we'll put Mr. Robertson on calendar on the next date
3 and get Mr. Sanft in here. I want him in here.

4 MR. RUGGEROLI: I understand. And, Judge, can I make a
5 quick record on two additional issues?

6 THE COURT: Sure.

7 MR. RUGGEROLI: I'd like to make the State aware we intend
8 to file another writ. I'd like to request 21 days from today's arraignment
9 for the filing of that writ. We're going to be alleging similar arguments,
10 but they are different in light of the evidence that was presented.

11 Also, Judge, it's very important what Mr. Wheeler just
12 asked me; to make sure I made a record of. The last time we were in
13 court, I made the State aware that Mr. Wheeler had indicated that he
14 may want to testify before the grand jury. So when the State made a
15 record about that, I want to make it very, very clear that that would've
16 been solely for the purpose of testifying on his own behalf. And in no
17 way was there ever a discussion that he would be testifying for the
18 State. And just so that's very clear because I think that that was
19 potentially misunderstood through no fault of Mr. Pesci's.

20 But after our court date last time, I spoke with Mr.
21 Wheeler and clarified everything. He did not testify, and so I just wanted
22 to make sure that we were clear on the record about that.

23 MR. PESCI: For the record, I never understood his invocation
24 of the right to go to the grand jury and testify is something he would do
25 on behalf of the State, it was on his own behalf. And then as I

1 understood it, and discussed it with his Counsel and chose not to, we
2 were made aware of his potential. We told him when it would be, and
3 then he said that he would not be testifying.

4 THE COURT: Okay. All right, that's noted now for the record.
5 Now, you want 21 days from today's date?

6 MR. RUGGEROLI: Please.

7 THE COURT: What's the State's position on that?

8 MR. PESCI: We'll submit it.

9 MR. BINDRUP: Has a transcript been filed already?

10 MR. RUGGEROLI: It has. I think it was yesterday.

11 THE COURT: Okay. I sort of hesitate to say 21 days from
12 today's because usually it's based upon when the transcript was filed.
13 But if you're telling me it was filed yesterday --

14 MR. RUGGEROLI: Either yesterday or the day before.

15 THE COURT: Okay, I'll give you 21 days from today's date to
16 file any writ.

17 MR. RUGGEROLI: Thank you.

18 MR. BINDRUP: And the same would apply to co-defendants,
19 of course.

20 THE COURT: Yes, it applies to you too. All right. So let's set
21 the -- we'll set the trial date. We'll set it for all three, since we already
22 have a trial date. And then we'll set a -- hold on one second.

23 [The Court and Clerk confer]

24 THE COURT: We'll set Mr. Robertson on Tuesday to get a
25 waiver invocation of his 60 days' rights, and I want Mr. Sanft here.

1 THE CLERK: Okay, so that will be May 8th at 8:30.

2 THE COURT: All right, we're going to set your -- set you on

3 Tuesday, and we'll have your attorney here and you can chat with him.

4 All right. Thank you.

5 THE CLERK: We'll need a status check date?

6 THE COURT: Yeah, since we're sort of in a state of disarray

7 a little bit, it sounds like with attorneys and such. Let's set this end of --

8 June, first week.

9 THE CLERK: June 6th at nine a.m. As to all defendants?

10 THE COURT: Yes.

11 THE DEFENDANT WHEELER: It was on record that I did not

12 revoke my 60 days, right?

13 MR. RUGGEROLI: You waived.

14 THE DEFENDANT WHEELER: I don't want to waive it. I

15 wanted to have a chance to have a 60-day trial.

16 THE COURT: All right.

17 MR. RUGGEROLI: Judge --

18 MR. PESCI: He already waived it. He just waived it here in

19 court.

20 THE COURT: All right. Well, you know, this is -- we have a

21 superseding -- I don't know. I haven't ever looked into this issue. So, I

22 mean, let me hear what he wants to -- may be a clear issue, or it may

23 not be a clear issue.

24 [Colloquy between Mr. Ruggeroli and Defendant Wheeler]

25 MR. RUGGEROLI: Judge, especially in light of the fact that

1 we fully intend to file the writ, I believe Mr. Wheeler is unaware we can't
2 have both. And so --

3 THE COURT: Yeah.

4 MR. RUGGEROLI: He don't believe that we would be
5 prepared to go to trial in this case. And in explaining it to him, I think he
6 does want to waive his 60-day rule. So if he could just clarify --

7 THE COURT: If you file a writ, you waive the 60 days with the
8 filing of the writ. So if you're going to file a writ, then that waives the 60-
9 day rule. Do you understand that?

10 THE DEFENDANT WHEELER: Yeah.

11 THE COURT: All right, then knowing that, do you waive then
12 the 60-day rule today?

13 THE DEFENDANT WHEELER: Yes.

14 THE COURT: Okay. All right. We've got a trial date set for
15 July 30th. So we'll, you know, I'm good with trying to keep that there if
16 we can do it, so --

17 THE DEFENDANT WHEELER: All right.

18 THE COURT: All right. We'll have a status check as to Mr.
19 Robertson and as to his attorney on Tuesday, and then we'll have June
20 6th for the next status check.

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MR. RUGGEROLI: Thank you, Judge.

THE COURT: Thank you.

[Hearing concluded at 10:38 a.m.]

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



Angie Calvillo
Court Recorder/Transcriber

Steven D. Grierson

ORD
JAMES RUGGEROLI, ESQ.
Nevada Bar No. 007891
LAW OFFICE OF JAMES RUGGEROLI
601 South 7th Street
Las Vegas, Nevada 89101
Ruggeroli@icloud.com
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,)
Plaintiff.)

vs.)

DAVONTAE WHEELER,)
#05909081,)
Defendant.)

Case No.: C-17-328587-3

Dept. No.: 20

COURT ORDER
TIME SENSITIVE

**ORDER FOR INMATE TRANSPORTATION FROM CLARK
COUNTY DETENTION CENTER TO WESTERN SECURITY LOCATED
AT 1920 S. MARYLAND PARKWAY, LAS VEGAS, NEVADA 89104.
ATTN.: JOSEPH LOMBARDO, SHERIFF FOR LAS
VEGAS METROPOLITAN POLICE DEPARTMENT LOCATED
AT 400 S. MARTIN LUTHER KING BOULEVARD, LAS
VEGAS, NEVADA 89106.**

This matter having coming forward before this court and good cause
appearing therefore:

IT IS HEREBY ORDERED that SHERIFF J. LOMBARDO and/or an
AGENT of Sheriff J. LOMBARDO at Las Vegas Metropolitan Police
Department shall transport Davontae Wheeler, Back ID# 05909081 from Clark
County Detention Center to Western Security located at 1920 S. Maryland Pkwy.,
Las Vegas, Nevada 89104 on or about Thursday, May 17th, 2018 at 1:00 PM.
Davontae Wheeler must be at Western Security no later than 1:00 PM.

1
2 **IT IS HEREBY ORDERED** that Davontae Wheeler, Back ID# 05909081,
3
4 be transported to meet with Mr. Ron Slay at Western Security located at
5 1920 S. Maryland Pkwy, Las Vegas, Nevada 89104.


6 **IT IS HEREBY ORDERED** that upon completion of the meeting with Ron Slay
7 at Western Security, that Sheriff J. LOMBARDO and or an AGENT of Sheriff J.
8 Lombardo transport Davontae Wheeler back to Clark County Detention Center.

9 **IT IS HEREBY ORDERED** that if you have any questions you are to
10 contact Criminal Defense Investigator Richard Franky, L.P.I., State of NV, PILB
11 License No. 797, DBA, RDF Investigative Agency. Mr. Franky can be reached
12 at (702) 696-9701 and/or cell #(702) 860-7898.
13

14 Dated this 9 day of MAY of 2018.

15
16
17
18 
HONORABLE JUDGE ERIC JOHNSON *KM*

19 Prepared by:

20
21 
22 JAMES RUGGEROLI, ESQ.
23 Nevada Bar No. 007891
24 LAW OFFICE OF JAMES RUGGEROLI
25 601 South 7th Street
26 Las Vegas, Nevada 89101
27 Ruggeroli@icloud.com
28 Attorney for Defendant
DAVONTAE WHEELER

JAMES J. RUGGEROLI, ESQ.

601 South 7th Street

Las Vegas, Nevada 89101

TEL: (702) 258-2022 | FAX: (702) 258-2021

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

ruggeroli@icloud.com

Attorney for Defendant

Electronically Filed
5/17/2018 12:37 PM
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 bringing 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.

7. That no other Petition for Writ of Habeas Corpus has heretofore been filed on 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 17th day of May, 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

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 31 day of
May, 2018 at the hour of 9:00 am.m. or as soon thereafter as
counsel can be heard.

DATED this 17th day of May, 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 17th day of May, 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 the Superseding Indictment (the "Indictment"). The Indictment must therefore be dismissed.

II. STATEMENT OF THE CASE

1. The State initially presented its case against Mr. Wheeler to the grand jury on November 29, 2017. See Grand Jury Transcript on file herein.

2. After the grand jury issued a true bill, the State 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.

3. The State subsequently 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.

4. After hearing argument on a petition for writ of habeas corpus, this court ordered the State to return to the grand jury in order to present the forensic examination's results to the grand jury because said evidence constituted exculpatory evidence pursuant NRS 172.145(2)

5. The State returned to the grand jury and presented the forensic examination results on April 18, 2018, and the grand jury issued a true bill. See Grand Jury Transcript of April 18, 2018 on file herein.

6. The State filed the Superseding Indictment (the "Indictment") against Mr. Wheeler on April 19, 2018.

7. The Indictment specifically charges Mr. Wheeler as follows:

a. **COUNT 5- CONSPIRACY TO COMMIT ROBBERY**

Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE

1 AMARRI WHEELER, did, or on about August 9, 2017, willfully, unlawfully, and
2 feloniously conspire with each other and/or unknown co-conspirators to commit robbery,
3 by the Defendants and/or unknown co-conspirators committing the acts as set forth in
4 Count 6, said acts being incorporated by this reference as though fully set forth herein.

5 b. COUNT 6- ATTEMPT ROBBERY WITH USE OF A DEADLY
6 WEAPON

7 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
8 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE
9 AMARRI WHEELER, did, or on about August 9, 2017, willfully, unlawfully, and
10 feloniously attempt to take personal property, to wit: U.S. Currency and/or property, from
11 the person of GABRIEL VALENZUELA, or in his presence, by means of force or
12 violence, or fear of injury to, and without the consent and against the will of GABRIEL
13 VALENZUELA, by pointing a firearm at the said GABRIEL VALENZUALA and
14 demanding said U.S. Currency and/or property, with use of a deadly weapon, to wit: a
15 firearm, the Defendant being criminally liable under one or more of the following
16 principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by
17 aiding or abetting in the commission of this crime, with the intent that this crime be
18 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
19 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit
20 this crime, with the intent that this crime be committed, Defendant and/or DEMARIO
21 LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON
22 ROBERTSON and/or unknown co-conspirators acting in concert throughout.

23 c. COUNT 7- MURDER WITH USE OF A DEADLY WEAPON

24 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
25 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE
26 AMARRI WHEELER, did, or on about August 9, 2017, willfully, unlawfully, and
27 feloniously and with malice of aforethought, kill GABRIEL VALENZUELA, a human
28 being, with use of a deadly weapon, to wit: a firearm, by shooting at and into the body of

1 said GABRIEL VALENZUELA, the said killing having been (1) willful, deliberate, and
2 premeditated, and/or (2) committed during the perpetration or attempted perpetration of a
3 robbery, the Defendants being criminally liable under one or more of the following
4 principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by
5 aiding or abetting in the commission of this crime, with the intent that this crime be
6 committed, by counseling, encouraging, hiring, commanding, inducing, and/or otherwise
7 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit
8 murder and/or robbery; Defendant and/or unknown co-conspirators aiding or abetting
9 and/or conspiring by Defendants and/or unknown co-conspirators acting in concert
10 throughout.

11 **III. STATEMENT OF PERTINENT FACTS**

12 The pertinent facts presented to the grand jury on November 29, 2017 and on April 18,
13 2018 against Mr. Wheeler are as follows:

14 1. On the night of August 8, 2017, the Defendant was inside the Shortline Express
15 and was captured on surveillance wearing a firearm on his right hip. See Grand Jury Transcript
16 of proceedings from November 29, 2017 ("GJT1") at 110-112.

17 2. *At least* three other individuals were at the Shortline Express approximately 30-40
18 minutes prior to the shooting. GJT1 27.

19 3. However, the evidence showed that Mr. Wheeler claimed to have gotten out of
20 the car after being at the Shortline Express and taken a bus home. GJT1 146:14-17.

21 4. Mr. Mason, the jogger, saw the White Grand Marquis and four dark skinned
22 individuals near the victim's home near midnight, but he provided only general descriptions and
23 there was no actual identification. GJT1 47.

24 5. A "Winchester 45 Auto" was found at the murder scene. GJT1 101-102.

25 6. However, no "Winchester 45 Auto" head stamp cartridges were found during any
26 of the searches in this case GJT1 101-102.
27
28

1 7. Moreover, the evidence presented to the grand jury on April 18, 2018 established
2 that the .45 caliber gun found at Mr. Wheeler's residence was not used in the shooting.

3 8. Mitchell Dosche, a detective with the homicide detail of the Las Vegas
4 Metropolitan Police Department ("Metro") testified that impounded lab item number 14, a
5 Taurus model .45 caliber handgun had been obtained during the course of the investigation
6 pursuant to a search warrant at Mr. Wheeler's residence at Civic Center Drive. See Grand Jury
7 Transcript of the proceedings held on April 18, 2018 ("GJT2") at 17-18.
8

9 9. Anya Lester, forensic scientist in the forensic laboratory in the firearms and
10 toolmarks analysis unit for Metro generated a report dated January 22, 2018 specifically
11 indicating that item number 14 (the .45 found at Mr. Wheeler's address) fired none of the
12 evidence bullets and cartridge cases. GJT2 11:7-13.
13

14 **IV. LAW AND ARGUMENT**

15 It is expected that the State will argue that based on these facts, the State demonstrated a
16 reasonable inference that Defendant committed the crime of Murder with Use of a Deadly
17 Weapon. Such is not the case. The State presented insufficient evidence to the grand jury,
18 especially in light of Mr. Wheeler's statements and the exculpatory evidence demonstrating that
19 Mr. Wheeler's gun was not used in the crime.

20 **A. LEGAL STANDARD**

21 A defendant charged with an offense may challenge the probable cause to hold him to
22 answer through a petition for writ of habeas corpus. Gary v. Sheriff, Clark County, 96 Nev. 78,
23 605 P.2d 212 (1980); Cook v. State, 85 Nev. 692, 462 P.2d 523 (1969). NRS 171.206 requires
24 the magistrate to determine if probable cause exists to believe that an offense has been
25 committed and that the defendant has committed it. To establish probable cause to bind a
26 defendant over for trial, the State must show that (1) a crime has been committed, and (2) there is
27 probable cause to believe the defendant committed it. See NRS 171.206.
28

1 A suspect may not be bound over for trial unless the state demonstrates that the suspect
2 committed the charged crime. Sheriff, Clark County v. Richardson, 103 Nev. 180, 734 P.2d 735
3 (1987). It is recognized that the finding of probable cause to support a criminal charge may be
4 based on slight, even marginal, evidence because it does not involve a determination of the guilt
5 or innocence of an accused. Sheriff, Clark County v. Richardson, 103 Nev. 180, 734 P.2d 735
6 (1987). However, finding of probable cause requires far more than a trace of evidence; the facts
7 must be such as would lead a person of ordinary caution and prudence to believe and
8 conscientiously entertain a strong suspicion that the defendant committed the crime in question.
9 See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972). Moreover, a finding of
10 probable cause may not rest on other than “legal evidence,” See Tetrou v. Sheriff, 89 Nev. 166,
11 169 (1973), and “due process of law requires adherence to the adopted and recognized rules of
12 evidence.” Goldsmith v. Sheriff, 85 Nev. 295, 303 (1969).

13
14
15 For the reasons set forth below, the Indictment here must be dismissed because the State
16 failed to present sufficient evidence against Mr. Wheeler to support the Indictment.

17 **A. INSUFFICIENT EVIDENCE**

18 It is recognized that the finding of probable cause to support a criminal charge may be
19 based on slight, even marginal, evidence because it does not involve a determination of the guilt
20 or innocence of an accused. Sheriff, Clark County v. Richardson, 103 Nev. 180, 734 P.2d 735
21 (1987). However, finding of probable cause requires far more than a trace of evidence; the facts
22 must be such as would lead a person of ordinary caution and prudence to believe and
23 conscientiously entertain a strong suspicion that the defendant committed the crime in question.
24 See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972). Moreover, it is
25 respectfully submitted that a finding of probable cause may not rest on other than “legal
26 evidence,” See Tetrou v. Sheriff, 89 Nev. 166, 169 (1973), and “due process of law requires
27
28

1 adherence to the adopted and recognized rules of evidence.” Goldsmith v. Sheriff, 85 Nev. 295,
2 303 (1969).

3 In the case at hand, the State’s evidence simply does not provide enough evidence to
4 support the charges. The facts against Mr. Wheeler are not such as would lead a person of
5 ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that
6 Mr. Wheeler committed the crimes in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498
7 P.2d 1324, 1326 (1972). Moreover, the State’s likely contention that the evidence provides a
8 reasonable inference that Defendant committed the crime of Murder with Use of a Deadly
9 Weapon contains no factual or legal support.
10

11 There was no proof that there were *only* four individuals present at the Shortline Express.
12 The video simply shows four individuals in the store. Additionally, the evidence demonstrates
13 that Mr. Wheeler claimed to have gotten out of the vehicle shortly *after being at the convenience*
14 *store*, and there were no identifications of any of the individuals present just before the shooting.
15 Thus, there’s no evidence that Mr. Wheeler was present at the scene of the shooting, but there is
16 evidence that Mr. Wheeler was not present at the time of the shooting.
17

18 This fact is based not only on Mr. Wheeler’s statements, but it is also supported by the
19 Winchester shell casings recovered at the scene. No Winchester casings were found at the
20 codefendants’ residences or at Mr. Wheeler’s addresses. Thus, the evidence would logically
21 demonstrate that there is another individual (**a *fifth man***) that had been present at the Shortline
22 Express (not seen on the video), and that individual had been the ***fourth man*** at the scene of the
23 shooting observed by the jogger. That fourth, unknown man would most likely be the one that
24 fired the gun containing the Winchester cartridges.
25

26 Thus, one the one hand, the State failed to present any evidence that Mr. Wheeler was
27 one of the individuals actually present at the scene. On the other hand, even if there were an
28

1 inference that Mr. Wheeler may have been present, there is no evidence supporting a conspiracy
2 to rob, lying in wait, or felony murder, nor is there any evidence that Mr. Wheeler aided or
3 abetted the crime. There is no inference from the evidence actually presented that Mr. Wheeler
4 was part of a preconceived plan. There are simply gaps in the evidence into which the State is
5 creating the notion of inference by *fiat* and without facts or evidence to support that inference.
6

7 Simply saying that “the most reasonable explanation is . . .” cannot be constituted as
8 evidence. The State presented no evidence or inference-supported-by-the-evidence establishing a
9 conspiracy, a robbery or an attempt to rob, period. Finding probable cause requires far more than
10 the “trace of evidence” the State presented to the grand jury. The facts against Mr. Wheeler are
11 not such as would lead a person of ordinary caution and prudence to believe and conscientiously
12 entertain a strong suspicion that Mr. Wheeler committed the crimes in question, and the
13 Indictment should therefore be dismissed. See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d
14 1324, 1326 (1972).
15

16 **V. CONCLUSION**

17 For the reasons stated herein, it is respectfully requests that this Court dismiss the
18 Indictment against Mr. Wheeler.
19

20 DATED this 17th day of May, 2018.

21 **JAMES J. RUGGEROLI**

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

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 17th day of May, 2018.

JAMES J. RUGGEROLI

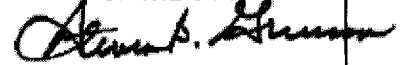
By: */s/ James Ruggeroli*
James J. Ruggeroli, Esq.
Nevada Bar No. 7891

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of May 2018, I emailed a copy of the foregoing Petition to them at the following address:

motions@clarkcountyda.com

By: */s/ James Ruggeroli*
James J. Ruggeroli, Esq.



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 DAVONTAE AMARRI WHEELER,
13 #5909081

14 Defendant(s).

15 **STATE'S RETURN WRIT OF HABEAS CORPUS**

16 DATE OF HEARING: May 31, 2018
17 TIME OF HEARING: 8:30 A.M.

18
19 COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent,
20 through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through
21 GIANCARLO PESCI, Chief Deputy District Attorney, in obedience to a writ of habeas corpus
22 issued out of and under the seal of the above-entitled Court on the 17th day of May, 2018, and
23 made returnable on the 31st day of May, 2018, at the hour of 8:30 A.M., before the above-
24 entitled Court, and states as follows:

- 25 1. Respondent admits the allegations of Paragraphs 1, 2, 7.
26 2. Respondent denies the allegations of Paragraph 3.
27 3. Paragraph numbers 4, 5, 6, 8 do not require admission or denial.
28

4. The Petitioner is in the actual or constructive custody of JOE LOMBARDO, Clark County Sheriff, Respondent herein, pursuant to a Superseding Indictment, a copy of which is attached hereto as Exhibit 1 and incorporated by reference herein.

Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the Petition be dismissed.

DATED this 29th day of May, 2018.

Respectfully submitted,

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

BY /s/GIANCARLO PESCI
GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #007135

POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

Defendant Devontae Wheeler (“Defendant”) was arrested on August 15, 2017. On August 17, 2017, Defendant was charged by way of Criminal Complaint in Justice Court Department 12 as follows: COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony – NRS 200.380, 199.480); COUNT 2 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – 200.380, 193.330, 193.165); and COUNT 3 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165).

On September 21, 2017, Defendant's case was consolidated into Justice Court Department 3, Case No. 17F14369C, so that Defendant's case could be joined with those of his co-defendants.

Prior to the preliminary hearing, the State indicted Defendant on the charges alleged in the Criminal Complaint. Following the State's presentation of evidence at the Grand Jury on

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, as follows:
3 COUNT 5 – CONSPIRACY TO COMMIT ROBBERY; COUNT 6 – ATTEMPT ROBBERY
4 WITH USE OF A DEADLY WEAPON; and COUNT 7 – MURDER WITH USE OF A
5 DEADLY WEAPON. On December 19, 2017, Defendant pled not guilty and waived his right
6 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. On February 8, 2018, Defendant filed a Petition for Writ of Habeas Corpus. On March
10 2, 2018, the State filed a Return to Defendant's Petition for Writ of Habeas Corpus and on
11 March 8, 2018, Defendant filed a Reply to the State's Return.

12 On March 22, 2018, oral argument was held as to Defendant's Petition. Following
13 argument by both parties, the Court ordered the State to return to the Grand Jury to present
14 additional evidence regarding ballistic testing that was performed after the State's initial
15 presentation to the Grand Jury.

16 On April 18, 2018, the State presented additional evidence to the Grand Jury.
17 Specifically, the State presented testimony from Anya Lester, a forensic scientist in the
18 firearms/toolmark analysis unit of the Las Vegas Metropolitan Police Department
19 ("LVMPD"). The State also presented additional testimony from LVMPD Detective Mitch
20 Dosch. After presentation of the additional evidence, the Grand Jury returned a true bill on
21 the same three counts alleged in the original Indictment. On April 19, 2018, a Superseding
22 Indictment was filed charging Defendant with the same three counts alleged in the original
23 Indictment.

24 Defendant is charged with the Murder and Attempt Robbery of Gabriel Valenzuela on
25 August 9, 2017. The State also alleges that Defendant conspired with his co-defendants to
26 commit a robbery against Mr. Valenzuela on that day.

27 ///

28 ///

1 **II. STATEMENT OF FACTS**

2 **A. Testimony from November 29, 2017**

3 The following is a summary of the relevant portions of testimony elicited during the
4 presentation of evidence to the Grand Jury on November 29, 2017.

5 **John Relato**

6 On August 9, 2017, John Relato ("Mr. Relato") resided with his cousin, Gabriel
7 Valenzuela at 5536 Dewey Drive in Las Vegas Nevada. See Grand Jury Transcript (Nov. 29,
8 2017) ("GJT") 84:18-85:6. In the early morning hours of August 9, 2017, Mr. Relato was
9 inside his home when he heard gunshots. GJT 85:7-23. Mr. Relato looked out his window
10 and saw his cousin, Gabriel Valenzuela laying in the driveway to their home. Id. Mr. Relato
11 went outside and realized that Mr. Valenzuela was bleeding from his head. Id. As Mr. Relato
12 proceeded outside, he called 911. GJT 86:21-22, 87:6. The initial call to 911 was placed at
13 12:11 a.m.¹ Mr. Relato did not see anyone in the area and he did not see who shot his cousin.
14 GJT 86:23-87:2. Mr. Relato testified that it was customary for his cousin to check the mail
15 and sit on the retaining wall in front of his home while he opened the mail. GJT 87:20-23.

16 **Lary Simms**

17 Larry Simms ("Dr. Simms") is a forensic pathologist with the Clark County Coroner's
18 Office. GJT 8:17-18, 9:11-13. Dr. Simms conducted the autopsy on Gabriel Valenzuela. GJT
19 9:22-10:1. Dr. Simms determined that Mr. Valenzuela suffered four gunshot wounds. One
20 shot entered the right side of Mr. Valenzuela's head and exited on the left side of Mr.
21 Valenzuela's forehead; another shot entered Mr. Valenzuela's left abdomen and did not exit;
22 another shot entered the outside of Mr. Valenzuela's right ankle, exiting on the inside of Mr.
23 Valenzuela's right ankle; the fourth shot entered the back of Mr. Valenzuela's left ankle and
24 came to rest in his leg. GJT 13:21-23, 15:20-24, 17:6-20. Dr. Simms concluded that the cause
25 of Mr. Valenzuela's death was multiple gunshot wounds and the manner of Mr. Valenzuela's
26 death was homicide. GJT 17:21-18:6.

27 ///

28 _____
¹ This fact was testified to by Detective Mitch Dosch. GJT 91:10:13

1 **Robert Mason**

2 At the time of Mr. Valenzuela's murder, Robert Mason lived in the same neighborhood
3 as the victim. GJT 45:20-25. At approximately midnight on the night of August 8, 2017, into
4 the morning of August 9, 2017, Mr. Mason went for a jog in his neighborhood. GJT 46:2-15.
5 During his jog, Mr. Mason saw four young black males standing on the corner of Lindell and
6 Dewey in front of 5536 Dewey Drive.² GJT 46:16-48:2-18. Shortly after Mr. Mason ran past
7 the four individuals standing in front of Mr. Valenzuela's home, he saw what he described as
8 a white Crown Vic, bearing Nevada license plate number 473YZB. GJT 50:3-21. The vehicle
9 was parked approximately 20-50 feet from where the four black males were standing. GJT
10 50: 22-25. When shown Grand Jury Exhibit 28 (attached as Exhibit 5 to the State's Return to
11 Writ of Habeas Corpus filed on March 2, 2018), Mr. Mason identified it as the vehicle he saw
12 when he jogged past the victim's house. GJT 51:1-15. Mr. Mason felt these individuals were
13 suspicious so he called his wife and told her to lock the doors to their house and he asked her
14 to call 311 to report the suspicious individuals. GJT 51:18-52:1.

15 **Nikolaus Spahn**

16 On the night of Mr. Valenzuela's murder (August 8, 2017 into the morning of August
17 9, 2017), Nikolaus Spahn ("Mr. Spahn") was working as a cashier at the Short Line Express
18 convenience store, located at the intersection of Warm Springs Road and Jones Boulevard at
19 7325 South Jones Boulevard. GJT 21:13-19, 24:2-7. On that night, Mr. Spahn's shift began
20 at 10:00 p.m. GJT 21: 24-25. Between 11:20-11:38 p.m., four individuals entered the store.
21 GJT 22, 27:7-29:13. Mr. Spahn believed these individuals were behaving suspiciously and he
22 was concerned because one of the individuals was wearing a firearm on his hip.³ GJT 22:1-
23 23:25.

24
25
26 ² See Grand Jury Exhibit 16, attached as Exhibit 2 to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018.
27 When shown Exhibit 16, Mr. Mason indicated that the photograph captured the area where he saw the four individuals
28 standing. GJT 48:3:18. During Mr. Relato's testimony, he identified Exhibit 16 as a photograph of his home located at
5536 Dewey Drive. GJT 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. GJT 66:5-9, GJT 142:24-143:4.

³ Surveillance footage reveals that the individual wearing the firearm is the person Detective Dosch identified as
Defendant Wheeler. The portions of the surveillance footage introduced at Grand Jury are attached as Exhibit 1 to the
State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018.

1 After the four individuals exited the store, they sat down at a table outside of the store.
2 GJT 25:22-26:11. Mr. Spahn continued to observe the individuals at which point he went
3 outside and saw the vehicle the four individuals were driving. Id. Mr. Spahn described the
4 vehicle as a white four door Mercury that looked like a Crown Victoria. GJT 26:12-15. Later
5 that night, police officers came into the store and told Mr. Spahn they were investigating a
6 murder; at that time, he told officers about the four individuals he observed. GJT 27:15-23.

7 During Mr. Spahn's testimony, the State introduced surveillance footage from the
8 Shortline Express capturing the four individuals as well as the vehicle in which they arrived.
9 GJT 29:20-31:15. The surveillance footage showed that the vehicle had paint damage on the
10 roof of the car that the first three numbers on the license plate number were 473. GJT 31:6-9,
11 96:11-22.

12 **James Newman**

13 James Newman testified that on August 4, 2017 (four days before Mr. Valenzuela was
14 murdered), he sold his white Mercury Grand Marquis to Co-Defendant Lofton-Robinson. GJT
15 38:22-39:14. The vehicle had a Nevada license plate number of 473-YZB, the same license
16 plate observed by Mr. Mason in front of the victim's home. See GJT 37:10-13, 50:3-21. When
17 Mr. Newman sold the vehicle, he allowed Co-Defendant Lofton-Robinson to keep the license
18 plates with the understanding they would be returned at a later time. GJT 39:25-40:1, 41:9-
19 17. James Newman identified the vehicle in Grand Jury Exhibits 28 and 30 (attached as
20 Exhibits 5 and 6, respectively to the State's Return to Writ of Habeas Corpus filed on Mar. 2,
21 2018) as the vehicle he sold to Co-Defendant Lofton-Robinson.⁴ Mr. Newman was able to
22 identify the vehicle based on its license plate number of 473-YZB which was depicted in Grand
23 Jury Exhibit 28 and because of the paint damage to the roof of the car which was depicted in
24 Grand Jury Exhibit 30. GJT 37:10-24.

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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. GJT 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 **Lora Cody**

2 Lora Cody ("Detective Cody") is a homicide detective with the Las Vegas Metropolitan
3 Police Department. GJT 135:11-19. Detective Cody was assigned to assist in the investigation
4 of Mr. Valenzuela's murder. GJT 135:20-22. A portion of her responsibilities involved
5 obtaining surveillance footage. GJT 135:24-3. As a result, Detective Cody responded to the
6 Shortline Express convenience store located near Dewey Drive. GJT 136:3-19. In viewing the
7 surveillance, detectives observed a white Mercury Grand Marquis with a NV license plate
8 bearing the first three numbers of 473. GJT 136:25-137:13. Based on an investigation into the
9 registration of the vehicle, officers were able to locate the vehicle. GJT 137:11-19. Ultimately,
10 a traffic stop was conducted, at which time Co-Defendant Lofton-Robinson was inside the car.
11 GJT 137:20-138:11.

12 **Mitch Dosch**

13 Mitch Dosch ("Detective Dosch") is a homicide detective with the Las Vegas
14 Metropolitan Police Department. GJT 90:16-19. Along with other detectives, Detective
15 Dosch was assigned to investigate Mr. Valenzuela's murder. GJT 91:5-9. Detective Dosch
16 testified that four cartridge casings were located at the scene of the murder: one .22 caliber
17 cartridge case and three .45 caliber cartridge cases. GJT 99:22-100:8. The .22 caliber cartridge
18 case bore a head stamp of "C." GJT 13:15. The .45 caliber cartridge cases bore three separate
19 head-stamps: R-P 45, NFCR, and WINCHESTER 45 AUTO. GJT 100:23-101:1, 101:18-21,
20 102:2-7.

21 Additionally, Detective Dosch testified regarding the substance of the surveillance
22 video retrieved from the Shortline Express convenience store depicting the events of which
23 Nikolas Spahn testified. GJT 95:17-23. Significantly, Detective Dosch testified that if one
24 were driving a vehicle from the Short Line Express to the scene of the murder, it would only
25 take a matter of minutes. GJT 95:9-16.

26 With respect to the vehicle that the four individuals were driving, the surveillance
27 footage revealed that the first three numbers on the license plate were 473. GJT 95:24-96:22.
28 Because this information matched the description of the vehicle at the scene of the crime and

1 because the four individuals in the surveillance footage were consistent with the four
2 individuals seen at the scene of the crime, detectives attempted to identify the individuals in
3 the footage. See id., GJT 96:23-97:21.

4 Following an investigation, Detective Dosch was able to identify the four individuals
5 depicted in the surveillance footage from the Shortline Express on August 8, 2017. Based on
6 his prior interactions with each of the defendants, Detective Dosch identified one of the
7 individuals in the surveillance footage as Co-Defendant Lofton-Robinson; in the surveillance
8 footage, Lofton-Robinson was wearing red shoes, blue jeans, and a long-sleeved green shirt.
9 GJT 105:17-106:5, 108:23-109:9. Detective Dosch also identified Co-Defendant Robertson
10 as one of the individuals in the surveillance footage. GJT 117:3-11. Finally, Detective Dosch
11 identified one of the individuals as Defendant Wheeler. GJT 112:22-113. In the surveillance
12 footage, Defendant Wheeler was wearing a white and black hat; a maroon top, and maroon
13 shoes. GJT 113:3-5, see Grand Jury Exhibits 9 and 10 (attached as Exhibits 7 and 8,
14 respectively, to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018).

15 After identifying these individuals, detectives obtained multiple search warrants. Id.
16 During execution of the various search warrants, officers located multiple items of evidentiary
17 value.

18 A .22 caliber semi-automatic firearm was located at 6647 West Tropicana, an address
19 associated with Co-Defendant Raekwon Robertson. GJT 98:12-19, 100:16-22. While
20 searching 6647 West Tropicana, officers also located ammunition bearing the headstamp "C."
21 Id. This ammunition matches the .22 caliber cartridge case found at the murder scene. Id.

22 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
23 Co-Defendant Lofton-Robinson. GJT 97:23-98:2, 98:24-99:2. During the search of that
24 residence, officers located a .45 caliber firearm and ammunition bearing a headstamp of R-P
25 45, which matched one of .45 caliber cartridge cases found at the scene of the murder, GJT
26 98:3-5, GJT 100:16-22.

27 A search warrant was also obtained to search Apartment F located at 3300 Civic Center
28 Drive. GJT 99:11-15. Detective Dosch testified that Defendant was associated with this

1 address. GJT 101:14-17. At that residence, officers located a .45 caliber firearm loaded with
2 ammunition bearing a headstamp of RP-45 auto. GJT 99:14-19, 101:2-17, 115:18-116:14.
3 This ammunition matches one of the .45 caliber cartridge cases found at the scene of the
4 murder. Id. Additionally, officers recovered a hat and a pair of maroon shoes both of which
5 matched the items worn by the individual in the surveillance footage who Detective Dosch
6 identified as being the Defendant. GJT 114:2-115:17, see Grand Jury Exhibit 37 and 38
7 (attached as Exhibits 9 and 10 respectively to the State's Return to Writ of Habeas Corpus
8 filed on Mar. 2, 2018). This is the same individual who is also seen on the surveillance footage
9 wearing a firearm. See Exhibits 1, 7 and 8, attached to the State's Return to Writ of Habeas
10 Corpus filed on Mar. 2, 2018.

11 **Ryan Jaeger**

12 Ryan Jaeger ("Detective Jaeger") is a homicide detective with the Las Vegas
13 Metropolitan Police Department assigned to assist in investigating the murder of Mr.
14 Valenzuela. GJT 142:14-25.

15 Detective Jaeger testified that at the area where the victim was picked up by medical
16 personnel, there was mail scattered about the ground. GJT 143:5-9, see Grand Jury Exhibits
17 16-18 (attached as 2-4, respectively to the State's Return to Writ of Habeas Corpus filed on
18 Mar. 2, 2018). Detective Jaeger also testified that he interviewed the Defendant after advising
19 him of his Miranda warnings. GJT 145:1-16. In his interview, Defendant was shown a
20 photograph of the vehicle captured in the surveillance at the Short Line Express and he
21 admitted to having been in the vehicle on August 8, 2017. GJT 145:25-146:2. He also
22 admitted that he owed a .45 caliber firearm and that he would carry the firearm in open carry
23 fashion on his right hip. GJT 145:19-21, 146:22-24. However, when shown footage from
24 inside the Shortline Express, Defendant denied that he had been present inside the store. GJT
25 146:25-147:5.

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1 **B. Testimony from April 18, 2018**

2 The following is a summary of the relevant portions of testimony elicited during the
3 presentation of evidence to the Grand Jury on April 18, 2018.

4 **Anya Lester**

5 Anya Lester is a forensic scientist with the firearms/toolmark analysis unit of the Las
6 Vegas Metropolitan Police Department. See Grand Jury Transcript (Apr. 18, 2018) ("GJT2")
7 7:21-23. In conjunction with the instant case, Ms. Lester analyzed various firearms and
8 firearms-related evidence, the results of which she compiled into a report. GJT2 7:11-20 (Ms.
9 Lester's report was introduced as Exhibit 2 at the Grand Jury Proceedings and is attached
10 hereto as Exhibit 2). Ms. Lester tested the following firearms: 1) a .22 long rifle caliber
11 semiautomatic pistol; 2) a Taurus model PT-145 Pro Millennium .45 caliber semiautomatic
12 pistol; and 3) a Star .45 auto caliber semiautomatic pistol. GJT2 8:13-23. Ms. Lester test fired
13 all three firearms and determined that they were all operable. GJT2 9:9-12. She also compared
14 the cartridge cases, bullets and bullet fragments fired from those three firearms to the cartridge
15 cases and bullets located at the crime scene. GJT2 9:13-21.

16 Following her analysis, Ms. Lester concluded that the .22 caliber cartridge case found
17 at the murder scene was fired from the .22 caliber pistol she tested. GJT2 9:13-21. The .22
18 caliber handgun tested by Ms. Lester was located, pursuant to a search warrant, at 6647 West
19 Tropicana, an address associated with Co-Defendant Raekwon Robertson. GJT 98:12-19,
20 100:16-22, GJT2 17:1-16.

21 Ms. Lester further concluded all three .45 caliber cartridge cases found at the murder
22 scene were fired by the Star .45 auto caliber semiautomatic pistol she tested. GJT2 11:14-21.
23 The Star .45 caliber firearm tested by Ms. Lester was located, pursuant to a search warrant, at
24 919 Bagpipe Court, an address associated with Co-Defendant Lofton-Robinson. GJT 97:23-
25 98:2, 98:3-99:2, 100:16-22, GJT2 18:3-18.

26 Finally, after testing the Taurus model PT-145 Pro Millennium .45 caliber
27 semiautomatic pistol, Ms. Lester determined that none of the evidence bullets or cartridge
28 cases she tested from the murder scene were fired from that particular gun. GJT2 11:4-13.

1 The Taurus firearm was located, pursuant to a search warrant, at 3300 Civic Center Avenue,
2 an address associated with Defendant. GJT 99:14-19, 101:2-17, 115:18-116:14, GJT2 17:17-
3 18:13.

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. Instead, Defendant makes a blanket statement that “the
9 State’s evidence simply does not provide enough evidence to support the charges.” Def.’s
10 PWHC at 9:3-5. Contrary to Defendant’s claim and as set for below, the State provided
11 sufficient evidence to hold Defendant to answer on all counts.

12 **A. Sufficient, Legal, Evidence was Presented to the Grand Jury to Establish** 13 **Probable Cause that Defendant Unlawfully Killed Gabriel Valenzuela and to** 14 **hold Defendant to answer to the charged of Murder with Use of a Deadly** 15 **Weapon**

16 An open murder charge includes murder in the first degree and all necessarily included
17 offenses, such as manslaughter where less than all the elements of first degree murder are
18 present. See Miner v. Lamb, 86 Nev. 54, 464 P.2d 451 (1970); Parsons v. State, 74 Nev. 302,
19 329 P.2d 1070 (1958); State v. Oschoa, 49 Nev. 194, 242 P.2d 582 (1926); NRS 175.501.
20 First-degree murder and Second-degree murder are not separate and distinct crimes which
21 must be pleaded accordingly. See Thedford v. Sheriff, 86 Nev. 741, 476 P.2d 25 (1970);
22 Howard v. Sheriff, 83 Nev. 150, 425 P.2d 596 (1967). Thus, there need not be evidence of
23 first degree murder to support an open charge. See Wrenn v. Sheriff, 87 Nev. 85, 482 P.2d
24 289 (1971).

25 “[T]he presence of malice is a question of fact which bears directly on the guilt or
26 innocence of a defendant and upon the degree of the crime charged. It is not a question to be
27 determined by the magistrate at a preliminary examination--it is a question to be determined
28 by the trier of fact at the trial of the case.” Thedford v. Sheriff, 86 Nev. 741, 476 P.2d 25 (1970)

1 (citing State v. Acosta, 49 Nev. 184, 242 P.2d 316 (1926)). “Neither a preliminary hearing,
2 nor a hearing upon a petition for a writ of habeas corpus is designed as a substitute for this
3 function (a trial).” Id at 28 (quoting State v. Fuchs, 78 Nev. 63, 368 P.2d 869 (1962)).

4 Additionally, pursuant to NRS 200.030, a murder which is committed during the
5 perpetration or attempted perpetration of a robbery is murder of the first degree. Pursuant to
6 the Felony Murder Rule, if one conspires to commit a robbery, he is liable for the murder
7 perpetrated during the course of the attempted robbery. Garner v. State, 116 Nev. 770, 782
8 (2000).

9 Defendant and his co-defendants are charged alternatively with open murder and felony
10 murder. Additionally, under the felony murder, the State alleged multiple theories, i.e., that
11 Defendant directly committed the crime; that Defendant aided and abetted in the commission
12 of the crime; and/or that Defendant conspired to commit the crime of robbery and/or murder.

13 The evidence presented at Grand jury establishes that on the night of August 8, 2017
14 the Defendant was inside the Shortline Express convenience store sometime between 11:20-
15 11:38 p.m. At that time, the Defendant was captured on surveillance wearing a firearm on his
16 right hip. The convenience store where Defendant was seen wearing a firearm is only a matter
17 of minutes away from the scene of the murder. Although Defendant denied that he was inside
18 the Shortline Express on August 8, 2017, he did admit that owns a .45 caliber firearm and that
19 he wears it in an open carry fashion. Additionally, Defendant was identified by Detective
20 Dosch as the individual wearing the firearm. This identification was corroborated by items
21 found during execution of a search warrant at 3300 Civic Center Drive (an address associated
22 with Defendant). Specifically, officers found a pair of maroon shoes and a white hat which
23 constitute an exact match to those worn by Defendant in the surveillance footage.

24 In addition, while Defendant was inside the store, he was with three other black males
25 who were all seen in a white Mercury Grand Marquis bearing a license plate beginning with
26 the numbers 473. Less than 30 minutes later, at around midnight, Mr. Mason saw four black
27 men standing in front of the victim’s home. Mr. Mason saw the four men standing near a
28 vehicle that he described as a white Crown Victoria with license plate number 473YZB. Mr.

1 Newman testified that he sold that exact car to Co-Defendant Lofton-Robinson four days
2 before Mr. Valenzuela's murder. Based on the surveillance footage from the Shortline Express
3 in conjunction with the testimony of Mr. Mason (the jogger), Mr. Spahn (the convenience store
4 clerk) and Mr. Newman (the vehicle's prior owner), there can be no dispute that the vehicle
5 seen by Mr. Mason in front of the victim's house is the same vehicle captured on surveillance
6 footage at the Shortline Express.

7 Not only does this evidence create a reasonable inference Defendant was at the scene
8 of the murder, it places him there in very close proximity to the murder. The first call to 911
9 was made at 12:11; just minutes after Mr. Mason saw four black men and the white vehicle in
10 front of the victim's home. Additionally, Defendant was seen in possession of a firearm
11 approximately 30 minutes before the killing. Furthermore, in a search warrant of 3300 Civic
12 Center Drive (an address associated with Defendant), officers located a .45 caliber firearm
13 with ammunition bearing the headstamp RP-45 auto. This headstamp matches one of the .45
14 caliber shell cases found at the scene of the murder. Just because the State presented evidence
15 that the .45 caliber cartridge cases found at the scene were fired from a different .45 caliber
16 firearm, i.e., the .45 caliber firearm found at the residence associated with Co-Defendant
17 Lofton-Robinson, does not absolve Defendant of guilt in the instant case. In fact, given that
18 the same ammunition was located at Defendant's house and in Defendant's firearm supports
19 an inference that he provided the ammunition to Co-Defendant Lofton-Robinson.

20 In his PWHC, Defendant argues the Defendant was not present at the murder scene and
21 that a fifth mystery person was one of the four individuals seen by Mr. Mason as he jogged
22 through the neighborhood. Def.'s PWHC at 9. Defendant's argument as to the existence of a
23 fifth mystery man is wholly unsupported by the evidence. In fact, the surveillance footage
24 admitted at the State's first presentation directly contradicts Defendant's argument regarding
25 the existence of a fifth individual. A view of the surveillance footage shows that the vehicle
26 in question arrived at the Shortline Express, at which time four individuals exited the vehicle
27 and entered the convenience store. See Exhibit 1 attached to the State's Return to Writ of
28 Habeas Corpus filed on Mar. 2, 2018. These individuals were identified by Detective Dosch

1 as being Defendant and his co-defendants. GJT 105:17-106:5, 108:23-109:9, 117:3-11,
2 112:22-113. While inside the convenience store, the Defendant and his co-defendants are
3 observed together and are not actively communicating with anyone else. See Exhibit 1
4 attached to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018. At no time is
5 a fifth person visible in the vehicle or seen associating with the defendants inside the store. Id.
6 The surveillance footage later shows all four individuals (including Defendant) getting back
7 into the vehicle. Id. At no point does the footage show Defendant getting back out of the
8 vehicle or anyone else getting into the vehicle. Id. The only evidence that Defendant left the
9 convenience store (after denying that he was in the surveillance footage) is his own self-
10 serving statement that he took the bus home.

11 Defendant further argues the existence of a fifth mystery man based on the fact police
12 located a cartridge case at the scene of the murder bearing a headstamp of "WINCHESTER
13 45 AUTO" but did not locate any such ammunition at any of the defendant's homes. Def.'s
14 PWHC at 9:18-25. This argument is completely illogical given Ms. Lester's testimony that
15 all three .45 caliber cartridge cases found at the murder scene were fired from the same firearm,
16 i.e., the firearm located at the address associated with Co-Defendant Lofton-Robinson. GJT2
17 11:14-21.

18 At this stage, the State is not required to negate all possible scenarios surrounding the
19 death of Mr. Valenzuela. The State is only required to demonstrate a reasonable inference that
20 the defendant committed the crime. Based on the evidence presented, the State demonstrated
21 a reasonable inference that Defendant committed the crime or Murder with Use of a Deadly
22 Weapon.

23 **B. Sufficient Evidence was Presented to the Grand Jury to Establish Probable**
24 **Cause that Defendant committed the Crimes of Conspiracy to Commit**
25 **Robbery and Attempt Robbery with Use of a Deadly Weapon**

26 Conspiracy is "an agreement between two or more persons for an unlawful purpose."
27 Doyle v. State, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996). The conspiracy agreement may
28 be inferred by a "coordinated series of acts" in furtherance of the underlying offense. Doyle,

1 112 Nev. at 894; see also Gaitor v. State, 106 Nev. 785, 790 n.1, 801 P.2d 1372, 1376 n.1
2 (1990); overruled on other grounds by, Barone v. State, 109 Nev. 1168, 1171, 866 P.2d 291,
3 292 (1993). Nevada adheres to the Pinkerton theory of conspiracy liability which holds that
4 the overt act of one is the act of all even without a specific new agreement, so long as the
5 "partnership in crime" continues. See, State v. Wilcox, 105 Nev. 434, 436, 776 P.2d 549, 550
6 (1989); Pinkerton v. United States, 328 U.S. 640, 646-647, 66 S.Ct. 1180, 1183-1184 (1946);
7 see also, Goldsmith v. Sheriff, 85 Nev. 295, 306, 454 P.2d 86, 93 (1969); citing, VanRiper v.
8 United States, 13 F.2d 961, 967 (2nd Cir. 1926), cert. denied sub nom., Ackerson v. United
9 States, 273 U.S. 702, 47 S.Ct. 102 (1926). Therefore, in Nevada the acts of one conspirator in
10 furtherance of the conspiracy are the acts of all, and each and every individual will be held
11 criminally responsible for the acts of the other.

12 While the standard at trial is much greater than before the Grand Jury, what the Nevada
13 Supreme Court believes is necessary for conviction in a conspiracy is illustrative of the instant
14 case:

15 [C]onspiracy is seldom susceptible of direct proof and is usually
16 established by inference from the conduct of the parties." Gaitor v.
17 State, 106 Nev. 785, 790 n. 1, 801 P.2d 1372, 1376 n. 1 (1990)
18 (quoting State v. Dressel, 85 N.M. 450, 451, 513 P.2d 187, 188
19 (1973)). In particular, a conspiracy conviction may be supported by
20 "a coordinated series of acts," in furtherance of the underlying
21 offense, "sufficient to infer the existence of an agreement." Id.

22 Doyle, 112 Nev. at 894 (overruled on other grounds by Kaczmarek v. State, 120 Nev. 314,
23 91 P.3d 16 (2004)).

24 Similarly, the Supreme Court of Nevada has recognized that "intent can rarely be
25 proven by direct evidence of a defendant's state of mind, but instead is inferred by the jury
26 from the individualized, external circumstances of the crime..." Sharma v. State, 118 Nev.
27 648, 659, 56 P.3d 868, 874 (2002), see also Hernandez v. State, 118 Nev. 513, 531, 50 P.3d
28 1100, 1112 (2002) ("[C]ircumstantial evidence alone may support a conviction.").

1 Robbery is defined as the unlawful taking of the personal property of another by means
2 of force or violence. NRS 200.380. An act done with intent to commit a crime, and tending
3 but failing to accomplish it, is an attempt to commit that crime. State v. Verganadis, 50 Nev.
4 1, 4 (1926) (internal citation omitted). The act done must be an overt act and must go beyond
5 mere preparation to commit the crime and tend to accomplish it. Id. at 4-5.

6 Accordingly, as to COUNT 5 – Conspiracy to Commit Robbery, the State must produce
7 slight or marginal evidence that Defendant entered into an agreement with his co-conspirators
8 to rob Mr. Valenzuela. As to COUNT 6 - Attempt Robbery with Use of a Deadly Weapon,
9 the State to produce slight or marginal evidence that the Defendant committed an overt act
10 with the intent to take personal property from Gabriel Valenzuela and that said act was
11 committed with a firearm. As COUNT 6 is Barren pled, the State need not prove that
12 Defendant is the person who directly committed the crime. Rather, Defendant can also be held
13 to answer if he aided and abetted in the attempted robbery of Mr. Valenzuela or if he conspired
14 to commit the crime.

15 Here, the evidence to establish that Defendant conspired to commit a robbery against
16 Mr. Valenzuela largely overlaps with the evidence that he attempted to rob Mr. Valenzuela.
17 Accordingly, the State will address these counts two together. For obvious reasons, the victim
18 in the instant case did not testify that Defendant attempted to take property from him.
19 However, the attendant circumstances indicate by slight or marginal evidence that Defendant
20 did attempt to rob Mr. Valenzuela and that he did so using a deadly weapon. First, it is
21 undisputed that a deadly weapon was used in the commission of the crimes committed against
22 Mr. Valenzuela as he was shot and killed with a firearm. Second, as to the conspiracy and
23 attempted robbery, the evidence shows that Defendant and his co-defendants were lying in
24 wait in a residential neighborhood in the middle of the night. The most reasonable explanation
25 for this fact is that the Defendant and his co-defendants were looking for a victim to rob.
26 Especially given the time of night, there is no other logical explanation for the Defendant to
27 be standing outside the victim's home and there is absolutely no evidence that the Defendant
28 or any of the co-defendants knew Mr. Valenzuela. This theory is further corroborated by Mr.

1 Mason's testimony that the four individuals he saw were so suspicious that he felt compelled
2 to call his wife to advise her to lock the door and call the police. GJT 51:18-52:1.

3 Additionally, Mr. Valenzuela's items were strewn about the ground. This supports an
4 inference that the Defendant and/or his co-defendants struggled with the victim and that these
5 items fell to the ground as they attempted to obtain Mr. Valenzuela's property.

6 Furthermore, the Defendant and his co-defendants all left the gas station together and
7 drove to the scene of the murder in the same vehicle. After the crime was committed, all four
8 individuals presumably left together in the same vehicle, given that Mr. Relato did not see
9 anyone in the area after his cousin was shot. Additionally, none of the offenders were present
10 on scene when police arrived in order to explain what happened.

11 This evidence clearly demonstrates probable cause to show a coordinated series of acts
12 sufficient to infer the existence of an agreement between the defendants and to support the
13 existence of a conspiracy. Defendant was not an innocent bystander simply along for the ride.
14 Defendant was present at the murder scene and had a gun in his possession. Defendant could
15 have exited the vehicle prior to the crime or he could have removed himself from the situation
16 after the murder. However, Defendant remained with his co-conspirators throughout the
17 entirety of the crime. Finally, the fact that Defendant denies being inside the Shortline Express
18 with his co-defendants, despite clear evidence to the contrary, demonstrates consciousness of
19 guilt.

20 Although there may be other explanations for the evidence presented, the State is not
21 required to negate all possible inferences to explain away the Defendant's behavior. The State
22 simply must show an inference that Defendant committed the crimes alleged.

23 In Bails v. State, 92 Nev. 95, 545 P.2d 1155 (1976), the Nevada Supreme Court
24 elaborated further on circumstantial evidence in citing to Holland v. United States, 348 U.S.
25 121, 75 S. Ct. 127 (1955), a wholly circumstantial evidence case:

26 Circumstantial evidence in this respect is intrinsically no different
27 from testimonial evidence. Admittedly, circumstantial evidence
28 may in some cases point to a wholly incorrect result. Yet this is
equally true of testimonial evidence. In both instances, a jury is
asked to weigh the chances that the evidence correctly points to
guilt against the possibility of inaccuracy or ambiguous inference.

1 In both, the jury must use its experience with people and events in
2 weighing the probabilities. If the jury is convinced beyond a
reasonable doubt, we can require no more.

3 Bails, 92 Nev. at 97, 545 P.2d at 1156.

4 While the evidence as to COUNTS 5 and 6 is circumstantial, when considered in its
5 totality, it leads to an inference that the Defendant and his co-defendants attempted to rob Mr.
6 Valenzuela and that they conspired to do so in advance. Such evidence is enough to establish
7 probable cause in the instant case.

8 CONCLUSION

9 Based on the foregoing, the State respectfully requests that Defendant's Petition for
10 Writ of Habeas Corpus be DENIED in its entirety.

11 DATED this 29TH day of May, 2018.

12 Respectfully submitted,

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

15 BY /s/GIANCARLO PESCI
16 GIANCARLO PESCI
17 Chief Deputy District Attorney
18 Nevada Bar #7135
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made this 29th day of
May, 2018 by Electronic Filing to:

JAMES RUGGEROLI, ESQ.
Email: ruggeroli@icloud.com

BY: /s/ Deana Daniels
Secretary for the District Attorney's Office

EXHIBIT '1'

ORIGINAL

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

APR 19 2018

BY 
DULCE MARIE ROMEA, DEPUTY

DISTRICT COURT
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

SUPERSEDING
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 C-17-328587-3
SIND
Superseding Indictment
4739605



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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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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,

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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 18th day of April, 2018.

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

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15 
16 Foreperson, Clark County Grand Jury
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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

LESTER, ANYA, LVMPD

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/mc - GJ
LVMPD EV#1708024571; 1708090029
(TK3)

EXHIBIT '2'

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:

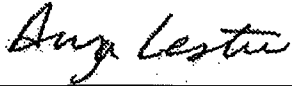
- The cartridge case (Lab Item 1) was identified as having been fired by the Taurus pistol (Lab Item 11).
- The three cartridge cases (Lab Items 2-4) were identified as having been fired by the Star pistol.
- The two bullets (Lab Items 17 and 24) were identified as having been fired by the Star pistol.
- 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 -

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****May 31, 2018**

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

May 31, 2018 09:00 AM Petition for Writ of Habeas Corpus**HEARD BY:** Johnson, Eric **COURTROOM:** RJC Courtroom 12A**COURT CLERK:** Skinner, Linda**RECORDER:** Calvillo, Angie**REPORTER:****PARTIES PRESENT:**

Davontae Amarri Wheeler	Defendant
James J. Ruggeroli	Attorney for Defendant
Rachel O'Halloran	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Upon Court's inquiry, Mr. Ruggeroli requested a continuance to respond to the State's Opposition. Ms. O'Halloran had no objection. COURT ORDERED, the following:

Mr. Ruggeroli to reply by 6/14 and matter CONTINUED for argument.

CUSTODY

... CONTINUED 6/14/18 9:00 AM



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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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 THURSDAY, MAY 31, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

18 APPEARANCES:

19 For the State:

RACHEL O'HALLORAN
Deputy District Attorney

20
21 For the Defendant:

JAMES J. RUGGEROLI, ESQ.

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23
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25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 Las Vegas, Nevada, Thursday, May 31, 2018, at 10:10 a.m.]

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3 THE COURT: State of Nevada versus Davontae Wheeler,
4 case number C328587. Counsel, please note your appearances for the
5 record.

6 MS. O'HALLORAN: Good morning, Your Honor. Rachel
7 O'Halloran on behalf of the State.

8 MR. RUGGEROLI: James Ruggeroli on behalf of Mr.
9 Wheeler who's present in custody. Your Honor, I asked the State to
10 agree to allow me additional time to reply to their return. I just received
11 this yesterday, I haven't had a chance to go over it with Mr. Wheeler yet.

12 I have to go to the Ely prison this weekend, and so I've
13 requested until June 8th to complete the reply. And if the Court can
14 accommodate a June 12th or thereafter, for a hearing --

15 THE COURT: Is the State good with that?

16 MS. O'HALLORAN: The State is, Your Honor.

17 THE COURT: Okay. All right, when did you want for a reply?

18 MR. RUGGEROLI: June 8th.

19 THE COURT: Okay. And then set this afterwards for --

20 [The Court and Clerk confer]

21 THE COURT: Was the 12th -- anything specifically important
22 about that day?

23 MR. RUGGEROLI: Whatever is convenient for the Court.

24 THE COURT: All right, let's set it for the 14th.

25 THE CLERK: June 14th at nine a.m.

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MR. RUGGEROLI: Thank you, Judge.

MS. O'HALLORAN: Thank you, Your Honor.

THE COURT: Thank you.

[Hearing concluded at 10:11 a.m.]

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



Angie Calvillo
Court Recorder/Transcriber

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

June 06, 2018

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

June 06, 2018 09:00 AM Status Check: Homicide Trial

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

Mr. Ruggeroli appeared for Mr. Bindrup for Deft Lofton-Robinson; for Mr. Sanft for Deft. Robertson and for Deft. Wheeler.

Court noted that Mr. Ruggeroli's writ is set for 6/14. Mr. Ruggeroli concurred advised he would file his reply by end of day Friday, June 8th and that all counsel have agreed to take today's matter off calendar and continue to 6/14, especially as Mr. Sanft is so new to the case, it will give him an opportunity to tell the Court where he stands as to investigation etc.

Following colloquy, Mr. Ruggeroli advised all Defendants have waived their 60 day rights.

Upon Court's inquiry, Mr. Ruggeroli stated his focus has been on the issues supporting the writ and developing their understanding of the evidence as there was a fifth person present and they are still doing independent investigation. Further, in light of the writ issue and additional investigation, he does not anticipate being ready for trial on 7/30, but is not aware of any specific discovery that they do not have. Mr. Pesci concurred that he is turning over discovery as he gets it and advised that is what caused the second return to the Grand Jury was the additional discovery that came in. Mr. Pesci advised the firearm testing has been done but does not know the status of the fingerprints or DNA. Mr. Ruggeroli advised he will be in a better position next date as to the trial date. At request of the Court, Mr. Pesci to check on the fingerprint and DNA testing.

COURT ORDERED, matter CONTINUED.

CUSTODY

... CONTINUED 6/14/18 9:00 AM



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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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 WEDNESDAY, JUNE 06, 2018

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

22 APPEARANCES:

23 For the State: GIANCARLO PESCI
24 Deputy District Attorney

25 For the Defendants: JAMES J. RUGGEROLI, ESQ.

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

1 [Las Vegas, Nevada, Wednesday, June 06, 2018, at 9:12 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. PESCI: Giancarlo Pesci on behalf of the State.

7 MR. RUGGEROLI: Good morning, Your Honor. James
8 Ruggeroli, Bar Number 7891. I represent Mr. Wheeler; I will be standing
9 in for all three defendants this morning.

10 THE COURT: Okay. This is a status check. We're set for --
11 and you represent Wheeler?

12 MR. RUGGEROLI: Correct, Your Honor.

13 THE COURT: Okay. We have your Petition for Writ set on
14 the 14th.

15 MR. RUGGEROLI: That's correct, Your Honor.

16 THE COURT: Okay. And then we have trial set on this matter
17 at the end of July. Are we on course for that? Or what's the status of
18 everything with this case?

19 MR. RUGGEROLI: What I can tell Your Honor right now is
20 this writ is pending. We have strong belief that there's a lot of merit to
21 what we're going to be arguing; this is not the time for that. I'll submit
22 my reply by Friday, end of day.

23 We'll have our hearing on the 14th. I believe it was the
24 parties request that we just take today's date off calendar; meet again on
25 the 14th especially having Mr. Sanft relatively new to the case. He can

1 more precisely bring the Court up to speed as far as how far along he's
2 gone with his investigation and discovery. So we were hoping to come
3 back with all three defendants for a status check as well as the argument
4 on the writ on the 14th.

5 THE COURT: Okay. All right, let me just -- when was this
6 indicted initially? I see the Superseding Indictment's April 18th. But, I
7 mean, when was this originally?

8 MR. PESCI: Originally, it was back -- I think, in December or
9 January of -- December of 2017 or January of 2018.

10 THE COURT: Okay, so this isn't super old yet?

11 MR. RUGGEROLI: No. And I believe all the defendants have
12 waived their speedy and --

13 MR. PESCI: They did.

14 MR. RUGGEROLI: They did previously have you grant a
15 portion of the writ, which required the State go back to the grand jury.

16 THE COURT: Yeah, I remember that. Okay. All right, so --
17 well let's just -- you know, you're here. I mean, let me find out from you
18 what -- how are we looking on discovery?

19 MR. RUGGEROLI: Right now our focus has mainly been on
20 the issues supporting the writ and developing our understanding of the
21 evidence is that, there was a fifth person present. We are still doing an
22 independent investigation. In light of the writ issue and the additional
23 investigation, I do not anticipate necessarily being ready. But in terms of
24 specific discovery that we don't have, I'm not aware of anything precisely
25 that we would need to request.

1 MR. PESCI: Right. I believe that they have been provided
2 everything as we've been getting them. In fact, that's what caused the
3 second run, so to speak, to the grand jury because discovery came in
4 after the first presentation so they've been receiving it and have had it
5 for a long time.

6 When more things come in, obviously, we'll hand them
7 over and we're happy to sit down; go over the file with them whenever
8 they want.

9 THE COURT: I mean, obviously, I know you'll hand over
10 anything that comes in. But do you anticipate anything else coming in?

11 MR. PESCI: Not offhand. But there's always -- there could be
12 other forensics --

13 THE COURT: I mean there's always stuff. But, I mean, are
14 you expecting anything, I guess?

15 MR. PESCI: Not at this moment, no.

16 THE COURT: Okay. What about forensics? Are we done
17 with that?

18 MR. PESCI: The firearm's portion, I believe is. I don't know
19 the status of fingerprints or DNA, that's why I'm saying I'm not exactly
20 sure. But it was the firearm's report coming in that precipitated that
21 second presentation.

22 THE COURT: Okay. All right. Do you know if you've gotten
23 any fingerprints or DNA?

24 MR. RUGGEROLI: We have not.

25 THE COURT: Okay. All right. You know, you say you don't

1 anticipate being ready, so let's just focus on the trial date separate from
2 the writ issue.

3 MR. RUGGEROLI: Yes.

4 THE COURT: Why don't you anticipate being ready?

5 MR. RUGGEROLI: As I mentioned, Your Honor, the
6 investigation that we're still looking into as far as potential alibi.

7 THE COURT: Okay.

8 MR. RUGGEROLI: Things of that nature.

9 THE COURT: All right, do you think you'll be able to discuss
10 this better then on the 14th?

11 MR. RUGGEROLI: Absolutely.

12 THE COURT: Okay. Can you check on the fingerprints and
13 the DNA issue by the 14th?

14 MR. PESCI: I can check. What is routine, though, is that if
15 the trial dates out some ways, the lab does not start it until it gets much
16 closer in time because they have so many out in the que already.

17 THE COURT: Well right now the trial date is set for the end of
18 July. So --

19 MR. PESCI: Right. They usually get to about 30 days when
20 they start to let us know because so many backed up, but I'll look into it.

21 THE COURT: I know, and I understand. But let's just check
22 and see what the status is. All right, anything else at this point in time?

23 MR. RUGGEROLI: That's all, Judge.

24 THE COURT: Okay. All right.

25 MR. RUGGEROLI: Thank you.

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THE COURT: Thank you.

MR. PESCI: Thank you.

THE COURT: Thank you.

[Hearing concluded at 9:17 a.m.]

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



Angie Calvillo
Court Recorder/Transcriber



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.

REPLY TO STATE'S RETURN TO WRIT OF HABEAS CORPUS

COMES NOW, the Defendant, DAVONTAE AMARRI WHEELER, by and through his attorney of record, JAMES J. RUGGEROLI, ESQ., and submits the following Reply to State's Return to Writ of Habeas Corpus. This supplement and reply 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 8th day of June, 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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In contrast to the State's Return, (1) there is clearly insufficient evidence against Mr. Wheeler ("Wheeler") because the evidence does not support a reasonable inference that (A) Wheeler killed Gabriel Valenzuela or that (B) Wheeler conspired to rob or attempted to rob Mr. Valenzuela. Due to the presentation of insufficient evidence, and in absence of a *reasonable* inference based on the evidence presented, therefore, (C) probable cause does not establish that Wheeler committed and of the crimes charged. (2) The State failed to present exculpatory evidence to the grand jury that there was a fifth person connected to case, so the Indictment must be dismissed.

II. THE STATE'S RETURN AND DEFENDANT'S REPLY

STATE'S ALLEGED FACTS

WHEELER'S REPLY AND FACTS

A. SUFFICIENT EVIDENCE THAT DEFENDANT UNLAWFULLY KILLED GABRIEL VALENZUELA: There is a reasonable inference of guilt because:	A. NO <i>REASONABLE INFERENCE</i> DEFENDANT KILLED GABRIEL VALENZUELA CAN BE MADE BASED ON THE FACTS PRESENTED HERE
1. The Defendant was in the Shortline Express between 11:20-11:38 p.m. State's Return ("RS") 13:13-15.	1. The evidence showed that the time was only an estimate. GJT 29:1. Moreover, the evidence showed that Wheeler claimed he got out of the car and took a bus home before the car would have gone to the scene of the shooting. GJT 146:13-17.
2. The Defendant was on video at the Shortline Express wearing a firearm. RS	2. Yet, the gun was not used in the shooting. GJT 2 at 11:7-13; 17-18.

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13:15-16.	
3. Shortline Express is minutes away from murder scene. RS 13:16-17.	3. The evidence did not show the actual distance. GJT 95: 11-13. However, there was more than enough time to drop Wheeler off near a bus stop prior to the shooting, as Wheeler claimed.
4. The Defendant denied being inside Shortline Express, but admitted owning .45 caliber firearm and that he wears it open carry fashion. RS 13:17-19.	4. Wheeler admitted owning .45 caliber hand gun; he admitted to being in the vehicle, but he stated he was not involved in any murder (GJT 145:19-21), and he claimed that he had got out of the vehicle and took a bus home without going to the murder scene. GJT 146 14-17.
5. While in the store, Defendant was with three other black males who were all seen in the white Mercury Grand Marquis. RS 13:24-26.	5. There were FIVE individuals at the Shortline Express. There were four individuals in the store, but there was another individual in the car outside, unobservable on the surveillance video, inside the Grand Marquis. Strangely this evidence was not presented to the grand jury. <u>See</u> below.
6. Less than 30 minutes later, at around midnight, Mr. Mason (the jogger) saw four black men standing in front of the victim's	6. 30 minutes amounts to more than enough time for Wheeler to have gotten out of the car and taken a bus home.

home near a vehicle he described as a white Crown Victoria. RS13:26-28.

Moreover, Mason's testimony was that "...all of them were dark skin, black individuals . . . , black, young males." GJT 47:22-25-48:2. Simply because Wheeler is a young, black male that had been with four other individuals is not a reasonable inference that Wheeler was one of the four at the scene, since: Wheeler's gun was not used in the shooting, Wheeler has light skin and claimed to have gotten out of the car and taken a bus home, and because there was a fifth individual.

7. Based on the surveillance footage from Shortline Express in conjunction with the testimony of Mr. Mason, Mr. Spahn (the convenience store clerk) and Mr. Newman (the vehicle's prior owner), there can be no dispute that the vehicle seen by Mr. Mason in front of the victim's house is the same vehicle on the surveillance footage. RS 14:1-6.

7. Wheeler was not one of the four, young, dark skinned black men at the crime scene, so the fact that it was the same vehicle cannot be a reasonable inference that Wheeler was with the other four individuals at the scene of the shooting.

8. The search warrant of 3300 Civic Center Drive (address associated with the Defendant), officers located a .45 caliber firearm with ammunition bearing headstamp

8. The evidence showed Wheeler's gun was not used in the shooting, which negates the State's attempt to opine that there is a reasonable inference that he was at the scene.

1 2 3 4 5 6 7	RP-45 auto. 14:11-13.	GJT 2 at 11:7-13; 17-18.
8 9 10 11 12 13	9. Just because the State presented evidence that the .45 caliber cartridge cases found at the scene were fired from a different .45 caliber firearm does not absolve Defendant of guilty in the instant case. RS 14:14-17.	9. The State's argument operates as an opinion, conjecture, and or speculation. The argument is not evidence, and there was no evidence or reasonable inference that Wheeler was at the shooting.
14 15 16 17 18	10. Given the same ammunition was located at Defendant's house and in Defendant's firearm supports an inference that he provided the ammunition to Co-Defendant Lofton-Robinson. RS 14:17-19.	There is no reasonable inference that Wheeler provided Lofton-Robinson the ammunition. There is NO evidence that occurred, period.
19 20 21 22 23 24 25 26 27	11. "Defendant's argument as to the existence of a fifth mystery man is wholly unsupported by the evidence." RS 14:22-23.	11. That there was a fifth individual, the fourth person at the shooting (that was not Wheeler), is fully supported by the evidence; strangely, the State did not provide all of the evidence to the grand jury.
28	The State is only required to demonstrate a reasonable inference that the defendant committed the crime. 15:18-21. These facts create a "reasonable inference" the Defendant was at the scene of the murder. RS 14:7-8.	The state has not demonstrated a reasonable inference from the facts presented in this case that Wheeler was present at the scene. There is no reasonable inference because the evidence showed that Wheeler's gun was not used, Wheeler claimed he took the bus home, and because the evidence that should have

	been presented would have shown there was a fifth man.
B. DEFENDANT COMMITTED CONSPIRACY TO COMMIT ROBBERY AND ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON	B. THERE IS NO EVIDENCE, NOT EVEN A REASONABLE INFERENCE, THAT D CONSPIRED TO COMMIT A ROBBERY OR ATTEMPTED TO ROB THE VICTIM
1. It is undisputed that a deadly weapon was used when Mr. Valenzuela was shot and killed. RS 17:20-22.	1. It is undisputed that Wheeler's weapon was not used in the shooting and there is no identification of Wheeler at the crime scene.
2. Defendant and his co-defendants were "lying in wait" in a residential neighborhood in the middle of the night. The most reasonable explanation for this fact is that the Defendant and his co-defendants were looking for a victim to rob." RS 17:22-25.	If true, why not rob Mr. Mason? He was alone and went right past them. He would have been an easy target if they were looking for a victim to rob.
3. "There's no other logical explanation for the Defendant to be standing outside the victim's home and there is absolutely no evidence that the Defendant or any of the co-defendants knew Mr. Valenzuela." RS 17:26-28.	Unlike the facts in <u>Kinsey</u> and <u>Morgan</u> , where no one else could logically or reasonably have been involve, there was a fifth person here, and there are many other explanations as to why those four individuals were at the scene of the crime.
4. Mr. Valenzuela's items were strewn about	The mail, not his items, were spread out on

the ground. RS 18:3-5.	the ground. GJT 143:7-9. There was no evidence the victim's wallet, cell phone, watch or any other personal effects were strewn, attempted to be taken, or actually missing.
5. The Defendant and his co-defendants all left the gas station together AND drove to the scene of the murder in the same vehicle. RS18:6-7.	The five individuals may have left gas station, but: the evidence showed, Wheeler claimed he got on a bus and was not at murder scene. There was no evidence Wheeler drove to the scene of the murder in the vehicle with the FOUR other individuals.
6. None of the offenders were present on scene when police arrived in order to explain what happened. RS 18:9-10.	There is no reasonable inference Wheeler was present at the crime scene.
This evidence clearly demonstrates probable cause to show a coordinated series of acts sufficient to infer the existence of an agreement between the defendants and to support the existence of a conspiracy. RS18:11-13.	There is no reasonable inference, and no evidence, PERIOD, establishing conspiracy/attempt to murder.

III. EXCULPATORY EVIDENCE NOT PRESENTED

That there was a fifth individual, the fourth person at the shooting (that was not Wheeler), is fully supported by the evidence. Strangely, the State did not provide this evidence to the grand jury.

1 At the grand jury, Mr. Spahn (the convenient store clerk) testified that he would not sell a
2 Black and Mild cigar to the four individuals in the store because of lack of ID, so another
3 individual that had ID came in the store later and bought the same Black and Mild cigar. GJT 25-
4 27. Through investigation, police obtained the identity of that individual and questioned him.

5 Marcell Solomon was the individual in the store that bought the Black and Mild cigar for
6 the individuals that had been in the store. See a true and accurate copy of the relevant portion of
7 Mr. Solomon's Voluntary Statement ("Solomon VS") attached hereto as **Exhibit A**. Det. Dosche
8 found Mr. Solomon through his credit card purchase and because of the surveillance video from
9 the convenience store. Solomon VS at 2. When asked about how many people he had seen in the
10 white car in front of the Shortline Express, Mr. Solomon answered:

11 A: I wanna say **five**. I'd say two in the front and three in the back."

12 Q1: And you believe there was five in the car.

13 A: I believe – I wanna say there was **five of 'em**.

14 Id. at 4.

15 Moreover, Wheeler had told detectives that there had been four other individuals, but the
16 State did not include his statement to the grand jury. Wheeler told detectives that there were five
17 people beside himself that went to the convenience store. See a true and accurate portion of
18 Wheeler's Voluntary Statement ("Wheeler's VS") attached hereto as **Exhibit B** at pages 21-23,
19 96, 99.

20 **IV. LAW AND ARGUMENT**

21 There is clearly insufficient evidence against Mr. Wheeler ("Wheeler") because the
22 evidence does not support a reasonable inference that (A) Wheeler killed Gabriel Valenzuela or
23 that (B) Wheeler conspired to rob or attempted to rob Mr. Valenzuela. Due to the presentation of
24 insufficient evidence, and in absence of a *reasonable* inference based on the evidence presented,
25 therefore (C) probable cause does not establish that Wheeler committed and of the crimes
26 charged. (D) The Indictment must be dismissed because the State failed to present exculpatory
27 evidence that there was a fifth person connected to case to the grand jury.

1 **A. NO REASONABLE INFERENCE WHEELER COMMITTED MURDER**

2 **1. The State's Argument**

3
4 Pursuant to Morgan v. Sheriff, 86 Nev. 23, 467 P2d 600 (1970) and Kinsey v. Sheriff, 87
5 Nev. 361, 487 P.2d 340 (1971), the State claims that the evidence establishes a reasonable
6 inference that Wheeler committed murder, apparently, based on notions of *identity*, *proximity*,
7 *opportunity*, and *exclusivity*: "Defendant's argument as to the existence of a fifth mystery man is
8 wholly unsupported by the evidence." (RS 14:22-23).

9 The State claims that it is only required to demonstrate a reasonable inference that the
10 defendant committed the crime. (RS 15:18-21). Based on the State's facts presented above, the
11 State claims that a "reasonable inference" exists that the Defendant was at the scene of the
12 murder. Therefore, *arguendo*, the State suggests that sufficient evidence supports the murder
13 charge. (RS 14:7-8). Such is not the case.

14 **2. Reply: No Reasonable Inference for Murder Because no Exclusivity**

15 There is no *reasonable* inference drawn from the evidence presented to the grand jury
16 that Wheeler committed murder. Despite the alternative theories advanced by the State
17 underlying the murder count, the facts presented here do not comport to the facts present in
18 Kinsey or Morgan. The facts in Kinsey and Morgan are far more compelling, are not analogous
19 or fairly applied to Wheeler's case, and require *exclusivity*, which is not present in this case. As
20 such there is no probable cause supporting the charge.

21 In Kinsey v. Sheriff, 87 Nev. 361, 487 P.2d 340 (1971), the Court found that the
22 inferences *reasonably* drawn there from the evidence constituted probable cause. However, the
23 evidence in that case was different than the evidence here. According to the court, the evidence
24 presented to the grand jury showed that Kinsey had been:
25
26
27
28

1 a registered guest at the motel. As such he was the *sole known occupant of the*
2 *motel room*. That occupancy continued for more than a month. Upon nonpayment
3 of rent, the management locked the room. The testimony shows that *no one else*
4 *could have gained entrance*. Two days after the appellant's room was locked,
5 marijuana was found in one of the dresser drawers inside the room.

6 Id. at 343. (Emphasis added). Thus, the fact that there was *no other known occupant* and that *no*
7 *one else could have gained entrance* justifiably and logically led to a "reasonable inference" that
8 appellant possessed the narcotics found in his room. This is not so in the case at hand.

9 In Morgan v. Sheriff, 86 Nev. 23, 467 P.2d 600 (1970), this notion of exclusivity or no
10 other possible suspect similarly lead to a reasonable inference that the appellant had committed
11 the crime. In Morgan, the facts established that:

12 The victim testified that after her car ran out of gas on March 15, 1969, she began
13 walking on Carey Street in Las Vegas. At 5:30 a.m. a person grabbed her purse and
14 took it without her consent. She had no opportunity to see her assailant's face except
15 to note that he was a male Negro. She did note that he wore a pink suit or pink
16 pants. *There were no other persons on Carey Street at that time*. Thereafter, a
17 police car approached and the victim got into it. The police officer observed
18 appellant at approximately 5:33 a.m. in an area about 50 to 75 feet from the victim
19 and he *observed no other persons in the area*. The police officer identified
20 appellant as the person who was in the area at that time. Appellant is a male Negro
21 who was wearing a pink jacket and pink pants at the time. Later, the victim's purse
22 was found about 30 feet from where she was first seen by the police officer and at
23 a point between the victim and where appellant was first seen.

24 Id. (Ephasis added).

25 In Morgan, there was a "reasonable inference that the defendant committed the crime"
26 because (1) the victim had given a specific description of the suspect beyond just race (the pink
27 clothing), (2) Appellant had been apprehended within feet (50 to 75 feet away) and mere minutes
28 (3 minutes) of the crime, AND (3) **there had been "no other individuals in the area at the**
29 **time."** Id. Such is not the case here.

30 In analyzing Kinsey and Morgan, the "formula" for a "reasonable inference" that the
31 defendant committed the crime obviously requires identity, proximity, opportunity AND
32 exclusivity. Here, the State's argument about the inferences surmised from the evidence is NOT
33 reasonable, and it is not analogous to the facts in Kinsey or Morgan. The State's claims here

1 operate much more as opinion testimony¹ rather than a recitation of the facts that have actually
2 been established.

3 In particular, Kinsey and Morgan do not fit the inadequate evidence presented here
4 because there was a fifth individual present at the Shortline Express. As provided above,
5 although the State failed to present this evidence, it was certainly aware of Mr. Solomon and
6 Wheeler's statements about a fifth person. The State's entire argument supporting its reasonable
7 inference is contingent upon its suggestion that "Defendant's argument as to the existence of a
8 fifth mystery man is wholly unsupported by the evidence." (RS 14:22-23). Yet, the State had
9 knowledge of evidence of the fifth person but did not present this evidence.
10

11 To establish probable cause to bind a defendant over for trial, the State must show that
12 (1) a crime has been committed, and (2) there is probable cause to believe the defendant
13 committed it. See NRS 171.206. Finding of probable cause requires far more than a trace of
14 evidence; the facts must be such as would lead a person of ordinary caution and prudence to
15 believe and conscientiously entertain a strong suspicion that the defendant committed the crime
16 in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972).
17

18 The State's presentation to the grand jury simply does not provide enough evidence to
19 support the charges. The facts here against Mr. Wheeler are not such as would lead a person of
20 ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that
21 Mr. Wheeler committed the crimes in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498
22 P.2d 1324, 1326 (1972). Moreover, the State's contention, pursuant to Morgan v. Sheriff, 86
23 Nev. 23, 467 P2d 600 (1970) and Kinsey v. Sheriff, 87 Nev. 361, 487 P.2d 340 (1971), that the
24 evidence provides a reasonable inference that Defendant committed the crime of Murder with
25

26 ¹ See NRS 48.265 detailing the limitation to opinion testimony by lay witnesses: "If the witnesses is not
27 testifying as an expert, the witness's testimony in the *form of opinions or inferences* is limited to those
28 opinions or inferences which are: (1) rationally based on the perception of the witness; and (2) helpful to a
clear understanding of the testimony of the witness or the determination of a fact in issue."

1 Use of a Deadly Weapon (SR at 12:18-20), is not applicable or analagous and has no support.

2 **B. NO REASONABLE INFERENCE WHEELER CONSPIRED TO COMMIT**
3 **A ROBBERY OR ATTEMPTED TO ROB THE VICTIM**

4 The State further argues that the evidence clearly demonstrates probable cause to show a
5 coordinated series of acts sufficient to infer the existence of an agreement between the
6 defendants and to support the existence of a conspiracy and attempted robbery because: (1) It is
7 undisputed that a deadly weapon was used when Mr. Valenzuela was shot and killed (RS 17:20-
8 22); (2) Defendant and his co-defendants were “lying in wait in a residential neighborhood in the
9 middle. The most reasonable explanation for this fact is that the Defendant and his co-defendants
10 were looking for a victim to rob;” (RS 17:22-25); (3) There’s no other logical explanation for the
11 Defendant to be standing outside the victim’s home, and there is absolutely no evidence that the
12 Defendant or any of the co-defendants knew Mr. Valenzuela. (RS 17:26-28); (4) Mr.
13 Valenzuela’s items were strewn about the ground; (RS 18:3-5); (5) The Defendant and his co-
14 defendants all left the gas station together AND drove to the scene of the murder in the same
15 vehicle; (RS 18:6-7); and (6) none of the offenders were present on scene when police arrived in
16 order to explain what happened. (RS 18:9-10).

17
18 In contrast to the State’s claim, there is no evidence here supporting a conspiracy to rob,
19 lying in wait, or felony murder, nor is there any evidence that Mr. Wheeler aided or abetted the
20 crime. There is no inference from the evidence actually presented that Mr. Wheeler was part of a
21 preconceived plan. There are simply gaps in the evidence into which the State is creating the
22 notion of inference but without facts to support the inference.

23 It is undisputed that Wheeler’s weapon was not used in the shooting, and there was no
24 identification that Wheeler was at the scene of the crime. The State asserts that “the most
25 reasonable explanation” of the four individuals at the scene is that the co-defendants were
26 looking for a victim to rob. Yet, this assertion begs the question, “why would they not attempt to
27 rob Mr. Mason?” Mr. Mason was jogging alone, and traveled right past them. If the individuals
28

1 were only there to rob someone, they would have robbed him.

2
3 Moreover, there are many other explanations as to why the individuals were outside of
4 the home. Unlike Kinsey and Morgan, where no one else could logically or reasonably have been
5 involved, there was a fifth individual here, which excludes Mr. Wheeler based on the evidence.
6 Moreover, there are many other reasons why the four individuals may have been present.
7 However, there is no reasonable evidence that Wheeler was one of the four individuals.

8 Although the State claims Mr. Valenzuela's items were strewn about the ground, the
9 "items" were the mail, and there is no evidence that his property had been strewn about. There
10 was no evidence of a wallet, cell phone, watch or any other personal effects were strewn,
11 attempted to be taken, or actually missing.

12 The State claims that the Defendant and co-defendants left the gas station together AND
13 drove to the scene of the murder in the same vehicle. However, the evidence showed that
14 Wheeler claimed to have gotten out of the car and onto a bus and was not at the murder scene.

15
16 Finally, the State alludes to flight in explaining that none of the offenders were present on
17 the scene when police arrived. However, no evidence showed that Wheeler had been present at
18 the murder scene in the first place, and there are no reasonable inferences to suggest otherwise.

19
20 Simply saying that "the most reasonable explanation is . . ." cannot be constituted as
21 "evidence." Again, there is no evidence or inference-supported-by-the-evidence establishing a
22 conspiracy, a robbery or an attempt to rob, period. This court should therefore dismiss the
23 Indictment as having insufficient evidence to support it.

24 **C. THE STATE VIOLATED NRS 172.145(2)**

25 The State has a special duty pursuant to NRS 172.145(2): "If the district attorney is aware
26 of any evidence which will explain away the charge, the district attorney shall submit it to the
27 grand jury." Exculpatory evidence has been defined as that evidence "which has a tendency to
28

1 explain away the charge against the target of the grand jury's investigation." Lane v. District
2 Court, 104 Nev. 427, 463, 760 P.2d 1245, 1269 (1988) (Steffen, J., concurring) (citing Sheriff v.
3 Frank, 103 Nev. 157 at 160, 734 P.2d 1241 at 1244 (1987)).

4 In Frank, the Court concluded that a deputy district attorney who failed to submit
5 evidence that had a tendency to explain away the charge against a defendant violated his duty as
6 dictated by the language of NRS 172.145(2). Frank, 103 Nev. at 164-65, 734 P.2d at 1244. The
7 respondent in Frank, a sexual assault case, argued that the deputy district attorney violated
8 his duty under NRS 172.145(2) by failing to present to the grand jury conclusive proof that the
9 victim made deliberately false accusations of sexual misconduct against other individuals at the
10 same time that she was making similar accusations against her father (the respondent). The
11 Supreme Court agreed and held that the evidence regarding the victim-daughter's prior false
12 accusations, made at the same time she also accused her father, had a tendency to explain away
13 the charge against the respondent. The Court held that by failing to submit this evidence to the
14 grand jury, the district attorney violated his duty dictated by the plain, unambiguous language of
15 NRS 172.145(2). Frank, 103 Nev. at 164-65, 734 P.2d at 1244.

16
17
18 In the case at hand, the State could have explained away the charges due to specific,
19 known evidence of a fifth person in the car at the convenience store. The State violated NRS
20 172.145(2). Here, as in Frank, the State failed to submit evidence that had "a tendency to explain
21 away the charges against the defendant," and the State violated its duty under the clear language
22 of the statute. The Indictment should therefore be dismissed.

23
24 **V. CONCLUSION**

25 For the reasons stated herein, it is respectfully requests that this Court dismiss the
26 Indictment against Mr. Wheeler.

1 DATED this 8th day of June, 2018.

JAMES J. RUGGEROLI

2
3 By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.
4 Nevada Bar No. 7891
601 South 7th Street
5 Las Vegas, Nevada 89101
Attorney for Defendant

6
7 **DECLARATION OF JAMES J. RUGGEROLI, ESQ.**

8 JAMES J. RUGGEROLI, ESQ., being first duly sworn under oath, deposes and states:

9 1. I am an attorney at law duly licensed to practice before this Court and make this
10 Declaration of facts from personal knowledge which is known to me, except for those matters
11 stated upon information and belief, and as to those matters, I believe same to be true.

12 2. I am counsel of record for the Defendant, DAVONTAE AMARRI WHEELER.

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

15 DATED this 8th day of June, 2018.

JAMES J. RUGGEROLI

16
17 By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.
18 Nevada Bar No. 7891

19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on the 8th day of June, 2018, I emailed a copy of the foregoing
21 Reply to them at the following address:

22 motions@clarkcountyda.com

23 By: /s/ James Ruggeroli
24 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

JAMES J. RUGGIEROLI, ESQ.

601 South 7th Street
Las Vegas, Nevada 89101
TEL: (702) 258-2022 | FAX: (702) 258-2021

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EXHIBIT B

VOLUNTARY STATEMENT

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EVENT #:170809-0029

STATEMENT OF: DAVONTE WHEELER

gonna keep it 1,000. Now, real life, we can keep it all 100, since we talking about, um, murder type shit, niggas gettin' murdered, yes, he did come try to buy a gun from me - I mean, try to - yes, try to - when I sold him my - me looking for a gun, he tried to sell me a gun. It was a Beretta. Had a long - it just had a long barrel. And I was - I was like, oh, you trying to sell it? He said it was for \$200. I said, okay. I only had, uh, 150. Then he said, oh, you can give me an eighth of weed. I said, no. Honestly, they would - it was all - we only talked through our interaction over business. There was never nothing - no, I don't know him as a mutual, as a chillin' buddy, none of that. No. And that's the honest truth.

Q: Okay. But you hit him up on Facebook, right?

A: Y- yes, I hit him up on Facebook.

Q: So somebody would've - someone would've had to introduce you, right? I mean...

A: No. It's like with Facebook, it's your - whoever send you likes. You feel me? Like when my Facebook - my Facebook got tons of - I'd say over 390 people is trying to request me. What I do is honestly, like, every now and again, because it get packed where people can't add you. I just add certain people. Just add, just like the - and they - I'm not lying about that. That - this is real live shit that you - that's all you do. I posted on there. He hit me up. I'm gonna keep it 1,000. When I looked at him, he seemed like a normal person, like somebody that's not trying to rob me. Somebody that's not trying to be on some scandalous shit, so I

VOLUNTARY STATEMENT

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STATEMENT OF: DAVONTE WHEELER

was like, all right, cool. It felt sketchy. When I walked up and he was with four other peop- four - it was like four, five, I don't know how many people. I think it was like four, five people. It was a female and four other people. So I was like, all right, cool. But at the same time, it felt weird. But at the same time, he told me he's all about his business. He not none of that fishy shit. We went to the store. He gave me change, then that was the end of it.

Q: So did you buy the gun from him?

A: No. I ended up - I ended up just telling him that honestly I was like, it just don't feel right. It just - just don't feel right. .45 going for 200. Like, it don't feel right. I'm gonna keep it 1,000. And then at the same time, it went lower, to all the way - 'cause I'm - like I said, I do business. Somebody that goes from weed - I mean, a - a gun and cash to the weed. Like, I'm like, no, this - this don't sound right. You feel me? Why you trying to sell me a gun for weed? That don't make sense. And that's the honest truth. So I was like - by that time, it was just mainly like, all right, I'm gonna just catch back up with. You feel me?

Q: All right. So did he bring you back home?

A: He - no, he ended up dropping me off - he said that they all had to end up doin' something. I don't know. But he didn't - he ended up dropping me off halfway, like at the bus stop.

Q: And this was a few weeks ago?

A: Yes, like...

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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Q: Like 15 days ago, a few weeks ago? Like to - today is...

A: I'm - I'm - what I'm thinkin' - well, I don't - I don't know how long. I mean, it don't really stick to my head like that, honestly. Because, like I said, it was just a business transaction. Other than that, it was nothing else to my knowledge. I'm gonna keep it 1,000, so...

Q: So - so the gun that you have that you don't know the caliber of...

A: Uh, it's - it's a - it's probably a .40. .40 or 9.

Q: A .40 or 9, um, where did you buy that gun from?

A: Mine, I bought mine's off of Craigslist.

Q: It - was it like a legit...

A: Yes. Off - from a - I got a bills of sales and all that.

Q: Okay. And when did you buy your gun?

A: I bought my gun, um, January, February, March, April, May, June, Ju- I'd say May.

Q: So you've had it a while, then?

A: Yeah. Yeah.

Q: A few months. Um, have you ever shot it?

A: Uh, no. I haven't. It was no need for me to.

Q: Okay. Have you ever loaded it?

A: Uh-uh.

Q: Uh, when you bought it, was there ammo that came with it?

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STATEMENT OF: DAVONTE WHEELER

Q3: No. No, no...

A: ...clothes.

Q3: ...no, no, no. Let's start over. Credi...

A: Completely over?

Q3: Credibility.

A: Completely over?

Q3: Yes.

A: This is...

Q3: Who...

A: This is how - this is completely over.

Q3: Okay.

A: How do you know these guys?

Q3: Because I booked them.

A: No. My question: "How do I know these guys?" "I don't know them."

Q3: Mm-hm.

A: "Do you remember going to a gas station?" "Yes I do." But is that me? I don't got no clothes like that.

Q3: Okay.

A: But do I n- do I know him? That's a for sure.

Q3: Mm-hm.

A: Did I see other people in the car? Yes. Four other people to be exact.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
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house.

Q3: Mm-hm.

A: But then he hopped on the highway...

Q3: Okay.

A: ...because he said the police was at the...

Q3: So in...

A: ...- at the store.

Q3: At this point, stop. Who was in the car at this time? Ru- run down the lineup.

A: It - I don't know. I just know it - it was four - it was three in the back. It was w-
uh, it was me, plus two more in the back, one in the front, and one more in the
front.

Q3: So there's five people in the car?

A: All together, at this moment.

Q3: Who is driving? DJ. Okay? And looking at these other two individuals, do you
see them in the car as depicted in this video?

A: Like, what you mean?

Q3: Well I'm just saying that here's some other photos...

A: The thing is is it's...

Q3: And this guy right here - um, where is the rest of the photos?

A: It's...

Q: I got them (unintelligible) - I'll go get them.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

June 14, 2018

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

June 14, 2018 09:00 AM All Pending Motions

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

COURT CLERK: Skinner, Linda

RECORDER: Calvillo, Angie

REPORTER:

PARTIES PRESENT:

Davontae Amarri Wheeler	Defendant
James J. Ruggeroli	Attorney for Defendant
Melanie L. Scheible	Attorney for Plaintiff
Rachel O'Halloran	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

STATUS CHECK: HOMICIDE TRIAL...DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

Upon Court's inquiry, Mr. Ruggeroli advised he has a conflict with the current trial date and that there may be grounds for a severance based on Bruton issues. Mr. Ruggeroli feels he could be ready by December, however, Defendant objects to the continuance.

Mr. Bindrup advised he also has a conflict with the trial date, however, can't be ready for trial until January- February.

Mr. Sanft advised he would have been ready for trial, however, understands that the Defendants need to stay together and the reasons for the continuance.

Following colloquy, COURT ORDERED, trial date VACATED and RESET with a status check being set in August as to all Defendants.

MATTER RECALLED: Ms. O'Halloran now present. Arguments by Mr. Ruggeroli and Ms. O'Halloran in support of their respective positions. Following, COURT ORDERED, most issues are DENIED, however, counsel can supplement the issue of Marcel Soloman's statement not being presented to the Grand Jury with the following schedule:

State to reply by 6/28;

Mr. Ruggeroli to respond by 7/5 and matter CONTINUED for argument.

CUSTODY

8/15/18 9:00 AM DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS



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 THURSDAY, JUNE 14, 2018

19 **RECORDER'S TRANSCRIPT OF HEARING:**
20 **STATUS CHECK: HOMICIDE TRIAL; DEFENDANT'S PETITION FOR**
21 **WRIT OF HABEAS CORPUS**

22 SEE APPEARANCES ON PAGE 2

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24
25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

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APPEARANCES:

For the State:

MELANIE L. SCHEIBLE
Deputy District Attorney

For Defendant

Lofton-Robinson:

SCOTT L. BINDRUP
Chief Deputy Special Public Defender

For Defendant Robertson: MICHAEL W. SANFT, ESQ.

For Defendant Wheeler: JAMES J. RUGGEROLI, ESQ.

1 [Las Vegas, Nevada, Thursday, January 14, 2018, at 9:25 a.m.]

2

3 THE COURT: State of Nevada versus Raekwon Robertson,
4 case number C328587. Counsel, please -- we're just doing Mr. Sanft
5 right now?

6 THE CLERK: I didn't realize -- no, we need Ms. O'Halloran.

7 MR. SANFT: We are missing some people, I think, Your
8 Honor.

9 THE CLERK: Yeah, I'm sorry.

10 MR. SANFT: That's all right. No, thank you. I appreciate the
11 thought.

12 MR. BINDRUP: Is there a DA that can stand in or?

13 MR. SANFT: I don't know. I think Rachel's got to come down
14 to argue it though.

15 THE CLERK: Yeah, because she's got to come down to
16 argue the writ.

17 MR. BINDRUP: All right. Thank you.

18 MR. SANFT: Thank you, Your Honor, for calling it though.

19 THE COURT: Okay.

20 [Recalled at 9:43 a.m.]

21 THE COURT: State of Nevada versus Demario Lofton-
22 Robinson, Raekwon Robertson --

23 MS. SCHEIBLE: Your Honor, I'm afraid that we are still
24 waiting on the DA on this case.

25 MR. SANFT: Your Honor, we had asked your clerk to call it

1 because on behalf of Mr. Robertson, I believe that we can just resolve
2 my issue and I can leave to another department.

3 THE COURT: I was going to say, I think -- the way I'm
4 reading your Petition for Writ is you're the only -- this is the one that's
5 been joined into.

6 MR. SANFT: Correct. That is correct, Your Honor.

7 THE COURT: Okay, so you're going in alone. All right, I don't
8 have a problem. Otherwise, it was a status check for homicide trial.
9 We're set for this trial at the end of July. Let me see if -- hold on a
10 second, let me -- have I called your client yet, Mr. Sanft?

11 MR. SANFT: I believe you have, that's Mr. Robertson, Your
12 Honor.

13 THE CLERK: No.

14 THE COURT: What page was --

15 MR. SANFT: Page 10.

16 THE CLERK: Ten.

17 THE COURT: Ten, okay. State of Nevada versus Raekwon
18 Robertson, and State of Nevada versus Davontae Wheeler, case
19 number C328587. Counsel, please note your appearances for the
20 record.

21 MR. SANFT: Michael Sanft on behalf of Mr. Robertson who's
22 present in custody, Your Honor. Bar Number 8245.

23 MR. RUGGEROLI: James Ruggeroli on behalf of Mr. Wheeler
24 who's present in custody.

25 THE COURT: Has anyone --

1 MR. BINDRUP: And Lofton-Robinson, Scott Bindrup on his
2 behalf.

3 THE COURT: Okay. All right, so let's focus on just the status
4 check relating to the homicide trial, which is set for the end of July.
5 Where do we -- where do we stand on that?

6 MR. SANFT: I reviewed all of the discovery in this matter. I
7 don't believe there is any discovery right now that's outstanding outside
8 of fingerprints and DNA that haven't come back yet in terms of the
9 testing. I don't anticipate there will be any problems before trial. And as
10 a result, we'll be prepared and ready to go in July.

11 THE COURT: Okay. Mr. Bindrup, what's your thoughts?

12 MR. BINDRUP: I'd agree. Although, I don't think -- I know I
13 won't be ready by the end of July. So at some point, I'm going to
14 request resetting of the trial date.

15 THE COURT: Well, you know, that's sort of one of the
16 reasons why we have these status checks. So, I mean, when are you
17 going to get around to doing that?

18 MR. BINDRUP: As it's an ongoing process. I'll try to be as
19 diligent as possible, trial ready.

20 THE COURT: I mean everybody is sort of prepping here. I
21 mean -- you know, July 30th isn't that far off. What are you not going to
22 be ready for?

23 MR. BINDRUP: Just other cases that are taking precedence
24 that definitely will go to trial before this one. I think one of them was
25 *Hernandez* in which you handled and was having client management

1 issues that have been resolved. And that, obviously, will take
2 precedence over this case, it's an older case. And Mr. Hernandez's
3 case needs to go, it's set for the same date.

4 THE COURT: Okay. So Mr. Fernandez [sic] is also set for
5 July 30th?

6 MR. BINDRUP: That's correct.

7 THE COURT: Okay.

8 MR. BINDRUP: So I'm just being honest.

9 THE COURT: All right. No, I want you to be honest, and
10 that's why --

11 MR. BINDRUP: If you want me to say I'll be ready, but --

12 THE COURT: -- that's why sitting here we're -- it's important I
13 know what is happening because that's what we're trying to do. I don't
14 know what Mr. Sanft's schedule is. But if he's sitting here thinking we're
15 going on July 30th and we aren't going on July 30th, it's not fair for him to
16 be burning that time, or Mr. Ruggeroli.

17 And what's your -- I know you got the petition, but
18 what's your perspective in terms of the July 30 trial date?

19 MR. RUGGEROLI: Judge, I do potentially have a conflict. I
20 have a not guilty by reason of insanity case that's in Department 9; that
21 has a firm setting that is scheduled for August 6th. I think that this case
22 would spill over into that date and it certainly would take up my
23 preparation time. We have experts that have been consulted regarding
24 their trial availability, and their schedule has been set up on that August
25 6th date.

1 Additionally, in terms of the evidence for this case, we
2 are still following up on potential surveillance regarding other places and
3 times that would have an impact. I don't know of anything else that's
4 outstanding that the State may have that we do not, though.

5 THE COURT: Okay. All right. Who is the not guilty by reason
6 of insanity case?

7 MR. RUGGEROLI: Judge Togliatti.

8 THE COURT: I mean, give me a case name.

9 MR. RUGGEROLI: *Walter Laak*.

10 THE COURT: What?

11 MR. RUGGEROLI: L-A-A-K.

12 THE COURT: L-A-A-K. All right. Okay.

13 All right, Mr. Sanft, what's your position in hearing that
14 your two colleagues may have some issues?

15 MR. SANFT: Whatever the Court's pleasure at this point,
16 Your Honor. We would be ready to go forward. But I do understand that
17 this would be a case that would need to be tried together and as a
18 result, whatever the Court's pleasure.

19 THE COURT: How long do you think you're going to need,
20 Mr. -- I know we'll deal with the petition, but I want to get Mr. Sanft and
21 Mr. Bindrup out of here. I mean, let's -- looking at it, how long do you
22 think you are going to need to get ready and finish whatever final
23 investigation you were going to do?

24 MR. RUGGEROLI: I think we have -- Mr. Wheeler may have
25 grounds for potential severance based on *Bruton* issues, so there is that

1 portion to deal with as well. In terms of preparation, actually I think I can
2 be ready in potentially September/October.

3 THE COURT: Okay. So what's with you, Mr. Bindrup?

4 MR. BINDRUP: January/February.

5 THE COURT: January/February?

6 MR. BINDRUP: Yes.

7 THE COURT: Is that because of your trial calendar?

8 MR. BINDRUP: Yes.

9 THE COURT: Okay. Mr. Sanft.

10 MR. SANFT: Whatever the Court's pleasure is, Your Honor.

11 THE COURT: How old is this? When was the homicide?

12 You should know this right away, Mr. Ruggeroli.

13 MR. RUGGEROLI: Sure, Judge. Judge, I believe it was

14 August of last year.

15 THE COURT: August, all right. So this isn't that old.

16 [The Court and Clerk confer]

17 THE CLERK: How about January 22nd for trial?

18 MR. SANFT: I have no objection to that.

19 MR. BINDRUP: That would work great for --

20 THE COURT: Will that work with you?

21 MR. BINDRUP: Yes, that would.

22 THE COURT: All right. Mr. Sanft.

23 MR. SANFT: Yes, Your Honor, that would work for me.

24 THE COURT: All right, not hearing any opposition from Mr.

25 Ruggeroli.

1 MR. RUGGEROLI: Judge, my client is opposed to the date
2 being that far off. On his behalf, I'll submit it. I mean, we do have the
3 writ issue; I think that we can address that.

4 THE COURT: I mean, yeah. I'm not -- but I'm -- like I said, I
5 want to get Mr. Sanft and Mr. Bindrup out of here. So, I mean -- all right,
6 I said it's not that old of a case. All right, we'll go ahead and set it for
7 January 22nd.

8 MR. RUGGEROLI: Judge, just one other thing. We may want
9 to have, Mr. Pesci or Ms. O'Halloran, to give the Court information about
10 their schedules.

11 THE COURT: The State is essentially malleable. So if you're
12 all ready to go in February, then theoretically the State's going to find
13 somebody to try that case so we'll work on that basis.

14 MR. SANFT: Thank you, Your Honor.

15 THE COURT: All right.

16 THE CLERK: So calendar call will be January 8th at 8:30; jury
17 trial, January 22nd, nine a.m.

18 THE COURT: Let's set a status check in a couple of months.

19 THE CLERK: August 1st, status check.

20 THE COURT: Let's go one more week in August.

21 THE CLERK: August 15th at nine a.m.

22 MR. SANFT: Thank you, Madam Clerk.

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MR. BINDRUP: Thank you.

MR. RUGGEROLI: Thank you, Judge.

THE COURT: Thank you.

[Hearing concluded at 9:51 a.m.]

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



Angie Calvillo
Court Recorder/Transcriber



1 RTRAN

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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 THURSDAY, JUNE 14, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

18
19 APPEARANCES:

20 For the State:

RACHEL O'HALLORAN
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, Thursday, June 14, 2018, at 10:28 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. O'HALLORAN: Good morning, Your Honor. Rachel
7 O'Halloran on behalf of the State.

8 MR. RUGGEROLI: Good morning, Your Honor. James
9 Ruggeroli appearing on behalf of Mr. Wheeler who's present in custody.

10 THE COURT: All right. I'm showing us now for consideration
11 of Defendant's Petition for Writ of Habeas Corpus. We received the
12 defendant's reply and then, of course, we have the original petition and
13 State's opposition.

14 All right, Mr. Ruggeroli, I'm sort of going to give you my
15 initial thought, all right. You put a lot into the defendant's denial that he
16 remained in the vehicle and his claim that he got -- left the vehicle and
17 got on a bus. I mean, obviously, if the jury believes that to be true or --
18 you know, A) if your defendant testifies and B) the jury finds that
19 credible, I mean, that obviously obviates that he's not there at the scene
20 of the crime. But that seems to be then a credibility assessment that
21 should go to the jury, and I'm not sure that it should be held against the
22 State at this point in time in making the determination whether or not
23 there's slight or marginal evidence of -- for probable cause.

24 The second issue in my mind is, you know, if you
25 discount his statement that he jumped out of the car and got on the bus,

1 then the fact that there's four people -- you know, the State saying
2 there's four people in the car at the convenience store and four people at
3 the time of the robbery -- murder, I think, just makes -- be sufficient
4 marginal evidence in view of the limited time between to justify finding.

5 You make the point that there was -- I think there's
6 evidence of five people in there, and you note a couple of things that you
7 feel may suggest that. And I think the one witness who comes in and
8 pays off -- or not -- shows I.D -- but the State argues that what evidence
9 they've got indicates there's just four people in there. Again, that
10 creates a factual issue that then seems to me to be a jury determination.

11 So if you sort of look at it in the context of looking at
12 things in the light most favorable to the State at this point in time, seems
13 like you might hit that slight or marginal; that's where I'm sort of standing
14 at, at this point. So giving you that, I'll be pleased to hear anything
15 further from you.

16 MR. RUGGEROLI: Thank you, Judge.

17 Your Honor, the way that the State is presenting this is
18 really not just slight or marginal evidence. But they're relying on two
19 specific cases to try and get Your Honor to view this as a reasonable
20 inference case. And when you look at the *Kenzie* case and the *Morgan*
21 case, and then you compare the facts of this case, you will find that the
22 facts are not similar. And in my argument, they're not analogous
23 because they're missing one very important prong.

24 In *Kenzie* and *Morgan*, the Court didn't say this straight
25 out, and they didn't outline these prongs. But when you look at the facts

1 of the case in *Kenzie*, it's a single individual that the Court notes is the
2 sole occupant of a hotel room. He didn't pay his bill on time, so the hotel
3 employees locked him out. And the Court specifically notes that,
4 because he was locked out, no other occupant or individual had access
5 to that room.

6 So when you add identity, proximity, opportunity to
7 commit the crime, that fourth prong of exclusivity is paramount. The
8 State does not have that prong in this case. And I'll get to that in a
9 moment because in the *Morgan* case, it's even more clear. In *Morgan*,
10 there's a robbery, a purse snatching approximately five a.m. in the
11 morning.

12 The police respond on the scene within approximately
13 three minutes. The victim is not able to give a specific identification of
14 the individual that robbed her, but she does say that it was a black male
15 adult wearing a pink suit. Within three minutes, the police find the only
16 other individual on the street that just happen to be a black male adult
17 wearing a pink suit.

18 So when you look at the four prongs again in both
19 cases: identity, proximity, opportunity. And most importantly, and this is
20 noted in both cases and this is what makes it an argument about a
21 reasonable inference, and why we don't have a reasonable inference
22 here, both cases require some notion of exclusivity. There was nobody
23 else on the street in the *Morgan* case. There was nobody else that had
24 access to the hotel room in the *Kenzie* case.

25 So what do we have here? And we really have to focus

1 on the absence of exculpatory evidence that was not presented to the
2 grand jury in violation of the statute. The State was aware of this
3 witness. This individual was found because his credit card was on file,
4 and you're apparently familiar with that fact. But even leaving my client's
5 statements aside themselves, now we have complete corroboration
6 which undo -- which undoes any reasonable inference that my client was
7 one of the four individuals that were present at the time of the shooting.

8 If you look at the State's evidence, they may have
9 evidence that he was on surveillance video. But it's approximately 30
10 minutes before; the State did not have a definitive time. They didn't
11 have a statement about how far of distance the location of the
12 convenience store was to the shooting. So unlike in *Morgan* where it
13 was three minutes, we've got at least a 30-minute gap.

14 And then we have this other witness that the State --
15 and I haven't heard an explanation. I was a little surprised to see that
16 they were so bold in their return to say that, any allegation that there's a
17 fifth individual has absolutely no evidentiary support. Well that's only
18 because they elected not to call this individual.

19 When you look at the *Frank* case, which I provided
20 you -- and that's a very important factual case to consider because it
21 involved an allegation that a young woman had made an allegation
22 against her own father of some type of sexual molestation. The State
23 did not present evidence that that particular victim had made other false
24 allegations against other individuals. And the Frank Court found that, by
25 simply not presenting those other instances to the grand jury, it was so

1 much error that the charge should've been dismissed for the State
2 violating the statute.

3 We have a very similar aspect here. Because if there
4 was a fifth individual in the car and then there's only four individuals at
5 the location of the shooting, then that could've easily explained a way
6 my client not being present at the scene. And this is also important,
7 because when you look at the identification that's made of the four
8 individuals, the State leaves out the fact that the jogger who noticed
9 these four individuals additionally added that they were four young dark-
10 skinned males.

11 The witness have the ability to perceive some sense of
12 age, which gives credibility to his notion that those were four dark-
13 skinned individuals. My client has very light skin, which would argue that
14 he was not one of the four but that the fifth individual that had been
15 present at the convenience store was the fourth individual present at the
16 time of the shooting.

17 Additionally, we came back because last time the State
18 did not present evidence and they didn't have that information at the
19 time. But my client presumably was on the video at the convenience
20 store with an open-carry firearm; that firearm was not used in this
21 shooting. So when you look at the evidence that they actually have
22 against my client, it simply comes down to there were four individuals on
23 the surveillance video; at the convenience store approximately 30
24 minutes; some distance away from the shooting; who were in a white car
25 that a jogger observes approximately 30 minutes later with four

1 individuals being present; four dark skinned young males.

2 There is not a reasonable inference here. In light of the
3 evidence that wasn't presented to the grand jury and in light of the
4 evidence that we do have, even discounting my client's statements for
5 the State to have sufficient evidence, and the two cases they've cited
6 are not similar: identity, proximity, opportunity, but most importantly
7 exclusivity.

8 There was another individual who was present in
9 the convenience store. They can't prove that my client was the only one
10 that could've been present and simply making the argument that there's
11 no other reasonable explanation for this, that's opinion testimony. Your
12 Honor, that's not evidence. Especially in light of the statute alone, my
13 argument is by not including the evidence of -- his name is Marcell
14 Solomon; by not including that information to the grand jury, the State
15 violated the clear dictates of the statute. And on that alone, this case
16 should be dismissed.

17 THE COURT: All right. Thank you.

18 MS. O'HALLORAN: Your Honor, first with respect to the
19 argument that exculpatory information was not given to the grand jury;
20 the State's position is you should not be considering that argument
21 because it was raised for the very first time in the defendant's reply brief,
22 it was not raised in his initial brief; it wasn't raised in his initial writ that he
23 filed prior to us going to the grand jury previously, because that was
24 some stand-up argument and the State wasn't given an opportunity to
25 respond in writing. The State's position is you couldn't -- shouldn't

1 consider that.

2 But regardless --

3 THE COURT: Well he's sort of saying he's surprised that you
4 took the position that there was absolutely no evidence. And so I think
5 he's sort of indicating that you surprised him when you indicated that
6 there was no evidence when there was. Although, I'm not sure the fact
7 that you were surprised that they didn't -- justify is not raising the fact
8 that they didn't present it to the grand jury in your prior brief.

9 But anyway, go ahead with your argument.

10 MS. O'HALLORAN: But I'll address both of those. So the two
11 things that he's claiming are -- were exculpatory that we didn't introduce
12 was the defendant's own statement. The Supreme Court had said time
13 after time that, the defendant's self-exculpatory; self-serving statements
14 are not reliable.

15 Additionally, Your Honor, they're inadmissible at trial as
16 hearsay; they would be inadmissible at the grand jury. So there -- it's
17 not exculpatory evidence, number one. Number two, his statement
18 didn't even say that there were five people in the car. What he said was
19 he was there, and there were a total of six people: four guys and a
20 female and him making six, so that's even contradictory to the argument
21 that there was five people.

22 Regarding Marco [sic] Solomon's statement -- you
23 know, that he thought there was five people in the car just because he
24 said he thought, maybe, there was five; that in and of itself is not
25 exculpatory. The video is clearly contradictory to any argument that

1 there could be five people, that car is right in front of that camera there;
2 there were four people that get out; four people that get in; you can see
3 into the car. There was nobody in the front side; nobody else in the
4 back seat.

5 So if there is a fifth person, that person is hiding in the
6 trunk because they're clearly not observable on the surveillance. And if
7 they're hiding in the trunk, it's not somebody that Mr. Solomon would've
8 seen. And additionally in addition to his statement, there were like four
9 or five of them in the car. And then he later says, two in the front; two in
10 the back.

11 On two other occasions, he talks about four people as
12 opposed to five. He said, I know two guys were in the back; he talks
13 about calling his friend and says there's four guys in the car. So this
14 definitive representation that he's claiming that there were five people is
15 not even accurate. So again, it's not exculpatory evidence. The State
16 did not do anything wrong by not presenting that because the evidence
17 was clear.

18 THE COURT: All right. And this is sort of where -- the
19 defendant's statement, I'm not -- you know, that's -- becomes a jury
20 question if he decides to testify, and I don't think it's appropriate to hold
21 that against you in terms of everything here. And then Mr. Solomon's --
22 you know, I looked at what Mr. Ruggeroli provided; I tend to think that he
23 is a little bit wishy-washy even the stuff that you provided, Mr. Ruggeroli.

24 But let's say for -- again, that becomes then a -- the
25 State feels its got evidence where it can credibly say no one -- four were

1 in the car. He, maybe, has a basis for alleging five in the car, it
2 becomes a jury issue at that point. What about the fact -- so let's say
3 everything's most favorable for the State; there's four people in the car
4 when they get in -- when they leave the --

5 MS. O'HALLORAN: Shortly -- uh-huh.

6 THE COURT: -- 30 minutes go by. What about his exclusivity
7 argument?

8 MS. O'HALLORAN: Well first -- the State did not cite to
9 *Kenzie* or *Morgan* because of the analogous facts. The State was only
10 citing to those to present the standard before Your Honor. And again,
11 he even indicated that exclusivity was not some sort of element or law
12 established in that case.

13 But what we have here, there are -- there are multiple
14 people. So, obviously, exclusivity is not something that the State is
15 going to be able to prove because the State is alleging that there were
16 four people present. And what we have here is a very solid timeline, it
17 wasn't as said when Mr. Solomon testified that those individuals were in
18 the store between 11:20 and 11:38 -- 11:20 and 11:40.

19 So even a half an hour is being favorable to the
20 Defense because the jogger who saw these individuals said that he
21 started his job a little bit before midnight. What he also said regarding
22 the description of these individuals; what he described them as they
23 were all dark-skinned black individuals, I guess you would say, and then
24 he goes on to say young black males. He doesn't say dark-skinned
25 black males. He just says dark skinned indicating that they were black

1 as opposed to being Caucasian.

2 As far as the timeline, we're talking -- Detective Dodge
3 [phonetic] did testify it was -- it would take a matter of minutes to drive
4 there. So again, a timeline, I think is significant. Regarding the
5 argument that defendants -- defendant, he was carrying a gun; there's
6 no dispute about that. The argument is that, that gun was not used in
7 the commission of the murder; that is not -- that's actually not the
8 evidence.

9 The evidence is that, the gun that was found at Mr.
10 Wheeler's house was not used in the commission of the murder. Well
11 we know is that, there was at least two firearms used. There could've
12 been more; number one, evidence of shooting could've been picked up
13 by somebody, that's known to happen. Additionally, the fact that his co-
14 defendants -- the guns were found in the co-defendants' home just
15 further ties the defendant to that location.

16 We don't know; the State can't prove --

17 THE COURT: Say that again, that one you lost me. I was
18 following --

19 MS. O'HALLORAN: The fact that -- well we're alleging that
20 the defendant -- all of these people were together. The murder weapon
21 were found at two of the co-defendants' homes. It basically just places
22 them all together, it places him in proximity with the murder weapon
23 because he was with those individuals.

24 But again, we don't know who shot the firearms
25 regardless of where these particular firearms were found. The fact is the

1 State, by slight or marginal evidence, puts him at the scene; puts a gun
2 in his hand; then, of course, the victim is murdered with a firearm. So
3 the fact that the gun found at his home did not come back to shell
4 casings at the scene does not exonerate him.

5 So I just don't put a lot of credence into this exclusivity
6 argument because there are multiple people being charged in this case.
7 There's no way we could overcome that argument. If you have any
8 specific questions regarding the facts or anything else, I would be happy
9 to answer those, Your Honor.

10 THE COURT: I'll let you have a short response, Mr.
11 Ruggeroli.

12 MR. RUGGEROLI: They have to have evidence that
13 Mr. Wheeler was one of the four people present at the time. All they
14 have --

15 THE COURT: Don't you think -- let's assume he's there in the
16 car; the car drives away, and the car and four people are there in a short
17 period of time later. Isn't that evidence that he was there?

18 MR. RUGGEROLI: Not when you have an independent
19 witness that has no connection to these four individuals, other than
20 being asked to buy a cigar; to purchase that cigar and says there were
21 five. So even if you take Mr. Wheeler's -- and I don't agree that it was
22 self-serving. But even if you take his statement out of it, you have an
23 independent witness indicating that there were five individuals that the
24 State elected not to present to the grand jury. That fifth individual
25 eliminates exclusivity. The State can't just cite the two most important

1 cases in Nevada dealing with a reasonable inference, and then disavow
2 the fact that both of those cases make a highlighted point that no other
3 person in both of those cases had access, and could've been
4 reasonably involved in those crimes. They're pushing that aside here,
5 but they can't. And I did not want to get into too many facts, specifically,
6 so that we could've avoid the notion that these are jury issues.

7 I was not being wishy-washy about the facts, I'm
8 pointing out that each of the points the State argued, really, there's a
9 counterpoint. But most importantly, my focus is centered on the fact that
10 the State has an absolute burden to present exculpatory evidence
11 pursuant to the clear dictates of this statute. If evidence can explain
12 away the charge, they must present that information to the grand jury.
13 They chose not to because it fit their version of events. They'd like to
14 limit this to only four people, and that is why it would fit under *Morgan*
15 and *Kenzie* because then, there wouldn't be another individual; they
16 would have exclusivity but they don't have that here. They have no
17 explanation for why that evidence wasn't presented. So this case
18 should be dismissed on that ground alone. But then they still haven't
19 answered; other than a general description, a very general description of
20 skin tone and a white car. They have no evidence that my client was
21 one of those four individuals at the scene of the shooting.

22 And without that, Judge, they have no case.

23 THE COURT: Okay. All right. Well I don't factor the
24 defendant's statement into this because, like I said, the issue then
25 becomes one of credibility and -- you know, the statement is one where

1 a jury can choose to find lack of credibility, and so I don't think that
2 should be held against the State in terms of valuation.

3 The State indicates that it has what it feels is fairly
4 definitive evidence that there were four people in the car at the
5 convenience store, and then you have Mr. Solomon's statement; which
6 apparently he's wishy-washy; sometimes hits four; sometimes hits five.
7 But, you know, the State -- looking at things most favorable to the State,
8 Mr. Solomon -- the jury could find that Mr. Solomon was wrong. The
9 evidence -- the relation to the video surveillance is such; that if the jury
10 finds there's only four and if they find there's only four in terms of the
11 timeline here; the fact that the defendant was armed, I think there's
12 slight or marginal evidence would justify the charges in this case. The
13 one issue that sort of sticks out there is should have Mr. Solomon's
14 testimony been provided to the grand jury. The State raises that you
15 didn't bring this up. Is there a reason why you didn't bring up the
16 exculpatory with Mr. Solomon prior --

17 MR. RUGGEROLI: In the original?

18 THE COURT: Yeah, in the original.

19 MR. RUGGEROLI: In the original writ, Judge, actually, this
20 was a statement that my client reminded me of and I was thankful that
21 he did that. However, I don't think it negates the argument because
22 there's no burden on the Defense to make the State aware of evidence
23 that they have in their possession that they were aware of. Their own
24 detectives went out and interviewed this individual. There's a
25 transcribed statement. They knew that it fit with what Mr. Wheeler had

1 indicated about a fifth individual. And so, even though that wasn't
2 raised, Judge, it was raised prior to today's hearing and burdens on the
3 State.

4 THE COURT: All right. Well I'm denying it as to all the other
5 aspects. I will -- I'll ask the State to file a supplement as to that issue.
6 And you're free to argue that he's waived it, and you're free to argue that
7 it's not. Let's make sure we have -- in view of the nature of the
8 underlying charges here, let's make sure we have a clean record. So I'll
9 give -- how long -- that's only indicted as to all other respects. I want
10 to -- that does sort of concern me and I want to make sure --

11 THE CLERK: What is the issue?

12 THE COURT: Whether or not the State violated providing
13 exculpatory material to the grand jury by not including Mr. Solomon's --
14 what was his first name?

15 MR. RUGGEROLI: Marcell.

16 THE COURT: Marcell Solomon's statement to the grand jury.

17 MR. RUGGEROLI: Judge, that statute is 172.145(2).

18 THE COURT: Okay. So how much time do you want for
19 that?

20 MS. O'HALLORAN: I'm in a murder trial next week potentially
21 until the following week. I don't know if Mr. Pesci's schedule. I just
22 know that he's out of the jurisdiction. Two weeks should be enough.

23 THE COURT: Do you mind if I give them three?

24 MR. RUGGEROLI: I know Mr. Wheeler would like to move
25 forward to this as soon as possible. I would like just a couple of days to

1 respond.

2 THE COURT: Okay. Well, I mean, this should be straight
3 forward. I'll give you two weeks. If you can't do it, I'm sure Mr.
4 Ruggeroli -- if you reasonably can't do it, would agree to give you a little
5 more time. You only want a couple days?

6 MR. RUGGEROLI: Yes.

7 THE COURT: I'll give you a week.

8 THE CLERK: Ms. O'Halloran to reply by June 28th. Mr.
9 Ruggeroli to reply by July 5th, and we'll have to set July 19th at nine a.m.

10 MR. RUGGEROLI: Could I have the last date again please?

11 THE CLERK: July 19th.

12 MR. RUGGEROLI: Thank you.

13 MS. O'HALLORAN: Thank you, Your Honor.

14 MR. RUGGEROLI: Thank you, Judge.

15 THE COURT: All right.

16 [Hearing concluded at 10:51 a.m.]

17
18
19 ATTEST: I do hereby certify that I have truly and correctly transcribed the
audio/video proceedings in the above-entitled case to the best of my ability.

20

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22

23

24

25



Angie Calvillo
Court Recorder/Transcriber

Steven D. Grierson

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**

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO: C-17-328587-3

11 -vs-

DEPT NO: XX

12 **DAVONTAE AMARRI WHEELER,**
13 **#5909081**

14 Defendant(s).

15 **STATE'S SUPPLEMENT TO RETURN WRIT OF HABEAS CORPUS**

16 DATE OF HEARING: August 15, 2018
17 TIME OF HEARING: 9:00 A.M.

18
19 COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent,
20 through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through
21 GIANCARLO PESCI, Chief Deputy District Attorney, in obedience to a writ of habeas corpus
22 issued out of and under the seal of the above-entitled Court on the 17th day of May, 2018, and
23 made returnable on the 31st day of May, 2018, at the hour of 8:30 A.M., before the above-
24 entitled Court, and states as follows:

- 25 1. Respondent admits the allegations of Paragraphs 1, 2, 7.
26 2. Respondent denies the allegations of Paragraph 3.
27 3. Paragraph numbers 4, 5, 6, 8 do not require admission or denial.
28

1 4. The Petitioner is in the actual or constructive custody of JOE
2 LOMBARDO, Clark County Sheriff, Respondent herein, pursuant to a Superseding
3 Indictment, a copy of which is attached hereto as Exhibit 1 and incorporated by reference
4 herein.

5 Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the
6 Petition be dismissed.

7 DATED this 28 day of June, 2018.

8 Respectfully submitted,

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

12 BY *R. L. Pesci* ^{#128410}
13 GIANCARLO PESCI
14 Chief Deputy District Attorney
15 Nevada Bar #007135

16 **POINTS AND AUTHORITIES**

17 **I. STATEMENT OF THE CASE**

18 Defendant Devontae Wheeler ("Defendant") was arrested on August 15, 2017. On
19 August 17, 2017, Defendant was charged by way of Criminal Complaint in Justice Court
20 Department 12 as follows: COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category
21 B Felony – NRS 200.380, 199.480); COUNT 2 – ATTEMPT ROBBERY WITH USE OF A
22 DEADLY WEAPON (Category B Felony – 200.380, 193.330, 193.165); and COUNT 3 –
23 MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS 200.010,
24 200.030, 193.165).

25 On September 21, 2017, Defendant's case was consolidated into Justice Court
26 Department 3, Case No. 17F14369C, so that Defendant's case could be joined with those of
27 his co-defendants.

28 Prior to the preliminary hearing, the State indicted Defendant on the charges alleged in
the Criminal Complaint. Following the State's presentation of evidence at the Grand Jury on

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, as follows:
3 COUNT 5 – CONSPIRACY TO COMMIT ROBBERY; COUNT 6 – ATTEMPT ROBBERY
4 WITH USE OF A DEADLY WEAPON; and COUNT 7 – MURDER WITH USE OF A
5 DEADLY WEAPON. On December 19, 2017, Defendant pled not guilty and waived his right
6 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. On February 8, 2018, Defendant filed a Petition for Writ of Habeas Corpus. On March
10 2, 2018, the State filed a Return to Defendant's Petition for Writ of Habeas Corpus and on
11 March 8, 2018, Defendant filed a Reply to the State's Return.

12 On March 22, 2018, oral argument was held as to Defendant's Petition. Following
13 argument by both parties, the Court ordered the State to return to the Grand Jury to present
14 additional evidence regarding ballistic testing that was performed after the State's initial
15 presentation to the Grand Jury.

16 On April 18, 2018, the State presented additional evidence to the Grand Jury.
17 Specifically, the State presented testimony from Anya Lester, a forensic scientist in the
18 firearms/toolmark analysis unit of the Las Vegas Metropolitan Police Department
19 ("LVMPD"). The State also presented additional testimony from LVMPD Detective Mitch
20 Dosch. After presentation of the additional evidence, the Grand Jury returned a true bill on
21 the same three counts alleged in the original Indictment. On April 19, 2018, a Superseding
22 Indictment was filed charging Defendant with the same three counts alleged in the original
23 Indictment.

24 Defendant is charged with the Murder and Attempt Robbery of Gabriel Valenzuela on
25 August 9, 2017. The State also alleges that Defendant conspired with his co-defendants to
26 commit a robbery against Mr. Valenzuela on that day.

27 ///

28 ///

1 On June 14, 2018, the Court heard arguments on Defendant's second pre-trial Writ of
2 Habeas Corpus. The Court issued the following minutes:

3 MATTER RECALLED: Ms. O'Halloran now present. Arguments by
4 Mr. Ruggeroli and Ms. O'Halloran in support of their respective
5 positions. Following, COURT ORDERED, most issues are DENIED,
6 however, counsel can supplement the issue of Marcel Soloman's
7 statement not being presented to the Grand Jury with the following
8 schedule: State to reply by 6/28; Mr. Ruggeorli to respond by 7/5 and
9 matter CONTINUED for argument. CUSTODY 8/15/18 9:00 AM
10 DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

11 The State hereby supplements the issue.

12 **II. STATEMENT OF FACTS**

13 **A. Testimony from November 29, 2017**

14 The following is a summary of the relevant portions of testimony elicited during the
15 presentation of evidence to the Grand Jury on November 29, 2017.

16 **John Relato**

17 On August 9, 2017, John Relato ("Mr. Relato") resided with his cousin, Gabriel
18 Valenzuela at 5536 Dewey Drive in Las Vegas Nevada. See Grand Jury Transcript (Nov. 29,
19 2017) ("GJT") 84:18-85:6. In the early morning hours of August 9, 2017, Mr. Relato was
20 inside his home when he heard gunshots. GJT 85:7-23. Mr. Relato looked out his window
21 and saw his cousin, Gabriel Valenzuela laying in the driveway to their home. Id. Mr. Relato
22 went outside and realized that Mr. Valenzuela was bleeding from his head. Id. As Mr. Relato
23 proceeded outside, he called 911. GJT 86:21-22, 87:6. The initial call to 911 was placed at
24 12:11 a.m.¹ Mr. Relato did not see anyone in the area and he did not see who shot his cousin.
25 GJT 86:23-87:2. Mr. Relato testified that it was customary for his cousin to check the mail
26 and sit on the retaining wall in front of his home while he opened the mail. GJT 87:20-23.

27 **Lary Simms**

28 Larry Simms ("Dr. Simms") is a forensic pathologist with the Clark County Coroner's
Office. GJT 8:17-18, 9:11-13. Dr. Simms conducted the autopsy on Gabriel Valenzuela. GJT

¹ This fact was testified to by Detective Mitch Dosch. GJT 91:10:13

1 9:22-10:1. Dr. Simms determined that Mr. Valenzuela suffered four gunshot wounds. One
2 shot entered the right side of Mr. Valenzuela's head and exited on the left side of Mr.
3 Valenzuela's forehead; another shot entered Mr. Valenzuela's left abdomen and did not exit;
4 another shot entered the outside of Mr. Valenzuela's right ankle, exiting on the inside of Mr.
5 Valenzuela's right ankle; the fourth shot entered the back of Mr. Valenzuela's left ankle and
6 came to rest in his leg. GJT 13:21-23, 15:20-24, 17:6-20. Dr. Simms concluded that the cause
7 of Mr. Valenzuela's death was multiple gunshot wounds and the manner of Mr. Valenzuela's
8 death was homicide. GJT 17:21-18:6.

9 **Robert Mason**

10 At the time of Mr. Valenzuela's murder, Robert Mason lived in the same neighborhood
11 as the victim. GJT 45:20-25. At approximately midnight on the night of August 8, 2017, into
12 the morning of August 9, 2017, Mr. Mason went for a jog in his neighborhood. GJT 46:2-15.
13 During his jog, Mr. Mason saw four young black males standing on the corner of Lindell and
14 Dewey in front of 5536 Dewey Drive.² GJT 46:16-48:2-18. Shortly after Mr. Mason ran past
15 the four individuals standing in front of Mr. Valenzuela's home, he saw what he described as
16 a white Crown Vic, bearing Nevada license plate number 473YZB. GJT 50:3-21. The vehicle
17 was parked approximately 20-50 feet from where the four black males were standing. GJT
18 50: 22-25. When shown Grand Jury Exhibit 28 (attached as Exhibit 5 to the State's Return to
19 Writ of Habeas Corpus filed on March 2, 2018), Mr. Mason identified it as the vehicle he saw
20 when he jogged past the victim's house. GJT 51:1-15. Mr. Mason felt these individuals were
21 suspicious so he called his wife and told her to lock the doors to their house and he asked her
22 to call 311 to report the suspicious individuals. GJT 51:18-52:1.

23 **Nikolaus Spahn**

24 On the night of Mr. Valenzuela's murder (August 8, 2017 into the morning of August
25 9, 2017), Nikolaus Spahn ("Mr. Spahn") was working as a cashier at the Short Line Express
26

27 ² See Grand Jury Exhibit 16, attached as Exhibit 2 to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018.
28 When shown Exhibit 16, Mr. Mason indicated that the photograph captured the area where he saw the four individuals
standing. GJT 48:3-18. During Mr. Relato's testimony, he identified Exhibit 16 as a photograph of his home located at
5536 Dewey Drive. GJT 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. GJT 66:5-9, GJT 142:24-143:4.

1 convenience store, located at the intersection of Warm Springs Road and Jones Boulevard at
2 7325 South Jones Boulevard. GJT 21:13-19, 24:2-7. On that night, Mr. Spahn's shift began
3 at 10:00 p.m. GJT 21: 24-25. Between 11:20-11:38 p.m., four individuals entered the store.
4 GJT 22; 27:7-29:13. Mr. Spahn believed these individuals were behaving suspiciously and he
5 was concerned because one of the individuals was wearing a firearm on his hip.³ GJT 22:1-
6 23:25.

7 After the four individuals exited the store, they sat down at a table outside of the store.
8 GJT 25:22-26:11. Mr. Spahn continued to observe the individuals at which point he went
9 outside and saw the vehicle the four individuals were driving. Id. Mr. Spahn described the
10 vehicle as a white four door Mercury that looked like a Crown Victoria. GJT 26:12-15. Later
11 that night, police officers came into the store and told Mr. Spahn they were investigating a
12 murder; at that time, he told officers about the four individuals he observed. GJT 27:15-23.

13 During Mr. Spahn's testimony, the State introduced surveillance footage from the
14 Shortline Express capturing the four individuals as well as the vehicle in which they arrived.
15 GJT 29:20-31:15. The surveillance footage showed that the vehicle had paint damage on the
16 roof of the car that the first three numbers on the license plate number were 473. GJT 31:6-9,
17 96:11-22.

18 **James Newman**

19 James Newman testified that on August 4, 2017 (four days before Mr. Valenzuela was
20 murdered), he sold his white Mercury Grand Marquis to Co-Defendant Lofton-Robinson. GJT
21 38:22-39:14. The vehicle had a Nevada license plate number of 473-YZB, the same license
22 plate observed by Mr. Mason in front of the victim's home. See GJT 37:10-13, 50:3-21. When
23 Mr. Newman sold the vehicle, he allowed Co-Defendant Lofton-Robinson to keep the license
24 plates with the understanding they would be returned at a later time. GJT 39:25-40:1, 41:9-
25 17. James Newman identified the vehicle in Grand Jury Exhibits 28 and 30 (attached as
26 Exhibits 5 and 6, respectively to the State's Return to Writ of Habeas Corpus filed on Mar. 2,

27
28 ³ Surveillance footage reveals that the individual wearing the firearm is the person Detective Dosch identified as Defendant Wheeler. The portions of the surveillance footage introduced at Grand Jury are attached as Exhibit 1 to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018.

1 2018) as the vehicle he sold to Co-Defendant Lofton-Robinson.⁴ Mr. Newman was able to
2 identify the vehicle based on its license plate number of 473-YZB which was depicted in Grand
3 Jury Exhibit 28 and because of the paint damage to the roof of the car which was depicted in
4 Grand Jury Exhibit 30. GJT 37:10-24.

5 **Lora Cody**

6 Lora Cody ("Detective Cody") is a homicide detective with the Las Vegas Metropolitan
7 Police Department. GJT 135:11-19. Detective Cody was assigned to assist in the investigation
8 of Mr. Valenzuela's murder. GJT 135:20-22. A portion of her responsibilities involved
9 obtaining surveillance footage. GJT 135:24-3. As a result, Detective Cody responded to the
10 Shortline Express convenience store located near Dewey Drive. GJT 136:3-19. In viewing the
11 surveillance, detectives observed a white Mercury Grand Marquis with a NV license plate
12 bearing the first three numbers of 473. GJT 136:25-137:13. Based on an investigation into the
13 registration of the vehicle, officers were able to locate the vehicle. GJT 137:11-19. Ultimately,
14 a traffic stop was conducted, at which time Co-Defendant Lofton-Robinson was inside the car.
15 GJT 137:20-138:11.

16 **Mitch Dosch**

17 Mitch Dosch ("Detective Dosch") is a homicide detective with the Las Vegas
18 Metropolitan Police Department. GJT 90:16-19. Along with other detectives, Detective
19 Dosch was assigned to investigate Mr. Valenzuela's murder. GJT 91:5-9. Detective Dosch
20 testified that four cartridge casings were located at the scene of the murder: one .22 caliber
21 cartridge case and three .45 caliber cartridge cases. GJT 99:22-100:8. The .22 caliber cartridge
22 case bore a head stamp of "C." GJT 13:15. The .45 caliber cartridge cases bore three separate
23 head-stamps: R-P 45, NFCR, and WINCHESTER 45 AUTO. GJT 100:23-101:1, 101:18-21,
24 102:2-7.

25 Additionally, Detective Dosch testified regarding the substance of the surveillance
26 video retrieved from the Shortline Express convenience store depicting the events of which
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. GJT 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 Nikolas Spahn testified. GJT 95:17-23. Significantly, Detective Dosch testified that if one
2 were driving a vehicle from the Short Line Express to the scene of the murder, it would only
3 take a matter of minutes. GJT 95:9-16.

4 With respect to the vehicle that the four individuals were driving, the surveillance
5 footage revealed that the first three numbers on the license plate were 473. GJT 95:24-96:22.
6 Because this information matched the description of the vehicle at the scene of the crime and
7 because the four individuals in the surveillance footage were consistent with the four
8 individuals seen at the scene of the crime, detectives attempted to identify the individuals in
9 the footage. See id., GJT 96:23-97:21.

10 Following an investigation, Detective Dosch was able to identify the four individuals
11 depicted in the surveillance footage from the Shortline Express on August 8, 2017. Based on
12 his prior interactions with each of the defendants, Detective Dosch identified one of the
13 individuals in the surveillance footage as Co-Defendant Lofton-Robinson; in the surveillance
14 footage, Lofton-Robinson was wearing red shoes, blue jeans, and a long-sleeved green shirt.
15 GJT 105:17-106:5, 108:23-109:9. Detective Dosch also identified Co-Defendant Robertson
16 as one of the individuals in the surveillance footage. GJT 117:3-11. Finally, Detective Dosch
17 identified one of the individuals as Defendant Wheeler. GJT 112:22-113. In the surveillance
18 footage, Defendant Wheeler was wearing a white and black hat; a maroon top, and maroon
19 shoes. GJT 113:3-5, see Grand Jury Exhibits 9 and 10 (attached as Exhibits 7 and 8,
20 respectively, to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018).

21 After identifying these individuals, detectives obtained multiple search warrants. Id.
22 During execution of the various search warrants, officers located multiple items of evidentiary
23 value.

24 A .22 caliber semi-automatic firearm was located at 6647 West Tropicana, an address
25 associated with Co-Defendant Raekwon Robertson. GJT 98:12-19, 100:16-22. While
26 searching 6647 West Tropicana, officers also located ammunition bearing the headstamp "C."
27 Id. This ammunition matches the .22 caliber cartridge case found at the murder scene. Id.

1 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
2 Co-Defendant Lofton-Robinson. GJT 97:23-98:2, 98:24-99:2. During the search of that
3 residence, officers located a .45 caliber firearm and ammunition bearing a headstamp of R-P
4 45, which matched one of .45 caliber cartridge cases found at the scene of the murder, GJT
5 98:3-5, GJT 100:16-22.

6 A search warrant was also obtained to search Apartment F located at 3300 Civic Center
7 Drive. GJT 99:11-15. Detective Dosch testified that Defendant was associated with this
8 address. GJT 101:14-17. At that residence, officers located a .45 caliber firearm loaded with
9 ammunition bearing a headstamp of RP-45 auto. GJT 99:14-19, 101:2-17, 115:18-116:14.
10 This ammunition matches one of the .45 caliber cartridge cases found at the scene of the
11 murder. Id. Additionally, officers recovered a hat and a pair of maroon shoes both of which
12 matched the items worn by the individual in the surveillance footage who Detective Dosch
13 identified as being the Defendant. GJT 114:2-115:17, see Grand Jury Exhibit 37 and 38
14 (attached as Exhibits 9 and 10 respectively to the State's Return to Writ of Habeas Corpus
15 filed on Mar. 2, 2018). This is the same individual who is also seen on the surveillance footage
16 wearing a firearm. See Exhibits 1, 7 and 8, attached to the State's Return to Writ of Habeas
17 Corpus filed on Mar. 2, 2018.

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. GJT 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. GJT 143:5-9, see Grand Jury Exhibits
24 16-18 (attached as 2-4, respectively to the State's Return to Writ of Habeas Corpus filed on
25 Mar. 2, 2018). Detective Jaeger also testified that he interviewed the Defendant after advising
26 him of his Miranda warnings. GJT 145:1-16. In his interview, Defendant was shown a
27 photograph of the vehicle captured in the surveillance at the Short Line Express and he
28 admitted to having been in the vehicle on August 8, 2017. GJT 145:25-146:2. He also

1 admitted that he owed a .45 caliber firearm and that he would carry the firearm in open carry
2 fashion on his right hip. GJT 145:19-21, 146:22-24. However, when shown footage from
3 inside the Shortline Express, Defendant denied that he had been present inside the store. GJT
4 146:25-147:5.

5 **B. Testimony from April 18, 2018**

6 The following is a summary of the relevant portions of testimony elicited during the
7 presentation of evidence to the Grand Jury on April 18, 2018.

8 **Anya Lester**

9 Anya Lester is a forensic scientist with the firearms/toolmark analysis unit of the Las
10 Vegas Metropolitan Police Department. See Grand Jury Transcript (Apr. 18, 2018) ("GJT2")
11 7:21-23. In conjunction with the instant case, Ms. Lester analyzed various firearms and
12 firearms-related evidence, the results of which she compiled into a report. GJT2 7:11-20 (Ms.
13 Lester's report was introduced as Exhibit 2 at the Grand Jury Proceedings and is attached
14 hereto as Exhibit 2). Ms. Lester tested the following firearms: 1) a .22 long rifle caliber
15 semiautomatic pistol; 2) a Taurus model PT-145 Pro Millennium .45 caliber semiautomatic
16 pistol; and 3) a Star .45 auto caliber semiautomatic pistol. GJT2 8:13-23. Ms. Lester test fired
17 all three firearms and determined that they were all operable. GJT2 9:9-12. She also compared
18 the cartridge cases, bullets and bullet fragments fired from those three firearms to the cartridge
19 cases and bullets located at the crime scene. GJT2 9:13-21.

20 Following her analysis, Ms. Lester concluded that the .22 caliber cartridge case found
21 at the murder scene was fired from the .22 caliber pistol she tested. GJT2 9:13-21. The .22
22 caliber handgun tested by Ms. Lester was located, pursuant to a search warrant, at 6647 West
23 Tropicana, an address associated with Co-Defendant Raekwon Robertson. GJT 98:12-19,
24 100:16-22, GJT2 17:1-16.

25 Ms. Lester further concluded all three .45 caliber cartridge cases found at the murder
26 scene were fired by the Star .45 auto caliber semiautomatic pistol she tested. GJT2 11:14-21.
27 The Star .45 caliber firearm tested by Ms. Lester was located, pursuant to a search warrant, at
28

1 919 Bagpipe Court, an address associated with Co-Defendant Lofton-Robinson. GJT 97:23-
2 98:2, 98:3-99:2, 100:16-22, GJT2 18:3-18.

3 Finally, after testing the Taurus model PT-145 Pro Millennium .45 caliber
4 semiautomatic pistol, Ms. Lester determined that none of the evidence bullets or cartridge
5 cases she tested from the murder scene were fired from that particular gun. GJT2 11:4-13.
6 The Taurus firearm was located, pursuant to a search warrant, at 3300 Civic Center Avenue,
7 an address associated with Defendant. GJT 99:14-19, 101:2-17, 115:18-116:14, GJT2 17:17-
8 18:13.

9 LEGAL ARGUMENT

10 I. STANDARD OF REVIEW

11 It is well settled that a district court's function in reviewing a pretrial writ of habeas
12 corpus challenging the sufficiency of probable cause is to determine whether enough
13 competent evidence was presented to establish a reasonable inference that the accused
14 committed the offenses. State v. Fuchs, 78 Nev. 63 (1962). The finding of probable cause to
15 support a criminal charge may be based on "slight, even 'marginal' evidence . . . because it
16 does not involve a determination of the guilt or innocence of the accused." Sheriff v. Hodes,
17 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). "To commit an accused for trial, the State is not
18 required to negate all inferences which might explain his conduct, but only to present enough
19 evidence to support a reasonable inference that the accused committed the offense." Kinsey
20 v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971). Sheriff v. Miley, 99 Nev. 377
21 (1983). Thus, the court need not consider whether the evidence presented to a Grand Jury, or
22 presented at a preliminary hearing, may, by itself, sustain a conviction, because the State need
23 not produce the quantum of proof required to establish the guilt of the accused beyond a
24 reasonable doubt. See Hodes, 96 Nev. at 186, 606 P.2d at 180; Miller v. Sheriff, 95 Nev. 255,
25 592 P.2d 952 (1979); McDonald v. Sheriff, 87 Nev. 361, 487 P.2d 340, (1971).

26 The Nevada Supreme Court has explicitly held that a probable cause determination is
27 "not a substitute for trial," and that the "full and complete exploration of all facets of the case"
28 should be reserved for trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969);

1 Robertson v. Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969). If the evidence produced
2 establishes a reasonable inference that the defendant committed the crime, the probable cause
3 to order the defendant to answer in the district court has been established. Morgan v. Sheriff,
4 86 Nev. 23, 467 P.2d 600 (1970). Accordingly, the issue of guilt or innocence is not involved
5 and "the evidence need not be sufficient to support a conviction." Kinsey, 87 Nev. at 363
6 (citing Masklay v. State, 85 Nev. 111, 450 P.2d 790 (1969)); Hodes, 96 Nev. at 184, 606 P.2d
7 at 180.

8 II. ANALYSIS

9 In the Court Minutes from June 14, 2018, the Court indicated that most issues were
10 denied but the issue of Marcell Solomon's statement not being presented could be
11 supplemented with briefing. As such, the State hereby incorporates by reference the entirety
12 of the arguments made in the State's Return Writ of Habeas Corpus filed on May 29, 2018 and
13 focuses solely on the Defendant's erroneous allegation of an alleged violation of NRS
14 172.145(2).

15 A. Defendant's Argument that the State failed to Present Exculpatory 16 Evidence is Untimely and should not be Considered

17 In Defendant's Reply to the State's Return to Writ of Habeas Corpus, Defendant argues,
18 for the very first time, that the State failed to present exculpatory evidence at the Grand Jury.
19 Defendant could have raised this argument in his initial Petition for Writ of Habeas Corpus
20 filed on February 8, 2018 or in his second Petition for Writ of Habeas Corpus filed on May
21 17, 2018. However, Defendant did not raise this issue until June 8, 2018 when he filed his
22 reply brief. Defendant's assertion that the State failed to present exculpatory evidence is a
23 substantive claim that should have been raised in his Petition for Writ of Habeas Corpus.
24 Because he failed to do so, this Court should not consider Defendant's argument. See NRAP
25 28(c) (providing that reply briefs "must be limited to answering any new matter set forth in
26 the opposing brief"); Elvik v. State, 114 Nev. 883, 888, 965 P.2d 281, 284 (1998) (explaining
27 that arguments made for the first time in a reply brief prevent the respondent from responding
28 to appellant's contentions with specificity); Weaver v. State, Dep't of Motor Vehicles, 121

1 Nev. 494, 502, 117 P.3d, 198-99 (2005) (arguments raised for the first time in an
2 appellant's reply brief need not be considered); City of Elko v. Zillich, 100 Nev. 366, 371, 683
3 P.2d 5, 8 (1984) (the Court need not consider arguments raised in a reply brief).

4 Additionally, as this argument was not raised until June 8, 2018, it was not timely raised
5 pursuant to NRS 34.700. NRS 34.700 states:

6 1. Except as provided in subsection 3, **a pretrial petition for**
7 **a writ of habeas corpus** based on alleged lack of probable cause
8 or otherwise challenging the court's right or jurisdiction to proceed
9 to the trial of a criminal charge **may not be considered unless:**

10 (a) **The petition and all supporting documents are filed**
11 **within 21 days after the first appearance of the accused in the**
12 **district court; and**

13 (b) The petition contains a statement that the accused:

14 (1) Waives the 60-day limitation for bringing an
15 accused to trial; or

16 (2) If the petition is not decided within 15 days
17 before the date set for trial, consents that the court may,
18 without notice or hearing, continue the trial indefinitely or
19 to a date designated by the court.

20 2. The arraignment and entry of a plea by the accused must
21 not be continued to avoid the requirement that a pretrial petition
22 be filed within the period specified in subsection 1.

23 3. The court may extend, for good cause, the time to file a petition.
24 Good cause shall be deemed to exist if the transcript of the
25 preliminary hearing or of the proceedings before the grand jury is
26 not available within 14 days after the accused's initial appearance
27 and the court shall grant an ex parte application to extend the time
28 for filing a petition. All other applications may be made only after
appropriate notice has been given to the prosecuting attorney.

EDCR 3.40(c) further requires that "[a]ll points and authorities in support of the petition
for writ of habeas corpus must be served and filed at the time of the filing of the petition."
Neither statute nor Eighth Judicial Court Rules allow a Defendant to raise new arguments
outside of the 21-day timeframe.

Nevada Law is clear that the timing requirements are mandatory and that where the
requirements are not complied with, the petition is neither cognizable in District Court nor
reviewable in the Supreme Court, Sheriff, Clark County v. Jensen, 95 Nev. 595, 600 P.2d 222

1 (Nev. 1979); see also Sheriff v. Toston, 93 Nev. 394, 566 P.2d 411 (1977) (holding that a
2 pretrial writ of habeas corpus that did not meet the requirements imposed on habeas petitioners
3 by the NRS was not cognizable in the District Court).

4 In the instant case, following the filing of the Superseding Indictment, Defendant's first
5 appearance in District Court was on May 3, 2018. Defendant was arraigned on the same day
6 and waived his right to a speedy trial. Accordingly, Defendant had 21 days from May 3, 2018,
7 to file his writ. The 21-day deadline for Defendant to file a writ was May 24, 2018. While
8 the Defendant filed his Petition for Writ of Habeas Corpus within the 21-day deadline, his
9 reply brief was not filed until June 8, 2018, well outside of the 21-day deadline. This is
10 significant in that Defendant's present argument was not raised until 36 days after Defendant's
11 first appearance following the Superseding Indictment.

12 These statutory requirements set forth in NRS 34.700 do not contain suggestions;
13 rather, they contain mandates. As Defendant's argument was not raised within 21-days of
14 Defendant's first appearance in District Court, said argument should not be considered by this
15 Court. Any other determination is not supported by law.

16 **B. The State did not fail to Present Exculpatory Evidence to the Grand Jury**

17 NRS 172.145(2) provides: If the district attorney is aware of any evidence which will
18 explain away the charge, he shall submit it to the grand jury. A district attorney violates NRS
19 172.145(2) if he fails to present to the grand jury evidence which has a tendency to explain
20 away the charge. Ostman v. Eighth Judicial Dist. Court, 107 Nev. 563, 564, 816 P.2d 458,
21 459, (1991). The determination of whether particular evidence is exculpatory is generally left
22 to the discretion of the district court. Id.

23 The Defendant argued in his second writ that, "The State failed to present exculpatory
24 evidence to the grand jury that there was a fifth person connected to [the] case, so the
25 Indictment must be dismissed. (Defendant's Second Writ, Page 2, Lines 8-10). The
26 Defendant's argument is that the State should have presented the statement of Marcell
27 Solomon who was present in the parking lot of the Short Line Express convenience store at
28 Warm Springs and Jones prior to the murder because he said in his statement to police that

1 there were five people in the car in the parking lot. While the State acknowledges that Mr.
2 Solomon referenced five people in parts of his statement, it is the Defendant who failed to
3 point out that Mr. Solomon also indicated there were four people in other parts of his statement.

4 On page 3 of his statement, Mr. Solomon stated:

5 So then I went inside. I was doin' Uber at the time, uh, so I went inside
6 and came back out, got it for 'em and they left. It was a real quick
7 interaction but I - I - I do remember that because I remember tellin'
8 my, uh, one of my friends about them bein' out there and it was just
9 weird how they were in the car and there was five of 'em and - there
10 was like four or five of 'em in the car.

11 Later on the same page Mr. Solomon stated:

12 Um, it's hard to see that in pictures. It was, uh, all - all I know is, uh,
13 two in the front, two in the back or - no, I couldn't tell ya which one
14 asked me. I wanna say he had long hair but all of them, you know,
15 have long hair, so... (adding up to only 4).

16 Later on page 15 Mr. Solomon stated:

17 Yeah, definitely, 'cause I remember callin' and tellin' Gabby about it
18 'cause I was tellin Gabby. I'm like, "There's four guys in a car. They
19 want - they is fuckin' trouble."

20 Thus, it is not all together definitive from Mr. Solomon's statement if he believed there
21 were four or five people in the car as he references four in some parts of his statement and five
22 in other parts of his statement. It can hardly be argued that this evidence explains away the
23 charges when the statement makes refence to four individuals in some parts and five
24 individuals in other parts. Moreover, the fact that there were four or five people in the car in
25 the parking lot of the Short Line convenience store does nothing to explain away the evidence
26 of four people being seen at the actual murder scene that was not located at the convenience
27 store.

28 As explained above in the Statement of Facts section, Robert Mason lived in the same
neighborhood as the victim. GJT 45:20-25. At approximately midnight on the night of August
8, 2017, into the morning of August 9, 2017, Mr. Mason went for a jog in his neighborhood.

1 GJT 46:2-15. During his jog, Mr. Mason saw four young black males standing on the corner
2 of Lindell and Dewey in front of 5536 Dewey Drive. GJT 46:16-48:2-18. Shortly after Mr.
3 Mason ran past the four individuals standing in front of Mr. Valenzuela's home, he saw what
4 he described as a white Crown Vic, bearing Nevada license plate number 473YZB. GJT 50:3-
5 21. The vehicle was parked approximately 20-50 feet from where the four black males were
6 standing. GJT 50: 22-25. When shown Grand Jury Exhibit 28 (attached as Exhibit 5 to the
7 State's Return to Writ of Habeas Corpus filed on March 2, 2018), Mr. Mason identified it as
8 the vehicle he saw when he jogged past the victim's house. GJT 51:1-15. Mr. Mason felt
9 these individuals were suspicious so he called his wife and told her to lock the doors to their
10 house and he asked her to call 311 to report the suspicious individuals. GJT 51:18-52:1. This
11 evidence shows that four black males were seen at the murder location. The fact that there
12 may have been five in the car at the convenience store does nothing to explain away the charges
13 and is thus no cause for dismissal.

14 Additionally, the State introduced video surveillance from the convenience store that
15 shows the four (not five) suspects inside the store. As the Statement of Facts explained above,
16 on the night of Mr. Valenzuela's murder (August 8, 2017 into the morning of August 9, 2017),
17 Nikolaus Spahn ("Mr. Spahn") was working as a cashier at the Short Line Express convenience
18 store, located at the intersection of Warm Springs Road and Jones Boulevard at 7325 South
19 Jones Boulevard. GJT 21:13-19, 24:2-7. On that night, Mr. Spahn's shift began at 10:00 p.m.
20 GJT 21: 24-25. Between 11:20-11:38 p.m., four individuals entered the store. GJT 22, 27:7-
21 29:13. Mr. Spahn believed these individuals were behaving suspiciously and he was
22 concerned because one of the individuals was wearing a firearm on his hip.⁵ GJT 22:1-23:25.

23 After the four individuals exited the store, they sat down at a table outside of the store.
24 GJT 25:22-26:11. Mr. Spahn continued to observe the individuals at which point he went
25 outside and saw the vehicle the four individuals were driving. Id. Mr. Spahn described the
26 vehicle as a white four door Mercury that looked like a Crown Victoria. GJT 26:12-15. Later
27

28 ⁵ Surveillance footage reveals that the individual wearing the firearm is the person Detective Dosch identified as Defendant Wheeler. The portions of the surveillance footage introduced at Grand Jury are attached as Exhibit 1 to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018.

1 that night, police officers came into the store and told Mr. Spahn they were investigating a
2 murder; at that time, he told officers about the four individuals he observed. GJT 27:15-23.

3 During Mr. Spahn's testimony, the State introduced surveillance footage from the
4 Shortline Express capturing the four individuals as well as the vehicle in which they arrived.
5 GJT 29:20-31:15. The surveillance footage showed that the vehicle had paint damage on the
6 roof of the car that the first three numbers on the license plate number were 473. GJT 31:6-9,
7 96:11-22.

8 Moreover, the surveillance footage admitted at the State's first presentation directly
9 contradicts Defendant's argument regarding the existence of a fifth individual. A view of the
10 surveillance footage shows that the vehicle in question arrived at the Shortline Express, at
11 which time four individuals exited the vehicle and entered the convenience store. See Exhibit
12 1 attached to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018. These
13 individuals were identified by Detective Dosch as being Defendant and his co-defendants.
14 GJT 105:17-106:5, 108:23-109:9, 117:3-11, 112:22-113.

15 While inside the convenience store, the Defendant and his co-defendants are observed
16 together and are not actively communicating with anyone else. See id. At no time is a fifth
17 person visible in the vehicle or seen associating with the defendants inside the store. Id. The
18 surveillance footage later shows all four individuals (including Defendant) getting back into
19 the vehicle. Id. At no point does the footage show Defendant getting back out of the vehicle
20 or anyone else getting into the vehicle. Id.

21 Thus, evidence was introduced by Mr. Spahn and from surveillance video of Defendant
22 and his co-defendants being together in the convenience store and associated with the vehicle
23 that was later seen and identified by Robert Mason as being in the area of the murder with four
24 individuals. The fact that Marcell Solomon referred to four individuals in some instances in
25 his statement and five individuals in other parts of his statement as being present in the car at
26 the convenience store does not explain away the charges and is not exculpatory.

27 But the Defendant further argued, "Moreover, Wheeler had told detectives that there
28 had been four other individuals, but that State did not include his statement to the grand jury.

1 (Defendant's Second Writ, Page 8, Lines 15-16). This assertion is completely belied by the
2 record. The following portion of the transcripts shows that the State did introduce evidence
3 of the Defendant's statement to police, comprising pages 145 through 148 of the transcripts
4 from November 29, 2017.

5 Q. Showing you Exhibit 13. Who is that?

6 A. That's Davontae Wheeler.

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

8 A. I did.

9 Q. Did you conduct an interview with him?

10 A. I did.

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

12 A. I did.

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

15 A. Yes, he did.

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

18 A. I did.

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

20 A. He admitted to owning a 45 caliber handgun. He admitted to being in the vehicle
21 but he stated he was not involved in any murder.

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

24 A. He was shown still photographs collected from the surveillance system of the
25 Short Line Express that depicted the Grand Marquis.

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

27 A. Yes, he did.

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

1 A. Yes.
2 Q. Okay. And did you ask him about what his comings and goings were of August
3 the 8th and August the 9th?
4 A. I did.
5 Q. What did he say he had done?
6 A. He said that he was in the vehicle, he was trying to negotiate to buy a Beretta
7 handgun, he couldn't reach a price for the gun that he liked so he got out of the
8 vehicle and took a bus home.
9 Q. And then you just talked about the purchase or attempt to purchase a Beretta.
10 Did he indicate whether or not he had a firearm or firearms or how he would
11 carry them?
12 A. He said he did have a firearm and he said that any time he didn't feel safe he
13 carried the firearm on his right hip in an open carry fashion.
14 Q. Was he, or did you show him any of the surveillance footage from inside of the
15 Express –
16 A. I did.
17 Q. Did he indicate that was him or not?
18 A. He denied that that was him inside the Short Line Express.
19 Q. However in the course of your investigation did you find pieces of evidence that
20 were similar or appeared to be similar to the clothing, the shoes, of the people
21 inside the surveillance of that Short Line Express?
22 A. We did.
23 Q. And also involving a hat?
24 A. I don't know if they've seen the picture.
25 Q. Yes. You're speaking of the hat. Was there something you were focusing on
26 with the hat?
27 A. The hat in the surveillance pictures, it's a white baseball hat with a black bill and
28 there's a holographic sticker that can be seen on the bill of the cap.

- 1 Q. Did you ask him about that?
- 2 A. I did and he said he does not have any clothing that would resemble the person
- 3 seen in the surveillance footage. If you see the hat that's there, that's actually a
- 4 Chicago Blackhawks hat with the same sticker that was found in his apartment.
- 5 Q. All right. That's the next question I was going to ask you. You were involved
- 6 with the search when this hat was found. Where was it found?
- 7 A. I did not search his apartment. I was with him doing the interview when his
- 8 apartment was searched.
- 9 Q. Are you aware that this was found in his apartment?
- 10 A. Yes.
- 11 Q. Was there information in your investigation that associated Mr. Wheeler with
- 12 that apartment?
- 13 A. Yes.
- 14 Q. Do you know offhand what some of that information was?
- 15 A. He lived in apartment F and his sister lived in apartment G. That was verified
- 16 by the complex security.

17 GJT, 145:1-148:16.

18 This clearly belies the Defendant's argument completely. The State did, in fact,

19 introduce the Defendant's statement, including his self-serving denial of involvement in the

20 crime and his allegation that he left the convenience store and took a bus home. Curiously,

21 the Defendant failed to mention that in his second writ. What is also curious is the argument

22 that the State violated NRS 172.145(2) because those statements were not even required to be

23 presented to the grand jury under the case law.

24 The Nevada Supreme Court rejected a similar argument by a defendant in Indico v.

25 Eighth Judicial Dist. Court, 2014 Nev. Unpub. LEXIS 994 *; 2014 WL 2751205, (June 16,

26 2014). In that case the State presented the murder case to the grand jury and the defendant

27 was indicted. The defendant filed a writ in District Court alleging that the State violated NRS

28 172.145(2) by failing to introduce "exculpatory" evidence. The District Court denied the writ

1 and the defendant appealed the denial to the Nevada Supreme Court. The defendant alleged
2 that the prosecution improperly excluded from the grand jurors' consideration evidence
3 showing self-defense, specifically, (1) her statement in a 911 call that the victim had stabbed
4 her, (2) her statement to a neighbor that the victim stabbed her, and (3) medical evidence that
5 the stab wounds to her abdomen (a shallow stab wound and a nick to her intestine) and a stab
6 wound to her thumb were consistent with her claims of self-defense, and (4) her multiple
7 statements to the police that the victim stabbed her and she acted in self-defense. In denying
8 the defendant's writ, the Nevada Supreme Court stated the following:

9 Petitioner argues that statements in her 911 call and to a neighbor that
10 the victim stabbed her satisfy the excited-utterance exception to the
11 hearsay rule, see NRS 51.095 (providing that "[a] statement relating
12 to a startling event or condition made while the declarant was under
13 the stress of excitement caused by the event or condition is not
14 inadmissible under the hearsay rule"), and therefore could be
15 considered by the grand jury. Even accepting that premise, we
16 conclude that those statements are not exculpatory under NRS
17 172.145(2), as they do not explain away the charges. Neither does
18 medical evidence regarding petitioner's injuries. Moreover, the grand
19 jury was presented with evidence that she sustained stab wounds to
20 her abdomen and thumb. Petitioner's statements in a 911 call and to a
21 neighbor do not in and of themselves explain away or negate the slight
22 or marginal evidence supporting the elements of the charge. Evidence
23 that the victim stabbed petitioner, alone, would not preclude a
24 probable cause determination that petitioner committed first-degree
25 murder. See NRS 200.030(1) (defining first-degree murder, in
26 relevant part, as a "willful, deliberate and premeditated killing").
27 Further, petitioner's non-life-threatening stab wounds do not explain
28 away the charge as those wounds could have been inflicted by means
other than self-defense. Finally, self-exculpating statements are
inherently suspect in their trustworthiness, see Williamson v. United
States, 512 U.S. 594, 600, 114 S. Ct. 2431, 129 L. Ed. 2d 476 (1994)
(observing that "[s]elf-exculpatory statements are exactly the ones
which people are most likely to make even when they are false").

Regarding petitioner's statements to the police that the victim stabbed
her and that she acted in self-defense, those statements are not
exculpatory for the reasons explained above. See United States v.
Camacho, 163 F. Supp. 2d 287, 308 (S.D.N.Y. 2001) ("Statements to
police and prosecutors by criminal suspects or defendants are not

1 considered to be reliable, because the declarant generally wants to
2 obtain favorable treatment; [defendant's] statements to the police were
3 especially unreliable because they were self-exculpatory.")

4 Thus, United States Supreme Court case law, Federal Circuit case law, and Nevada
5 state case law clearly establishes that the State does not have to present the grand jury with a
6 defendant's self-exculpating statements. Notwithstanding the State not being required to
7 present the evidence under this case law, the State did present it and it was considered by the
8 grand jury. The State had no duty to present evidence of a witness who spoke of four or five
9 people being in the car, as that does not explain away the charges. Moreover, the State did
10 present the non-required statement by the Defendant that he was not involved in the murder
11 and that he left the car at the convenience store and went home on a bus. Consequently, the
12 Defendant's petition should be denied.

13 CONCLUSION

14 Based on the foregoing, the State respectfully requests that Defendant's Petition for
15 Writ of Habeas Corpus be DENIED in its entirety.

16 DATED this 28 day of June, 2018.

17 Respectfully submitted,

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

21 BY

22 *Giancarlo Pesci* ^{to 128410}
23 GIANCARLO PESCI
24 Chief Deputy District Attorney
25 Nevada Bar #7135
26
27
28

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made this 28th day of June, 2018 by Electronic Filing to:

JAMES RUGGEROLI, ESQ.
Email: ruggeroli@icloud.com

BY:



Secretary for the District Attorney's Office

17F14369A/GP/rmj/L-3

Steven D. Grierson

ORD
JAMES RUGGEROLI, ESQ.
Nevada Bar No. 007891
LAW OFFICE OF JAMES RUGGEROLI
601 South 7th Street
Las Vegas, Nevada 89101
Ruggeroli@icloud.com
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,)
Plaintiff.)

Case No.: C-17-328587-3

vs.)

Dept. No.: 20

DAVONTAE WHEELER,)
#05909081,)
Defendant.)

COURT ORDER
TIME SENSITIVE

**ORDER TO ALLOW RON SLAY, POLYGRAPH EXAMINER
EXPERT, NV PILB LICENSEE No. 207, DEFENSE EXPERT TO
ENTER CLARK COUNTY DETENTION CENTER AND
CONDUCT A LEGAL CONTACT AND A POLYGRAPH EXAM
ON DAVONTAE WHEELER.**

This matter having coming forward before this court and good cause
appearing therefore:

IT IS HEREBY ORDERED that the WATCH COMMANDER and/or
the Lieutenant on duty ALLOW Mr. Ron Slay, Defense Polygraph Examiner
Expert, to conduct a legal contact meeting and a polygraph exam using his own
professional polygraph equipment with Davontae Wheeler, CCDC ID#
#05909081. This is during normal legal contact visiting hours.

1 **IT IS HEREBY ORDERED** that this COURT ORDER will expire on
2 JULY 15th, 2018.
3

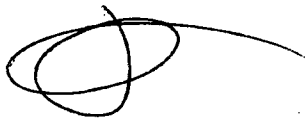
4 **IT IS HEREBY ORDERED** that you provide a LEGAL CONTACT room to
5 Mr. Ron Slay so that he can conduct the polygraph exam of Mr. Wheeler.

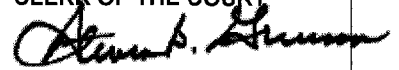
6 **IT IS HEREBY ORDERED** that if you have any questions you are to
7 contact Criminal Defense Investigator Richard Franky, L.P.I., State of NV, PILB
8 License No. 797, DBA, RDF Investigative Agency. Mr. Franky can be reached
9 at (702) 696-9701 and/or RDFINVESTIGATIVE@AOL.COM.
10

11
12 Dated this 28 day of JUNE of 2018.

13
14
15
16 
HONORABLE JUDGE ERIC JOHNSON KM

17 Prepared by:

18
19 
20
21 JAMES RUGGEROLI, ESQ.
22 Nevada Bar No. 007891
23 **LAW OFFICE OF JAMES RUGGEROLI**
24 601 South 7th Street
25 Las Vegas, Nevada 89101
26 Ruggeroli@icloud.com
27 **Attorney for Defendant**
28 DAVONTAE WHEELER



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.

DAVONTAE AMARRI WHEELER,
#5909081,

Defendant.

**REPLY TO STATE'S SUPPLEMENT TO RETURN TO WRIT OF HABEAS CORPUS
AND, IF NECESSARY, MOTION TO AMEND PETITION TO INCLUDE A MOTION
TO DISMISS, IN THE ALTERNATIVE**

COMES NOW, the Defendant, DAVONTAE AMARRI WHEELER, by and through his attorney of record, JAMES J. RUGGEROLI, ESQ., and submits the following Reply to State's Supplement Return to Writ of Habeas Corpus. This supplement and reply 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 5th day of July, 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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The arguable untimeliness of Wheeler's contention that the State's violated NRS 172.145(2) for failing to present exculpatory evidence to the grand jury operates as excusable delay pursuant to NRS 34.700(3). In the alternative, Wheeler's argument may unquestionably be considered by this court through a motion to amend that portion of his petition to a *motion to dismiss*, which does not contain any applicable time constraint. Moreover, evidence of the potential fifth person present at the convenient store certainly amounts to evidence which could explain away the charges against Wheeler, therefore, the State violated NRS 172.145(2) and the Indictment must be dismissed.

II. EXCUSABLE DELAY OR MOTION TO AMEND ARGUMENT TO A MOTION TO DISMISS

A. GOOD CAUSE EXCUSES THE DELAY

The State has suggested that Wheeler's argument concerning its failure to present exculpatory evidence to the grand jury is entirely inapplicable to the case at hand. NRS 34.700(3) enables this court to permit untimely filed petitions for good cause: "[t]he court may extend, for good cause, the time to file a petition." In the case at hand, Wheeler has been provided with voluminous discovery. The information concerning the Marcell Solomon had not been included in the arrest report. Moreover, counsel had been operating under the belief that no evidence, other than Wheeler's own statement, existed. The State even boldly asserted "[t]he **only evidence that the Defendant left the convenience store (after denying that he was in the surveillance footage) is his own self-serving statement that he took the bus home.**"

Counsel had taken the State at its word until further review of the discovery in this matter revealed that Marcell Solomon, an independent, objective witness had been interviewed by Metro detectives and informed them that:

A: I wanna say **five**. I'd say two in the front and three in the back."

1 Q1: And you believe there was five in the car.

2 A: I believe – I wanna say there was **five of ‘em**.

3 See Marcell Solomon’s Voluntary Statement at p. 4.

4 The very purpose of the 21-day time limit applies to the time it would take to review the
5 transcripts from the grand jury proceedings and then file a petition. The exception contained in
6 NRS 34.700(3) perfectly applies to the facts at issue here. Wheeler had relied on the State’s
7 representations that no other evidence existed that a fifth person had been present. Moreover,
8 Wheeler relied on NRS 172.145(2)’s clear mandate that any exculpatory evidence would be
9 provided to the grand jury by the State. Any delay in raising this argument may clearly be
10 excused as good cause for the delay, and the merits of the argument must justly be heard.

11 **B. MOTION TO AMEND ARGUMENT TO A MOTION TO DISMISS**

12 Should this court hold that good cause does not excuse the delay for the purposes of
13 petitions for writ of habeas corpus pursuant to NRS 34.700, Wheeler respectfully and justifiably
14 requests that this court permit the petition’s argument to be amended to and heard as a motion to
15 dismiss, which is subject to no applicable time constraint. NRS 172.145(2) is not a trivial dictate
16 upon the State’s obligations. Providing exculpatory evidence to the grand jury, especially in a
17 murder case in which the State’s evidence against Wheeler amounts to circumstantial evidence at
18 best, must be viewed as paramount. Justice demands that this court entertain this argument,
19 whether through the name of a petition or through a motion to dismiss. For the reasons provided
20 below, the exculpatory evidence was unjustifiably not presented to the grand jury, and the
21 Indictment must therefore be dismissed.

22 ////

23 ////

1 **III. EXCULPATORY EVIDENCE NOT PRESENTED IN VIOLATION OF NRS**
2 **172.145(2)**

3 Evidence that there was a fifth individual present at the convenience store is fully
4 supported by independent evidence, but the State violated NRS 172.145(2) by not providing this
5 evidence to the grand jury.

6 At the grand jury, Mr. Spahn (the convenient store clerk) testified that he would not sell a
7 Black and Mild cigar to the four individuals in the store because of lack of ID, so another
8 individual that had ID came in the store later and bought the same Black and Mild cigar. GJT 25-
9 27. Through investigation, police obtained the identity of that individual and questioned him.

10 Marcell Solomon was the individual in the store that bought the Black and Mild cigar for
11 the individuals that had been in the store. See a true and accurate copy of the relevant portion of
12 Mr. Solomon's Voluntary Statement ("Solomon VS"). Det. Dosche found Mr. Solomon through
13 his credit card purchase and because of the surveillance video from the convenience store.
14 Solomon VS at 2. When asked about how many people he had seen in the white car in front of
15 the Shortline Express, Mr. Solomon answered:

16 A: I wanna say **five**. I'd say two in the front and three in the back."

17 Q1: And you believe there was five in the car.

18 A: I believe – I wanna say there was **five of 'em**.

19 Id. at 4.

20 Moreover, Wheeler had told detectives that there had been four other individuals, but the
21 State did not include his statement to the grand jury. Wheeler told detectives that there were five
22 people beside himself that went to the convenience store. See a true and accurate portion of
23 Wheeler's Voluntary Statement ("Wheeler's VS") at pages 21-23, 96, 99.

24 Although the State accurately provides that Mr. Solomon eventually waived in his
25 certainty as to the exact number of individuals, Mr. Solomon unquestionably indicated, in the
26 first instance, that he though there were five. It was only after the detective continued to press
27 Mr. Solomon did he waiver. Nevertheless, even if he said four individuals were present at certain
28 points of his statement, he undoubtedly indicated that there were five present at the begin and at

1 different points during his statement. This evidence was exculpatory because it corroborated
2 Wheeler's statement to the police that there had been four others present before he left the car,
3 got on a bus, and did not go with the others to the scene of any shooting.

4 In its supplement, the State argues that it did not fail to present exculpatory evidence to
5 the grand jury. This court must not agree with this contention. Exculpatory evidence has been
6 defined as that evidence "which has a tendency to explain away the charge against the target of
7 the grand jury's investigation." Lane v. District Court, 104 Nev. 427, 463, 760 P.2d 1245, 1269
8 (1988) (Steffen, J., concurring). When a prosecutor has abused NRS 172.145 (2) by withholding
9 known exculpatory evidence and engaging in conduct that impairs the function of an
10 independent and informed grand jury, the courts of this state have not stood silently by. Mayo v.
11 Eighth Jud. Dist. Ct., 384 P.3d 486, 491 (2016).

12 Though not required by the federal constitution or as a matter of the federal courts'
13 supervisory authority, see United States v. Williams, 504 U.S. 36, 51-53, 112 S.Ct. 1735, 118
14 L.Ed.2d 352 (1992), in a number of states and in the District of Columbia, "there are statutes or
15 judicial decisions that require prosecutors to inform the grand jury of exculpatory evidence in
16 some circumstances," 1 Sara Sun Beale et al., *supra*, § 4:17, as do the ABA Standards for
17 Criminal Justice, § 3-4.6(e) (4th ed. 2015).

18 In Nevada, our Supreme Court has determined that a deputy district attorney who failed
19 to submit evidence that had a tendency to explain away the charge against a defendant violated
20 his duty as dictated by the language of NRS 172.145(2). See Sheriff v. Frank, 103 Nev. 157 at
21 160, 734 P.2d 1241 at 1244 (1987)).

22 The respondent in Frank, a sexual assault case, argued that the deputy district attorney
23 violated his duty under NRS 172.145(2) by failing to present to the grand jury conclusive proof
24 that the victim made deliberately false accusations of sexual misconduct against other individuals
25 at the same time that she was making similar accusations against her father (the respondent).
26 The Supreme Court agreed and held that the evidence regarding the victim-daughter's prior false
27 accusations, made at the same time she also accused her father, had a tendency to explain away

1 the charge against the respondent. The Court held that by failing to submit this evidence to the
2 grand jury, the district attorney violated his duty dictated by the plain, unambiguous language of
3 NRS 172.145(2). Frank, 103 Nev. at 164-65, 734 P.2d at 1244.

4 In State v. Babayan, 787 P.2d 805, 817 (1990) the district court found that substantial
5 exculpatory evidence was known to the District Attorney's Office, but that the prosecutors failed
6 to present it to the grand jury. The prosecution presented evidence to the grand jury that
7 numerous children were sexually assaulted, either vaginally or anally. The testimony presented
8 indicated that complete penetration had occurred and, in some instances, occurred more than
9 once. At the time of its presentations, the prosecution possessed reports submitted by physicians
10 who had examined the children. None of the physicians found any indicia of sexual penetration.
11 The prosecution did not present these reports to the grand jury.

12 On appeal, the Supreme Court agreed and held that the prosecution's failure to present
13 such evidence added to an overall foundation supportive of the district court's decision to dismiss
14 the indictments. Id. The Court importantly noted that *while not entirely dispositive* of whether
15 the children were sexually assaulted, "evidence that there were no physical findings of
16 penetration would tend to explain away the charges against the defendants, or, at the very least,
17 would suggest that any sexual abuse that might have occurred did not happen as recounted by
18 some of the alleged victims. The grand jury should have had this information before it in order
19 for it to make an informed determination." Id. The Court further noted that:

20
21 the prosecution received statements by preschool teachers and staff. These
22 statements indicated that there were normally at least four teachers or assistants
23 supervising the children at each preschool, that the shuttle buses between the
24 preschools usually traveled in tandem, and that the children were not normally out
25 of an adult supervisor's presence. None of the teachers or staff who provided
26 statements indicated that they observed any activity or heard any statements that
27 would suggest that child abuse was or had been occurring. The District Attorney's
28 Office, however, never called any of the teachers or staff, the majority of whom
29 were women and some of whom had children attending the preschools, to testify
30 before the grand jury at any of its proceedings. This evidence was of an exculpatory
nature and the district attorney should have presented it.

The prosecutors also failed to present certain other evidence which when
considered separately may not have explained away the charges, but when viewed
in its totality was exculpatory, i.e., the schools' open floor plans, the irregular flow

1 of persons, including parents, in and out of the schools, and the presence of a tutorial
2 service that rented space at the Hash Lane preschool. When considered against the
3 allegations of continuous and ongoing sexual abuse, some of which was alleged to
4 have occurred in open areas, *this evidence would have had a tendency to explain
5 away the charges and it should have been presented.*

6 Id. (Emphasis added).

7 When a prosecutor has abused NRS 172.145(2) by withholding known exculpatory
8 evidence and engaging in conduct that impairs the function of an independent and informed
9 grand jury, the courts of this state have not stood silently by. State v. Babayan, 106 Nev. 155,
10 169-70, 787 P.2d 805, 816-17 (1990). See also Ostman v. Eighth Judicial Dist. Court, 816 P.2d
11 458, 107 Nev. 563 (1991) in which a statement that the Defendant gave to the police, which
12 generally acknowledged the alleged events occurred but claimed that the victim voluntarily
13 participated in the charged sexual activity, was exculpatory and prosecutor was therefore obliged
14 to present it to grand jury.

15 In the case at hand, the State could have explained away the charges due to specific,
16 known evidence of a fifth person in the car at the convenience store. The State knew that
17 Wheeler had claimed that there were five people present at the convenient store. Moreover,
18 despite the State's interesting description of the surveillance video, the video footage does not
19 reveal inside the car. Another occupant could easily have been present in the car and not seen on
20 the video surveillance.

21 Moreover, as discussed in Babayan, it does not matter that the evidence of a fifth
22 individual would not have been dispositive, that evidence was exculpatory. It could have
23 explained away the charges as to Wheeler. If there had been a fifth person present at the
24 convenience store and Wheeler left the other four individuals prior to the shooting, his
25 involvement in the murder would have been explained away.

26 The State violated NRS 172.145(2). Here, as in Frank and Babayan, the State failed to
27 submit evidence that had "a tendency to explain away the charges against the defendant," and the
28 State violated its duty under the clear language of the statute. The Indictment must be dismissed.

1 **V. CONCLUSION**

2 For the reasons stated herein, it is respectfully requests that this Court dismiss the
3 Indictment against Mr. Wheeler.

4 DATED this 5th day of July, 2018.

JAMES J. RUGGEROLI

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

9
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 the
17 State of Nevada that the foregoing is true and correct.

18 DATED this 5th day of June, 2018.

JAMES J. RUGGEROLI

By: */s/ James Ruggeroli*
James J. Ruggeroli, Esq.
Nevada Bar No. 7891

21 **CERTIFICATE OF SERVICE**

22
23 I hereby certify that on the 5th day of July, 2018, I emailed a copy of the foregoing
24 Supplemental Reply to them at the following address:

25 motions@clarkcountyda.com

26 By: */s/ James Ruggeroli*
James J. Ruggeroli, Esq.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

August 02, 2018

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

August 02, 2018 08:30 AM Defendant's Petition For Writ Of Habeas Corpus**HEARD BY:** Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Botzenhart, Susan**RECORDER:** Santi, Kristine**REPORTER:****PARTIES PRESENT:**

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

JOURNAL ENTRIES

Deft. present in custody. Mr. Ruggeroli advised defense has no objection to this Court taking over the homicide cases from Department 20, further noting Judge Johnson may have been in the middle of ruling on this issue, and this is not contained in the minutes of the case. Additionally, there was no transcript available, the first writ involved on the gun and what Deft. was wearing and not being in the crime, Judge Johnson had issued a ruling ordering the State to go back and present additional evidence before the Grand Jury, findings were made as to insufficient evidence, defense came in on this case, with knowledge of an independent witness, Deft. had made statements regarding four individuals, there were four people in the video, a jogger had observed four people, Deft. said there was a fifth individual, and defense believes the statements made by Deft. are important. Court stated that witness was equivocal, the Court read the statement, the Court is not sure whether it is exculpatory, and the statement seems helpful to defense. Mr. Ruggeroli advised Judge Johnson was halfway on issuing a ruling, defense does not have a transcript, and the ruling is not in the minutes. Court asked defense counsel whether he wanted to make inquiry to Department 20 today about this; and stated there is no legal basis for this Court to send the case back to Department 20, and Judge Johnson would have had the right to retain this case, or issue a ruling and give the case to this Court, however, he did not. Mr. Pesci argued there is nothing by Court stating Department 20 was retaining the case on this issue, the murder cases are gone from Department 20, the murder cases were taken away from Department 20, Judge Johnson is done and has no jurisdiction on this case, and State would object to this Court sending this case back to Department 20. Discussions. Court stated it does not appear Judge Johnson hung on to this case. Mr. Ruggeroli submitted to the Court's discretion; and added defense is ready to proceed forward with the Petition.

Court noted the State made arguments regarding timeliness on filing of Petition, and the Court will allow defense to be heard on the issue. Mr. Ruggeroli addressed the timeliness issue; and argued as to 21 day rule, review of Preliminary Hearing transcript, there being voluminous discovery, one of the statements not having been available until later, and State's arguments as to timeliness being moot. Mr. Ruggeroli added defense is on good footing to go forward on grounds to move to dismiss. COURT ORDERED, it will allow defense to be heard on the Petition and substantive issue. Mr. Ruggeroli argued in support of Petition; and further argued as to video surveillance, the charges, the video surveillance not showing who was in the car, there being exculpatory evidence, there having been five people in the

convenience store, testimony from the jogger, weight of evidence, Babayan case law, and the evidence not having to be dispositive. Mr. Pesci opposed the Petition; and argued as to alleged phone call, claim having been made about there having been four people getting out of the car, there being four people in the store, Indigo case law, cited in State's supplemental response, and the evidence not being exculpatory. Further arguments by Mr. Ruggeroli as to case law not being applicable.

COURT ORDERED, Petition DENIED. State to prepare order.

CUSTODY

9/05/18 8:30 A.M. STATUS CHECK: HOMICIDE TRIAL

2/05/19 8:30 A.M. CALENDAR CALL

2/12/19 10:30 A.M. TRIAL BY JURY



1 RTRAN

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA,)

7 Plaintiff,)

8 vs.)

9 DAVONTAE AMARRI WHEELER,)

10 Defendant.)

CASE NO. C-17-328587-3

DEPT. XII

11
12 BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

13 THURSDAY, AUGUST 2, 2018

14 **RECORDER'S TRANSCRIPT RE:**
15 **DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

16 APPEARANCES:

17 For the Plaintiff:

GIANCARLO PESCI, ESQ.
Chief Deputy District Attorney

18
19 For the Defendant:

JAMES J. RUGGEROLI, ESQ.

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24 RECORDED BY: KRISTINE SANTI, COURT RECORDER

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LAS VEGAS, NEVADA, THURSDAY, AUGUST 2, 2018

[Case called at 8:37 a.m.]

* * * * *

THE COURT: State of Nevada versus Davontae Wheeler, C328587.
Good morning.

THE DEFENDANT: Good morning.

THE COURT: He's present. He's in custody.

MR. RUGGEROLI: Good morning, Your Honor.

THE COURT: Good morning.

MR. RUGGEROLI: James Ruggeroli appearing on his behalf.

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

THE COURT: Okay, go ahead.

MR. RUGGEROLI: Thank you, Judge.

Your Honor, I did want to make a record. We absolutely have no
objection to you taking over the case.

THE COURT: Sure.

MR. RUGGEROLI: As you know, this came from Department XX. The
unique thing about this writ is that Judge Johnson had essentially been in the middle
of ruling, and so, unfortunately, it's not contained in the minutes and I don't have the
transcript. Mr. Pesci was not present so, unfortunately, he doesn't have a memory
of this.

THE COURT: Okay.

MR. RUGGEROLI: But when we had gone through – and this is
actually our second writ. The first writ involved the State's learning that the gun that
my client was allegedly wearing had not been used in the crime and there was

1 forensic evidence to substantiate that. So on our first writ, Judge Johnson ordered
2 that the State go back and present that to the grand jury. The second writ involved
3 an initial argument of insufficient evidence. Judge Johnson did rule on that and said
4 that I find that there is sufficient evidence.

5 However, I became aware of a report of a witness halfway through filing
6 our second petition about an independent witness. Mr. Wheeler had always
7 maintained to the police that he was present with four other individuals. And this is
8 very important because there's surveillance video of four individuals at a
9 convenience store. Later that night at the scene of the crime, a jogger, a very
10 important witness to the State, observed four individuals present at the crime scene.
11 My client's position that there was a fifth individual at the convenient store is very,
12 very important for the Defense, because if there's only four people present at the
13 scene of the crime, obviously, Mr. Wheeler's statement to the police that he had left
14 those other four individuals prior to the shooting is extremely exculpatory.

15 So Judge Johnson allowed us –

16 THE COURT: Okay. But you understand that witness was equivocal;
17 that that witness said four, five. I mean because I read that witness's statement –

18 MR. RUGGEROLI: Yes.

19 THE COURT: – and I'm not sure that that's necessarily exculpatory.

20 MR. RUGGEROLI: Well –

21 THE COURT: I think it's helpful if – I mean it's helpful to your theory
22 that he left, got out of the car, got on the bus and went home, right?

23 MR. RUGGEROLI: Yes. And it appears that you're ready to rule, and
24 so my argument about this going back to Judge Johnson – that was my initial
25 request is that because he was halfway through really reviewing all of this, I thought

1 that he would be in a better position, but if –

2 THE COURT: Well, did he retain?

3 MR. RUGGEROLI: I can't establish that. I thought he said he's
4 sending the case but will keep the remainder of this argument, but, to be honest with
5 you, Judge, I don't have the transcript. It's not in the minutes.

6 THE COURT: Well, do you want an opportunity to ask him that?

7 MR. RUGGEROLI: That would be fine.

8 THE COURT: I mean because I don't think there's any legal basis,
9 rule, anything that would require me to send it back; however, if he – I think he
10 would have the right to retain it in order to rule on something and then send it to me,
11 but that didn't happen.

12 MR. RUGGEROLI: I understand.

13 THE COURT: I mean it was transferred to me.

14 MR. RUGGEROLI: Correct.

15 MR. PESCI: Judge, if I could be heard on that –

16 I don't want to interrupt your –

17 MR. RUGGEROLI: Please.

18 MR. PESCI: – just on this very issue. I was not present; however,
19 Rachel O'Halloran was and her memory was that there was nothing said by the
20 Court indicating that he was retaining jurisdiction of this particular issue.
21 Additionally, the minutes don't show that. And, lastly, he's lost his murder cases.
22 Just like I had cases in front of you that were murder cases that were taken away
23 midstream, midtrial – not midtrial but midway through litigating things – and they
24 were taken away, but we all dealt with that. And now the exact thing is happening to
25 Judge Johnson. He's done. He doesn't have these anymore. He doesn't have

1 jurisdiction. No one got to hold onto anything.

2 And so the State objects to that, but if the Court so rules we'll go back
3 and fight it there, but there's been no indication via the minutes or anything to
4 indicate that. Plus, I honestly don't think he has the opportunity to because District
5 Court III has taken those all away.

6 THE COURT: Right. I think he would've had to have done it before. I
7 think he could have, I mean because you'd get asked, is there anything that you
8 want to hang onto? He would've had that opportunity, I believe, to hang onto it. It
9 just doesn't appear as though he did.

10 MR. RUGGEROLI: I understand. Can I just have one minute?

11 THE COURT: Sure.

12 MR. RUGGEROLI: Thank you, Judge.

13 [Pause in proceedings]

14 MR. RUGGEROLI: Thank you, Judge.

15 Your Honor, I'm going to submit it and we'll be prepared to go forward
16 today.

17 THE COURT: Okay. I know that the State has made an argument
18 regarding the timeliness. I'm going to allow you to be heard on the issue, so.

19 MR. RUGGEROLI: Thank you, Judge.

20 Judge, the statute specifically provides for good cause to excuse the
21 delay. I think the intent of the 21 days is really not applicable to this instance
22 because I think that 21 days really has to do with reviewing the transcripts and
23 finding out whether there were legal or factual grounds to challenge the findings of
24 the grand jury proceedings.

25 In this particular case, there's been voluminous discovery. One witness

1 statement existed that I was not aware of that I became aware of after the fact, so I
2 think that we do have good cause to excuse the delay. However, I think the State's
3 argument as far as timeliness is essentially moot because I could've certainly filed
4 this as a motion to dismiss, which does not have any time restraints applicable to
5 this matter. So in my supplement, I've asked the Court to allow me leave to
6 essentially have this treated as a motion to dismiss in the alternative and I think that
7 we're on good footing to go forward with grounds to dismiss that are the same that
8 as would be contained in the writ.

9 THE COURT: Right. And I'm going to allow you to be heard on the
10 substantive issue.

11 MR. RUGGEROLI: Thank you, Judge.

12 As to your concern about the equivocation, respectfully, Your Honor,
13 that goes to the weight of the evidence and I think that, despite the fact that he did at
14 one point say four, the most important aspect is that he said five. And then it would
15 be up to the grand jury as an independent reviewer of the evidence –

16 THE COURT: Well, how does that explain away the charges –

17 MR. RUGGEROLI: Because if there were –

18 THE COURT: – against your client?

19 MR. RUGGEROLI: I'm sorry. If there were five people –

20 THE COURT: Okay.

21 MR. RUGGEROLI: – one person could be left in the car. I'm sure the
22 State is going to say that the video surveillance does not show that, but the video
23 surveillance doesn't show who was in the car or if anybody was in the car. It's
24 outside, and so the surveillance video alone cannot disprove that there was a
25 potential fifth person in the car. It's exculpatory because my client's statements to

1 the police were always that there were four other individuals. If there's five total at
2 the surveillance – at the convenience store – and my client gets in the car and
3 leaves with them and prior to the shooting my client gets out of the vehicle, takes the
4 bus home, as he told detectives, and then the jogger runs by and sees four
5 individuals, not five, then it's exculpatory because it explains away my client's
6 presence at the crime scene, you see?

7 THE COURT: It explains away someone's presence.

8 MR. RUGGEROLI: Well, we would argue that it's his because – and
9 that's why it's so important that the grand jury would've been told that there are
10 potentially five people and I think it goes to the weight of the evidence.

11 Now I've cited the *Babayan* case and, for the record, it's 100 – 106 Nev.
12 155, a 1990 case. And in that case, they talk about the fact that the evidence does
13 not have to be dispositive. There were several victims that alleged sex assault in
14 that case. The State had evidence that physicians had reviewed a number of those
15 victims and had no physical findings of sex assault. The State didn't present that
16 evidence to the grand jury. It wouldn't have been dispositive because the alleged –

17 THE COURT: Well, it's clearly exculpatory.

18 MR. RUGGEROLI: Well, I think this is clearly exculpatory, because if
19 you have five people present at a convenient store and my client said that he left
20 before going into this neighborhood, and then the jogger says that there's only four
21 people, then it's exculpatory because it supports my client's credibility that he got
22 out of the car before they ever – the other people ever entered this neighborhood
23 and there was a shooting. It would explain away the charge if there's only four
24 people and my client said he left before them.

25 I don't see how it would not be exculpatory, to be honest with you. And

1 if it is exculpatory and the State was aware of it – the police reports had this. They
2 had already interviewed this individual – the statute is very, very clear, it's not
3 discretionary; the State must present this evidence to the grand jury. And I think
4 that whether it was an oversight or not, and I'm not alleging any misconduct at all on
5 the part of the State, but this evidence had to be presented to the grand jury.

6 THE COURT: Thank you.

7 MR. PESCI: Thank you, Your Honor.

8 And as you pointed out, the individual, Marcell, equivocated and it
9 wasn't one time that he said four; in the State's pleading, page 15, I cite to three
10 different locations in which the witness says four. The individual says four or five.
11 Then he goes on on page – the next page and says two in the front, two in the back.
12 Then he talks about how he, the witness, Marcell, where they're claiming is this
13 exculpatory evidence, calls his girlfriend and says to his girlfriend there's four guys
14 in the car. So he says four more than he says five.

15 Set that aside. You have the video surveillance. We've actually
16 attached it. In the video surveillance, you see four individuals get out of the car, go
17 into the store. The video surveillance inside the store shows four individuals sitting
18 – standing with each other. The video surveillance shows four individuals get out
19 and get into that car and then leave. And then the argument is that somehow the
20 fact that the Defendant says, well, listen, I got out of the car and there are four
21 people seen by the jogger and so that has to be exculpatory, that's interesting and
22 there was no response to the case cited in the reply.

23 The State cited to an interesting case, the Nevada Supreme Court's
24 *Indico v. Eighth Judicial Dist. Court*. And in that case, in which a female defendant
25 butchered her sister-in-law to death, right, who was pregnant, she says that she

1 called 9-1-1 and said the victim stabbed me. She also tells a neighbor before the
2 police came, the victim stabbed me, and then she gives a statement talking about
3 self-defense. And the District Attorney, in that case, went to the grand jury, did not
4 present those self-serving statements by the Defendant, which arguably are far
5 more substantial as far as explaining away the charges than some fourth or fifth
6 mythical person in this video surveillance that doesn't even exist in the surveillance.

7 And the State Supreme Court said all of those statements, the self-
8 serving statements by the Defendant, were not exculpatory. How on earth could this
9 alleged, fifth, mythical person that doesn't show up on the video and then the
10 witness equivocates be exculpatory, when a defendant is saying, I didn't do it, I did it
11 in self-defense, is not exculpatory. There's just not even a question this should be
12 denied.

13 THE COURT: Counsel?

14 MR. RUGGEROLI: Briefly, Judge, the reason why that case is not
15 applicable to the facts here is because I'm not arguing that the State failed to
16 present Mr. Wheeler's statements, which would be potentially self-serving. We have
17 a completely independent witness that has no connection to Mr. Wheeler
18 whatsoever. He's an excellent witness in terms of his objectivity. His first statement
19 was five people. If you read the transcript, what happens is the police that
20 questioned him, they're the ones that went back and caused the doubt, in my
21 opinion, for him to equivocate, but initially his – his initial statement is there were five
22 people, I want to say, five people. It is exculpatory because the grand jury needed
23 that evidence to make an independent decision about whether or not the entirety of
24 the case that the State presented would exclude Mr. Wheeler as being the fourth
25 individual at the scene of the shooting.

1 Once you have Mr. Wheeler – you know it's interesting that Mr.
2 Wheeler had a gun on the surveillance video, but once you find out that gun was not
3 used in the shooting, and once you find out that Mr. Wheeler maintained to the
4 detectives that he had left and that there was a fourth person present at the time,
5 and then once you find out that there's a completely independent witness that, okay,
6 let's say he did equivocate, nevertheless, that goes to the weight of that evidence
7 and the grand jury should be able to consider whether or not saying four or five
8 would be enough to find that the charge has been explained away, and I think it
9 would be. So, because of that, the State did not satisfy their requirement under the
10 statute and the charge should be dismissed.

11 THE COURT: Okay. At this time the Court is going to deny the writ.
12 The State can prepare the order.

13 MR. PESCI: Thank you, Your Honor.

14 MR. RUGGEROLI: Thank you, Judge.

15 THE COURT: Thank you.

16 [Proceedings concluded at 8:51 a.m.]

17 * * * * *

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

20 Kristine Santi
21 KRISTINE SANTI
22 Court Recorder
23
24
25

Steven B. Wolfson

1 **ORDR**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #7135
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 DAVONTAE AMARRI WHEELER,
14 #5909081

15 Defendant.

CASE NO: C-17-328587-3

DEPT NO: XII

16 **ORDER DENYING DEFENDANT'S PRETRIAL PETITION FOR WRIT OF**
17 **HABEAS CORPUS**

18 DATE OF HEARING: 8/2/18
19 TIME OF HEARING: 9:00 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 2nd day of August, 2018, the Defendant being present, REPRESENTED BY JAMES
22 RUGGEROLI, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District
23 Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and the Court
24 having heard the arguments of counsel and good cause appearing therefor,

25 ///

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RECEIVED

AUG 03 2018

DEPT. 12

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1 IT IS HEREBY ORDERED that the Defendant's Pretrial Petition for Writ of Habeas
2 Corpus, shall be, and it is Denied.

3 DATED this 7th day of August, 2018.

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5 
DISTRICT JUDGE

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

GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #7135

dd-MVU



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DEMARIO LOFTON-ROBINSON,
RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. C-17-328587-1

C-17-328587-2

C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, AUGUST 21, 2019

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: TRIAL READINESS**

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For Defendant Lofton-Robinson:

SCOTT BINDRUP
Deputy Special Public Defender

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 21, 2019, 9:16 A.M.

2 * * * * *

3 THE COURT: State versus Lofton-Robinson, Robertson, Davontae Wheeler.
4 Okay. You want to make your appearances?

5 Do we have Mr. -- okay, we do have Mr. Sanft. You can start making
6 your appearances, please.

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

8 MR. RUGGEROLI: Good morning, Your Honor. James Ruggeroli on behalf
9 of Mr. Wheeler who is present in custody.

10 MR. SANFT: Michael Sanft on behalf of Mr. Robertson who is also present in
11 custody, Your Honor, good morning,

12 MR. BINDRUP: Scott Bindrup for Mr. Lofton-Robinson.

13 THE COURT: Okay. The parties are on for trial readiness.

14 Mr. Bindrup, how are you doing?

15 MR. BINDRUP: Doing good, thank you.

16 THE COURT: Okay.

17 MR. BINDRUP: So I think we're --

18 THE COURT: Are you ready?

19 MR. BINDRUP: I'm ready -- I'm going to make an unusual defense request.

20 THE COURT: Okay.

21 MR. BINDRUP: We usually don't ask this, but if there's any way that you can
22 move this trial up one week, I'd appreciate it. If not, I'll just have to try to make due.
23 Just, I have Martin set in this department on November 12th. I expect that to be
24 vacated when it's called and reset for next year. Do you -- how does your week
25 before the 18th look? And I only bring this up because I planned on being out of the

1 country November 25th for a few weeks. But --

2 THE COURT: Okay, can the other parties do it?

3 MR. RUGGEROLI: Judge, I can.

4 MR. SANFT: Yes, Your Honor, we can.

5 MR. PESCI: Sure.

6 MR. RUGGEROLI: That's sooner, so, yes.

7 THE COURT: So there's no objection to moving it up?

8 MR. RUGGEROLI: I just want to clarify for Mr. Wheeler, the request is to

9 actually have the trial date start the week before.

10 THE COURT: Earlier.

11 DEFENDANT WHEELER: All right.

12 MR. BINDRUP: See, they're happy. Remember last time we were in court --

13 THE COURT: Okay. I know.

14 MR. BINDRUP: -- these two were yelling at me for wanting so much

15 additional time, so.

16 THE COURT: I'm happy.

17 MR. SANFT: Who was yelling? Was it me?

18 MR. BINDRUP: No, the -- your clients.

19 MR. SANFT: Okay. I just wanted to make sure.

20 THE COURT: Okay. Since there's no objection, we'll just move the trial date

21 up one week.

22 THE CLERK: Okay. Calendar call is going to be November 5th, 8:30; jury

23 trial, November 12th, 10:30.

24 DEFENDANT WHEELER: I thought trial was going to be --

25 THE COURT: But everybody's ready to go?

1 MR. SANFT: Yes, Your Honor.
2 THE COURT: Okay. Then your next appearance will just be your calendar
3 call.
4 MR. RUGGEROLI: Thank you.
5 MR. BINDRUP: Thank you.
6 MR. PESCI: Thank you, Judge.
7 THE COURT: Thank you.

8 PROCEEDING CONCLUDED AT 9:19 A.M.

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.


SARA RICHARDSON
Court Recorder/Transcriber

Steven D. Grierson

1 **JAMES J. RUGGEROLI**
2 James J. Ruggeroli, Esq.
3 Nevada Bar No. 7891
4 601 South 7th Street
5 Las Vegas, Nevada 89128
6 Telephone: (702) 258-2022
7 *Attorney for Defendant*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

8 STATE OF NEVADA

9 Plaintiff,

Case No: C-16-311920-1

10 vs.

Dept No: XII

11 **JOVAN ALEXANDER JACKSON,**
12 #2778458,

13 Defendant.

ORDER FOR TRANSCRIPTS OF PROCEEDINGS

14 It appearing to the satisfaction of the Court, and good cause appearing therefor,
15
16 IT IS HEREBY ORDERED that certified court reporter, **Kristine Santi**, prepare at the State's
17 expense a transcript of Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)
18 on May 24, 2018 held in Department XII.

19 DATED this 27 day of June, 2018.

20
21 *[Signature]*
22 **DISTRICT COURT JUDGE**
23

24 SUBMITTED BY:
25 **JAMES J. RUGGEROLI**

26 By /s/ James J. Ruggeroli
27 James J. Ruggeroli, Esq.
28 Nevada Bar No. 7891
601 South 7th Street
Las Vegas, Nevada 89101

Page 1 of 1

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JAMES J. RUGGEROLI, ESQ.

601 South 7th Street

Las Vegas, Nevada 89101

TEL: (702) 258-2022 | FAX: (702) 258-2021

Steven D. Grierson

1 **JAMES J. RUGGEROLI**
2 James J. Ruggeroli, Esq.
3 Nevada Bar No. 7891
4 601 South 7th Street
5 Las Vegas, Nevada 89128
6 Telephone: (702) 258-2022
7 *Attorney for Defendant*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

8 STATE OF NEVADA

9 Plaintiff,

Case No: C-17-328587-3

10 vs.

Dept No: XII

11 DAVONTAE WHEELER,
12 #2778458,

13 Defendant.

ORDER FOR TRANSCRIPTS OF PROCEEDINGS

14 It appearing to the satisfaction of the Court, and good cause appearing therefor,
15 IT IS HEREBY ORDERED that certified court reporter, **Kristine Santi**, prepare at the State's
16 expense a transcript of Defendant's Petition for Writ of Habeas Corpus heard on August
17 2, 2018 in Department XII.

18 DATED this 23 day of August 2018.

19 *[Signature]*
20 DISTRICT COURT JUDGE

21 SUBMITTED BY:
22 **JAMES J. RUGGEROLI**

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

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JAMES J. RUGGEROLI, ESQ.

601 South 7th Street
Las Vegas, Nevada 89101
TEL: (702) 258-2022 | FAX: (702) 258-2021

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

September 05, 2018

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

September 05, 2018 08:30 AM Status Check: Homicide Trial

HEARD BY: Leavitt, Michelle COURTROOM: RJC Courtroom 14D

COURT CLERK: Botzenhart, Susan

RECORDER: Kirkpatrick, Jessica

REPORTER:

PARTIES PRESENT:

Davontae Amarri Wheeler

Defendant

Giancarlo Pesci

Attorney for Plaintiff

James J. Ruggeroli

Attorney for Defendant

State of Nevada

Plaintiff

JOURNAL ENTRIES

Mr. Ruggeroli not present. Court TRAILED and RECALLED matter. Mr. Ruggeroli now present; and informed the Court bail setting on this case should reflect for \$250,000.00, the case shows no bail, and defense would request the bail setting be re-issued. Mr. Pesci confirmed there was a Motion for own recognizance release denied by Judge Eric Johnson on March 22, 2018, and the bail setting is still accurate. COURT ORDERED, bail SET at \$250,000.00 with House Arrest through CCDC as a condition, upon bail being posted. Mr. Ruggeroli stated he needs to meet with the investigator, and he also needs the video recording from discovery. Discussions as to file review needing to be done, and trial date. COURT ORDERED, matter SET for another status check, trial date STANDS.

CUSTODY

12/05/18 8:30 A.M. STATUS CHECK: TRIAL READINESS

2/05/19 8:30 A.M. CALENDAR CALL

2/12/19 10:30 A.M. TRIAL BY JURY

CLERK'S NOTE: Minutes amended to include the House Arrest condition. 9/24/18 /// sb



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. C-17-328587-2

C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, SEPTEMBER 5, 2018

RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: HOMICIDE TRIAL

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, SENIOR RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 5, 2018, 8:50 A.M.

2 * * * * *

3 THE COURT: Page 1, State versus Davontae Wheeler, case C328587. He's
4 present in custody. Do we have Mr. Ruggeroli here?

5 MR. PESCI: I haven't seen him, Your Honor.

6 THE COURT: Has he checked in?

7 MR. PESCI: I'm not sure.

8 THE COURT: Okay.

9 [Proceeding trailed until 9:29 a.m.]

10 THE COURT: State versus Davontae Wheeler, case C328587.

11 [Colloquy between the Court and the Clerk]

12 THE COURT: What page are you on, Mr. Sanft?

13 MR. SANFT: Page 25, Your Honor, that's Mr. Robertson.

14 THE COURT: And page 25, State versus Robertson, C328587, they're both
15 present. They're both in custody.

16 MR. RUGGEROLI: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. RUGGEROLI: James Ruggeroli on behalf of Mr. Wheeler. Judge, there
19 were a couple of issues. The first I'd like to bring up, and I did make Mr. Pesci
20 aware of this, bail had been set at 250,000. At some point when the case was
21 transferred, or prior to it being transferred, for some reason it looks like the computer
22 has it at no bail. We've never readdressed this and I think bail should just be at
23 250,000.

24 THE COURT: Well, when was it set and by whom?

25 MR. RUGGEROLI: Department 20 set it.

1 THE COURT: Is there an --

2 MR. RUGGEROLI: We had a motion and I don't know if it's because the
3 State went back to the grand jury at one point based on writ work that we did and
4 then brought Mr. Wheeler back. In any event, right now he's being held, I believe,
5 with no bail and we're just respectfully requesting that that 250,000 that was already
6 ordered be reissued.

7 MR. PESCI: Judge, on December the 14th of 2017, at the return of the true
8 bill, the District Court set bail at \$250,000. Defense counsel and the defendant on
9 March 22nd, 2018, made a motion for an O.R. or reduction of bail, that was denied.

10 THE COURT: Okay.

11 MR. PESCI: So it is accurate that it should be 250,000.

12 THE COURT: Okay.

13 MR. RUGGEROLI: Thank you, Judge.

14 Your Honor, as to potential evidentiary issues, I've raised this with
15 Mr. Pesci, I'm meaning to meet with my investigator but there's only a couple of
16 items right now that I'm -- I'm specifically looking into, in particular, a video recording
17 of my client's statements to the police, whether or not there was a second voluntary
18 statement by my client to the police. We don't believe there was, but I just want to
19 make sure, if there are any allegations that he spoke to police on more than one
20 occasion, I'm sure Mr. Pesci will make us aware of that. At this time we have no
21 information regarding any second statement.

22 And, finally, whether or not there was an application for a search
23 warrant on the Civic Center address, that may not have been done because of a --
24 police claiming that there was consent. So Mr. Pesci's aware of this. I think we're
25 going to arrange a file review in -- within, hopefully, a couple of weeks to go over

1 these issues specifically.

2 THE COURT: Okay. Mr. Sanft.

3 MR. SANFT: Your Honor, we'll be working with the State with regards to
4 discovery. I don't think -- believe there's any outstanding discovery that has not
5 been provided to my office. My client has talked to me about some motions that he
6 wants to have filed, so I'll be talking to him about the legalities of that, but outside of
7 that we're ready -

8 THE COURT: Okay.

9 MR. SANFT: -- to go forward.

10 THE COURT: But you'll do a file review before the next status check?

11 MR. RUGGEROLI: Yes.

12 THE COURT: Okay. 60 days.

13 THE CLERK: December 5, 8:30.

14 MR. SANFT: Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. RUGGEROLI: Thank you, Judge.

17 MR. PESCI: Thank you, Your Honor.

18 PROCEEDING CONCLUDED AT 9:32 A.M.

19 * * * * *

20

21

22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.

24 
25 SARA RICHARDSON
Court Recorder/Transcriber

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Steven D. Grierson

1 **ROC**
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

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 DAVONTAE WHEELER #5909081,
13 Defendant.

CASE NO: C-17-328587-3

DEPT NO: XII

14
15 RECEIPT OF COPY

16
17 RECEIPT OF COPY of the above and foregoing USB drive containing documents
18 Bates numbered 14821-15831, 1147 photos totaling 6.01 GB, 3 CFL reports totaling 21 GB,
19 and video files totaling 744 MB is hereby acknowledged this 3 day of Dec
20 2018.

21
22 JAMES RUGGEROLI
23 ATTORNEY FOR DEFENDANT

24 BY

R. Franky
25 601 S. Seventh St.
26 Las Vegas, Nevada 89101

27
28 17F14369C jn/MVU