

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. 4 OF 14)

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Nevada Bar No.: 6834
1361 Babbling Brook Court
Mesquite, Nevada 89034
(702) 363-4656
Attorneys for Appellant

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AGREEMENT TO TESTIFY (ROBINSON)	10-21-2018	2592	011
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ARRAIGNMENT-SUPERSEDING INDICTMENT-RT	05-03-2018	0567	003
BAIL-RT	03-20-2018	0502	003
BAIL-RT	03-22-2018	0506	003
BAIL-RT	09-05-2018	0741	003
BAIL-STATE OPPOSITION	03-19-2018	0449	002
BAIL-WHEELER MOTION	03-13-2018	0440	002
BRADY-RT	12-31-2019	1068	005
BRADY-RT	01-15-2020	1085	005
BRADY-STATE OPPOSITION	12-26-2019	1002	005
BRADY-STATE OPPOSITION	12-27-2019	1015	005
BRADY-WHEELER MOTION	12-20-2019	0929	004
BRADY-WHEELER MOTION	12-20-2019	0956	004
CONTINUE TRIAL-RT	11-05-2019	0904	004
CONTINUE TRIAL-WHEELER MOTION	12-14-2018	0814	004
DISCLOSE INFORMANTS-RT	12-31-2019	1068	005
DISCLOSE INFORMANTS-RT	01-15-2020	1085	005
DISCLOSE INFORMANTS-STATE OPPOSITION	12-26-2019	1008	005
DISCLOSE INFORMANTS-WHEELER MOTION	12-20-2019	0942	004
EXHIBIT LIST	02-19-2020	3103	013
EXHIBITS	02-13-2020	1991	009
EXHIBITS	02-14-2020	2385	010
EXHIBITS	02-18-2020	2814	012
EXHIBITS	02-19-2020	3096	013
EXHIBITS	02-20-2020	3124	014
EXPERTS-STATE 2ND SUPP	01-13-2020	1073	005
EXPERTS-STATE 3RD SUPP	02-06-2020	1107	005
EXPERTS-STATE NOTICE	12-13-2018	0752	004
EXPERTS-STATE SUPP. NOTICE	10-11-2019	0891	004
GRAND JURY-EXHIBITS	11-29-2017	0340	002
GRAND JURY-INSTRUCTIONS	11-29-2017	0326	002
GRAND JURY-RT	11-29-2017	0167	001
GRAND JURY-RT	12-13-2017	0378	002
HABEAS PETITION-ORDER	08-08-2018	0733	003
HABEAS PETITION-RT	02-27-2018	0422	002
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HABEAS PETITION-RT	06-06-2018	0632	003
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
HABEAS PETITION-WHEELER REPLY	06-08-2018	0639	003
HABEAS PETITION-WHEELER REPLY TO SUPP	07-05-2018	0713	003
INDICTMENT	12-14-2017	0385	002
INFORMATION (ROBINSON)	10-04-2018	2590	011
JUDGMENT OF CONVICTION	06-17-2020	3318	014
JURY INSTRUCTIONS	02-19-2020	1358	006
JURY INSTRUCTIONS-WHEELER PROPOSED	02-19-2020	3099	013
JURY LIST	02-12-2020	1354	006
JURY LIST	02-12-2020	1724	007
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
JURY TRIAL (DAY 6)-RT	02-19-2020	2881	012
JURY TRIAL (DAY 7)-RT	02-20-2020	3119	014
JURY TRIAL (DAY 8)-RT	02-24-2020	3266	014
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METRO-FIREARMS REPORT	01-22-2018	0438	002
METRO-FIREARMS REPORT-RT	04-05-2018	0520	003
METRO-TEMPORARY CUSTODY RECORD	12-14-2017	0391	002
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SENTENCING-STIPULATION	02-11-2020	1352	006
SEVER COUNTS-RT	12-31-2019	1068	005
SEVER COUNTS-RT	01-15-2020	1085	005
SEVER COUNTS-STATE RESPONSE	12-26-2019	0991	004
SEVER COUNTS-WHEELER MOTION	12-20-2019	0918	004
SEVER DEFENDANTS-ORDER	03-15-2019	0877	004
SEVER DEFENDANTS-RT	01-02-2019	0818	004
SEVER DEFENDANTS-RT	01-16-2019	0856	004
SEVER DEFENDANTS-STATE OPPOSITION	01-15-2019	0829	004
SEVER DEFENDANTS-WHEELER MOTION	12-14-2018	0817-01	004
SEVER DEFENDANTS-WHEELER SUPPLEMENT	01-04-2019	0825	004
STATUS CHECK-RT	12-05-2018	0748	004
STATUS CHECK-RT	04-17-2019	0880	004
STATUS CHECK-RT	05-15-2019	0885	004
STATUS CHECK-RT	12-18-2019	0914	004
STAY PROCEEDINGS-RT	03-05-2019	0873	004
STAY PROCEEDINGS-WHEELER MOTION	01-19-2019	0865	004
SUPERSEDING INDICTMENT	04-19-2018	0553	003
SUPERSEDING INDICTMENT (AMENDED)	02-11-2020	1348	006
SUPERSEDING INDICTMENT-RT	04-18-2018	0528	003
SUPPRESS JAIL CALLS-RT	12-31-2019	1068	005
SUPPRESS JAIL CALLS-RT	01-15-2020	1085	005
SUPPRESS JAIL CALLS-STATE OPPOSITION	12-26-2019	0996	005
SUPPRESS JAIL CALLS-WHEELER MOTION	12-20-2019	0985	004
SUPPRESS STMT-RT	12-31-2019	1068	005
SUPPRESS STMT-RT	01-15-2020	1085	005
SUPPRESS STMT-STATE OPPOSITION	12-30-2019	1048	005
SUPPRESS STMT-WHEELER MOTION	12-20-2019	0948	004
SUPPRESS STMT.-RT	02-11-2020	1290	006
TRIAL CONTINUE-RT	08-21-2019	0735	003
TRIAL SETTING-RT	01-09-2018	0400	002
VERDICT	02-24-2020	1398	006
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WITNESSES-STATE 3RD SUPP	02-06-2020	1107	005
WITNESSES-STATE NOTICE	12-13-2018	0752	004
WITNESSES-STATE SUPP. NOTICE	10-11-2019	0891	004

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VOLUNTARY STMT-SOLOMON	09-07-2017	0149	001
GRAND JURY-RT	11-29-2017	0167	001
GRAND JURY-INSTRUCTIONS	11-29-2017	0326	002
GRAND JURY-EXHIBITS	11-29-2017	0340	002
GRAND JURY-RT	12-13-2017	0378	002
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HABEAS PETITION-RT	02-27-2018	0422	002
HABEAS PETITION-STATE RETURN	03-02-2018	0464	002
HABEAS PETITION-STATE RETURN	03-08-2018	0427	002
BAIL-WHEELER MOTION	03-13-2018	0440	002
BAIL-STATE OPPOSITION	03-19-2018	0449	002
HABEAS PETITION-RT	03-20-2018	0502	003
BAIL-RT	03-20-2018	0502	003
HABEAS PETITION-RT	03-22-2018	0506	003
BAIL-RT	03-22-2018	0506	003
METRO-FIREARMS REPORT-RT	04-05-2018	0520	003
SUPERSEDING INDICTMENT-RT	04-18-2018	0528	003
SUPERSEDING INDICTMENT	04-19-2018	0553	003
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HABEAS PETITION-STATE RETURN	05-29-2018	0598	003
HABEAS PETITION-RT	05-31-2018	0628	003
HABEAS PETITION-RT	06-06-2018	0632	003
HABEAS PETITION-WHEELER REPLY	06-08-2018	0639	003
HABEAS PETITION-RT	06-14-2018	0661	003
HABEAS PETITION-RT	06-14-2018	0672	003
HABEAS PETITION-STATE SUPP TO RETURN	06-28-2018	0688	003
POLYGRAPH-ORDER	07-02-2018	0711	003
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STATUS CHECK-RT	12-05-2018	0748	004
EXPERTS-STATE NOTICE	12-13-2018	0752	004
WITNESSES-STATE NOTICE	12-13-2018	0752	004
CONTINUE TRIAL-WHEELER MOTION	12-14-2018	0814	004
SEVER DEFENDANTS-WHEELER MOTION	12-14-2018	0817-01	004
SEVER DEFENDANTS-RT	01-02-2019	0818	004
SEVER DEFENDANTS-WHEELER SUPPLEMENT	01-04-2019	0825	004
SEVER DEFENDANTS-STATE OPPOSITION	01-15-2019	0829	004
SEVER DEFENDANTS-RT	01-16-2019	0856	004
STAY PROCEEDINGS-WHEELER MOTION	01-19-2019	0865	004
STAY PROCEEDINGS-RT	03-05-2019	0873	004
SEVER DEFENDANTS-ORDER	03-15-2019	0877	004
STATUS CHECK-RT	04-17-2019	0880	004
STATUS CHECK-RT	05-15-2019	0885	004
TRIAL CONTINUE-RT	08-21-2019	0735	003
WITNESSES-STATE SUPP. NOTICE	10-11-2019	0891	004
EXPERTS-STATE SUPP. NOTICE	10-11-2019	0891	004
CONTINUE TRIAL-RT	11-05-2019	0904	004
STATUS CHECK-RT	12-18-2019	0914	004
SEVER COUNTS-WHEELER MOTION	12-20-2019	0918	004
BRADY-WHEELER MOTION	12-20-2019	0929	004
DISCLOSE INFORMANTS-WHEELER MOTION	12-20-2019	0942	004
SUPPRESS STMT-WHEELER MOTION	12-20-2019	0948	004
BRADY-WHEELER MOTION	12-20-2019	0956	004
SUPPRESS JAIL CALLS-WHEELER MOTION	12-20-2019	0985	004
SEVER COUNTS-STATE RESPONSE	12-26-2019	0991	004
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
SUPPRESS STMT-STATE OPPOSITION	12-30-2019	1048	005
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SUPPRESS STMT-RT	12-31-2019	1068	005
WITNESSES-STATE 2ND SUPP	01-13-2020	1073	005
EXPERTS-STATE 2ND SUPP	01-13-2020	1073	005
BRADY-RT	01-15-2020	1085	005
SUPPRESS JAIL CALLS-RT	01-15-2020	1085	005
DISCLOSE INFORMANTS-RT	01-15-2020	1085	005
SEVER COUNTS-RT	01-15-2020	1085	005
SUPPRESS STMT-RT	01-15-2020	1085	005
VIDEO WITNESS (CHARLTON)-STATE MOTION	01-28-2020	1092	005
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EXPERTS-STATE 3RD SUPP	02-06-2020	1107	005
JURY TRIAL (DAY 1)-RT	02-11-2020	1114	005
SUPPRESS STMT.-RT	02-11-2020	1290	006
SUPERSEDING INDICTMENT (AMENDED)	02-11-2020	1348	006
SENTENCING-STIPULATION	02-11-2020	1352	006
JURY LIST	02-12-2020	1354	006
JURY TRIAL (DAY 2)-RT	02-12-2020	1400	006
JURY LIST	02-12-2020	1724	007
JURY TRIAL (DAY 3)-RT	02-13-2020	1727	007
EXHIBITS	02-13-2020	1991	009
JURY LIST (AMENDED)	02-14-2020	1356	006
JURY TRIAL (DAY 4)-RT	02-14-2020	2121	009
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
JURY INSTRUCTIONS	02-19-2020	1358	006
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
EXHIBIT LIST	02-19-2020	3103	013
JURY TRIAL (DAY 7)-RT	02-20-2020	3119	014
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

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

December 05, 2018 08:30 AM Status Check: Trial Readiness

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

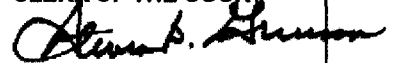
Mr. Ruggeroli informed the Court there was a bit of a delay to go do a file review due to scheduling, as there are three attorneys on the case, however, defense completed the file review, and just received large amount of documents and discovery, defense would request a status check be set in two weeks to review the documents, and he may be filing a motion. State made no objection. **COURT ORDERED**, matter SET for status check. Mr. Pesci noted the other Co-Def. on this case is still at Lakes Crossing.

CUSTODY

12/19/18 8:30 A.M. STATUS CHECK: DISCOVERY / TRIAL READINESS

2/05/19 8:30 A.M. CALENDAR CALL

2/12/19 10:30 A.M. TRIAL BY JURY



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, DECEMBER 5, 2018

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: TRIAL READINESS**

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: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, DECEMBER 5, 2018, 8:44 A.M.

2 * * * * *

3 THE COURT: Page 12 and 13, State versus Robertson and Wheeler,
4 C328587.

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

7 THE COURT: Okay.

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

9 THE COURT: Mr. Sanft?

10 MR. SANFT: Thank you, Your Honor. I'm present as well with my client.

11 THE COURT: Thank you.

12 MR. SANFT: He's here.

13 THE COURT: All right. This is on for trial readiness.

14 MR. RUGGEROLI: Judge, we had a bit of a delay in getting over and doing a
15 file review because there were three attorneys and all of our schedules, but we have
16 completed that and then there was a large amount of documents and discovery that
17 we needed to be copied for us. I just received that this week. We're asking for a
18 two-week status check for us to have a chance to review those new materials. I
19 think there's going to be at least one motion that I plan on filing as a result of some
20 of that. So I think if the Court can accommodate a December 19th status check
21 date.

22 THE COURT: Okay.

23 MR. PESCI: No objection from the State. We also have a third defendant
24 who is currently at Lake's Crossing.

25 MR. SANFT: And, Your Honor, just for the record, on behalf of

1 Mr. Robertson, he's indicated to me multiple times that he will be intending on going
2 forward with his trial on the trial date that's set. I have received the same discovery.
3 I'll be reviewing it. But I told Mr. Robertson that I'll make every effort to be ready for
4 that trial date.

5 THE COURT: Okay. So we'll put it on for two weeks.

6 MR. RUGGEROLI: Thank you, Judge.

7 THE CLERK: December 19, 8:30.

8 MR. PESCI: Thank you, Your Honor.

9 THE COURT: Thank you.

10 PROCEEDING CONCLUDED AT 8:46 A.M.

11 * * * * *

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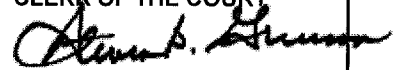
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19

20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
22 video recording of this proceeding in the above-entitled case.

23 
24 SARA RICHARDSON
25 Court Recorder/Transcriber



1 NNEW
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, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

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

Defendants.

CASE NO: C-17-328587-1
C-17-328587-2
C-17-328587-3

DEPT NO: XII

STATE'S NOTICE OF WITNESSES AND/OR EXPERT WITNESSES
[NRS 174.234]

19 TO: DEMARIO LOFTON-ROBINSON, aka Demario Loftonrobinson, Defendant;
20 and

21 TO: SCOTT BINDRUP, Deputy Special Public Defender, Counsel of Record:

22 TO: RAEKWON SETRY ROBERTSON, aka Raekwon Robertson, Defendant; and

23 TO: MICHAEL SANFT, ESQ., Counsel of Record:

24 TO: DAVONTAE AMARRI WHEELER, Defendant; and

25 TO: JAMES RUGGEROLI, ESQ., Counsel of Record:

26 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
27 NEVADA intends to call the following witnesses in its case in chief:

28 ///

	<u>NAME</u>	<u>ADDRESS</u>
1	BAMBARENDAGO, SARATH	5565 W. DEWEY DR., LVN
2	BOGATAY, M.	LVMPD P#7782
3	BUSHMAN, TRACEY	LVMPD P#8618
4	CALLEJA, A.	LVMPD P#9185
5	CATRICALA, W.	LVMPD P#12939
6	COOK, D.	LVMPD P#5730
7	CUSTODIAN OF RECORDS	FIESTA DISCOUNT MARKET
8	CUSTODIAN OF RECORDS	NEVADA DMV
9	DIZON, PELITA	c/o CCDA-VWAC, 200 LEWIS AVE., LVN
10	GARCIA, C.	LVMPD P#8913
11	HONAKER, JAMIE	CCDA INVESTIGATOR
12	JANO, BOB	5536 W. DEWEY DR., LVN
13	JANO, MERCEDITA	5536 W. DEWEY DR., LVN
14	JUSTICE, JANESEA	3300 CIVIC CENTER, N. LAS VEGAS, NV
15	KLASSEN, RAE	SHORTLINE EXPRESS, 7325 S. JONES, LVN
16	MCCARTHY, J.	LVMPD P#4715
17	MENDEZ, LUCY	5224 ZACHARY ST., LVN
18	MERRICK, F.	LVMPD P#7549
19	PARKER, J.	LVMPD P#12936
20	PARRA, JOSEPH	LVMPD P#10025
21	REEVES, ANTHONY	1327 H. ST., LVN
22	ROBINSON, DESHAWN	c/o J.D. EVANS, ESQ.
23	ROMATKO, MARIAH	7101 PINELAKE RD., LVN
24	SANDOVAL, H.	LVMPD P#5819
25	SOLOMON, MARCELL	2043 SOMBRERO DR., LVN
26	TRAMBONI, J.	LVMPD P#9331
27	TRUAX, M.	LVMPD P#13752

1 WILLIAMS, TOD

LVMPD P#3811

2
3 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
4 NEVADA intends to call the following expert witnesses in its case in chief:

5 **BARRINGER, D. – LVMPD P#7178** (or designee): Expert in the area of cellular
6 phones, including but not limited to, cellular system technology including cell tower
7 generation of calls and ability to determine the location where generated, collection and
8 handling of cellular phones for evidentiary purposes, and the examination, preservation,
9 retrieval and analysis of cellular call and text records/data, photos and/or video and/or any
10 other data kept on a cellular phone. Further, this expert will testify to the results of any and
11 all examinations performed on the cellular phones in this case.

12 **BROWNING, CLAIRE – LVMPD P#15291** (or designee): Expert in the
13 identification, documentation, collection and preservation of evidence, including crime scene
14 analysis and is expected to testify as an expert to the identification, documentation, collection
15 and preservation of evidence in this case.

16 **CHARLTON, NOREEN – LVMPD P#13572** (or designee): Expert in the
17 identification, documentation, collection and preservation of evidence, including crime scene
18 analysis and is expected to testify as an expert to the identification, documentation, collection
19 and preservation of evidence in this case.

20 **CORNEAL, DR. JENNIFER** (or designee): is a medical doctor employed by the
21 Clark County Coroner Medical Examiner. She is an expert in the area of forensic pathology
22 and will give scientific opinions related thereto. She is expected to testify regarding the cause
23 and manner of death of GABRIEL VALENZUELA in this case.

24 **CORNELL, LAURA – LVMPD P#13576** (or designee): Expert in the identification,
25 documentation, collection and preservation of evidence, including crime scene analysis and is
26 expected to testify as an expert to the identification, documentation, collection and
27 preservation of evidence in this case.
28

1 **FLETCHER, SHAWN – LVMPD P#5221** (or designee): Expert in the identification,
2 documentation, collection and preservation of evidence, including crime scene analysis and is
3 expected to testify as an expert to the identification, documentation, collection and
4 preservation of evidence in this case.

5 **FLINK, J. – LVMPD P#6272** (or designee): Expert in the area of cellular phones,
6 including but not limited to, cellular system technology including cell tower generation of calls
7 and ability to determine the location where generated, collection and handling of cellular
8 phones for evidentiary purposes, and the examination, preservation, retrieval and analysis of
9 cellular call and text records/data, photos and/or video and/or any other data kept on a cellular
10 phone. Further, this expert will testify to the results of any and all examinations performed on
11 the cellular phones in this case.

12 **GAVIN, DR. LISA** (or designee): is a medical doctor employed by the Clark County
13 Coroner Medical Examiner. She is an expert in the area of forensic pathology and will give
14 scientific opinions related thereto. She is expected to testify regarding the cause and manner
15 of death of GABRIEL VALENZUELA in this case.

16 **GUERRERO, G. – LVMPD P#15290** (or designee): Expert in the identification,
17 documentation, collection and preservation of evidence, including crime scene analysis and is
18 expected to testify as an expert to the identification, documentation, collection and
19 preservation of evidence in this case.

20 **LESTER, A. – LVMPD P#13771** (or designee): Expert in the area of
21 firearm/toolmark analysis, bullet trajectory comparison and will give opinions related thereto.
22 Additionally, is expected to testify regarding the collection, comparison and analysis of
23 firearms, ammunitions, ballistics and toolmark evidence as it relates to this case.

24 **ROQUERO, DR. LEONARDO** (or designee): is a medical doctor employed by the
25 Clark County Coroner Medical Examiner. He is an expert in the area of forensic pathology
26 and will give scientific opinions related thereto. He is expected to testify regarding the cause
27 and manner of death of GABRIEL VALENZUELA in this case.
28

1 **RUBINO, A. – LVMPD P#14784** (or designee): Expert in the field of DNA
2 extractions, comparisons, analysis and the identification of bodily fluids and is expected to
3 testify thereto.

4 **SCHELLBERG, P. – LVMPD P#5413** (or designee): Expert in the identification,
5 documentation, collection and preservation of evidence, including crime scene analysis and is
6 expected to testify as an expert to the identification, documentation, collection and
7 preservation of evidence in this case.

8 **SCOTT, JEFFREY – LVMPD P#9618** (or designee): Expert in the identification,
9 documentation, collection and preservation of evidence, including crime scene analysis and is
10 expected to testify as an expert to the identification, documentation, collection and
11 preservation of evidence in this case.

12 **SHANNON, J. – LVMPD P#13482** (or designee): Expert in the identification,
13 documentation, collection and preservation of evidence, including crime scene analysis and is
14 expected to testify as an expert to the identification, documentation, collection and
15 preservation of evidence in this case.

16 **SIMMS, DR. LARY** (or designee): is a medical doctor employed by the Clark County
17 Coroner Medical Examiner. He is an expert in the area of forensic pathology and will give
18 scientific opinions related thereto. He is expected to testify regarding the cause and manner
19 of death of GABRIEL VALENZUELA in this case.

20 **SPEAS, WILLIAM – LVMPD P#5228** (or designee): Expert in the identification,
21 documentation, collection and preservation of evidence, including crime scene analysis and is
22 expected to testify as an expert to the identification, documentation, collection and
23 preservation of evidence in this case.

24 **STEPHENS, EBONY - LVMPD P#5158** (or designee): Expert in the identification,
25 documentation, collection and preservation of evidence, including crime scene analysis and is
26 expected to testify as an expert to the identification, documentation, collection and
27 preservation of evidence in this case.

28

1 **TAPAY, GLEZZELLE – LVMPD P#15709** (or designee): Expert in the
2 identification, documentation, collection and preservation of evidence, including crime scene
3 analysis and is expected to testify as an expert to the identification, documentation, collection
4 and preservation of evidence in this case.

5 **TOMAINO, D. – LVMPD P#8278** (or designee): Expert in the area of cellular
6 phones, including but not limited to, cellular system technology including cell tower
7 generation of calls and ability to determine the location where generated, collection and
8 handling of cellular phones for evidentiary purposes, and the examination, preservation,
9 retrieval and analysis of cellular call and text records/data, photos and/or video and/or any
10 other data kept on a cellular phone. Further, this expert will testify to the results of any and
11 all examinations performed on the cellular phones in this case.

12 These witnesses are in addition to those witnesses endorsed on the Information or
13 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert
14 Witnesses has been filed.

15 The substance of each expert witness' testimony and copy of all reports made by or at
16 the direction of the expert witness has been provided in discovery.

17 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

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

21 BY /s/GIANCARLO PESCI
22 GIANCARLO PESCI
23 Chief Deputy District Attorney
24 Nevada Bar #7135
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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 13th day of
December, 2018, by electronic transmission to:

SCOTT BINDRUP, Dep. Special Public Defender
Email: Scott.Bindrup@ClarkCountyNV.gov
(Def. LOFTON-ROBINSON)

ELIZABETH ARAIZA, SPD Secretary
Email: Elizabeth.araiza@clarkcountynv.gov

MICHAEL SANFT, ESQ.
Email: michael@sanftlaw.com
(Def. ROBERTSON)

JAMES RUGGEROLI, ESQ.
Email: ruggeroli@icloud.com
(Def. WHEELER)

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

17F14369ABC-dd/MVU



Detective Damon Barringer P# 7178

Las Vegas Metropolitan Police Department

400 S. Martin Luther King Blvd.

Las Vegas, NV 89106

Office (702) 828-1388

Email D7178B@LVMPD.com

CURRICULUM VITAE

CURRENT EMPLOYMENT

- Detective and Computer Forensic Examiner, Las Vegas Metropolitan Police Department, Secret Service Electronic Crimes Task Force.
- Employed with LVMPD since 2001.
- Acquired over 2000 hours of police specific training, of which, more than 303 hours are in areas relevant to conducting examinations on electronic storage devices and associated techniques.

EDUCATION CURRICULUM

- Nevada POST certification
 - Las Vegas Metropolitan Police Department, 2001
- National University
 - Master of Science: Management Information Systems, 2012

CERTIFICATIONS

- ACE- AccessData Certified Examiner (April 2016)
- MCFE- Magnet Certified Forensic Examiner (September 2016)
- CCLO- Cellebrite Certified Logical Operator (October 2016)
- CCPA- Cellebrite Certified Physical Analyst (October 2016)
- CFCE- Certified Forensic Computer Examiner (October 2016)

COMPUTER FORENSIC TRAINING

- AccessData Bootcamp
 - AccessData, February 2016
- Windows Registry
 - AccessData, March 2016
- Internet Forensics
 - AccessData, April 2016
- Mac Forensics
 - AccessData, April 2016
- Basic Certified Forensic Examiner Training
 - International Association of Computer Investigative Specialists, April 2016
- Windows 8 Forensics
 - AccessData, May 2016
- Windows OS Forensics
 - AccessData, May 2016
- Advanced FTK
 - AccessData, August 2016
- Networking for Incident Response I
 - AccessData, August 2016
- IEF Computer Essentials Training Course and Practical Skills Assessment
 - Magnet Forensics, September 2016
- Cellebrite Certified Logical Operator Course
 - Cellebrite, October 2016
- Cellebrite Certified Physical Analyst Course
 - Cellebrite, October 2016

ASCLD/LAB-International

STATEMENT OF QUALIFICATIONS

Name	Claire Browning P# 15291	Date	6/26/2017
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Laboratory	Las Vegas Metropolitan Police Department - Crime Scene Investigations Section
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Job Title	Crime Scene Analyst I
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Indicate all disciplines in which you do casework:

<input type="checkbox"/>	Drug Chemistry	<input type="checkbox"/>	Toxicology
<input type="checkbox"/>	Firearms/Toolmarks	<input type="checkbox"/>	Biology
<input type="checkbox"/>	Trace Evidence	<input type="checkbox"/>	Questioned Documents
<input type="checkbox"/>	Latent Prints	<input checked="" type="checkbox"/>	Crime Scene
<input type="checkbox"/>	Digital & Multimedia Evidence		

List all category(ies) of testing in which you do casework:

Crime Scene Investigation; Body Fluid Identification
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Breath Alcohol Calibration Categories

<input type="checkbox"/>	Toxicology - Breath Alcohol Measuring Instruments (The work of the laboratory MUST include calibration certificates- do not check the box if work is limited to breath/alcohol testing)
<input type="checkbox"/>	Toxicology - Breath Alcohol Calibration Reference Material

Education: List all higher academic institutions attended (list high school only if no college degree has been attained)

Institution	Dates Attended	Major	Degree Completed
Ivy Tech Community College	2008-2010	N/A	N/A
Purdue University	2010-2013	Interdisciplinary Sciences- Forensic Sciences	BS

Other Training: List continuing education, workshops, in-service and other formal training received. Please include the course title, source and date of the training.

09-30-15 Crime Scene Analyst Academy LVMPD Las Vegas, NV
07-28-16 Basic Medicolegal Death Investigation IACME Las Vegas, NV
3-31-17 Basic Bloodstain Recognition Course-LVMPD-C. Moore-Las Vegas, NV

Courtroom Experience: List the discipline/category(ies) of testing in which you have qualified to testify as an expert witness and indicate over what period of time and approximately how many times you have testified in each.

Testified in court from 07/06/2015 to present:
Crime Scene Investigation - 3
Body Fluid Identification - 0

Professional Affiliations: List any professional organizations of which you are or have been a member. Indicate any offices or other positions held and the date(s) of these activities.

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Employment History: List all scientific or technical positions held, particularly those related to forensic science. List current position first. Be sure to indicate employer and give a brief summary of principal duties and tenure in each position.

Job Title	Crime Scene Analyst I	Tenure	07/06/2015 to present
Employer	Las Vegas Metropolitan Police Department		
Provide a brief description of principal duties:			
Respond to and investigate crime scenes; perform a variety of tasks in documenting crime scenes including photographically documenting crime scenes, photographing fingerprints, and sketching and diagraming crime scene; powder or chemically process for latent fingerprints; perform and submit fingerprint comparisons; classify fingerprints as appropriate; collect, preserve, and safely package evidence; prepare crime scene and related reports and documentation; ensure accuracy and completeness; testify as an expert witness in court; ensure the adherence to standard safety precautions; recover, unload and impound firearms; and perform related duties as required.			

Job Title		Tenure	
Employer			
Provide a brief description of principal duties:			

Job Title		Tenure	
Employer			
Provide a brief description of principal duties:			

Job Title		Tenure	
Employer			
Provide a brief description of principal duties:			

Job Title		Tenure	
Employer			
Provide a brief description of principal duties:			

Other Qualifications: List below any scientific publication and/or presentation you have authored or co-authored, research in which you are or have been involved, academic or other teaching positions you have held, and any other information which you consider relevant to your qualification as a forensic scientist.
(Use additional sheets if necessary.)

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Curriculum Vitae

**Las Vegas Criminalistics Bureau
Statement of Qualifications**

Name: Noreen Charlton

P# 13572

Date: 04-01-13

CURRENT CLASSIFICATION		
	<i>Classification</i>	<i>Minimum Qualifications</i>
X	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
X	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.
FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
John Carroll University	Biology	B.S.-May 2007
TESTIMONY		
<i>Yes</i>	<i>No</i>	
X		District Court, Justice Court, Grand Jury
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LVMPD	Crime Scene Analyst I	09/02/2008 to 09/02/10
LVMPD	Crime Scene Analyst II	09/02/2010 to 10/27/2012
LVMPD	Senior Crime Scene Analyst	10/27/12 to present

Jennifer Corneal

CONTACT

Clark County Coroner's Office
1704 Pinto Lane
Las Vegas, NV 89106
Work: 702-455-3210
Cell: 502-718-6667
Email: jennifer.corneal@clarkcountynv.gov

EDUCATION

University of Louisville School of Medicine	2010
MD	
Murray State University	2006
B.S., Chemistry	
University of New Haven	2003
M.S., Forensic Science	
Murray State University	2001
B.S., Criminal Justice	

GRADUATE TRAINING

Fellowship	2014 – 2015
Forensic Pathology	
San Diego County Medical Examiner	
Residency	2010 – 2014
Pathology	
University of South Alabama Medical Center, Mobile, AL	

LICENSURE AND CERTIFICATION

Nevada Medical License	2015
California Medical License	2014
American Board of Pathology, Anatomic Pathology	2014

HONORS AND AWARDS

Rural Honors Scholarship	2006 – 2007
Dean's Certificate of Recognition for research	2007
Chemistry Department Academic Scholarship	2005

RESEARCH EXPERIENCE

Summer Research Scholars Program	2007
“Complications of PICC lines in low birthweight infants”	
Supervisor Dr. Scott Duncan	
Poster Presentation at Neonatal Conference at Heuston Woods	2007

SCIENTIFIC PRESENTATIONS

Corneal J, Sosnowski J. Body Mass Index in Hospital Autopsy Cases: Younger Age at Death Associated with Increased BMI in the Southeast. College of American Pathologists Annual Meeting, 2012 September; San Diego, California.

Corneal J, Geli D, Sosnowski J. Amyloid Angiopathy: A Case Study. College of American Pathologists Annual Meeting, 2012 September; San Diego, California.

Corneal J, Sosnowski J. Nodular Myositis: A Case Study. College of American Pathologists Annual Meeting, 2012 September; San Diego, California.

Corneal J, Cordell C, Mancini E. Alpha-Fetoprotein Negative Papillary Yolk Sac Tumor in an Ovarian Mixed Germ Cell Tumor. College of American Pathologists Annual Meeting, 2012 September; San Diego, California.

Cordell C, Corneal J, Kahn A. Advanced Stage Medullary Carcinoma of the Colon. College of American Pathologists Annual Meeting, 2012 September; San Diego, California.

EXTRACURRICULAR AND LEADERSHIP ACTIVITIES

Team Member, CAP Self Inspection	March 2012
CAP Resident Delegate	2011 – 2013
Clinical Track Captain	2008
Benchmark Institutions Curricular team	2007

SERVICE ACTIVITIES

Volunteer, Healthcare Classic 5K	2007, 2008
Volunteer, Medical School Charity Auction	2008
Volunteer, Life Clinic (student service learning clinic)	2007

PROFESSIONAL MEMBERSHIPS

National Association of Medical Examiners	2012 – present
College of American Pathologists	2010 – present
United States & Canadian Academy of Pathology	2010 – present
American Society for Clinical Pathology	2010 – present
Medical Association of the State of Alabama	2010 – present
American College of Physicians	2006 – present
American Medical Association	2006 – present
Kentucky Medical Association	2006 – present
Southern Medical Association	2006 – present
Lambda Alpha (National Anthropology Honor Society)	2000 – present

Curriculum Vitae

**Las Vegas Criminalistics Bureau
Statement of Qualifications**

Name: Laura B. Cornell

P#13576

Date: 06-02-09

CURRENT CLASSIFICATION		
	<i>Classification</i>	<i>Minimum Qualifications</i>
X	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene.
	Crime Scene Analyst II	18 months - two (2) years continuous service with LVMPD as a Crime Scene Analyst I.
	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.
FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
Grossmont College	Forensic Technology	Certificate/Dec 2007
Texas A&M University	Meteorology	B.S./May 1998
Texas A&M University	Geography	B.S./May 1994
TESTIMONY		
<i>Yes</i>	<i>No</i>	
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LVMPD	Crime Scene Analyst I	9-2-08 to Present
San Diego PD	Crime Scene Unit Intern	11/2007 to 08/2008
San Diego Superior Court	Family Law Office-Student Worker	01/2007 to 02/2008

Curriculum Vitae

Las Vegas Criminalistics Bureau
Statement of Qualifications

Name: Shawn Fletcher

P# 5221

Date: 8-28-03

CURRENT CLASSIFICATION		
	Classification	Minimum Qualifications
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION		
Institution	Major	Degree/Date
Central Michigan University	Health & Fitness	Degree 1990
CCSN	Criminal Justice/Law Enforcement	Degree 1995

TESTIMONY		
Yes	No	

EMPLOYMENT HISTORY		
Employer	Title	Date
LVMPD	Sr. Crime Scene Analyst	7-29-96

FLETCHER, SHAWN
SENIOR CSA

P# 5221
SS#: 381-94-9092

CRIMINALISTICS BUREAU - FIELD
DOH: 07-29-96

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
1990	Health Fitness & Health Promotion in Hospital & Corporate Settings Minor in Nutrition	Central Michigan University	Degree
1995	Criminal Justice/ Law Enforcement	CCSN	Degree
01-24-96	Crime Scene Processing for Resident Officers	LVMPD	7
02-28-96	NCIC - Phase III - Full Access	LVMPD	7
07-29 to 08-16-96	Crime Scene Analyst Academy	LVMPD	105
08-16-96	CAPSTUN for Civilians	LVMPD	1.5
09-96	FATS Training	LVMPD	?
09-18, 19 & 09-25-96	Civilian Firearm/Use of Force	LVMPD	21
09-20-96	NCIC - Phase II - Limited Access	LVMPD	4
08-17 to 11-01-96	Field Training	LVMPD	440
09-18 to 09-25-96	Civilian Firearm/Use of Force	LVMPD	21
09-27-96	DI Weaponless Defense/Handcuff	LVMPD	3
09-27-96	Combat Shooting Simulator/FATS	LVMPD	1
09-30-96	Duty Weapon Qualification	LVMPD	2
10-24-96	Driver Training - Level 2	LVMPD	8
11-07-96	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
12-13-96	International Association For Identification - Member	# 15197	
01-21-97	Forensic Science	American Institute of Applied Science (AIAS)	260
01-28 to 01-30-97	Top Gun Training	LVMPD	21
02-27-97	Moot Court - Video	LVMPD	2
03-26-97	Introduction to Computers	LVMPD	4
03-30-97	Duty Weapon Qualification	LVMPD	2
01-28 to 01-30-97	Top Gun Training	LVMPD	21
??	Crime Scene Processing for Resident Officers		7
02-28-??	NCIC Phase III	LVMPD	8
06-13-97	NCIC - Phase I - Video	LVMPD	20 Min

06-18-97	Critical Procedures Test	LVMPD	
07-02-97	Duty Weapon Qualification	LVMPD	2
09-08 to 09-12-97	Crime Scene Technology Workshop 2	Northwestern University, Traffic Institute	40
09-30-97	Duty Weapon Qualification	LVMPD	2
10-06 to 10-10-97	Investigative Photography I	Northwestern University, Traffic Institute	40
12-31-97	Duty Weapon Qualification	LVMPD	2
02-23-98	Domestic Violence	LVMPD	1
03-28-98	Critical Procedures Test	LVMPD	2
03-31-98	Duty Weapon Qualification	LVMPD	2
05-19-98	Investigative Profiling of Sexually Deviant Crimes	LVMPD	7
06-23-98	Duty Weapon Qualification	LVMPD	2
08-24 to 08-28-98	Bloodstain Evidence Workshop I	Northwestern University, Traffic Institute	40
09-28-98	Optional Weapon	LVMPD	
11-17-98	Combat Shooting Simulator/FATS	LVMPD	1
12-15-98	Verbal Judo	LVMPD	7
12-22-98	Duty Weapon Qualification	LVMPD	2
03-30-99	Duty Weapon Qualification	LVMPD	2
04-13-99	Critical Procedures Test	LVMPD	2
04-28 to 04-30-99	First Annual Educational Conference Opening Ceremonies (2) Banquet (3)	NSDIAI	
"	Blood Enhancement	NSDIAI	4
"	DNA Evidence	NSDIAI	2
"	Latent Prints on Skin	NSDIAI	2
"	Footwear/Tire Tracks	NSDIAI	2
"	Unabomber	NSDIAI	2
"	JFK-MLK Evidence	NSDIAI	2
"	Laboratory Photography	NSDIAI	2
"	Polly Klass	NSDIAI	2
06-15-99	Duty Weapon Qualification	LVMPD	2
06-30-99	Optional Weapon	LVMPD	
08-23 to	Bloodstain Evidence Workshop 2	Northwestern University,	40

08-27-99		Traffic Institute	
09-21-99	Duty Weapon Qualification	LVMPD	2
09-27-99	Combat Shooting Simulator/FATS	LVMPD	1
01-20-00	Latent Fingerprint Development Workshop	U.S. Secret Service	8
03-08-00	Critical Procedures Testing	LVMPD	
03-22, 23 & 03-24-00	Forensic Death and Homicide Investigation	Public Agency Training Council - National Criminal Justice	24
04-07-00	Winning Courtroom Confrontations Seminar	LVMPD	4
06-13-00	Crime Scene Analyst Certification (qualified) - Completed all requirements and tests	IAI	
06-20-00	Handgun Qualification 3 - Recertification	LVMPD	1
07-18-00	Handgun Qualification 3 - Recertification	LVMPD	1
07-23 to 07-29-00	85 TH International Educational Conference (SEE BELOW) Charleston Civic Center, Charleston, West Virginia	IAI	Total - 13 hrs. (See below)
"	W-BL104 - Blood Presumptive Tests to Enhancement Techniques	IAI	3
"	W-BL205 - Swipes, Wipes and other Transfer Impressions	IAI	2
"	W-CS401 - The Recovery of Skeletal Remains	IAI	4
"	W-FT302 - The Collection and Preservation of Footwear Evidence	IAI	4
10-31-00	Firearms Training Simulator	LVMPD	1
01-26-01	Ridgeology Comparison Techniques - Advanced	Forensic Identification Training Seminars, LLC	40
02-12 to 02-14-01	Clandestine Laboratory Safety Certification Course Occasional Site Worker - Patrol Response to Clandestine Drug Labs (02-14-01 - 4 hours)	LVMPD	24
03-19-01	In-the-Blink-of-an -Eye - Video	LVMPD	15 Min.
03-23-01	Handgun Qualification I	LVMPD	1
04-05-01	Driver Training Class II	LVMPD	8
04-11 to 04-13-01	NSDIAI - 3 rd Annual Educational Conference Gizmos & Gadgets	NSDIAI	2
"	Officer Involved Shootings	NSDIAI	3
"	Ted Binion Homicide	NSDIAI	2
09-07-01	Firearms Qualification 2 - Recertification	LVMPD	2
10-01-01	RC - Use of Force - Video Training Tape #1	LVMPD	15 Min.
10-29-01	Bloodstain Pattern Analysis - Angle of Impact Proficiency Exercise - Certificate #22	LVMPD Criminalistics Bureau	3

12-20-01	Firearms Training Simulator - Recertification	LVMPD	1
12-21-01	Handgun Qualification 4 - Recertification	LVMPD	1
02-19-02	Handgun Qualification 1 - Recertification	LVMPD	1
03-30-02	Documentation of Footwear & Tire Impressions	LVMPD	1
03-30-02	Forensic Anthropology	LVMPD	1.5
04-02-02	Objective Approach to the Crime Scene	LVMPD	1
04-01-02	Clandestine Laboratory Safety - Fingerprint Processing	LVMPD	1
04-25-02	Chemical Enhancements of Bloodstains, Preliminary Steps	LVMPD - Criminalistics Bureau	1
08-04 to 08-10-02	87 th International Educational Conference - See below	IAI	
"	W-50 - Advanced Documentation for Bloodstain Evidence	"	3
"	W-69 - Painting with Light	"	3
"	Triple Murders in the City of Los Angeles: The Trial in Indonesia	"	1
"	Death Cases: Truth or Consequences	"	1
"	Suicide or Is It?	"	1
01-04-03	IAI - Crime Scene Certification Board - Declared "Senior Crime Scene Analyst"	IAI	
02-03 to 02-05-03	Shooting Incident Reconstruction - Forensic Identification Training Seminars	LVMPD	24



Detective Jessica Flink P# 6272

Las Vegas Metropolitan Police Department

400 S. Martin Luther King Blvd. Bldg A

Las Vegas, NV 89106

Email j6272f@lvmpd.com

CURRICULUM VITAE

Current Employment

- Detective and Computer Forensic Examiner, Las Vegas Metropolitan Police Department and Secret Service Electronic Crimes Task Force.
- Employed with LVMPD since 1999
- Acquired over 3,340 hours of police specific training, of which more than 1,150 hours are in areas relevant to conducting examinations on electronic storage devices and associated techniques.

Education Curriculum

- Nevada POST Certification
 - Las Vegas Metropolitan Police Department, 1999
- Basic Evidence Recovery Training (BCERT)
 - United States Secret Service National Computer Forensics Institute
 - Hoover, Alabama, May 2014
 - Over 190 hours training curriculum

- AccessData Certified Examiner - ACE May 2014, 2016, 2018
- Encase Certified Examiner - EnCE February 2015, 2017
- Magnet Certified Forensic Examiner – MCFE September 2016
- Cellebrite Certified Mobile Examiner – CCME December 2016
- IACIS Certified Forensic Computer Examiner – CFCE January 2017
- Certified Analyst – Axon Five March 2017
- Magnet Certified Forensic Examiner – Axiom May 2017
- DVR Examiner Certified User – June 2017

Computer Forensic Training

- Computer Forensics – College of Southern Nevada Fall 2012
- Digital Crime Investigations – College of Southern Nevada Spring 2013
- A+ Hardware – College of Southern Nevada Spring 2013
- Introduction to Electronic Crime for Law Enforcement – College of Southern Nevada Fall 2013
- AccessData Bootcamp – AccessData December 2013
- Windows 8 Forensics – AccessData January 2014
- MAC Forensics – AccessData January 2014
- MPE+ - AccessData February 2014
- EnCase Computer Forensics I – Guidance Software March 2014
- EnCase Computer Forensics II – Guidance Software March 2014
- Internet Forensics – AccessData March 2014
- Lantern Certification – Katana Forensics March 2014
- Windows Registry Forensics – AccessData April 2014
- Basic Computer Evidence Recovery Training – US Secret Service National Computer Forensics Institute May 2014
- A+ Software – College of Southern Nevada Summer 2014
- Cellular Phone Master Technician – Wild PCS June 2014
- Windows Forensics Core – AccessData September 2014
- Cellebrite Mobile Forensics Fundamentals – Cellebrite Software September 2014
- EnCase Advanced Computer Forensics – Guidance Software September 2014
- Cellebrite Certified Logical Operator- Cellebrite, Inc October 2014
- Cellebrite Certified Physical Analyst – Cellebrite, Inc October 2014
- AccessData Forensics – AccessData November 2014
- Advanced FTK – AccessData November 2014

- EnCE Test Prep – Guidance Software November 2014
- Basic Computer Skills for Law Enforcement – NW3C January 2015
- Cyber Investigation 100 – Identifying and Seizing Electronic Evidence – NW3C January 2015
- MAC Forensics – US Secret Service National Computer Forensics Institute February 2015
- AccessData Bootcamp – AccessData March 2016
- Advanced Forensics – AccessData March 2016
- Cloud Forensics – AccessData March 2016
- Internet Forensics – AccessData April 2016
- Networking for Incident Responders - AccesData April 2016
- Basic Certified Forensics Examiner Training – IACIS April 2016
- Mobile Device Forensics – US Secret Service National Computer Forensics Institute May 2016
- RAM Analysis – AccessData – May 2016
- Advanced Computer Forensics – US Secret Service National Computer Forensics Institute – June 2016
- Linux Forensics – AccessData – July 2016
- Windows 10 Forensics – AccessData – August 2016
- Android Forensics – AccessData – August 2016
- Magnet Forensics Computer Essentials Training Course – Magnet Forensics September 2016
- Password Recovery – AccessData –September 2016
- Security Essentials Bootcamp SEC401- SANS November 2016
- Magnet Forensics Axiom Transition Course – Magnet Forensics March 2017
- Axon Five Introductory Level – Amped Software March 2017
- DVR Examiner Training– DVR Examiner Software June 2017
- Tor, Onion Routers, Deepnet, and Darknet: A Deep Dive for Criminal Investigators – NW3C December 2017

Lisa Gavin, M.D., M.P.H.

1704 Pinto Lane, Las Vegas, NV 89106 ♦ 702.455.3210 ♦ LGavin@co.clark.nv.us

Current Position Medical Examiner, 2009 to present

Office of the Coroner/Medical Examiner, Clark County, Las Vegas, Nevada

Training & Education

Forensic Pathology Fellowship, 2008 to 2009

Office of the Chief Medical Investigator, Albuquerque, New Mexico

Surgical Pathology Fellowship, 2007-2008

Hartford Hospital, Hartford, Connecticut

Anatomic & Clinical Pathology Residency, 2002 – 2007

Hartford Hospital, Hartford, Connecticut

Post-Sophomore Fellowship in Pathology, 2001 – 2002

University of Connecticut Health Center, Farmington, Connecticut

Medical Degree, 2001

University of Connecticut School of Medicine, Farmington, Connecticut

Master Degree of Public Health, 1994

Columbia University School of Public Health, New York, New York

Bachelor of Arts, 1991

Mount Holyoke College, South Hadley, Massachusetts

Research Experience

Polyoma Virus Hemorrhagic Cystitis in an Otherwise Normal Child, 2008

Hartford Hospital Department of Pathology & Department of Pediatric Infectious Disease

Metastatic Testicular Choriocarcinoma in a Young Male with Abdominal Pain, 2007

*Hartford Hospital Department of Pathology & University of Connecticut
Department of Internal Medicine*

Inter-observer Variability in Diagnosing Colon Biopsies as Indefinite for Dysplasia, 2006

Hartford Hospital Department of Pathology

Susceptibility of Streptococcus Pneumoniae to Moxifloxacin and Other Antimicrobial Agents, 2004

Hartford Hospital Department of Pathology & Laboratory Medicine

Awards & Scholarship

Dr. Beckett Book Award, 2007

Martin Berman Immunopathology Award, 2007

Bloomberg Award for Psychiatry, 2001

Memberships

American Academy of Forensic Sciences (2009 to present)

American Society of Clinical Pathology (2003 – 2008, 2010)

United States and Canadian College of Pathologist (2005 – 2007)

College of American Pathologist (Delegate 2003 – 2007)

Connecticut Society of Pathologists (CSP) Delegate (2003 – 2007)

Lisa Gavin, M.D., M.P.H.

1704 Pinto Lane, Las Vegas, NV 89106 ♦ 702.455.3210 ♦ LGavin@co.clark.nv.us

Connecticut Society of Pathologists Presentations

Malignant Peritoneal Mesothelioma in 17 year-old male, January 2006

Focal Nodular Hyperplasia, June 2004

Resident & Fellow Topics

Two Unusual Neuropathology Cases, January 2008

Testicular Germ Cell Tumors, October 2007

Waldenströms Macroglobulinemia, October 2005

Minimal Change Disease & Focal Segmental Glomerular Sclerosis, October 2004

Crescentic Glomerulonephritis or Rapidly Progressive Glomerulonephritis, January 2004

Mitral Valve Prolapse and Sudden Death, July 2003

Previous Work Experience

Teacher of “Correlated Medical Problem Solving” Course, 2001 – 2002

University of Connecticut School of Medicine, Farmington Connecticut

Manager of South Marshall Street Pediatric Clinic, 1995 – 1997

Salvation Army, South Marshall Street, Hartford Connecticut

Administrative Assistant to the Director of Admissions & Career Development
and to the Director of Academic & Student Affairs, 1992 – 1994

Columbia University School of Public Health, New York, New York

Tutor and Evaluator of children with learning disabilities, 1988 – 1994 & 1996 – 1997

Milford, Connecticut & Farmington, Connecticut

Coordinator of Infant Registration Project, 1991 – 1992

New York City Department of Health: Office of Child Health Planning, New York, New York

Service Work

- Annual Host for summer high-school student tours of Hartford Hospital Department of Pathology
- Education of Medical Students & Residents on rotation in Hartford Hospital Department of Pathology
- Guest speaker for Public Relations Department at Hartford Hospital for local middle-school children
- Guidance to Medical Technician Students interested in future careers in Medicine
- Editor of personal statements and resumes

Medical License

State of New Mexico, 2008 – 2011

State of Nevada, 2009 – 2011

Eligible For Anatomic Pathology,
Clinical Pathology and Forensic Pathology Boards

ASCLD/LAB-International

STATEMENT OF QUALIFICATIONS

Name	Gabrielle Guerrero P# 15290	Date	6/5/2017
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Laboratory	Las Vegas Metropolitan Police Department - Crime Scene Investigations Section
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Job Title	Crime Scene Analyst I
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Indicate all disciplines in which you do casework:

<input type="checkbox"/>	Drug Chemistry	<input type="checkbox"/>	Toxicology
<input type="checkbox"/>	Firearms/Toolmarks	<input type="checkbox"/>	Biology
<input type="checkbox"/>	Trace Evidence	<input type="checkbox"/>	Questioned Documents
<input type="checkbox"/>	Latent Prints	<input checked="" type="checkbox"/>	Crime Scene
<input type="checkbox"/>	Digital & Multimedia Evidence		

List all category(ies) of testing in which you do casework:

Crime Scene Investigation; Body Fluid Identification
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Breath Alcohol Calibration Categories

<input type="checkbox"/>	Toxicology - Breath Alcohol Measuring Instruments (The work of the laboratory MUST include calibration certificates- do not check the box if work is limited to breath/alcohol testing)
<input type="checkbox"/>	Toxicology - Breath Alcohol Calibration Reference Material

Education: List all higher academic institutions attended (list high school only if no college degree has been attained)

Institution	Dates Attended	Major	Degree Completed
University of Nevada Las Vegas	2011-2014	N/A	N/A

Other Training: List continuing education, workshops, in-service and other formal training received. Please include the course title, source and date of the training.

09-30-15 Crime Scene Analyst Academy LVMPD Las Vegas, NV
3-31-17 Basic Bloodstain Recognition Course-LVMPD-C. Moore-Las Vegas, NV

Courtroom Experience: List the discipline/category(ies) of testing in which you have qualified to testify as an expert witness and indicate over what period of time and approximately how many times you have testified in each.

Testified in court from 07/06/2015 to present:
Crime Scene Investigation - 4
Body Fluid Identification - 0

Professional Affiliations: List any professional organizations of which you are or have been a member. Indicate any offices or other positions held and the date(s) of these activities.

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Employment History: List all scientific or technical positions held, particularly those related to forensic science. List current position first. Be sure to indicate employer and give a brief summary of principal duties and tenure in each position.

Job Title	Crime Scene Analyst I	Tenure	07/06/2015 to present
Employer	Las Vegas Metropolitan Police Department		
Provide a brief description of principal duties:			
Respond to and investigate crime scenes; perform a variety of tasks in documenting crime scenes including photographically documenting crime scenes, photographing fingerprints, and sketching and diagraming crime scene; powder or chemically process for latent fingerprints; perform and submit fingerprint comparisons; classify fingerprints as appropriate; collect, preserve, and safely package evidence; prepare crime scene and related reports and documentation; ensure accuracy and completeness; testify as an expert witness in court; ensure the adherence to standard safety precautions; recover, unload and impound firearms; and perform related duties as required.			

Job Title	Explorer I/Explorer II/Senior Explorer/ Sergeant/Lieutenant/Captain	Tenure	02/23/10 to 07/29/14 (aged out of program)
Employer	Las Vegas Metropolitan Police Department		
Provide a brief description of principal duties:			
During my time with the LVMPD Explorer Program, I taught basic level classes to peer explorers, Boy Scouts and Girl Scouts such as fingerprint processing, elimination prints, note taking and diagramming. I supervised the peer explorers as captain, where I passed on duties to other explorers and oversaw the program during class and outside of class (community service events).			

Job Title		Tenure	
Employer			
Provide a brief description of principal duties:			

Job Title		Tenure	
Employer			
Provide a brief description of principal duties:			

Job Title		Tenure	
Employer			
Provide a brief description of principal duties:			

Other Qualifications: List below any scientific publication and/or presentation you have authored or co-authored, research in which you are or have been involved, academic or other teaching positions you have held, and any other information which you consider relevant to your qualification as a forensic scientist.
(Use additional sheets if necessary.)

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**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
CURRICULUM VITAE**

Date: 6/15/17

Name: Anya Lester P#: 13771 Classification: Forensic Scientist II

Current Discipline of Assignment: Firearms and Toolmarks

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Toxicology/Blood Alcohol	
Toolmarks	X	Toxicology/Breath Alcohol	
Trace Evidence		Toxicology/Drugs	
Arson Analysis		Firearms	X
Latent Prints		Crime Scene Investigations	
Serology		Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	
Quality Assurance		Technical Support /	

EDUCATION			
<i>Institution</i>	<i>Dates Attended</i>	<i>Major</i>	<i>Degree Completed</i>
Oakland Fire Training Institute	2004-2005	Firefighter I and II	Certification, 2005
Henry Ford Community College	1998-2000	Emergency Medical Services - Paramedic	Certification, 2000
Edinboro University	1995-1997	Biology	Graduate courses
Michigan State University	1989-1994	Forensic Science	B.S., 1994

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Contemporary Issues in Firearms and Toolmark Identification	Denver, CO	5/14/17
AFTE Annual Training Seminar	Denver, CO	5/14-5/19/2017
ASCLD/LAB-International Internal Auditor Training	Las Vegas, NV	5/13/2016
Blue Courage: The Heart and Mind of the Guardian	Las Vegas, NV	8/10-11/2015
Thermo Fisher Scientific Niton XRF Analyzer Operational Training Course	Las Vegas, NV	6/4/15

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Forensic Anthropology Center at Texas State University Tour	Dallas, TX	5/29/15
STI International/Jesse James Firearms Manufacturers Tours	Dallas, TX	5/27/15
Critical Decision Making	Dallas, TX	5/24/15
Expert Witness Testimony Techniques for Firearms/Toolmarks Examiners	Dallas, TX	5/24/15
AFTE Annual Training Seminar	Dallas, TX	5/24-5/29/2015
Guidelines for Oral Board Raters	Las Vegas, NV	4/17/15
Basic Instructor Development	Las Vegas, NV	2/23-2/26/15
Implication of ISO 17025 Calibration on Comparison Microscopes	Las Vegas, NV (webinar)	12/09/14
Remington 870/1187 Armorer's Course	Las Vegas, NV	10/22-10/24/2014
Fair and Impartial Policing/Procedural Justice Trainer Update	Las Vegas, NV	10/9/2014
Acting Supervisor Skills	Las Vegas, NV	10/14/2014
Suppressor History, Technology and Testing	Henderson, NV	10/2 – 10/3/2014
How to Avoid Negligent Discharges	Las Vegas, NV	8/20/2014
Fair and Impartial Policing/Procedural Justice - Train the Trainer	Las Vegas, NV	6/24 – 6/26/2014
Gun Shot Wound – Seal in 15	Las Vegas, NV	5/29/14
Understanding and Dealing with Mentally Ill Persons	Las Vegas, NV	5/29/14
Shooting Reconstruction: The 4 Elements of Trajectory (Webinar)	Las Vegas, NV	5/22/14
CJIS Security Awareness	Las Vegas, NV	11/14/2013
Shotgun Familiarization and Pattern Documentation	Las Vegas, NV	10/2013
Mandated Reporter Requirements	Las Vegas, NV	9/24/13
OSHA 2012 Revised HazCom Standard and GHS	Las Vegas, NV	8/12/13
Tuberculosis for Law Enforcement	Las Vegas, NV	8/12/13
Shooting Hunting Outdoor Trade (SHOT) Show	Las Vegas, NV	1/15 – 1/17/2013
Toolmark Identification and Comparison Training	Ammendale, MD	07/30 - 08/03/2012
Southern CA Firearms Study Group - BB and Airsoft Training	Los Angeles, CA	12/08/2011
Hi-Point Firearms Armorer's Course	Chicago, IL	06/03/2011
BATFE Machine Gun Conversions/Silencers workshop	Chicago, IL	06/02/2011
AFTE Annual Training Seminar	Chicago, IL	05/29 - 06/03/2011

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Testifying in Court	Las Vegas, NV	5/2/11
Completed LVMPD Firearms/Toolmarks Examiner Training Program <ul style="list-style-type: none"> • Cartridge Case and Bullet Comparisons • Distance Determination • Toolmark Comparisons 	Las Vegas, NV	4/7/11 11/21/11 1/10/12
Basic Shooting Reconstruction Course	Las Vegas, NV	01/24 - 01/26/2011
ATF Serial Number Restoration Course	Las Vegas, NV	09/27 - 09/29/2010
Colt .45/Model "O" and Colt M16/AR-15 Armorer's School	Las Vegas, NV	08/02 - 08/07/2010
LAR Manufacturing Factory Tour	West Jordan, UT	07/14/10
North American Arms Factory Tour	Provo, UT	07/13/10
Barnes Bullets Ammunition Factory Tour	Mona, UT	07/13/10
Sig Sauer Classic Pistols Amorer's School	Las Vegas, NV	07/07 - 07/08/10
NIBIN Entry Competency Certificate	Las Vegas, NV	6/21/2010
Sturm Ruger Firearms Factory Tour	Prescott, AZ	06/19/10
Dillon Precision Reloading Factory Tour	Scottsdale, AZ	06/18/10
Schneider Rifle Barrels Factory Tour	Payson, AZ	06/18/10
Benelli M1, M2, M4 Armorer's School	Las Vegas, NV	06/16 - 06/17/2010
Beretta 90 Series and Px4 Armorer's School	Las Vegas, NV	06/14 - 06/15/2010
AFTE Annual Training Seminar	Henderson, NV	05/02 - 05/07/2010
Innov-x XRF Safety and Operator Training	Las Vegas, NV	04/08/10
Employee Emergency Preparedness	Las Vegas, NV	3/23/10
ATF IBIS Data Acquisition Training	Largo, FL	01/24 - 01/29/2010
Glock Armorer's School	Las Vegas, NV	01/20/10
EEO Basics	Las Vegas, NV	12/7/2009
Driver's Training	Las Vegas, NV	4/1/2009
Nevada Workplace Safety Rights and Responsibilities	Las Vegas, NV	2/19/2009
Civilian Employee Orientation	Las Vegas, NV	1/5/2009
COURTROOM EXPERIENCE		

CURRICULUM VITAE: LESTER

<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
Clark County District Court	Firearms and Toolmarks Analysis	21
Clark County Justice Court	Firearms and Toolmarks Analysis	1
United States District Court	Firearms and Toolmarks Analysis	1
Clark County Grand Jury	Firearms and Toolmarks Analysis	1

EMPLOYMENT HISTORY

<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department	Forensic Scientist I/II	10/2010 - present
Las Vegas Metropolitan Police Department	Forensic Scientist Trainee	10/2009-10/2010
Las Vegas Metropolitan Police Department	Forensic Laboratory Aide	12/2008-10/2009
College of Southern Nevada	American Heart Association Training Center Coordinator	11/2006-12/2008
College of Southern Nevada	Part-Time Instructor Healthcare Continuing Education	11/2006 - present
Oakland Community College	Laboratory Paraprofessional – Forensic Science and EMS Labs	2001-2006
Oakland Community College	Adjunct Faculty – Medical Terminology and EMS	2001-2006

PROFESSIONAL AFFILIATIONS

<i>Organization</i>	<i>Date(s)</i>
Association of Firearm and Toolmark Examiners (AFTE) – Regular Member	09/2016 – present
Association of Firearm and Toolmark Examiners (AFTE) – Provisional Member	07/2011 – 09/2016

PUBLICATIONS / PRESENTATIONS:

Poster Presentation, "The Effectiveness of the Human Body, as Represented by Pig Skin Covered PERMA-GELTM as a Firearm Sound Suppressor", Association of Firearm and Tool Mark Examiners (AFTE) Annual Training Seminar, May 2015, Dallas, TX

PUBLICATIONS / PRESENTATIONS:

Poster Presentations (Co-Presented at Association of Firearm and Tool Mark Examiners (AFTE) Annual Training Seminar, May 2010, Henderson, NV):

- "Evaluation of the Forensics Source Short Length Ballistic Fiber Filled Bullet Catcher"
- "Remington HD Ultimate Home Defense 12 Gauge Shot Shell Ammunition"
- "Sub-Caliber Shenanigans"
- "Proof of Concept (Preliminary) Results on a Method to Cross Check Chronograph Velocities Using Hi-Speed Video Camera"

Accepted Presenter, "How the College of Southern Nevada Met Community Needs Using the American Heart Association Programs for Healthcare Professionals", National Council for Workforce Education Conference, Fall 2007

Advanced Cardiac Life Support Presenter, Symposium on Emergency, Trauma, and Critical Care Medicine, Spring 2007

Presenter Michigan EMS EXPO, "Pediatric IV/IO 'When You're More Scared Than They Are'", "Advanced Airway Seminar", "Advanced Patient Assessment", 2004, 2005, 2006

OTHER QUALIFICATIONS:

HAZMAT Awareness and Operations Certified

Certified EMT/Paramedic, Certified Firefighter I and II – State of MI

American Heart Association Instructor Certified – CPR and First Aid

AHA Emergency Cardiac Care Regional Task Force Member, 2006-2012

AHA Training Center Faculty Member, 2006-present

LEONARDO ROQUERO, M.D.
Board Certified – Forensic Pathology
Board Certified – Anatomical and Clinical Pathology

EDUCATION and TRAINING

Education

06/1994 – 03/1998	Bachelor of Science in Medical Technology, Colegio San Agustin Bacolod City, Philippines
06/2000 – 03/2004	Cebu Doctors College of Medicine, Cebu City, Philippines

Training

05/2004 – 04/2005	Postgraduate Internship Training, Philippine General Hospital Manila, Philippines
2008 – 2010	Residency, Pathology Training Program – Anatomical and Clinical Pathology, Corazon Locsin Montelibano Memorial Regional Hospital, Bacolod City, Philippines
07/2010 – 06/2014	Anatomical and Clinical Pathology Residency Henry Ford Health System, Detroit, MI, USA
07/2014 – 06/2015	Fellowship, Forensic Pathology, University of Michigan Health System Wayne County Medical Examiner's Office, Detroit, Michigan Washtenaw County Medical Examiner's Office, Ann Arbor, Michigan

CERTIFICATION and LICENSURE

Certification

07/2014 – 12/2024	American Board of Pathology (Anatomical and Clinical Pathology)
09/2015 – 2025	American Board of Pathology (Forensic)

Licensure

12/13/2013 – 01/31/2018	State of Michigan, Medical License
08/31-2016 – 06/30/2017	State of Nevada, Medical License

HONORS AND AWARDS

2013-2014	Chief Resident, Anatomical and Clinical Pathology Residency Henry Ford Health System, Detroit, MI
2013-2014	Champion – Nephropathology Challenge Bi-weekly Residency Test Henry Ford Health System, Detroit, MI

MEMBERSHIP IN PROFESSIONAL SOCIETIES

2015 – present	American Academy of Forensic Sciences
2016 – present	National Academy of Medical Examiners
2015 – present	College of American Pathology

TEACHING ACTIVITY

2006	Lecturer on Clinical Chemistry, Medical Technology Licensure Exam Review, Bacolod city, Philippines
2000 – 2002	Lecturer on Clinical Microscopy and Clinical Chemistry, Medical Technology, Licensure Exam Review, Bacolod city, Philippines
1999 – 2000	Clinical Instructor, Medical Technology Department, Colegio San Agustin-Bacolod city, Philippines

PRESENTATIONS

03/2011	USCAP Annual Meeting, San Antonio, Texas “Clinical and Pathologic features of prostate cancer with Prostatic-Specific antigen (PSA) less than 2.5 ng/ml. A Study of 209 cases.” Genitourinary Pathology Platform Presentation
09/12/2014	Elder Abuse Medicolegal Death Investigation Course Wayne County Medical Examiner’s Office
10/2014	Fire death Pathology resident review lectures Wayne County Medical Examiner’s Office
11/04/2015	Sharp Force Injury Medicolegal Death Investigation Course Wayne County Medical Examiner’s Office
11/05/2016	Investigation of bodies in water Medicolegal Death Investigation Course Wayne County Medical Examiner’s Office
05/06/2016	Cerebral air embolism Advances in Forensic Medicine and Pathology University of Michigan Health System
05/07/2016	Atypical Gunshot wounds Advances in Forensic Medicine and Pathology University of Michigan Health System
11/02/2016	Sharp Force Injury Medicolegal Death Investigation Course Wayne County Medical Examiner’s Office

ADDITIONAL ACTIVITIES

1998 – 2000	Medical Technologist, Corazon Locsin Montelibano Memorial Regional Hospital, Bacolod city, Philippines
2005	General Practitioner Physician, Kabankalan city, Philippines

2006 – 2007	General Practitioner Physician, Bacolod city, Philippines
2008	Volunteer, Department of Pathology, Corazon Locsin Montelibano Memorial Regional Hospital, Bacolod City, Philippines
2010	Participant, LEAN Training for Healthcare
2011	Participant, Process Improvement – A LEAN Project for Hematopathology, “Tracking the Flow Cytometry Request”
2011	Participant, Mock CAP Inspection, Henry Ford Health System Microbiology, Detroit, Michigan
2014	Participant, Mock CAP Inspection, Henry Ford Health System Laboratory West Bloomfield, Michigan
2015 – present	Medical Student Coordinator Wayne County Medical Examiner’s Office

PUBLICATION

Current

1. MDMA Abuse, Intercourse and Aneurysm Rupture
Leonardo Roquero and Francisco Diaz
Submitted to The Forensic Examiner Journal (Manuscript #779)
Spring issue of the examiner in 2017

Peer-reviewed Journal and Publication

1. Cerebral Air Embolism: A Clinical, Radiologic and Histopathologic Correlation.
Leonardo Roquero, Sandra Camelo-Piragua and Carl Schmidt
Am J Forensic Med Pathol. 2016 Dec;37(4):241-244.
PMID: 27763884 DOI: [10.1097/PAF.0000000000000276](https://doi.org/10.1097/PAF.0000000000000276)
2. Oleksandr N. Kryvenko, **Leonardo Roquero**, Nilesh S. Gupta, Min W Lee and Jonathan I. Epstein MD. Low-Grade Clear Cell Renal Cell Carcinoma Mimicking Hemangioma of the Kidney. A Series of 4 Cases. *Arch Pathol Lab Med*—Vol. 136, August 2012
3. **Leonardo P Roquero** MD, Oleksandr N Kryvenko MD, Nilesh S Gupta MD and Min W Lee MD. Characterization of Fibromuscular Pseudocapsule of Renal Cell Carcinoma International Journal of Surgical Pathology (Currently in review - Manuscript ID is IJSP-15-0021.R1)

Non-Peer reviewed Journals and Publications

1. DE Nowak, **LP Roquero**, DA Chitale. Extraction and Molecular Screening of Decade-Old mRNA from Archived Breast Cancer Tissues. *Modern Pathology*. Vol 25 (Supplement 1s) 101: 514A, 2012.
2. **Leonardo Roquero**, Oleksandr Kryvenko, Shyam Sukumar, Mireya Diaz, Mani Menon, Nilesh Gupta. Clinical and Pathologic Features of Prostate Cancer with Prostatic-Specific Antigen (PSA) Less Than 2.5 ng/ml. A Study of 209 Cases (Abstract 27). *Modern Pathology*. Vol 24 (Supplement 1s) USCAP 100th Annual Meeting: 220A, 2011.

Abstracts

1. **Leonardo Roquero** and Bruce Jones. Clinical Diagnostic Utility of Endocervical Curretage as Follow-up for Pap Tests Identified Squamous Epithelial Abnormalities. CAP Annual Meeting 2013. Poster Presentation. Poster #29.
2. Continuous Improvements Decrease Cardiac Troponin Turnaround Time (TAT) to Meet Cardiac Critical Care Standards. 2013 AACC. **Leonardo Roquero**, C.S. Feldkamp, J. Zajechowski, J. Dolland, S. Ali, A. Vasudev, H. Zand and V.I. Luzzi. Annual Meeting and Clinical Lab Expo. Abstract #: B-30.
3. David E Nowak MD, **Leonardo P Roquero**, S David Nathanson, Nilesch S Gupta and Dhananjay A Chitale MD. Differential Expression of Cyclooxygenase-2 in Triple-Negative Hormone Receptor Phenotype Breast Cancers: An Additional Marker in the Quest for Personalized Medicine. 2012 AACC Annual Meeting Proceedings (Abstract A-171).
4. **Leonardo P Roquero** M.D., Adrian H Ormsby M.D., Jiyeon Yoon M.D., Mohammad Ghaffarloo M.D., Min/W Lee M.D. Esophageal Mucosal Siderosis. 2011 ASCP Annual Meeting Proceedings (Abstract 234 456).Poster presentation.
5. **L. Roquero**, C. S. Feldkamp, J. Zajechowski, J. Dolland, S. Ali, A. Vasudev, V. I. Luzzi. Effect of Hemolysis on the Cardiac Troponin I and Creatinine Assays on the Siemens Dimension Vista®Analyzer. Clinical Chemistry, Vol. 57, No. 10. 2011 AACC Annual Meeting Proceedings (Abstract A-109). Poster presentation.

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
CURRICULUM VITAE**

Date: 01/09/14

Name: Allison Rubino

P#: 14784

Classification: Forensic Scientist I

Current Discipline of Assignment: Biology/DNA Detail

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Toxicology/Blood Alcohol	
Toolmarks		Toxicology/Breath Alcohol	
Trace Evidence		Toxicology/Drugs	
Arson Analysis		Firearms	
Latent Prints		Crime Scene Investigations	
Serology	x	Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	x
Quality Assurance		Technical Support / DNA	
EDUCATION			
<i>Institution</i>	<i>Dates Attended</i>	<i>Major</i>	Degree Completed
University of Scranton	08/03-05/07	Biochemistry	B.S.
University of New Haven	08/07-05/09	Forensic Science (Criminalistics)	M.S.
ADDITIONAL TRAINING / SEMINARS			
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>	

More Ys in half the time. See Y: An Overview of the Global PPY23-YHRD Database Project	Webinar (Armed Forces DNA Identification Laboratory/AFDIL)	October 2013
Introducing TrueAllele Casework at the New York State Police	Webinar (AFDIL)	October 2013
Recovery of Human DNA Profiles from Poached Deer Remains/ Australian Centre for Ancient DNA	AFDIL	February 2013
Lecture about Quant Duo	AFDIL	January 2013
Y-STR History and Review	AFDIL	January 2013

CURRICULUM VITAE -Name

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
LCN Y-filer	AFDIL	December 2012
Promega Fusion	Webinar (AFDIL)	December 2012
Globalfiler System	Webinar (AFDIL)	November 2012
Topics and Techniques for Forensic DNA Analysis	NYC OCME	April 2012
Cognitive Factors in Forensic Decision Making	NYC OCME	September 2011
Forensic Ethics Training	NYC OCME	August 2011
Principles of Genetics	Farmingdale State College	August – December 2011
Forensic Relationship Training	Marshall University at NYS Police Academy	July 2011
Advanced DNA Training	Marshall University	June 2011
TrueAllele Casework Technology by Cybergenetics	Suffolk County Crime Laboratory	April 2011

American Academy of Forensic Science Meeting	Chicago, Illinois	February 2011
Forensic Toxicology	University of Verona	November 2010
Advanced Analytical Techniques in Biomedical and Forensic Investigations	University of Verona	October 2010
19th Annual Markle Symposium Police Involved Shootings-Investigation of Critical Incidents and Issues	Ledyard, CT	September 2010
HID Future Trends in DNA Technology	HID University at NYC OCME	August 2010
Statistics 110	Farmingdale State College	July 2010
Forensic Scientist Criminal Trial Training	New York Prosecutor's Training Institute	March 2010
18th Annual Markle Symposium Investigating International Crimes	Ledyard, CT	April 2009
American Academy of Forensic Science meeting	Denver, CO	February 2009
17th Annual Markle Symposium Conspiracies: Investigating Complex Cases	Ledyard, CT	March 2008
COURTROOM EXPERIENCE		
<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>

CURRICULUM VITAE -Name

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
None		
EMPLOYMENT HISTORY		

<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department	Forensic Scientist I (In-Training)	January 2013- Present
Armed Forces DNA Identification Laboratory (AFDIL)	Forensic Scientist I - Technician	June 2012 – December 2013
Lab Support, A Division of On Assignment/ Suffolk County Crime Laboratory	Research Associate/ Forensic Scientist I	April 2009 – June 2012
University of Verona/University of New Haven	Research Student	January – December 2010
University of New Haven	Graduate Assistant	August 2007 – May 2009
Suffolk County Crime Laboratory	Intern	August 2008
University of Verona	Intern	July 2008

PROFESSIONAL AFFILIATIONS

<i>Organization</i>	<i>Date(s)</i>
American Academy of Forensic Sciences	2009-Present

PUBLICATIONS / PRESENTATIONS:

American Academy of Forensic Sciences meeting in Chicago, Illinois February 2011; presented a poster in the Toxicology section

OTHER QUALIFICATIONS:

Instrumental and Computer Skills: Qiagen

- EZ1 Robotics, Qiagility

Applied Biosystems – 7500 RT-PCR and software, GeneAmp PCR System 9700, 3130 Genetic Analyzer and software, and GeneMapper ID software v3.2.1

Windows and Macintosh software - Microsoft Word, Excel and PowerPoint, Access

TrueAllele Data Review System

**LAS VEGAS CRIMINALISTICS BUREAU
STATEMENT OF QUALIFICATIONS**

Name:	PETER SCHELLBERG	P#	5413	Date:	October 24, 1997
CURRENT CLASSIFICATION					
	<i>CLASSIFICATION</i>	<i>MINIMUM QUALIFICATIONS</i>			
X	CRIME SCENE ANALYST I	AA DEGREE WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD, INCLUDING SPECIALIZED TRAINING IN CRIME SCENE INVESTIGATION			
	CRIME SCENE ANALYST II	18 MONTHS - 2 YEARS CONTINUOUS SERVICE WITH LVMPD AS A CRIME SCENE ANALYST I			
	SENIOR CRIME SCENE ANALYST	2 YEARS AS A CRIME SCENE ANALYST II TO QUALIFY FOR THE PROMOTIONAL TEST FOR SENIOR CRIME SCENE ANALYST			
	CRIME SCENE ANALYST SUPERVISOR	4 YEARS CONTINUOUS SERVICE WITH LVMPD AND COMPLETION OF PROBATION AS A SENIOR CRIME SCENE ANALYST. MUST HAVE THE EQUIVALENT OF A BACHELOR'S DEGREE FROM AN ACCREDITED COLLEGE OR UNIVERSITY WITH MAJOR COURSE WORK IN CRIMINAL JUSTICE, FORENSIC SCIENCE, PHYSICAL SCIENCE OR RELATED FIELD.			
FORMAL EDUCATION					
<i>Institution</i>		<i>Major</i>		<i>Degree/Date</i>	
SADDLEBACK COMMUNITY COLLEGE		CRIMINAL JUSTICE		AA 5/84	
TESTIMONY					
Yes	No				
X		Eighth Judicial District, Clark County Nevada			
X		Justice Courts of Las Vegas Township			
EMPLOYMENT HISTORY					
<i>Employer</i>		<i>Title</i>		<i>Date</i>	
LAS VEGAS METROPOLITAN POLICE DEPARTMENT		CRIME SCENE ANALYST		1/97present	
CLARK COUNTY AMINAL CONTROL		AMINAL CONTROL OFFICER 1		12/89-1/97	
ORANGE COUNTY SHERIFF-CORONER DEPARTMENT		SPECIAL OFFICER 1		10/81-8/89	
PROFESSIONAL AFFILIATIONS					
<i>Organization</i>				<i>Date(s)</i>	

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)

Curriculum Vitae
JEFFREY SCOTT

Las Vegas Criminalistics Bureau
Crime Scene Analyst I
P# 9618

EMPLOYMENT

10/06 **Las Vegas Metro Police Department**
CSA I

EDUCATION

12/91 **Northern Arizona University**
B.S. Physical Science

➤ **American Institute of Applied Science (AIAS)**
Forensic Science 101B, 178 hours

➤ **American Institute of Applied Science (AIAS)**
Forensic Science 201, 230 hours

ASCLD/LAB-International

STATEMENT OF QUALIFICATIONS

Name	Jamelle Shannon P# 13482	Date	08/11/2015
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Laboratory	Las Vegas Metropolitan Police Department - Crime Scene Investigations Section
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Job Title	Crime Scene Analyst I
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Indicate all disciplines in which you do casework:

<input type="checkbox"/>	Drug Chemistry	<input type="checkbox"/>	Toxicology
<input type="checkbox"/>	Firearms/Toolmarks	<input type="checkbox"/>	Biology
<input type="checkbox"/>	Trace Evidence	<input type="checkbox"/>	Questioned Documents
<input type="checkbox"/>	Latent Prints	<input checked="" type="checkbox"/>	Crime Scene
<input type="checkbox"/>	Digital & Multimedia Evidence		

List all category(ies) of testing in which you do casework:

Crime Scene Investigation; Body Fluid Identification
--

Breath Alcohol Calibration Categories

<input type="checkbox"/>	Toxicology - Breath Alcohol Measuring Instruments (The work of the laboratory MUST include calibration certificates- do not check the box if work is limited to breath/alcohol testing)
<input type="checkbox"/>	Toxicology - Breath Alcohol Calibration Reference Material

Education: List all higher academic institutions attended (list high school only if no college degree has been attained)

Institution	Dates Attended	Major	Degree Completed
Wake Forest University	1999-2003	Political Science	BA

Other Training: List continuing education, workshops, in-service and other formal training received. Please include the course title, source and date of the training.

09-30-15 Crime Scene Analyst Academy LVMPD Las Vegas, NV
--

Courtroom Experience: List the discipline/category(ies) of testing in which you have qualified to testify as an expert witness and indicate over what period of time and approximately how many times you have testified in each.

Testified in court from 07/06/2015 to present:
Crime Scene Investigation - 0
Body Fluid Identification - 0

Professional Affiliations: List any professional organizations of which you are or have been a member. Indicate any offices or other positions held and the date(s) of these activities.

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Employment History: List all scientific or technical positions held, particularly those related to forensic science. List current position first. Be sure to indicate employer and give a brief summary of principal duties and tenure in each position.

Job Title	Crime Scene Analyst I	Tenure	07/06/2015 to present
Employer	Las Vegas Metropolitan Police Department		
Provide a brief description of principal duties:			
Respond to and investigate crime scenes; perform a variety of tasks in documenting crime scenes including photographically documenting crime scenes, photographing fingerprints, and sketching and diagraming crime scene; powder or chemically process for latent fingerprints; perform and submit fingerprint comparisons; classify fingerprints as appropriate; collect, preserve, and safely package evidence; prepare crime scene and related reports and documentation; ensure accuracy and completeness; testify as an expert witness in court; ensure the adherence to standard safety precautions; recover, unload and impound firearms; and perform related duties as required.			

Job Title	Tenure
Employer	
Provide a brief description of principal duties:	

Job Title	Tenure
Employer	
Provide a brief description of principal duties:	

Job Title	Tenure
Employer	
Provide a brief description of principal duties:	

Job Title	Tenure
Employer	
Provide a brief description of principal duties:	

Other Qualifications: List below any scientific publication and/or presentation you have authored or co-authored, research in which you are or have been involved, academic or other teaching positions you have held, and any other information which you consider relevant to your qualification as a forensic scientist.
(Use additional sheets if necessary.)

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Curriculum Vitae
LARY A. SIMMS, D.O., M.P.H.

4548 SPECIAL COURT
LAS VEGAS, NEVADA 89130
Telephone: 702-658-3578
e-mail: MEDXMNR@aol.
Marital Status: Married (June Elizabeth Clee Simms)

PRESENT POSITION

Chief Medical Examiner
Clark County Coroner/Medical Examiner Office
1704 Pinto Lane
Las Vegas, Nevada 89106
702-455-3210
POSITION: Chief Medical Examiner

PREVIOUS WORK EXPERIENCE

Perry Memorial Hospital
Perry, Oklahoma
July 1979 to September 1981
POSITION: Private solo office and hospital practice in family medicine including obstetrics (approximately 75 deliveries); 2000 hours of Emergency Department coverage; total patient contacts for period: 6,000.

Rock County Hospital and Clinic
Bassett, Nebraska
September 1981 to July 1982
POSITION: Private solo office and hospital practice in family medicine and obstetrics (approximately 10 deliveries); 2500 hours of Emergency Department coverage; total patient contacts for period: 1,200.

Park Medical Centers
2255 Fort Street
Lincoln Park, Michigan 48146
313-385-7505
August 1982 to June 1986
POSITION: Member of 20+ physician group that renders primary care in the Detroit and suburban area; hospital privileges at 250 bed acute care hospital, total patient contacts for period: 30,000.

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

Taylor Physicians-Van Born Clinic, P.C.
21711 Van Born Road
Taylor, Michigan
313-562-6040

June 1986 to January 1987

POSITION: Member of four physician group that renders primary care in the suburban Detroit area and trains family practice residents at Botsford General Hospital; hospital privileges at a 250 bed acute care hospital and a 125 bed acute care hospital; total patient contacts for period: 4500.

Michigan Health Care Center – Park Medical Centers, Inc.
2255 Fort Street
Lincoln Park, Michigan 48146
313-385-7505

January 1987 to June 1989

POSITION: Member of 60+ physician group that renders primary care in the Detroit and suburban area; hospital privileges at 250 bed acute care hospital; total patient contacts for period: 18,000.

Blodgett Memorial Medical Center
1840 Wealthy, S.E.
East Grand Rapids, Michigan 49506
616-774-7722

July 1, 1991 to January 30, 1993

POSITION: Independent contractor for autopsy services for in-house autopsies and Kent County Medical Examiner autopsies; completed approximately one hundred thirty autopsies on a fee-for-service basis.

Cook County Office of the Medical Examiner
Stein Institute of Forensic Medicine
2121 West Harrison Street
Chicago, Illinois 60612-3705
312-666-0500

July 1, 1994 to August 15, 1998

POSITION: Deputy Medical Examiner performing approximately 500-600 medico-legal investigations per year and testify 10-15 times per year.

BOARD STATUS

Board Certified in Anatomic Pathology and Clinical Pathology in 1993 by the American Board of Pathology

Board Certified in Forensic Pathology in 1994 by the American Board of Pathology

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

- 2 -

LICENSES

Diplomate of the National Board of Osteopathic Medical Examiners (1979)

Active licenses in Illinois and Nevada

Inactive licenses in Nebraska, Michigan, Ohio and Oklahoma

EDUCATION

Oklahoma State University

Stillwater, Oklahoma

1970-71

Completed freshman year and transferred to University of Tulsa

University of Tulsa

Tulsa, Oklahoma

1971-74

MAJOR: Philosophy

G.P.A.: 3.34

DEGREE: Bachelor of Science (B.S.)

Oklahoma State University College of Osteopathic Medicine and Surgery

(formerly Oklahoma College of Osteopathic Medicine and Surgery)

1111 West 17th Street

Tulsa, Oklahoma

1974-78

DEGREE: Doctor of Osteopathy (D.O.)

Dallas Memorial Hospital (formerly Dallas Osteopathic Hospital)

5003 Ross Avenue

Dallas, Texas

One year rotating internship with elective time in anesthesiology

1978-79

Grand Rapids Medical Education Center/Michigan State University

200 Cherry Street

Grand Rapids, Michigan

Four year Anatomic and Clinical Pathology Residency

1989-1993

Office of the Medical Examiner of Cook County

Stein Institute of Forensic Medicine

2121 West Harrison Street

Chicago, Illinois 60612-3705

312-666-0500

Fellowship in Forensic Medicine

July 1, 1993 to June 30, 1994

LARY A. SIMMS, D.O., M.P.H.

Curriculum Vitae

- 3 -

University of Illinois at Chicago
Office of the Dean [MC 922]
School of Public Health
2121 West Taylor Street
Chicago, Illinois 60612-7260
312-966-3832

MAJOR: Health Policy Administration and Health Information Management
G.P.A.: 4.56 (5 point grading system)
DEGREE: Master of Public Health (M.P.H.)

ASSOCIATION MEMBERSHIPS

National Association of Medical Examiners

International Association of Coroners and Medical Examiners

PRESENTATIONS, LECTURES AND ACADEMIC CONTRIBUTIONS

Ectopic Thyroid Gland in Neck: Report of a Case (clinical staff presentation 1983)

Simultaneous Intrauterine and Extra-uterine Pregnancies: Report of a Case
(clinical staff presentation 1984)

*Heterozygous 21-OH Deficiency in the Father of a Neonate with Congenital
Adrenal Hyperplasia: Report of a Case* (clinical staff presentation 1985)

*Hyperprolactinemia in an Ambulatory Clinic: Incidence, Diagnosis and
Management* (1985 unpublished manuscript)

*Use of Plasmid Fingerprinting in the Diagnosis of Coagulase Negative
Staphylococcal Septicemia* (Grand Rapids Research Day presentation 1992)

Forensic Aspects of DNA (1993 Office of the Medical Examiner staff lecture
series presentation)

*Case Report: Lethal Morphine Doses Administered by Family Member in an
Elderly Patient Admitted to a Nursing Home* (1994 unpublished manuscript)

Forensic Sciences and the Medical Examiner (1994 Office of the Medical
Examiner staff lecture series presentation)

*Case Report: Sudden Death in A 60 Day Old Male Infant with Hypoplastic Right
Coronary Artery* (1995 unpublished manuscript)

Modern Death Investigation (Illinois Histology Society Annual Meeting
presentation 1995)

LARY A. SIMMS, D.O., M.P.H.
Curriculum Vitae

- 4 -

Database Information System for Tracking Unknown Bodies in a Medical Examiner System (1996 Office of the Medical Examiner staff lecture series presentation)

Modern Death Investigation (University of Illinois at Chicago Criminal Justice Department presentation 1996)

Case Report: Sudden Death in a 6 Day Old Male Infant with Thymic Hypoplasia and Congenital Heart Disease (1996 unpublished manuscript)

Case Report: Sudden Death and Right Ventricular Cardiomyopathy in an Adolescent Male (1996 unpublished manuscript)

Medical Examiner Information Management System: Experience of a Practicing Forensic Pathologist (1996 unpublished manuscript)

Case Report: Sudden Death in a Neonate with Congenital Aneurysm of the Right Ventricle (in preparation)

Case Report: Sudden Death Due to Group A Streptococcal Necrotizing Fascitis in an HIV-Positive Adult (in preparation)

Modern Death Investigation (University of Illinois at Chicago Criminal Justice Department presentation 1997)

Modern Death Investigation (Midwestern University Faculty Guest Lecture Series presentation 1997)

Modern Death Investigation (Clinical Staff Cook County Department of Corrections and Cermack Hospital presentation 1997)

Suicide and Illinois Law (1997 Office of the Medical Examiner staff lecture series presentation)

Total Quality management in a Medical Examiner System (1997 Master of Public Health program)

Lymphoid Activation in Sudden Infant Death Syndrome: Histology of the Lymph Nodes and Spleen in SIDS Deaths in Chicago 1995-97 (grant application in preparation)

ACADEMIC APPOINTMENTS, AWARDS AND ACTIVITIES

Office of the Medical Examiner Liaison for the University of Illinois at Chicago
Department of Criminal Justice (1996 to 1998)

Medical Consultant to the Industrial Commission of the Illinois State Attorney
General's Office (1996 to 1998)

Grand Rapids Area Medical Education Council Research Foundation Award
(1992) for Clinical Research of Bacterial Plasmids

Chief Resident, Grand Rapids Area Medical Education Center/Michigan State
University Pathology Program (1991-1992)

Clinical Instructor, Michigan State University, Colleges of Human and
Osteopathic Medicine (1990-1992)

Clinical Instructor to clinical clerks from the College of Osteopathic Medicine in
Des Moines, Iowa (1985 to 1989)

Clinical Instructor to Family Practice Residents at Botsford General Hospital and
Michigan Osteopathic Medical Center, Detroit, Michigan (1986-1989)

Advanced Trauma Life Support Certified, 1984

Advanced Cardiac Life Support Certified, 1983

Clinical Instructor to Emergency Medical Services, Rock County, Nebraska
(1981)

Chief of Staff, Perry Memorial Hospital in Perry, Oklahoma (1980-81)

Chief Physician, Noble County Planned Parenthood Clinic (1980-81)

Clinical Instructor, Emergency Medical Services, Noble County, Oklahoma
(1980)

Intern of the Year, Dallas Memorial Hospital, 1979
University of Tulsa President's Honor Roll (4.0 GPA) in 1973 and 1974

Published in the University of Tulsa Poetry Review for two consecutive years
(1973-74)

Curriculum Vitae
Las Vegas Criminalistics Bureau
Statement of Qualifications

Name: William Speas

P# 5228

Date: 10-1-03

CURRENT CLASSIFICATION		
	<i>Classification</i>	<i>Minimum Qualifications</i>
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
X	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.
FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
CCSN	Criminal Justice	Associates Degree-2000
TESTIMONY		
Yes	No	
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LVMPD	Crime Scene Analyst II	7-29-96

TRAINING/SEMINARS			
DATE	CLASS TITLE	AGENCY	CREDIT HOURS
08-06-90	Electronic Systems Technology	Community College of the Air Force	Associate Degree
02-25-91	Audiovisual Production Services	Community College of the Air Force	Associate Degree

08-11-95	COMMUNITY COLLEGE OF THE AIR FORCE - SEE ATTACHED FOR PARTICULARS - Medical Laboratory Technician	Applied Science - Medical Laboratory Technician	Associate Degree of Applied Science
05-21-97	To Your Good Health - 90s	LVMPD	7
05-15-00	COMMUNITY COLLEGE OF SOUTHERN NEVADA - SEE ATTACHED FOR PARTICULARS - Criminal Justice - Law Enforcement Emphasis	Applied Science - Criminal Justice - Law Enforcement Emphasis	Associate Degree of Applied Science
02-23 to 02-25-99	Latent Print Identification - (in cooperation with FBI)	Law Enforcement Officers Training School	24
04-28 to 04-30-99	First Annual Educational Conference Opening Ceremonies (2)	NSDIAI	2
"	DNA Evidence	NSDIAI	2
"	Body ID Techniques	NSDIAI	2
"	Superglue	NSDIAI	2
"	Blood Enhancement	NSDIAI	4
"	Child Abuse	NSDIAI	2
"	Traffic Photography	NSDIAI	2
"	Clandestine Labs	NSDIAI	2
"	Laboratory Photography	NSDIAI	2
"	Death Investigations	NSDIAI	2
"	Footwear/Tire Tracks	NSDIAI	2
09-02-99	Active Charter Member - # 00023	NSDIAI	
10-21-99	New Civilian Employee Orientation Course	LVMPD	56
10-25 to 11-18-99	Crime Scene Analyst Academy - followed by	LVMPD	175
11-22-99	Civilian Use of Force/Firearms	LVMPD	21
11-22-99	Optional Weapon	LVMPD	1
	Field Training	LVMPD	400

11-10-00	Certificate - completed Basic Program in Forensic Science	American Institute of Applied Science, Inc.	230
11-29-00	Principles of Crime Scene Diagramming	North LV Police Dept.	8
12-09-99	Driver Training - Class II	LVMPD	8
01-17-01	Commission on Peace Officers' Standards and Training - "Courtroom Testimony for Police Officers"	State of Nevada	4
02-12 to 02-14-01	Clandestine Laboratory Safety Certification Course - Occasional Site Worker	LVMPD	24
04-12-02	Documentation of Footwear & Tire Impressions	LVMPD - Criminalistics Bureau	1
04-19-02	Clandestine Laboratory Safety - Fingerprint Processing	LVMPD - Criminalistics Bureau	1
04-22-02	Forensic Anthropology	LVMPD - Criminalistics Bureau	1.5
05-06-02	Major Case Prints	LVMPD - Criminalistics Bureau	3



ASCLD/LAB-International
Application for Accreditation
Attachment 2

Statement of Qualifications

Name	Glezzelle Tapay # 15709	Date	05/16/2017
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Forensic Service Provider	Las Vegas Metropolitan Police Department – Crime Scene Investigations Section
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Job Title	Crime Scene Analyst I
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Indicate all disciplines in which you currently perform testing or calibration work:

<input type="checkbox"/>	Drug Chemistry	<input type="checkbox"/>	Biology
<input type="checkbox"/>	Firearms/Toolmarks	<input type="checkbox"/>	Questioned Documents
<input type="checkbox"/>	Trace Evidence	<input checked="" type="checkbox"/>	Crime Scene
<input type="checkbox"/>	Latent Prints	<input type="checkbox"/>	Toxicology - Testing
<input type="checkbox"/>	Digital & Multimedia Evidence	<input type="checkbox"/>	Toxicology - Calibration

For each discipline checked in the table above, list all category(ies) in which you perform work:

Crime Scene Investigation; Body Fluid Identification
--

Education: List all higher academic institutions attended (list high school only if no college degree has been attained).

Institution	Dates Attended	Major	Degree Completed
University of Nevada Las Vegas	2009-2014	Biological Sciences	Bachelor of Science

Continuing Education: List formal coursework, conferences, workshops, in-service and other training received applicable to past and current forensic related positions.

Course Title	Source of Training	Date(s) of Training
Crime Scene Analyst Academy	LVMPD Las Vegas, NV	02/21-04/27/2016
Procedural Justice Through Non-Biased Policing	LVMPD Las Vegas, NV	05/02/2016
Latent Print Suitability for Crime Scene Analysts	LVMPD Las Vegas, NV	05/09/2016
Basic Bloodstain Recognition Course	LVMPD, C. Moore, Las Vegas, NV	3/31/2017

Testimony: Complete the information below for testimony provided.

Discipline or Category of Testimony	Period of Time in Which Testimony Occurred	Approximate Number of Times Testified
Crime Scene Investigation	02/08/2016 to present	0
Body Fluid Identification	02/08/2016 to present	0

Professional Affiliations: List professional organizations of which you are or have been a member. Indicate any offices or other positions held and the date(s) of these activities.

Organization	Period of Membership	Offices or Positions Held/Dates

Employment History: List all scientific or technical positions held, particularly those related to forensic science. List current position first. Add additional sections as necessary.

Job Title	Crime Scene Analyst I	Tenure	02/08/2016 to present
Employer	Las Vegas Metropolitan Police Department		
Provide a brief description of principal duties:			
Respond to and investigate crime scenes; perform a variety of tasks in documenting crime scenes including photographically documenting crime scenes, photographing fingerprints, and sketching and diagraming crime scene; powder or chemically process for latent fingerprints; perform and submit fingerprint comparisons; classify fingerprints as appropriate; collect, preserve, and safely package evidence; prepare crime scene and related reports and documentation; ensure accuracy and completeness; testify as an expert witness in court; ensure the adherence to standard safety precautions; recover, unload and impound firearms; and perform related duties as required.			

Job Title		Tenure	
Employer			
Provide a brief description of principal duties:			

Job Title		Tenure	
Employer			
Provide a brief description of principal duties:			

Job Title		Tenure	
Employer			
Provide a brief description of principal duties:			

Job Title		Tenure	
Employer			
Provide a brief description of principal duties:			

Other Qualifications: List below all personal certifications identifying the issuing organization and the dates; all scientific publications and/or presentations you have authored or co-authored, research in which you are or have been involved, academic or other teaching positions you have held, and any other information which you consider relevant to your qualifications.

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Curriculum Vitae
Las Vegas Criminalistics Bureau
Statement of Qualifications

Name: Ebony McGhee

P# 5158

Date: 10-1-03

CURRENT CLASSIFICATION		
	<i>Classification</i>	<i>Minimum Qualifications</i>
X	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
CCSN	Criminal Justice	Associates Degree-1998

TESTIMONY		
<i>Yes</i>	<i>No</i>	

EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LVMPD	Crime Scene Analyst I	5-29-96

CSA I

DOH: 05-29-96

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
01-90 to 06-92	Computer Information Systems	S.N.V.T.C. (Vo-Tech)	5 Semesters
10-07-96	New Civilian Employee Orientation	LVMPD	8
04-03-97	Auto Theft	LVMPD	2
05-27-97	NCIC Certification - Limited Access	LVMPD	7
01-01-98	NCIC Recertification 2/Guide	LVMPD	1
02-10-98	Investigations: Internship	LVMPD	9
08-21-98	K-9 Perimeter Class	LVMPD	3
08-92 to 05-98	Criminal Justice - Degree - Associate of Applied Science (A.A.S.) - dated 05-14-98 - 83 Credits	C.C.S.N.	1,245
01-00 to 05-00	Photography 170	C.C.S.N.	
05-24-00	Training Techniques	LVMPD	8
03-21-01	Patrol Response to Clandestine Drug Labs	LVMPD	2
05-24-01	Ecstasy & Other Drugs, The Pleasure Killers	LVMPD	7.5
07-18-01	Driver's Training II	LVMPD	8
08-27-01	NCIC/NCJIS Training 10132H-IIR	LVMPD	1
08-06 to 08-31-01	Crime Scene Analyst Academy - Criminalistics Bureau	LVMPD	175
09-08 to 09-10-01	Civilian Use of Force and Firearms Training - CCW permit granted	LVMPD	21
10-01-01	RC-Use of Force Video Training - Tape #1	LVMPD	15 Minutes
12-01-01	Field Training - Criminalistics Bureau	LVMPD	400
04-02-02	Chemical Enhancements of Bloodstains, Preliminary Steps	LVMPD	2
04-03-02	Documentation of Footwear & Tire Impressions	LVMPD	1
04-03-02	Major Case Prints	LVMPD	3
04-04-02	Criminal Law	LVMPD	2

DATE	CLASS TITLE	AGENCY	CREDIT - HOURS
04-22-02	Forensic Anthropology	LVMPD - Criminalistics Bureau	1.5
05-22-02	Handgun Refresher Training	LVMPD	2
05-22-02	Handgun Qualification 2	LVMPD	1
09-03-02	Firearms Qualification 3	LVMPD	1
10-23-02	Stress Management	LVMPD	2
11-05-02	Handgun Qualification 4	LVMPD	1
03-11-03	Handgun Qualification 1	LVMPD	1
03-27-03	Testifying in Court	LVMPD	7
05-07-03	Handgun Qualification 2	LVMPD	1
06-04-03	Firearms Training Simulator	LVMPD	1



DETECTIVE DANIEL TOMAINO P# 8278

Las Vegas Metropolitan Police Department 400 S.
Martin Luther King Blvd. Las
Vegas, NV 89106
Office (702) 868-3087
Email D8278T@LVMPD.com

CURRICULUM VITAE

CURRENT EMPLOYMENT

- Detective and Computer Forensic Examiner, Las Vegas Metropolitan Police Department, Secret Service Electronic Crimes Task Force, January 2016 to present.
- Employed with LVMPD since 2004.
- Acquired over 2,368 hours of police specific training, of which, more than 771 hours are in areas relevant to conducting examinations on electronic storage devices and associated techniques.

BACKGROUND AND EDUCATION CURRICULUM

- High School Graduate with 1½ years of University Schooling
- 2 years U.S. ARMY Tactical Operations Center operator. ○ Jan 1998 Jan 2000
- Nevada POST Certification Category III ○ City of Las Vegas Detention and Enforcement, 2002
- Nevada POST Certification Category I ○ Las Vegas Metropolitan Police Department, 2004

CERTIFICATIONS

- ACE- AccessData Certified Examiner April 2016
- MCFE- Magnet Certified Forensic Examiner September 2016
- Cellebrite- Cellebrite Certified Logical Operator October 2016
- Cellebrite- Cellebrite Certified Physical Analyst October 2016
- MCFE AXIOM -Magnet Certified Forensic Examiner April 2017
- CFCE - Certified Forensic Computer Examiner October 2017

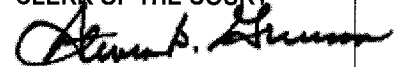
COMPUTER FORENSIC TRAINING

- BCERT-National Computer Forensic Institute/Basic Computer Evidence Recovery Training Jan-Feb 2017, 192hrs
- IACIS-International Association of Computer Investigative Specialists/Basic Computer Forensics Examiner Course May 2017, 76hrs
- AccessData Bootcamp ○ By AccessData, February & April 2016, 21hrs ea.
- FTK Transition Day ○ By AccessData, February 2016, 7hrs
- Windows 8 Forensics ○ By AccessData, March & May 2016, 21hrs ea.
- Cloud Forensics ○ By AccessData, March 2016, 21hrs
- Applied Decryption ○ By AccessData, March 2016, 21hrs
- Mac Forensics ○ By AccessData, April & July 2016, 21hrs ea.
- Internet Forensics ○ By AccessData, April, May, & August 2016, 21hrs ea.
- Dead Box Analysis ○ By AccessData, May 2016, 7hrs
- Advanced FTK ○ By AccessData, May 2016, 21hrs

- Ram Analysis ○ By AccessData, May & August 2016, 21hrs
- Windows 10 Forensics ○ By AccessData, June 2016 21hrs
- Windows OS Forensics ○ By AccessData, June & September 2016 21hrs
- Networking for Incident Response ○ By AccessData, August 2016 21hrs
- Advanced Forensics ○ By AccessData, September 2016 35hrs

CONFERENCES ATTENDED

- OSINT Open Source Intelligence ○ By Mike Bazzell, February 2016, 24hrs
- Internet Evidence Finder ○ By Magnet Forensics, Sept 2016, 24hrs
- Cellebrite Mobile Forensics ○ By Cellebrite, Oct 2016, 35hrs



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rugggeroli@icloud.com
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Plaintiff,

Case No. C-17-328587-3

vs.

Dept. No. XII

DAVONTAE AMARRI WHEELER,
#590908.

Defendant.

MOTION TO CONTINUE TRIAL

COMES NOW Defendant, DAVONTAE AMARRI WHEELER, through JAMES J. RUGGEROLI, ESQ., submits the following Motion. This Motion is based on the following Points and Authorities, the pleadings and papers on file herein, the exhibits and affidavits and any oral argument by counsel permitted at the hearing on this matter.

DATED this 12th day of December, 2018.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Motion will be heard in Department XII before the District Court Judge of the above entitled court on the _____ day of January 31, 2019, 2018 at the hour of 8:30 a.m. or as soon thereafter as counsel can be heard.

DATED this 12th day of December, 2018.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Trial in this matter is presently scheduled for February 12, 2018. There is a status check on discovery calendared for December 19, 2018. It is expected that counsel for Co-Defendant, Raekwon Robertson, will announce his intent to move forward with the trial scheduled for February 12, 2018. A file review at the District Attorney's Office occurred between the prosecutor and counsel on or about November 12, 2018. Based on a review of the files, additional discovery had to be provided on a "jump drive" to the defense. The Defense obtained a copy of the discovery on a jump drive after December 4, 2018. Due to the volume of materials contained in the new discovery, and based on the necessary investigation that consequently needs to occur in this matter, Mr. Wheeler respectfully requests that the trial date be continued in this case.

II. LAW AND ARGUMENT

The granting of a motion to continue a trial in a criminal case is within the sound discretion of the trial court. Doleman v. State, 107 Nev. 409, 416, 812 P.2d 1287, 1291 (1991). Any party for "good cause" may move the court for an order continuing the date set for trial. EJDRC 7.30(a). The Nevada Supreme Court has repeatedly held that good cause can take on a

1 variety of forms. *See Furbay v. State*, 116 Nev. 481, 998 P.2d 553 (2000); *see also Snyder v.*
2 *State*, 103 Nev. 275, 738 P. 2d 1303 (1987) (Defense counsel not prepared for trial.).

3 Moreover, Eight Judicial District Court Rule 7.30(a) provides, in pertinent part, that “any
4 party may, for good cause, move the court for an order continuing the day set for trial of any
5 cause.” Furthermore, N.R.S. 174.515 holds that “when an action is called for trial, or at any time
6 previous thereto, the court may, upon sufficient cause shown by either party by affidavit, direct
7 the trial to be postponed to another day.” Finally, the granting of a continuance in a criminal
8 proceeding is within the sound discretion of the trial court. *See Dixon v. State*, 584 P.2d 693, 94
9 Nev. 662 (1978).

11 In the case at hand, the defense seeks a continuance because additional investigation is
12 necessary in order to provide Mr. Wheeler with an adequate and effective defense in this case.
13 Good cause exists to support this request. Counsel and the investigator in this case only received
14 the new discovery this month, and significant further investigation needs to take place as a result.
15 *See* a true and accurate copy of the private investigator’s, Richard Franky’s, Declaration attached
16 hereto as **Exhibit A**. Moreover, several motions, that can only be filed after complete discovery
17 has been disclosed, need to be researched and filed. The Defendant is facing a potential life
18 sentence in this case, and the State will suffer no prejudice as a result of a continuance. As such,
19 a continuance of the February, 2019 trial setting is necessary, justified, and most respectfully
20 requested

21 DATED this 12th day of December, 2018.

22 JAMES J. RUGGEROLI

23 By: */s/ James J. Ruggeroli*

24 James J. Ruggeroli, Esq.

25 Nevada Bar No. 7891

26 400 South 4th Street, Suite 280

27 Las Vegas, Nevada 89101

28 Attorney for Defendant

DECLARATION OF JAMES J. RUGGEROLI, ESQ.

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

1. I am counsel of record for the Defendant and 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. 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 12th day of December, 2018.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on the 14th day of December, 2018, I emailed a copy of this motion to:
motions@clarkcountyda.com; SBindrup@ClarkCountyNV.gov; michael@sanftlaw.com

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

JAMES J. RUGGEROLI, ESQ.

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rugggeroli@icloud.com
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Plaintiff,

Case No. C-17-328587-3

vs.

Dept No. XII

DAVONTAE AMARRI WHEELER,
#5909081.

Defendant.

MOTION TO SEVER DEFENDANTS

COMES NOW Defendant, DAVONTAE AMARRI WHEELER, through JAMES J. RUGGEROLI, ESQ., submits the following Motion. This Motion is based on the following Points and Authorities, the pleadings and papers on file herein, the exhibits and affidavits and any oral argument by counsel permitted at the hearing on this matter.

DATED this 14th day of December, 2018.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli

James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Motion will be heard in Department XII before the District Court Judge of the above entitled court on the _____ day of _____, 2018 at the hour of _____ a.m. or as soon thereafter as counsel can be heard.

DATED this 14th day of December, 2018.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mr. Wheeler's case should be severed from the co-defendants because: the evidence Mr. Wheeler is at best circumstantial; the evidence against co-defendants Lofton-Robinson and Robertson is substantial; the co-defendants have implicated Mr. Wheeler; significant prejudice will spill-over from the substantial evidence against Lofton-Robinson and Robertson to the circumstantial case against Mr. Wheeler if there is a joint trial; Mr. Wheeler will have a conflicting and irreconcilable defense against both co-defendants; therefore Mr. Wheeler will be unable to have a fair trial at a joint proceeding, and severance is justified and necessary.

II. FACTS

Pertinent facts were presented to the grand jury on November 29, 2017 and on April 18, 2018 against Mr. Wheeler, and additional facts are contained in the police reports, which are as follows:

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

2. The allegations and testimony presented to the grand jury related to Mr. Wheeler

are essentially as follows:

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

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

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

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

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

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

e. The four individuals had been in the store at "about 11:20, 11:25" p.m. on August 8, 2017. (GJT 27:8-11).

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

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

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

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

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

c. Mr. Mason was not able to personally identify any of the individuals,

1 however, he was able to notice that the race of the four individuals were all "dark skin,
2 black individuals." (GJT 47:11-23).

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

6 e. Later, while still jogging, Mr. Mason called his wife and informed her to
7 lock the house and call 311 to report "some suspicious guys in the neighborhood." (GJT
8 51:18-25).

9 6. Shawn Fletcher, Las Vegas Metropolitan Police Department ("Metro") senior
10 crime scene analyst testified that:

11 a. He documented the white Crown Vic's search and took photographs on
12 August 9, 2017. (GJT 54-61).

13 b. A pair of red Air Jordan shoes were recovered. (Id.)

14 c. A box of 45 caliber ammunition head-stamped "FC" for "Federal and "N"
15 for NATO was found. (Id.).

16 7. William Speas, Metro senior crime scene analyst testified:

17 a. He had been called to assist in searching and documenting aspects of the
18 investigation relating to the crime scene at 5536 West Dewey Drive (the "Dewey Scene")
19 and other locations (including the Short Line Express, 919 Bagpipe Court ("Bagpipe"),
20 on August 9, 2017. (GJT 65:6-10).

21 b. A number of cartridge cases were impounded at the Dewey Scene (GJT
22 68).

23 c. There were three 45 caliber cartridges with three different head stamps
24 and a 22 caliber cartridge found at the Dewey Scene. (GJT 70-71).

25 d. One of the 45 caliber cartridge cases was an R-P 45 auto. (GJT14-19).

26 8. Glezzelle Tapay, a Metro crime scene analyst testified:

27 a. On August 15, 2017, she responded to 6647 West Tropicana (the
28 "Tropicana Address") to photograph and document a residence searched pursuant to a

1 search warrant. (GJT 77-82).

2 b. A Taurus 22 caliber firearm and 22 caliber ammunition with "C" head
3 stamp was located at the Tropicana Address. (GJT 78-79).

4 9. Mitchell Dosch, a Metro Detective, testified:

5 a. On August 9, 2017, he went to the Short Line Express and observed the
6 surveillance video. (GJT 95).

7 b. Det. Dosch obtained a search warrant for Bagpipe and found a 45 handgun
8 at that address. (GJT 97-98).

9 c. During the course of his investigation, he determined that Raekwon
10 Robertson was associated with the Tropicana Address. (GJT 98).

11 d. During the course of his investigation, he determined that Demario
12 Lofton-Robinson and DeShawn Robinson were associated with the Bagpipe Address.
13 (GJT 98-99).

14 e. During the course of his investigation, Det. Dosch was aware of a search
15 at 3300 Civic Center, apartment 2f (the "Civic Center Address") where police recovered
16 a third firearm, a 45 caliber semi-automatic handgun. (GJT 98-99).

17 f. Police recovered 45 caliber cartridge cases with head stamp "R-P" in a 45
18 handgun at the Bagpipe and at the Civic Center address. (GJT 100-101).

19 g. Det. Dosch testified that he had information" that Mr. Wheeler was
20 associated with the Civic Center Address. (GJT 101).

21 h. 45 caliber cartridges with a head stamp "NFCR" and "Winchester 45
22 Auto" were found at the murder scene. (GJT 101-102).

23 i. No "Winchester 45 Auto" head stamp cartridges were found during any of
24 the searches in this case. (GJT 101-102) (emphasis added).

25 j. During the investigation, Det. Dosch came in contact with Raekwon
26 Robertson and Davontae Wheeler. (GJT 105).

27 k. Based on Det. Dosch's time with Mr. Wheeler, Det. Dosch testified that he
28 could identify Mr. Wheeler as the individual with the open-carry firearm in the Short

1 Line Express surveillance video. (GJT 106).

2 l. Det. Dosch interviewed Demario Lofton-Robinson, who admitted to being
3 one of the shooters and that he used the 45 semi-automatic handgun found at the Bagpipe
4 Address. (GJT 110-112).

5 m. A Taurus 45 caliber handgun and "RP 45 Auto" head stamped cartridges
6 were located at the Civic Center Address. (GJT 115-116).

7 10. Detective Ryan Jaeger with Metro testified that:

8 a. During the course of his investigation he came into contact with and
9 interviewed Mr. Wheeler. (GJT 144).

10 b. According to Det. Jaeger, Mr. Wheeler admitted to owning a 45 caliber
11 handgun, to being in the vehicle (the white Grand Marquis) and to being in the Short Line
12 Express on August 8, 2017. (GJT 145-146).

13 c. However, according to Det. Jaeger, *Mr. Wheeler denied being involved in*
14 *any killing* and that Mr. Wheeler said that he had been in the vehicle "trying to negotiate
15 to buy a Beretta handgun, he couldn't reach a price for the gun that he liked *so he got out*
16 *of the vehicle and took a bus home*.". (GJT146:14-17) (emphasis added).

17 11. Anya Lester, forensic scientist in the forensic laboratory in the firearms and tool
18 marks analysis unit for Metro, generated a report dated January 22, 2018 specifically indicating
19 that item number 14 (the .45 found at Mr. Wheeler's address) fired none of the evidence bullets
20 and cartridge cases. GJT 99:14-19, 101:2-17, 115:18-116:14; GJT2 17:17-18:13.

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

25 13. Ms. Lester also 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, which had been
27 located, pursuant to search warrant at 919 Bagpipe Court, an address associated with Co-
28 Defendant Lofton-Robinson. GJT 97:23-98:2, 98:3-99:2, 100:16-22, GJT 18:3-18.

1 14. That there was a fifth individual, the fourth person present at the shooting (that
2 was not Wheeler), is supported by evidence in discovery that the State did not present to the
3 grand jury.

4 15. Nikolaus Spahn (the Short Line Express convenient store clerk) testified that he
5 would not sell a Black and Mild cigar to the four individuals in the store because of lack of ID,
6 but another individual that had ID came in the store a few minutes later and bought the same
7 Black and Mild cigar. GJT 25-27.

8 16. Through investigation, police obtained the identity of the individual, Marcell
9 Solomon, in the store that bought the Black and Mild cigar for the people that had been in the
10 store.

11 17. Det. Dosch found Mr. Solomon through his credit card purchase and because of
12 the surveillance video from the convenience store.

13 18. When asked about how many people he had seen in the white car in front of the
14 Short Line Express, Mr. Solomon answered:

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

16 ...

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

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

19 19. Wheeler had told detectives that there had been four other individuals beside
20 himself that went to the convenience store.

21 20. Further information not presented to the grand jury establishes the grounds for the
22 need to sever the defendants from Mr. Wheeler for trial:

23 Detective Dosch obtained a search warrant for the cell phones recovered from Lofton-
24 Robinson's and Robinson's person at the time of their arrests. See Police Report attached hereto
25 as **Exhibit A**.

26 21. Examination of Robinson's cell phone revealed a Facebook Messenger thread
27 between Robinson's Facebook account and the Ray Logan Account. Id.

28 22. Police allege that 12 hours before the murder, Robertson contacted Robinson via

1 Facebook Messenger and asked Robinson if "DJ" (Lofton-Robinson was "trying to hit a house
2 (SIC) tonight." Robertson added, "me u sace and him sace already said yeah." Id.

3 23. Further investigation allegedly established that "Sace" had a corresponding
4 number associated with Mr. Wheeler. Id.

5 24. Police allege that it appeared that Robertson was identifying all the would-be
6 participants in what sounded like the planning of a burglary prior to what would become the
7 murder at issue in this case. Id.

8 25. Police further allege that the corresponding phone number for "Sace" showed
9 Robertson's Facebook account showed that he was friends with an account named "Young Sace
10 Versace." Id.

11 26. Detective Dosch viewed the photos in the "Young Sace Versace" account and
12 compared them to the individual on the Speedy Mart surveillance that had been open carrying
13 the firearm. Id.

14 27. Police claim that the suspect depicted in the video surveillance bore a strong
15 resemblance to the photos of the black male depicted in the Facebook account "Young Sace
16 Versace," and police allege that further follow-up investigation identified Mr. Wheeler as the
17 name associated with the Facebook account for "Young Sace Versace." Id.

18 28. Detectives subsequently obtained a pen register for Wheeler's phone number,
19 reviewed Wheeler's CDR and discovered he had a lot of contact with Robertson, and police
20 allege that review of the CDRs establish that Wheeler and Robertson locations were consistent
21 with Lofton-Robinson's claim that he picked up Wheeler on the night of the murder at the 7-
22 Eleven near Civic Center Dr. and Cheyenne Ave. Id.

23 29. Furthermore, after Lofton-Robinson had been arrested, he confessed to his
24 involvement in the crime and said that one of the other suspects went by the name "Rae,"
25 (alleged to be Co-Defendant Robertson). Id.

26 30. Lofton-Robinson also indicated that one of the other suspects was known by the
27 moniker "Light Skin" (alleged to be Mr. Wheeler), and that that suspect might be connected to
28 the contact name "Sace" in his cell phone. Id.

1 For the reasons set forth below, Mr. Wheeler must have his case severed from the co-
2 defendants.

3 **III. LAW AND ARGUMENT**

4 **A. LAW**

5 N.R.S. 174.165 authorizes severance, and states in pertinent part as follows:

6 If it appears that a Defendant or the State of Nevada is prejudiced by a joinder of
7 offenses or of Defendants in an indictment or information, or by such joinder for
8 trial together, the court may order an election or separate trials of counts, grant a
severance of Defendants or provide whatever other relief justice requires.

9 Nevada appellate courts review a district court's decision to sever a trial for abuse of
10 discretion. Chartier v. State, 124 Nev. 760, 764, 191 P.3d 1182, 1185 (2008). "[I]t is well settled
11 that where persons have been jointly indicted they should be tried jointly, absent compelling
12 reasons to the contrary." Jones v. State, 111 Nev. 848, 853, 899 P.2d 544, 547 (1995). "A
13 defendant seeking severance must show that the codefendants have conflicting and irreconcilable
14 defenses and there is danger that the jury will unjustifiably infer that this conflict alone
15 demonstrates that both are guilty." Marshall v. State, 118 Nev. 642, 646, 56 P.3d 376, 378 (2002)
16 (internal quotation omitted). However, "mutually antagonistic defenses are not prejudicial per
17 se"; a defendant must also demonstrate that the joint trial "prevented the jury from making a
18 reliable judgment regarding guilt or innocence," or compromised a specific trial right. Id. at 646-
19 48, 56 P.3d at 379-80 (internal quotation omitted).

21 "[D]istrict courts must determine the risk of prejudice from a joint trial based on the facts
22 of each case." Marshall v. State, 118 Nev. 642, 648, 56 P.3d 376, 379 (2002) (citing Middleton
23 v. State, 114 Nev. 1089, 1108, 968 P.2d 296, 309 (1998)). "A district court should grant a
24 severance 'only if there is a serious risk that a joint trial would compromise a specific trial right
25 of one of the defendants, or prevent the jury from making a reliable judgment about guilt or
26 innocence.'" Id. at 647, 56 P.3d at 379 (quoting Zafiro v. United States, 506 U.S. 534, 539, 113
27
28

1 S.Ct. 933, 122 L.Ed.2d 317 (1993)). Conflicting defenses may cause prejudice warranting
2 severance if the defendant seeking severance shows that the codefendants have "conflicting and
3 irreconcilable defenses and there is danger that the jury will unjustifiably infer that this conflict
4 alone demonstrates that both are guilty." *Id.* at 646, 56 P.3d at 378 (quoting *Jones v. State*, 111
5 Nev. 848, 854, 899 P.2d 544, 547 (1995)). The district court's duty to consider the potential
6 prejudice that may result from a joint trial does not end with the denial of a pretrial motion to
7 sever. Rather, as this court has recognized, "the district court has a continuing duty at all stages
8 of the trial to grant a severance if prejudice does appear." *Id.* at 646, 56 P.3d at 379 (quoting
9 *Neill v. State*, 827 P.2d 884, 890 (Okla.Crim.App.1992)).
10

11 The decision to sever a joint trial is vested in the sound discretion of the district court and
12 will not be reversed on appeal unless the appellant carries the heavy burden of showing that the
13 trial judge abused his discretion. *Buff v. State*, 114 Nev. 1237, 970 P.2d 54 (1998). While
14 joinder of defendants for trial together promotes judicial economy and efficiency as well as
15 consistent verdicts and is preferred, this preference applies only so long as it does not
16 compromise a defendant's right to a fair trial; despite the concern for efficiency and consistency,
17 the district court has a continuing duty at all stages of the trial to grant a severance if prejudice
18 does appear. *Marshall v. State*, 118 Nev. 642, 56 P.3d 376 (2002). Moreover, a co-defendant is
19 entitled to a separate trial if he presents sufficient showing of facts demonstrating that substantial
20 prejudice would result in joint trial. *Lisle v. State*, 113 Nev. 679, 941 P.2d 459 (1997). The
21 ultimate issue on a motion for severance turns on whether a jury could reasonably be expected to
22 compartmentalize evidence as it relates to separate defendants. *Id.*
23

24
25 In *Zafiro v. United States*, 506 U.S. 534, 113 S.Ct. 933, 122 L.Ed.2d 317 (1993), Zafiro
26 and her co-defendants challenged their convictions based upon the misjoinder by the District
27 Court. The Supreme Court upheld the trial court's decision to have one trial with the multiple
28

1 defendants. The Court declined to adopt a bright line rule allowing for severance based upon
2 inconsistent defenses. Instead, the Court addressed those occasions when a trial court should
3 sever defendants:

4 A district court should grant a severance . . . only if there is a serious risk that a
5 joint trial would compromise a specific trial right of one of the defendants, or
6 prevent the jury from making a reliable judgment about guilt or innocence. Such a
7 risk might occur when evidence that the jury should not consider against a
8 defendant and that would not be admissible if a defendant were tried alone is
9 admitted against a co-defendant. For example, evidence of a co-defendant's
10 wrongdoing in some circumstances erroneously could lead a jury to conclude that
11 a defendant was guilty. When many defendants are tried together in a complex
12 case and they have markedly different degrees of culpability, this risk of prejudice
13 is heightened. . . Evidence that is probative of a defendant's guilt but technically
14 admissible only against a co-defendant also might present a risk of prejudice. . .
15 The risk of prejudice will vary with the facts in each case, and district courts may
16 find prejudice in situations not discussed here.

17 Zafiro v. United States, 506 U.S. 534, 113 S.Ct. 933, 122 L.Ed.2d 317 (1993).

18 Addressing the underlying facts in Zafiro, the Court noted that the codefendants never
19 blamed each other. Instead, each claimed his/her own innocence and during argument, the
20 attorneys placed blame on certain defendants. The Zafiro Court felt that the trial court properly
21 denied severance. (Such is not the case here.)

22 In Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620 (1968), the United States
23 Supreme Court addressed severance when a co-defendant's confession was admitted in a joint
24 trial. The Court found that the co-defendant's confession constituted a "powerfully
25 incriminating extrajudicial statement," and the Court found that its introduction into evidence,
26 insulated from cross-examination, violated Bruton's Sixth Amendment rights. Id. at 135. The
27 facts in Bruton involved a joint trial of two defendants, Bruton and Evans, for robbery. Evans
28 did not testify, but the government introduced his confession into evidence. The confession
claimed that Evans had committed the robbery with Bruton. Id. at 124. The trial court allowed
the confession to be admitted, but instructed the jury to consider the evidence as to Evans only.
Id. at 125.

1 The Court found that Evan's confession violated Bruton's right to cross-examine the
2 witnesses against him. Id. at 137. Further, the Court stated that the confession was so prejudicial
3 that a limiting instruction was not enough to shield the defendant from the prejudicial effects of a
4 co-defendant's confession:

5 There are some contexts in which the risk that the jury will not, or cannot, follow
6 instructions is so great, and the consequences of failure so vital to the defendant
7 that the practical and human limitation of the jury system cannot be ignored.
8 Such a context is presented here, where the powerfully incriminating
9 extrajudicial statements of a codefendant, who stands accused side-by-side with
10 the defendant, are deliberately spread before the jury in a joint trial. Not only are
11 the incriminations devastating to the defendant but their credibility is inevitably
12 suspect...The unreliability of such evidence is intolerably compounded when the
13 alleged accomplice, as here, does not testify and cannot be tested by cross
14 examination. (Citation omitted) Gray v. Maryland, 523 U.S. 185, 190, 118 S.Ct.
15 1151, 1154 (1998); citing Bruton.

16 Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620 (1968).

17 In Stevens v. State, 97 Nev. 443, 444, 634 P.2d 662, 663 (1981), the statements used in a
18 joint trial to incriminate one defendant were redacted to excise all express references to the other
19 defendant, Jean Stevens, who was subsequently convicted. Citing Bruton, the Nevada Supreme
20 Court reversed Stevens' conviction, concluding that "it appears likely that the jury read [Stevens']
21 name into the blanks in each one of [her co-defendant's] statements introduced at the trial
22 below." Later, in Gray v. Maryland, 523 U.S. 185, 118 S. Ct. 1151, 140 L. Ed. 2d 294
23 (1998), the United States Supreme Court reached the same conclusion, holding that Bruton's
24 protections applied where a co-defendant's confession was redacted to substitute blanks for the
25 defendant's name.

26 In Ducksworth v. State, 113 Nev. 780, 942 P.2d 157 (1997), Ducksworth and Martin
27 were convicted after a joint trial. The Court held that the district court erred in failing to grant
28 Martin's motion for severance. According to the Court, Martin had been prejudiced by the
joinder. The evidence against Martin had been largely circumstantial and had been much less
convincing than the evidence against Ducksworth. Despite the fact that the district court had

1 given a limiting instruction before two witnesses testified that Ducksworth had confessed to
2 committing some of the crimes with an accomplice, the Court held that the testimony allowed the
3 jury to deduce that Martin had been the accomplice, especially in light of the fact that Martin and
4 Ducksworth sat together at the defendant's table during the trial. Ducksworth did not testify,
5 which the Court concluded violated Martin's right to cross-examination secured by the
6 Confrontation Clause of the Sixth Amendment. Ducksworth, citing Stevens v. State, 97 Nev.
7 443, 634 P.2d 662 (1981) citing Bruton.

9 **B. ARGUMENT**

10 In the case at hand, Mr. Wheeler's case should be severed because: the evidence Mr.
11 Wheeler is at best circumstantial; the evidence against co-defendants Lofton-Robinson and
12 Robertson is substantial; the co-defendants have implicated Mr. Wheeler; significant prejudice
13 will spill-over from the substantial evidence against Lofton-Robinson and Robertson to the
14 circumstantial evidence against Mr. Wheeler if there is a joint trial; Mr. Wheeler will have a
15 conflicting and irreconcilable defense against both co-defendants; therefore Mr. Wheeler will be
16 unable to have a fair trial at a joint proceeding, and severance is justified and necessary.

18 **1. The Evidence Against Wheeler Is Nothing More Than Circumstantial**

19 The State's case against Mr. Wheeler is at best circumstantial. Mr. Solomon, the
20 independent witness not presented to the grand jury establishes that there were *up to* five
21 individuals at the Short Line Express 30-40 minutes prior to the shooting in this case. Mr.
22 Wheeler claimed to have gotten out of the car, prior to any shooting, and taken a bus home after
23 being at the Short Line Express. The jogger, Mr. Mason noticed four suspicious individuals in
24 his neighborhood. He was not able to personally identify any of the individuals, however, he was
25 able to notice that the race of the four individuals were all "dark skin, black individuals." Mr.
26 Wheeler is light skinned. Ms. Lester has established that Mr. Wheeler's gun did not fire any of
27
28

1 the shots that killed Mr. Valenzuela or were recovered in this case. There is simply no evidence
2 that Mr. Wheeler was one of the four individuals present at the scene, and there is evidence that
3 there had been a total of five individuals at the Short Line Express and that Mr. Wheeler claimed
4 to have left those four individuals prior to any shooting. Since Mr. Mason testified he only saw
5 four individuals, Mr. Wheeler's claims are corroborated, and the State's case against Mr.
6 Wheeler is only based on the slightest of circumstantial evidence and conjecture.

7
8 **2. The Evidence Against the Co-Defendants is Substantial**

9 Ms. Lester has established that the guns used to kill Mr. Valenzuela were recovered in
10 Lofton-Robinson's and Robertson's homes. Moreover, Lofton-Robinson confessed to the
11 shooting and implicated Robertson. Robertson's phone records, email, and Facebook account
12 link him to Lofton-Robinson and a plan to commit a burglary prior to the shooting. Lofton-
13 Robinson and Robertson are seen on the video from Short Line Express and both have dark skin,
14 which supports a stronger case against them based on Mr. Mason's testimony that four dark
15 skinned youths were present just prior to the shooting. As such, The State's case against Mr.
16 Wheeler's co-defendants amounts to substantial evidence of guilt.

17
18 **3. The Co-defendants Have Implicated Mr. Wheeler**

19 Lofton-Robinson specifically made statements against "Sace," which police allege to be
20 Mr. Wheeler. Moreover, Robertson's cell phone and Facebook accounts provide what amounts
21 to testimonial evidence against Mr. Wheeler "**me u sace and him sace already said yeah.**"
22 Thus, it is clear that the Co-defendants statements and writings have implicated Mr. Wheeler in
23 this case.

24
25 **4. Severance is Necessary and Justified**

26 Justice requires severance of the Mr. Wheeler from the co-defendants because of the
27 severe prejudice that Mr. Wheeler will surely suffer as a result of a joint trial. (See Lisle v. State,
28

1 113 Nev. 679, 941 P.2d 459 (1997) where a codefendant is entitled to a separate trial if he
2 presents sufficient showing of facts demonstrating that substantial prejudice would result in joint
3 trial.) Moreover, a jury could not reasonably be expected to compartmentalize the evidence
4 pertaining to the codefendants (especially concerning the fact that Lofton-Robinson has
5 confessed and both co-defendants' guns have been determined to have been used in the murder).
6 As such, there is no way to properly protect Mr. Wheeler from the taint of guilt by association as
7 it relates to the separate defendants. Id. Moreover, while there is strong evidence of guilt against
8 the codefendants, there is but mere, circumstantial evidence against Mr. Wheeler, and there is no
9 evidence that Mr. Wheeler was present at the time of the shooting.
10

11 Thus, here, as in Bruton, and Ducksworth, the codefendants' incriminating statements
12 and writings require severance, and a limiting instruction and redactions of transcripts etc...
13 cannot cure the danger of unfair prejudice that will surely result from a joint trial in this case.
14 Even if the State excludes statements, a joint trial will impermissibly prejudice Mr. Wheeler.
15 Simply sitting next to the codefendants when the majority of the evidence at trial is presented
16 will clearly have a "spill over" effect against Mr. Wheeler, and the taint of guilt by association
17 cannot be avoided at a joint trial.
18

19 Furthermore, there is a strong likelihood that there will be conflicting and irreconcilable
20 defenses between Mr. Wheeler and the co-defendants. Mr. Wheeler will certainly be able to
21 establish that if there were five individuals at the convenience store but only four individuals (all
22 of which had dark skin), his statement to the police that he left the co-defendants prior to any
23 shooting has significant support. Moreover, Mr. Wheeler will be able to claim that his gun has
24 been eliminated from being involved in the shooting, while the co-defendants' guns have been
25 concluded to have been used to kill Mr. Valenzuela.
26

27 It is certainly conceivable that the co-defendants may attempt to defend themselves by
28

1 attempting to use the same defense: that they had left the others before the shooting and that Mr.
2 Wheeler, therefore, was one of the four present that Mr. Mason saw. Additionally, the co-
3 defendants or the State may suggest that Mr. Wheeler's gun may not have been used, but he may
4 have used one of the co-defendants' guns.

5 "[D]istrict courts must determine the risk of prejudice from a joint trial based on the facts
6 of each case." Marshall v. State, 118 Nev. 642, 648, 56 P.3d 376, 379 (2002) (citing Middleton
7 v. State, 114 Nev. 1089, 1108, 968 P.2d 296, 309 (1998)). Conflicting defenses may cause
8 prejudice warranting severance if the defendant seeking severance shows that the codefendants
9 have "conflicting and irreconcilable defenses and there is danger that the jury will unjustifiably
10 infer that this conflict alone demonstrates that both are guilty." Id. at 646, 56 P.3d at 378
11 (quoting Jones v. State, 111 Nev. 848, 854, 899 P.2d 544, 547 (1995)). Thus, in the case at hand
12 the likely conflicting defenses between Mr. Wheeler and the co-defendants conclusively
13 establishes that the risk of prejudice further warrants severance. Severance in this matter is
14 therefore justified and necessary, and Mr. Wheeler respectfully requests that this Court grant the
15 foregoing motion accordingly.

16 DATED this 14th day of December, 2018.

17 **JAMES J. RUGGEROLI**

18 By: /s/ James J. Ruggeroli

19 James J. Ruggeroli, Esq.

20 Nevada Bar No. 7891

21 400 South 4th Street, Suite 280

22 Las Vegas, Nevada 89101

23 Attorney for Defendant

JAMES J. RUGGEROLI, ESQ.
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
TEL: (702) 258-2022 | FAX: (702) 258-2021

DECLARATION OF JAMES J. RUGGEROLI, ESQ.

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

1. I am counsel of record for the Defendant and 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. 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 14th day of December, 2018.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on the 14th day of December, 2018 I emailed a copy of this motion to:
motions@clarkcountyda.com; SBindrup@ClarkCountyNV.gov; michael@sanftlaw.com

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

JAMES J. RUGGEROLI, ESQ.

601 South 7th Street

Las Vegas, Nevada 89101

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EXHIBIT A

PA0302

817-18

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
ARREST REPORT

☐ City

☒ County

☐ Adult

☐ Juvenile

Sector/Beat S5

ID/EVENT# 05909081	ARRESTEE'S NAME (Last) (First) (Middle) Wheeler Davontae Amarri			S.S.#
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code) 3300 Civic Center Drive #2F N. Las Vegas 89030				
CHARGES Attempt Robbery with a Deadly Weapon, Conspiracy to Commit Robbery with a Deadly Weapon, Murder with a Deadly Weapon				
OCURRED	DATE 08-09-17	DAY OF WEEK Wednesday	TIME 0012	LOCATION OF ARREST (Number, Street, City, State, Zip Code) 220 Civic Center Drive #2F N. Las Vegas, Nevada 89030
RACE B	SEX M	D.O.B. 04/27/95	HT. 5'8"	WT. 136
HAIR BLK		EYES BRN	PLACE OF BIRTH Dayton Ohio	
ARRESTING OFFICER #1: R. Jaeger		P#: 5587	ARRESTING OFFICER #2: M. Dosch	
CONNECTING REPORTS (Type or Event Number) 170809-0029				

APPROVED BY (PRINTED NAME): Lieutenant D. McGrath #4349

CIRCUMSTANCES OF ARREST:

On 08-09-2017 the Las Vegas Metropolitan Police Department (LVMPD) dispatch received a 911 call from John Relato. Relato reported his cousin, Gabriel Valenzuela, had been shot in the driveway of 5536 West Dewey Dr. Patrol officers and Medical personnel responded to the scene and discovered Gabriel Valenzuela lying on the ground suffering from gunshot wounds. Gabriel was transported via ambulance to UMC Trauma and patrol officer secured the scene and contacted witnesses. One of the witnesses was Robert Mason. Mason told the officers that he was jogging in the neighborhood right before the shooting. Mason saw four black males wearing dark colored clothing and standing in front of the Valenzuela's residence. The males were acting suspiciously. When Mason ran past the males and turned north on Lindell Rd. he saw an unoccupied white Mercury Grand Marquis bearing Nevada registration 473YZB. Mason called his wife, Lucy Mendoza, and asked her to call the police and report the suspicious circumstances. Mendoza's 3-1-1 call to the LVMPD Communications Center was at approximately 0011 hours, which was documented under LVMPD event 170809-0027.

At approximately 0055 hours UMC Dr. Saquib pronounced Valenzuela dead. Patrol detectives determined further investigation from the Homicide Section was warranted. Detectives Jaeger and Dosch responded to the scene and assumed investigatory responsibility. Evidence at the scene consisted of three .45 caliber cartridge cases, a .22 caliber cartridge case and apparent blood. Detectives Jaeger and Dosch received a briefing from patrol detectives and learned a patrol officers had stopped in at a nearby convenience store, which was located at 7325 S. Jones Boulevard. The clerk told the officer that around 2230 hours (August 8th), right before midnight, four black males entered the store. One of the males was open-carry with a black handgun. The males arrived in white sedan and the clerk was fearful he was going to get robbed. The males made a couple purchases and eventually left without incident.

PA0303

817-19

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 170809-0029

Detective Cody responded to the convenience store and viewed the video surveillance. The males arrived at approximately 2325 hours in a white Mercury Grand Marquis. The video was clear enough to determine the front license plate matched the license plate information from the Mason. The four black males entered the store, made a couple purchases and stayed for approximately 20 minutes. One of the males depicted in the video surveillance appeared to have a handgun visible on the right side of his waistband. A description of the occupants of the vehicle were as follows:

The driver was a black male wearing a green hoodie type shirt with a circular insignia on the front, blue jeans, and red shoes. He was approximately 5'7", thin build and noticeably shorter than the rest of the group.

The right front passenger was a black male wearing a red hoodie type shirt, white baseball hat with an unknown symbol, torn black jeans, and red high tops shoes. He was approximately 5'10", thin build and carrying a handgun in a holster on right hip (open carry).

The left rear passenger was a black male wearing a black hoodie, dark blue or black jeans, and black and white shoes. He was approximately 5'10" with a thin build.

The right rear passenger was a black male wearing black short sleeved-shirt, dark blue or black jeans, and red high top shoes. He was approximately 5'10" with a thin build.

Over the next 24 hours detectives subsequently identified as Demario "DJ" Lofton-Robinson and his younger brother, Deshawn Robinson. Lofton-Robinson and Robinson were transported to LVMPD Headquarters where they were interviewed in connection with the murder.

In summary and post-Miranda Lofton-Robinson confessed to his involvement in the crime. The original plan was to rob the victim but the victim fought back and was shot multiple times. Lofton-Robinson was armed with a .45 caliber handgun and admitted to shooting at Valenzuela one time. Lofton-Robinson confirmed his brother was there but had limited information regarding the identities of the other two suspects. Lofton-Robinson said one of the suspects went by the name "Rae" and the other suspect was known only by the moniker of "Light Skin." Lofton-Robinson said Rae's cell phone number would be in Lofton-Robinson's cell phone and the number started out as 702-934. Lofton-Robinson said the other suspect's number might be connected to the contact name "Sace," which was also in his cell phone. Lofton-Robinson said he picked up Rae in a white colored apartment complex near the intersection of Jones Blvd. and Tropicana Ave. After the murder, he dropped the suspect off at the same complex.

In summary and post-Miranda Robinson confessed to his involvement in the murder. The original plan was to rob the victim and Robinson said everyone was armed with the exception of him. Robinson claimed as the four males moved toward the victim, he became afraid and turned around. That was when he heard multiple gunshots. Other than his brother, Robinson said he was unable to identify the other two suspects but claimed information which could lead to their identities might be in his cell phone. Trough follow up investigation the third suspect involved in the murder was identified as Raekwon Robertson.

Detective Dosch obtained a search warrant for the cell phones recovered from Lofton-Robinson's and Robinson's person at the time of their arrests. The search warrant was signed by District Court Judge Elizabeth Gonzalez. On August 12th Detective Dosch released custody of the cell phones to Computer Forensics Lab (CFL) Detectives Tomaino and Flink, who conducted a forensic examination of the electronic storage devices. During the examination of Robinson's cell phone, CFL

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 170809-0029

detectives located a Facebook Messenger thread between Robinson's Facebook account and the Ray Logan account. On August 8th at approximately 1140 hours, which was about 12 hours before the murder, Robertson contacted Robinson via Facebook Messenger and asked Robinson if "DJ" (Lofton-Robinson) was "trying to hit ahouse (SIC) tonight." Robertson added, "me u sace and him sace already said yeah." It appeared Robertson was identifying all the would-be participants in what sounded like the planning of a burglary. Robinson responded and then at approximately 1227 hours Robertson said, "tell him to kall (SIC) me 934-4851."

Lofton-Robinson's cell phone was examined and there was recent text messaging between Lofton-Robinson and the contact name "Sace." The corresponding phone number for the Sace contact name was 702-801-0516. A records check of Robertson's Facebook account showed he was friends with an account named "Young Sace Versace." Detective Dosch viewed the photos in the "Young Sace Versace" account and compared them to the open carry suspect. The suspect depicted in the video surveillance bore a strong resemblance to the photos of the black male depicted in the Facebook account Young Sace Versace. Through follow-up investigation the name associated with the account was identified as Davontae Wheeler. Wheeler had tattoos on his arm and chest and it appeared in some of his accessible Facebook photos.

On August 14th a pen register was obtained for Wheeler's phone number of 702-801-0516. Subscriber information for the phone confirmed it was in Wheeler's name. Detective Jaeger reviewed Wheeler's CDR and discovered he had a lot of contact with Robertson. Detective Dosch compared Wheeler CDRs to Robertson's CDRs and it appeared the two phone numbers were associated with each on the on August 8th at 2212 hours. The cell towers the cell phones connected to were located less than a half mile from one another in the area of Decatur Blvd. and Desert Inn Rd. Detective Dosch conducted a more thorough review of Wheeler's CDRs and it showed a lot of interaction with cell towers showed located near Civic Center Dr. and Cheyenne Ave., which meant his residence was possibly in that general area of town. This was consistent with Lofton-Robinson's claim he picked up Wheeler at the 7-Eleven near Civic Center Dr. and Cheyenne Ave.

On August 15th personnel from the LVMPD Criminal Apprehension Team (CAT) arrested Robertson at his residence. The CAT team then went to 3300 Civic Center Dr. apartment 2F and took Wheeler into custody. In plain view the detectives saw what appeared to be a .45 caliber black semi-automatic handgun. Wheeler was transported to the LVMPD Headquarters to be interviewed and his apartment was frozen in anticipation of the search warrant. While at Wheeler's residence, detectives determined the neighboring apartment, 2G, belonged to Wheeler's sister. Not only were the two apartments adjacent to one another, but the apartments both shared a patio. Furthermore, detectives noticed phone activity from Wheeler's cell phone was in contact with his sister's apartment and security for the complex confirmed there is constant activity back and forth between the two apartments. This means it is highly likely Wheeler keeps property or possibly evidence at apartment 2G in addition to his own. Search warrant were granted allowing Detectives to search apartments 2G and 2F.

In apartment 2F a semi-automatic Taurus .45 handgun and a holster was located. The magazine was removed from the handgun located in Wheeler's apartment and it was loaded with live ammo bearing head stamp R-P 45 AUTO which matched one of the cartridge recovered from the crime scene. A pair of red in color shoes, and a black and white baseball cap were also collected.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 170809-0029

The red shoes and black and white baseball cap appeared to be the same items worn by Wheeler while he was captured on surveillance footage in the gas station just prior to the murder. Detectives at the Wheeler's apartment contacted Wheeler's sister and his fiancée, Janessa Justice. Both women were shown the surveillance still from the gas station and they identified the subject in the maroon shirt as Wheeler.

Wheeler was transported to LVMPD Headquarters where he was advised of his Miranda rights which he acknowledged and stated he would answer questions. Wheeler was shown the still photos collected from the surveillance footage at the gas station. Wheeler denied he was depicted in the stills. Wheeler was able to identify "DJ" (Lofton-Robinson) in the stills. Wheeler claimed that he was going to purchase a Beretta handgun from DJ. Wheeler admitted he was in DJ's vehicle and they drove to a gas station so he could get some change. After they left the gas station Wheeler became involved in an argument over the price of the gun she he exited the vehicle and took the bus home. Wheeler was not able to describe where the gas station was, or what bus he took home, or the clothes he wore that night. Wheeler did admit to owning a .45 caliber handgun which he open carried whenever he felt unsafe. Throughout the interview Wheeler denied shooting anyone, or being present when anyone was shot.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

January 02, 2019

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

January 02, 2019 08:30 AM All Pending Motions (1/02/2019)

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
Michael W. Sanft	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

DEFT'S MOTION TO CONTINUE TRIAL...DEFENDANT'S MOTION TO SEVER DEFENDANTS

Michael Sanft, Esq., is present for Co-Defendant Raekwon Setrey Robertson.

Mr. Ruggeroli expressed concerns going forward with trial with Co-Defendant Robertson, further noting defense for Mr. Wheeler has valid arguments for a severance, the merits and matters with Co-Defendants are different, and the State did not file an opposition. Mr. Pesci apologized to the Court; and noted the State had thought they had until later to file a response to the motion to sever, the State has no opposition to Co-Defendant Wheeler's Motion to continue trial, as long as it is as to all three Defendants in this case, and the State will file a response to the motion to sever, further noting the State has been preparing for another trial set before this Court for next week. Mr. Sanft noted his client wants to go forward with the current trial date, and defense is ready. Mr. Pesci noted Co-Defendant had waived previously, the other Co-Defendant is in Competency Court, and State believes all of the Co-Defendants need to be together. COURT ORDERED; Deft's Motion to Continue Trial GRANTED; trial date VACATED AND RESET in this matter; status check hearing ALSO SET. Mr. Ruggeroli noted the State filed an additional count as to his client, and defense would request to supplement the Motion to sever, to add an additional ground to the severance, as he believes what the State filed in the count gives more reason for the case to be severed. Court stated it does not have a problem, and defense can supplement. COURT FURTHER ORDERED, Deft's Motion to Sever Defendants CONTINUED.

CUSTODY

1/16/19 8:30 A.M. DEFENDANT'S MOTION TO SEVER DEFENDANTS

4/17/19 8:30 A.M. STATUS CHECK: TRIAL READINESS

6/18/19 8:30 A.M. CALENDAR CALL



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, JANUARY 2, 2019

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: TRIAL READINESS (ROBERTSON)
DEFENDANT'S MOTION TO SEVER CODEFENDANTS (WHEELER)
DEFENDANT'S MOTION TO CONTINUE TRIAL (WHEELER)**

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: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 2, 2019, 8:45 A.M.

2 * * * * *

3 THE COURT: Page 4 and 5, State versus Robertson and Wheeler, C328587.
4 They're both present and in custody. I know we're on for trial readiness as well as
5 Mr. Wheeler has a motion to sever. Why don't we deal with that one first.

6 MR. RUGGEROLI: Good morning, Your Honor, James Ruggeroli appearing
7 on behalf of Mr. Wheeler who is present in custody. Judge, I did note that the State
8 had not filed an opposition. I filed, simultaneously, a motion to continue the trial as
9 well as the motion to sever and I do think that those two kind of work together. It's
10 my understanding Mr. Sanft's client wants to move forward with this trial date.

11 Within the last month, month and a half we were provided with a large
12 amount of discovery from the State. We are still going through that. In my motion,
13 and I did file it as essentially a supplemental affidavit in support of the motion to
14 continue, my investigator's indicated that his review of the materials put us in a
15 situation where we just simply don't have time to be adequately prepared to deal
16 with the new discovery that we've received in time for our defense at trial.

17 Additionally, Judge, I do have concerns about going to a joint trial with
18 the codefendants. The third codefendant, as you probably recall, is in Lake's
19 Crossing. So that -- that issue and those arguments are really not applicable right
20 now. But I do still think that the merits as far a different type of case in regards to
21 these two codefendants creates a situation where we have very valid arguments for
22 severance. But because the State didn't file an opposition, I think you would want to
23 hear from them.

24 MR. PESCI: So, Judge, I apologize. I was out of town on the last court date,
25 one of my teammates was here, and I didn't realize that it got switched. I thought

1 that we still had until later in the month to respond to that.

2 As far as the motion to continue, if I could respond orally?

3 THE COURT: Sure.

4 MR. PESCI: My response is that I have no opposition to a continuance as
5 long as it as to all three and would seem appropriate considering that one defendant
6 is still in Competency Court.

7 As far as the severance motion, I'd like to actually be able to respond to
8 that in writing, and I would ask for a week. I have a capital case in front of you
9 starting on Tuesday. And so I apologize, I've been kind of focused on that. I did not
10 realize that the dates had been changed on this one. So I'd ask for that one week's
11 continuance as far as the severance motion. But the continuance, as long as it is as
12 to all three, the State has no opposition.

13 THE COURT: Mr. Sanft?

14 MR. SANFT: And we're prepared and ready to go forward, Your Honor. My
15 client, I've spoken to this morning, he is not going to continue the trial.

16 THE COURT: So you object to the --

17 MR. SANFT: On behalf of my client, I mean, I guess we could do a *de facto*
18 severance, but I think at this particular point, my client -- we are ready to go forward.

19 MR. PESCI: And I would just note for the record that his client previously
20 waived his right to a speedy trial, and so there is -- for judicial economy, there
21 makes no sense in severing this case and having it tried, in essence, it would be
22 three times at that point because one codefendant's still in Competency Court. So
23 they should all be kept together.

24 THE COURT: Okay. At this time I'm going to grant the motion to continue the
25 trial. And I'm going to put the motion to sever on for one week.

1 MR. PESCI: Thank you, Your Honor.

2 THE COURT: Or I'll put it on as soon as I can. How quickly?

3 THE CLERK: The 16th.

4 THE COURT: That's fine.

5 THE CLERK: January 16th, 8:30, for the motion to sever.

6 MR. RUGGEROLI: Judge, there is one additional issue, if I may? I had
7 anticipated potentially supplementing one extra ground for the motion to sever. In
8 this case, the State has charged Mr. Sanft's client with an additional couple of
9 counts in something that is unrelated to the murder case here.

10 THE COURT: Okay.

11 MR. RUGGEROLI: If the State would like me to do a supplement, I can have
12 that done by the end of tomorrow just to add that as an additional ground that there
13 are these extra counts that create more reasons why they should not appear at a
14 joint trial together.

15 THE COURT: Sure. I don't have a problem if you want to supplement your
16 motion and then the State can respond.

17 MR. RUGGEROLI: And it's just as to that one ground, Judge.

18 THE COURT: That's fine.

19 MR. RUGGEROLI: Thank you.

20 THE COURT: And then we need a new -- we need a trial date.

21 THE CLERK: Okay. We have June.

22 THE COURT: Go ahead.

23 THE CLERK: Calendar call, June 18, 8:30; jury trial, June 25, 10:30.

24 MR. RUGGEROLI: Thank you, Your Honor.

25 MR. PESCI: Thank you, Your Honor.

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THE CLERK: Do you want a status check?

THE COURT: I do.

And I'm going to give you a status check as well.

THE CLERK: 90 days?

THE COURT: That would be -- that would be good.

THE CLERK: April 17, 8:30.

THE COURT: Thank you.

MR. RUGGEROLI: Thank you, Judge.

MR. PESCI: Thank you.

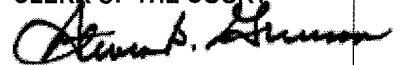
PROCEEDING CONCLUDED AT 8:49 A.M.

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

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rugggeroli@icloud.com
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Plaintiff,

Case No. C-17-328587-3

vs.

Dept No. XII

DAVONTAE AMARRI WHEELER,
#5909081.

Defendant.

SUPPLEMENT TO MOTION TO SEVER DEFENDANTS

COMES NOW Defendant, DAVONTAE AMARRI WHEELER, through JAMES J. RUGGEROLI, ESQ., submits the following Motion. This Motion is based on the following Points and Authorities, the pleadings and papers on file herein, the exhibits and affidavits and any oral argument by counsel permitted at the hearing on this matter.

DATED this 2nd day of January, 2019.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mr. Wheeler will additionally be unable to have a fair trial at a joint proceeding, and severance is justified and necessary because co-defendant Robertson is charged in this matter not only with the three (3) counts that Mr. Wheeler is charged with in relation to the Murder of Gabriel Valenzuela (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), but he is also charged with completely unrelated crimes COUNT 1 Burglary While in Possession of a Deadly Weapon; COUNT 2 Conspiracy to Commit Robbery; COUNTS 3&4 Robbery with use of a Deadly Weapon). Mr. Wheeler is not alleged to have had any involvement in Counts 1-4, and as provided below, Mr. Wheeler's case should be severed from Mr. Robertson.

II. FACTS PERTINENT TO SUPPLEMENT TO MOTION

The pertinent for this supplement are:

1. The State has charged Mr. Wheeler by way of Superseding Indictment ONLY 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 Superseding Indictment on file herein.

2. The incident underlying COUNTS 5-7 allegedly occurred on August 9, 2017.

3. The State has also charged Co-defendant Robertson in this case, however, with a convenience store burglary and robbery that is alleged to have occurred on August 2, 2017: COUNT 1 Burglary While in Possession of a Deadly Weapon; COUNT 2 Conspiracy to Commit Robbery; COUNTS 3&4 Robbery with use of a Deadly Weapon).

4. For clarity, COUNTS 1-4 should hereinafter be referred to as **CASE 1**, and COUNTS 5-7 will hereinafter referred to as **CASE 2**.

5. CASE 1 involves the following allegations, which increase the prejudice to Mr. Wheeler in CASE 2: (1) A conspiracy with a different co-conspirator, (2) to commit a robbery, (3) at a convenient store, (4) that resulted in a burglary and robbery that, (5) occurred only a week prior to the allegations underlying CASE 2.

1 6. CASE 2 similarly involves allegations of (1) a conspiracy, (2) to commit a
2 robbery, that (3) involved a convenience store, (4) that resulted in a murder that (5) occurred
3 only one week after CASE 1.

4 For the reasons set forth below, Mr. Wheeler must have his case severed from the co-
5 defendants.

6 **III. SUPPLEMENTAL ARGUMENT**

7 In the case at hand, Mr. Wheeler's case should additionally be severed because
8 significant prejudice will spill-over from the substantial evidence against Robertson as to CASE
9 1 to the circumstantial evidence against Mr. Wheeler in CASE 2 if there is a joint trial. The facts
10 and allegations in CASE 1 are very similar to the allegations in CASE 2. Both cases involve Mr.
11 Robertson and a conspiracy to commit a robbery. Both cases involve convenience stores.
12 Moreover, both cases are alleged to have been committed only a week apart.

13 It is clear that the evidence against Mr. Robertson will demonstrate a *modus operandi*,
14 and the spill-over to the State's case against Mr. Wheeler will be unavoidable and
15 unquestionably prejudicial. (See Lisle v. State, 113 Nev. 679, 941 P.2d 459 (1997) where a
16 codefendant is entitled to a separate trial if he presents sufficient showing of facts demonstrating
17 that substantial prejudice would result in joint trial.) Moreover, a jury could not reasonably be
18 expected to compartmentalize the evidence pertaining to co-defendant Robertson (especially in
19 light of the likely *modus operandi* conclusion that will likely result against him) and properly
20 protect Mr. Wheeler from the taint of guilt by association as it relates to the separate defendants
21 and cases. Id. Simply sitting next to Mr. Robertson when the majority of the evidence at trial is
22 presented will clearly have a "spill-over" effect against Mr. Wheeler, and the taint of guilt by
23 association cannot be avoided at a joint trial.

24 ////

25 ////

1 Severance in this matter is therefore justified and necessary, and Mr. Wheeler
2 respectfully requests that this Court grant the motion accordingly.

3 DATED this 2nd day of January, 2019.

4 JAMES J. RUGGEROLI

5 By: /s/ James J. Ruggeroli
6 James J. Ruggeroli, Esq.
7 Nevada Bar No. 7891
8 400 South 4th Street, Suite 280
9 Las Vegas, Nevada 89101
10 Attorney for Defendant

11 **DECLARATION OF JAMES J. RUGGEROLI, ESQ.**

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

13 1. I am counsel of record for the Defendant and am an attorney at law duly licensed
14 to practice before this Court and make this Declaration of facts from personal knowledge which
15 is known to me, except for those matters stated upon information and belief, and as to those
16 matters, I believe same to be true.

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

19 DATED this 14th day of December, 2018.

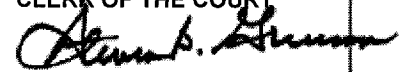
20 JAMES J. RUGGEROLI

21 By: /s/ James J. Ruggeroli
22 James J. Ruggeroli, Esq.

23 **CERTIFICATE OF SERVICE**

24 I certify that on the 2nd day of January, 2019 I emailed a copy of this supplement to the
25 motion to: motions@clarkcountyda.com; SBindrup@ClarkCountyNV.gov;
26 michael@sanftlaw.com

27 By: /s/ James J. Ruggeroli
28 James J. Ruggeroli, Esq.



1 **OPPS**
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 RACHEL O'HALLORAN
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13 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

CASE NO: C-17-328587-3

12 -vs-

DEPT NO: XII

13 DAVONTAE AMARRI WHEELER,
14 #5909081

15 Defendant(s).

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SEVER DEFENDANTS**
17 **AND STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENT TO MOTION TO**
18 **SEVER DEFENDANT**

19 DATE OF HEARING: January 16, 2019
20 TIME OF HEARING: 8:30 A.M.

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
22 District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney and
23 RACHEL O'HALLORAN, Deputy District Attorney, and hereby submits the attached Points
24 and Authorities in opposition to Defendant's to Sever Defendants.

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

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POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

On December 14, 2017, Defendant was charged by way of Indictment, as follows: COUNT 5 – CONSPIRACY TO COMMIT ROBBERY; COUNT 6 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON; and COUNT 7 – MURDER WITH USE OF A DEADLY WEAPON, all of which involve the attempted robbery and killing of Gabriel Valenzuela on August 9, 2017.

On the same date, Co-Defendant Demario Lofton-Robinson (“Co-Defendant Lofton-Robinson”) and Co-Defendant Raekwon Robertson (“Co-Defendant Robertson”), were charged with the same three counts. In addition to these three counts, Co-Defendant Robertson was charged as follows: COUNT 1 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON; COUNT 2 – CONSPIRACY TO COMMIT ROBBERY; COUNT 3 – ROBBERY WITH USE OF A DEADLY WEAPON; and COUNT 4 – ROBBERY WITH USE OF A DEADLY WEAPON. These counts pertain to the robbery of a convenience store on August 2, 2017.

On March 7, 2018, a fourth suspect, Deshawn Robinson (“Robinson”), was charged by way of Criminal Complaint in Case 18F03869X, with charges related to the murder of Gabriel Valenzuela. Robinson is the brother of Co-Defendant Lofton-Robinson. On October, 3, 2018, Robinson unconditionally waived his right to a preliminary hearing pursuant to negotiations. On October 4, 2018, Robinson was charged by way of Information in Case Number C-18-335287 as follows: COUNT 1 – CONSPIRACY TO COMMIT ROBBERY; and COUNT 2 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON. On October 22, 2018, Robinson pled guilty to both counts. The Guilty Plea Agreement was filed under seal on the same date.

On December 19, 2017, Defendant pled not guilty and waived his right to a speedy trial. On February 8, 2018, Defendant filed a Petition for Writ of Habeas Corpus. On March 2, 2018, the State filed a Return to Defendant’s Petition for Writ of Habeas Corpus and on March 8, 2018, Defendant filed a Reply to the State’s Return.

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

5 On April 18, 2018, the State presented additional evidence to the Grand Jury, after
6 which, the Grand Jury returned a true bill. On April 19, 2018, a Superseding Indictment was
7 filed charging Defendant and his co-defendants with the same three counts alleged in the
8 original Indictment.

9 On May 17, 2018, following the Superseding Indictment, Defendant filed a second pre-
10 trial Petition for Writ of Habeas Corpus. On May 29, 2018, the State filed its Return. On June
11 8, Defendant filed a reply. On June 14, 2018, the Court heard arguments on Defendant's
12 second Petition for Writ of Habeas Corpus. At that time, the Court issued the following
13 minutes:

14 MATTER RECALLED: Ms. O'Halloran now present. Arguments by
15 Mr. Ruggeroli and Ms. O'Halloran in support of their respective
16 positions. Following, COURT ORDERED, most issues are DENIED,
17 however, counsel can supplement the issue of Marcel Soloman's
18 statement not being presented to the Grand Jury with the following
19 schedule: State to reply by 6/28; Mr. Ruggeroli to respond by 7/5 and
20 matter CONTINUED for argument. CUSTODY 8/15/18 9:00 AM
21 DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

22 On June 28, 2018, the State filed a Supplement to its Return Writ of Habeas Corpus.
23 On July 5, 2018, Defendant filed a Reply to State's Supplement to Return to Writ of Habeas
24 Corpus. On August 2, 2018, after additional argument, Defendant's second Petition for Writ
25 of Habeas Corpus was denied.

26 On December 14, 2018, Defendant filed a Motion to Sever Defendants and a Motion to
27 Continue Trial. On January 2, 2019, Defendant's Motion to Continue Trial was granted and
28 trial was set for June 25, 2019. On January 4, 2019, Defendant filed a Supplement to Motion
to Sever Defendants.

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1 The State hereby responds to Defendant's Motion to Sever Defendants and Defendant's
2 Supplement to Motion to Sever Defendants.

3 **II. STATEMENT OF FACTS**

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

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

7 **John Relato**

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

18 **Lary Simms**

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

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

1 of Mr. Valenzuela's death was multiple gunshot wounds and the manner of Mr. Valenzuela's
2 death was homicide. GJT 17:21-18:6.

3 **Robert Mason**

4 At the time of Mr. Valenzuela's murder, Robert Mason lived in the same neighborhood
5 as the victim. GJT 45:20-25. At approximately midnight on the night of August 8, 2017, into
6 the morning of August 9, 2017, Mr. Mason went for a jog in his neighborhood. GJT 46:2-15.
7 During his jog, Mr. Mason saw four young black males standing on the corner of Lindell and
8 Dewey in front of 5536 Dewey Drive. GJT 46:16-48:2-18. Shortly after Mr. Mason ran past
9 the four individuals standing in front of Mr. Valenzuela's home, he saw what he described as
10 a white Crown Vic, bearing Nevada license plate number 473YZB. GJT 50:3-21. The vehicle
11 was parked approximately 20-50 feet from where the four black males were standing. GJT
12 50: 22-25. Mr. Mason felt these individuals were suspicious so he called his wife and told her
13 to lock the doors to their house and he asked her to call 311 to report the suspicious individuals.
14 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.² GJT 22:1-
23 23:25.

24 After the four individuals exited the store, they sat down at a table outside of the store.
25 GJT 25:22-26:11. Mr. Spahn continued to observe the individuals at which point he went
26 outside and saw the vehicle the four individuals were driving. Id. Mr. Spahn described the
27

28 ² 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 vehicle as a white four door Mercury that looked like a Crown Victoria. GJT 26:12-15. Later
2 that night, police officers came into the store and told Mr. Spahn they were investigating a
3 murder; at that time, he told officers about the four individuals he observed. GJT 27:15-23.

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

9 **James Newman**

10 James Newman testified that on August 4, 2017 (four days before Mr. Valenzuela was
11 murdered), he sold his white Mercury Grand Marquis to Co-Defendant Lofton-Robinson. GJT
12 38:22-39:14. The vehicle had a Nevada license plate number of 473-YZB, the same license
13 plate observed by Mr. Mason in front of the victim's home. See GJT 37:10-13, 50:3-21. When
14 Mr. Newman sold the vehicle, he allowed Co-Defendant Lofton-Robinson to keep the license
15 plates with the understanding they would be returned at a later time. GJT 39:25-40:1, 41:9-
16 17. When shown photographs from the surveillance footage from the Shortline Express, James
17 Newman identified the vehicle therein as the vehicle he sold to Co-Defendant Lofton-
18 Robinson.

19 **Lora Cody**

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

1 GJT 137:20-138:11.

2 **Mitch Dosch**

3 Mitch Dosch ("Detective Dosch") is a homicide detective with the Las Vegas
4 Metropolitan Police Department. GJT 90:16-19. Along with other detectives, Detective
5 Dosch was assigned to investigate Mr. Valenzuela's murder. GJT 91:5-9. Detective Dosch
6 testified that four cartridge casings were located at the scene of the murder: one .22 caliber
7 cartridge case and three .45 caliber cartridge cases. GJT 99:22-100:8. The .22 caliber cartridge
8 case bore a head stamp of "C." GJT 13:15. The .45 caliber cartridge cases bore three separate
9 head-stamps: R-P 45, NFCR, and WINCHESTER 45 AUTO. GJT 100:23-101:1, 101:18-21,
10 102:2-7.

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

16 With respect to the vehicle that the four individuals were driving, the surveillance
17 footage revealed that the first three numbers on the license plate were 473. GJT 95:24-96:22.
18 Because this information matched the description of the vehicle at the scene of the crime and
19 because the four individuals in the surveillance footage were consistent with the four
20 individuals seen at the scene of the crime, detectives attempted to identify the individuals in
21 the footage. See id., GJT 96:23-97:21.

22 Following an investigation, Detective Dosch was able to identify the four individuals
23 depicted in the surveillance footage from the Shortline Express on August 8, 2017. Based on
24 his prior interactions with each of the defendants, Detective Dosch identified one of the
25 individuals in the surveillance footage as Co-Defendant Lofton-Robinson; in the surveillance
26 footage, Lofton-Robinson was wearing red shoes, blue jeans, and a long-sleeved green shirt.
27 GJT 105:17-106:5, 108:23-109:9. Detective Dosch also identified Co-Defendant Robertson
28 as one of the individuals in the surveillance footage. GJT 117:3-11. Finally, Detective Dosch

1 identified one of the individuals as Defendant Wheeler. GJT 112:22-113. In the surveillance
2 footage, Defendant Wheeler was wearing a white and black hat; a maroon top, and maroon
3 shoes. GJT 113:3-5. Detective Dosch identified the fourth individual as suspect Deshawn
4 Robinson, the brother of Co-Defendant Lofton-Robinson.

5 After identifying these individuals, detectives obtained multiple search warrants. Id.
6 During execution of the various search warrants, officers located multiple items of evidentiary
7 value.

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

12 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
13 Co-Defendant Lofton-Robinson. GJT 97:23-98:2, 98:24-99:2. During the search of that
14 residence, officers located a .45 caliber firearm and ammunition bearing a headstamp of R-P
15 45, which matched one of .45 caliber cartridge cases found at the scene of the murder, GJT
16 98:3-5, GJT 100:16-22.

17 A search warrant was also obtained to search Apartment F located at 3300 Civic Center
18 Drive. GJT 99:11-15. Detective Dosch testified that Defendant was associated with this
19 address. GJT 101:14-17. At that residence, officers located a .45 caliber firearm loaded with
20 ammunition bearing a headstamp of RP-45 auto. GJT 99:14-19, 101:2-17, 115:18-116:14.
21 This ammunition matches one of the .45 caliber cartridge cases found at the scene of the
22 murder. Id. Additionally, officers recovered a hat and a pair of maroon shoes both of which
23 matched the items worn by the individual in the surveillance footage who Detective Dosch
24 identified as being the Defendant. GJT 114:2-115:17. Defendant Wheeler is the same
25 individual who is seen on the surveillance footage wearing a firearm.

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1 **Ryan Jaeger**

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

5 Detective Jaeger testified that at the area where the victim was picked up by medical
6 personnel, there was mail scattered about the ground. GJT 143:5-9. Detective Jaeger also
7 testified that he interviewed the Defendant after advising him of his Miranda warnings. GJT
8 145:1-16. In his interview, Defendant was shown a photograph of the vehicle captured in the
9 surveillance at the Short Line Express and he admitted to having been in the vehicle on August
10 8, 2017. GJT 145:25-146:2. He also admitted that he owed a .45 caliber firearm and that he
11 would carry the firearm in open carry fashion on his right hip. GJT 145:19-21, 146:22-24.
12 However, when shown footage from inside the Shortline Express, Defendant *denied* that he
13 had been present inside the store. GJT 146:25-147:5.

14 Regarding Defendant's statement, Detective Jaeger testified as follows:

15 Q. Showing you Exhibit 13. Who is that?

16 A. That's Davontae Wheeler.

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

18 A. I did.

19 Q. Did you conduct an interview with him?

20 A. I did.

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

22 A. I did.

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

25 A. Yes, he did.

26 Q. Did you ask him questions about the events of the night of the 9th and some
27 other events as well?

28 A. I did.

1 Q. And what did he tell you after you gave him his Miranda warnings?
2 A. He admitted to owning a 45 caliber handgun. He admitted to being in the vehicle
3 but he stated he was not involved in any murder.
4 Q. And when you say a vehicle, specifically did you show him or was he shown
5 still photographs of the Grand Marquis?
6 A. He was shown still photographs collected from the surveillance system of the
7 Short Line Express that depicted the Grand Marquis.
8 Q. Did he admit that he had been in the vehicle?
9 A. Yes, he did.
10 Q. Did he deny that he was involved in any sort of killing?
11 A. Yes.
12 Q. Okay. And did you ask him about what his comings and goings were of August
13 the 8th and August the 9th?
14 A. I did.
15 Q. What did he say he had done?
16 A. He said that he was in the vehicle, he was trying to negotiate to buy a Beretta
17 handgun, he couldn't reach a price for the gun that he liked so he got out of the
18 vehicle and took a bus home.
19 Q. And then you just talked about the purchase or attempt to purchase a Beretta.
20 Did he indicate whether or not he had a firearm or firearms or how he would
21 carry them?
22 A. He said he did have a firearm and he said that any time he didn't feel safe he
23 carried the firearm on his right hip in an open carry fashion.
24 Q. Was he, or did you show him any of the surveillance footage from inside of the
25 Express –
26 A. I did.
27 Q. Did he indicate that was him or not?
28 A. He denied that that was him inside the Short Line Express.

1 Q. However in the course of your investigation did you find pieces of evidence that
2 were similar or appeared to be similar to the clothing, the shoes, of the people
3 inside the surveillance of that Short Line Express?

4 A. We did.

5 Q. And also involving a hat?

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

7 Q. Yes. You're speaking of the hat. Was there something you were focusing on
8 with the hat?

9 A. The hat in the surveillance pictures, it's a white baseball hat with a black bill and
10 there's a holographic sticker that can be seen on the bill of the cap.

11 Q. Did you ask him about that?

12 A. I did and he said he does not have any clothing that would resemble the person
13 seen in the surveillance footage. If you see the hat that's there, that's actually a
14 Chicago Blackhawks hat with the same sticker that was found in his apartment.

15 Q. All right. That's the next question I was going to ask you. You were involved
16 with the search when this hat was found. Where was it found?

17 A. I did not search his apartment. I was with him doing the interview when his
18 apartment was searched.

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

20 A. Yes.

21 Q. Was there information in your investigation that associated Mr. Wheeler with
22 that apartment?

23 A. Yes.

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

25 A. He lived in apartment F and his sister lived in apartment G. That was verified
26 by the complex security.

27 GJT, 145:1-148:16.

28 ///

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 tested the following firearms: 1) a .22 long rifle caliber semiautomatic pistol; 2) a
10 Taurus model PT-145 Pro Millennium .45 caliber semiautomatic pistol; and 3) a Star .45 auto
11 caliber semiautomatic pistol. GJT2 8:13-23. Ms. Lester test fired all three firearms and
12 determined that they were all operable. GJT2 9:9-12. She also compared the cartridge cases,
13 bullets and bullet fragments fired from those three firearms to the cartridge cases and bullets
14 located at the crime scene. GJT2 9:13-21.

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

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

25 Finally, after testing the Taurus model PT-145 Pro Millennium .45 caliber
26 semiautomatic pistol, Ms. Lester determined that none of the evidence bullets or cartridge
27 cases she tested from the murder scene were fired from that particular gun. GJT2 11:4-13.
28 The Taurus firearm was located, pursuant to a search warrant, at 3300 Civic Center Avenue,

1 an address associated with Defendant. GJT 99:14-19, 101:2-17, 115:18-116:14, GJT2 17:17-
2 18:13.

3 LEGAL ARGUMENT

4 Defendant has filed a motion asking for severance from his co-defendants. In support
5 of his Motion, Defendant claims he is entitled to severance because (1) the evidence against
6 Defendant is circumstantial; (2) the evidence against Co-Defendant Lofton-Robinson and Co-
7 Defendant Wheeler is substantial; (3) the co-defendants have implicated Mr. Wheeler; and (4)
8 Defendant and his co-defendants have conflicting and irreconcilable defenses.

9 Defendant's claims are entirely meritless and his motion should be denied on all
10 grounds.

11 I. GENERAL LAW REGARDING SEVERANCE

12 In general, where codefendants are charged together, they should be tried together.
13 United States v. Gay, 567 F.2d 916, 919 (9th Cir. 1978); see also NRS 173.135.

14 NRS 173.135 provides for the joinder of defendants by stating:

15 **Two or more defendants may be charged in the same indictment**
16 **or information if they are alleged to have participated in the same**
17 **act or transaction or in the same series of acts or transactions**
18 **constituting an offense or offenses. Such defendants may be charged**
in one or more counts together or separately and all of the defendants
need not be charged in each count.

19 However, NRS 174.165 provides that "[i]f it appears that a defendant or the State of
20 Nevada is prejudiced by a joinder of offenses or of defendants in an indictment or
21 information...the court may...grant a severance of defendants or provide what other relief
22 justice requires."

23 Case law in Nevada has held that persons who have been jointly indicted should be
24 tried jointly, absent compelling reasons to the contrary. See e.g., Jones v. State, 111 Nev. 848,
25 853, 899 P.2d 544 (1995). The Nevada Supreme Court has stated that "severance should only
26 be granted when there is a 'serious risk that a joint trial would compromise a specific trial right
27 of one of the defendants, or prevent the jury from making a reliable judgment about guilt or
28 innocence.'" Rodriguez v. State, 117 Nev. 800, 808, 32 P.3d 773, 779 (2001) (citations

1 omitted). It is the defendant's burden to make "a sufficient showing of facts proving that
2 prejudice would result from a joint trial..." Anderson v. State, 81 Nev. 477, 480, 406 P.2d 532,
3 533 (1965); see also Adams v. State, 81 Nev. 524, 528, 407 P.2d 169, 172 (1965) ("merely
4 stat[ing] that one co-defendant had made 'certain statements' prejudicial to the other and that
5 evidence proper to one co-defendant might prejudicially affect the other" found insufficient to
6 warrant severance.).

7 The decision to sever is left to the discretion of the trial court and such decision will not
8 be reversed absent an abuse of discretion. Amen v. State, 106 Nev. 749, 801 P.2d 1354 (1990).
9 *Broad allegations of prejudice are not enough to require a trial court to grant severance.*
10 United States v. Baker, 10 F.3d 1374, 1389 (9th Cir. 1993), cert. denied, 513 U.S. 934, 115 S.
11 Ct. 330 (1994), overruled on other grounds by United States v. Nordby, 225 F.3d 1053 (9th
12 Cir. 2000). *Finally, even if prejudice is shown, the trial court is not required to sever; rather,*
13 *it must grant relief tailored to alleviate the prejudice.* See e.g., Zafiro v. United States, 506
14 U.S. 534, 540-41, 113 S. Ct. 933 (1993).

15 The Ninth Circuit Court of Appeals has stated that the presumption is heavily in favor
16 of joint trials. "[C]o-defendants jointly charged, are, prima facie, to be jointly tried." United
17 States v. Gay, 567 F.2d 916, 919 (9th Cir.), cert. denied, 435 U.S. 999, 98 S. Ct. 1655 (1978);
18 United States v. Silla, 555 F.2d 703, 707 (9th Cir. 1977) ("compelling circumstances" are
19 generally necessary to show need for separate trials). The trial court has the broad discretion
20 to join or sever trials and severance is not required unless a joint trial would be manifestly
21 prejudicial. See, Gay, 567 F.2d at 919. Federal appellate courts review a denial of a motion
22 to sever for abuse of discretion and "[t]o satisfy this heavy burden, an appellant must show
23 that the joint trial was so prejudicial as to require the exercise of the district judge's discretion
24 in only one way: by ordering a separate trial." United States v. Ford, 632 F.2d 1354, 1373 (9th
25 Cir. 1980), cert. denied, 450 U.S. 934, 101 S. Ct. 1399 (1981), overruled on other grounds,
26 United States v. DeBright, 730 F.2d 1263 (9th Cir. 1984).

27 In both the state and federal system, the general rule favoring joinder has evolved for a
28 specific reason—there is a substantial public interest in joint trials of persons charged together

1 because of judicial economy. Jones, 111 Nev. at 854, 899 P.2d at 547. Joint trials of persons
2 charged with committing the same offense expedites the administration of justice, relieves trial
3 docket congestion, conserves judicial time, lessens the burden on citizens called to sacrifice
4 time and money while serving as jurors, and avoids the necessity of calling witnesses more
5 than one time. Id. at 853-54, 899 P.2d at 547, see also United States v. Brady, 579 F.2d 1121
6 (9th Cir. 1978), cert. denied, 439 U.S. 1074, 99 S. Ct. 849 (1979). Therefore, the legal
7 presumption is in favor of a joint trial among co-defendants.

8 II. ANALYSIS

9 A. To the Extent there is a Disparity of Evidence Between Defendant and his 10 co-defendants; Defendant is not entitled to Severance

11 In seeking severance, Defendant repeatedly argues that the disparity of evidence
12 between Defendant and his co-defendants creates such a prejudice that severance is required.
13 However, Defendant's claims of disparity are not sufficient to warrant severance in the instant
14 case.

15 Severance may sometimes be appropriate in instances where the voluminous or
16 gruesome evidence against one defendant overwhelms the de minimus evidence against the
17 co-defendant(s). See United States v. Sampol, 636 F.2d 621 (D.C.Cir.1980) (severance granted
18 where one defendant charged with two murders and co-defendant charged with false
19 declarations and misprision of felony). A showing that there is more evidence against one
20 defendant, that there are more charges against one defendant, or that the evidence is stronger
21 against one defendant than against others is insufficient to prevail on a demand for severance.
22 See Blumenthal v. United States, 332 U.S. 539, 68 S.Ct. 248, 92 L.Ed. 154 (1947); United
23 States v. Perholtz, 657 F.Supp. 603 (D.D.C.1986).

24 In particular, where conspiracy is a dominant element and the Government must prove
25 agreement among several co-defendants, joinder is presumed despite the fact that the evidence
26 may show that some defendants were "kingpins" and others were less active. See United States
27 v. Edelin, 118 F.Supp.2d 36, 43 (D.D.C.2000) ("[S]everance is not appropriate merely because
28 some co-conspirators were more active in the conspiracy, nor because some co-conspirators

1 played a more central role.”). In order to make a valid claim for severance, the defendant must
2 show that as a result of these evidentiary disparities, there will be undue prejudice against the
3 defendant or the jury will be unable to “compartmentalize” the evidence against the
4 defendants. Zafiro v. United States, 506 U.S. 534, 113 S.Ct. 933, 122 L.Ed.2d 317 (1993).
5 Proper jury voir dire and curative instructions may be used to cure any possibility for prejudice
6 or jury confusion in all but the most extreme cases. Richardson v. Marsh, 481 U.S. 200, 211,
7 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987).

8 In Lisle v. State, the Supreme Court of Nevada acknowledged that “the ‘spillover’ or
9 “rub off theory” involves the question of whether a jury's unfavorable impression of [one]
10 defendant against whom the evidence is properly admitted will influence the way the jurors
11 view the other defendant.” Lisle v. State, 113 Nev. 679, 680, 941 P.2d 459 (1997) (citation
12 omitted). The Court further stated that severance will not be granted based on “guilt by
13 association” alone because merely having a better chance at acquittal is insufficient to establish
14 prejudice. 113 Nev. at 689, 941 P.2d at 466 (quoting State v. Rendon, 148 Ariz. 524, 715 P.2d
15 777 (Ct.App.1986)), Rowland v. State, 118 Nev. 31, 46, 39 P.3d 114, 123 (2002).

16 Here, Defendant fails to establish how the evidence against Co-Defendant Lofton-
17 Robinson and/or Co-Defendant Robertson is prejudicial to the point of warranting severance.
18 Rather, Defendant’s claims of prejudice are conclusory and without factual support, relying
19 on his claim that the evidence against him is “nothing more than circumstantial” while the
20 “evidence against the co-defendant’s is substantial.” Def.’s Motion to Sever, 13-14. In his
21 attempt to support this argument, Defendant minimizes the evidence against him and places
22 great significance on evidence that is not deserved.

23 In short, the evidence placing Defendant at the scene is as follows. Minutes prior to the
24 murder, Mr. Mason went for a jog in his neighborhood. During his jog, Mr. Mason saw four
25 young black males standing on the corner of Lindell and Dewey in front of 5536 Dewey Drive.
26 Shortly after Mr. Mason ran past the four individuals standing in front of Mr. Valenzuela’s
27 home, he saw what he described as a white Crown Vic, bearing Nevada license plate number
28 473YZB. The vehicle was parked approximately 20-50 feet from where the four black males

1 were standing. Mr. Mason felt these individuals were suspicious so he called his wife and told
2 her to lock the doors to their house and he asked her to call 311 to report the suspicious
3 individuals. Gabriel Valenzuela was shot just minutes after Mr. Mason saw four black males
4 were seen at the murder location.

5 Approximately 30 minutes prior to the murder, Defendant was captured on surveillance
6 footage with Co-Defendant Lofton-Robinson, Co-Defendant Robertson, and Deshawn
7 Robinson at the Shortline Express convenience store. The Shortline Express is approximately
8 2.5 miles from the murder scene. Notably, Defendant was captured on surveillance footage
9 getting out of and back into the vehicle seen by Robert Mason at the murder scene. At that
10 time, Defendant was also carrying a firearm on his hip. While this evidence is circumstantial,
11 the close proximity in time and location from Shortline Express to the murder scene is
12 compelling. Furthermore, the fact that Defendant and three other black males were together
13 30 minutes before the murder, inside the same vehicle seen at the scene of the murder, is also
14 compelling given that Mr. Mason saw four young black males at the scene of the murder in
15 the same car.

16 However, evidence that Defendant was present at the scene of the crime is not merely
17 circumstantial. In its case in chief, the State intends on calling Deshawn Robinson as a witness.
18 Deshawn Robinson was present at the scene of the crime and his testimony will implicate each
19 of the defendants in this case, including Defendant Wheeler.

20 In additional to arguing that the evidence against Defendant is circumstantial,
21 Defendant places significance weight on evidence he believes is exculpatory. Specifically,
22 Defendant continually mentions "evidence" that five people were present with the co-
23 defendants at the Shortline Express just minutes before Mr. Valenzuela was murdered.
24 Defendant bases this claim on the statement of Marcel Solomon; the unrelated witness that
25 bought a cigar for Defendant and his co-defendants. Defendant further attempts to use Mr.
26 Solomon's statement as an attempt to bolster his own self-serving statement that he took a bus
27 home and wasn't present at the murder scene. While the State acknowledges that Mr. Solomon

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1 referenced five people in parts of his statement, Defendant fails to point out that Mr. Solomon
2 also indicated

3 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. Furthermore, this is hardly solid evidence that five people were
23 in the vehicle. The better evidence is the surveillance footage. A view of the surveillance
24 footage shows that the vehicle in question arrived at the Shortline Express, at which time four
25 individuals exited the vehicle and entered the convenience store. These individuals were
26 identified by Detective Dosch as being Defendant and his co-defendants. While inside the
27 convenience store, the Defendant and his co-defendants are observed together and are not
28 actively communicating with anyone else. At no time is a fifth person visible in the vehicle
or seen associating with the defendants inside the store. The surveillance footage later shows

1 all four individuals (including Defendant) getting back into the vehicle. At no point does the
2 footage show Defendant getting back out of the vehicle or anyone else getting into the vehicle.

3 Accordingly, Defendant's argument regarding five people in the vehicle is not only
4 unconvincing but does nothing to negate his presence at the scene of the murder.

5 Defendant further tries to distance himself from the crime based on Robert Mason's
6 description of the suspects in this case as being dark-skinned. Defendant's representation of
7 Mr. Mason's description is misleading. When Mr. Mason testified at the Grand Jury, he was
8 asked about the description of the four individuals he saw standing in front of the victim's
9 home; he testified as follows:

10 Q. Were you able to notice the race of any of these four individuals?

11 A. Yeah, all of them were dark skin, black individuals I guess you would say.

12 Q. So all four were -

13 A. Yeah. Yeah.

14 Q. -- black males?

15 A. Yeah, black, young males.

16 GJT 47:20-48:2.

17 Defendant describes himself as "light-skinned" indicating that he does not match the
18 description provided by Mr. Mason. It goes without saying that the term "light-skinned" is
19 relative and is not a basis to sever the Defendants in the instant case. Defendant is a young
20 African American male which is perfectly in line with Mr. Mason's description of the murder
21 suspects in this case.

22 Here, Defendant's argument regarding a disparity of evidence amounts to nothing more
23 than his opinion that he would have a better chance at acquittal if he and his co-defendants had
24 separate trials. This is not sufficient to warrant severance. In every case involving co-
25 defendants, there will always be a disparity of evidence. This is especially true in cases
26 involving conspirator and/or aiding and abetting liability as the focus of said trials tends to be
27 on the principal as opposed to the accomplice. Here, the evidence against Co-Defendant

28 *///*

1 Lofton-Robinson and Co-Defendant Robertson, when compared to the evidence against his
2 co-defendants, does not create a disparity that is sufficient to warrant severance.

3 **B. Defendant Fails to Show Potential Bruton Issues Warrant Severance**

4
5 In seeking severance, the defense relies in part upon the decision in Bruton v. United
6 States, 391 U.S. 123, 88 S.Ct. 1620 (1968). Specifically, Defendant claims that his case should
7 be severed because the co-defendants implicate him in the murder of Gabriel Valenzuela.
8 Specifically, Defendant points to Facebook Messenger message sent from a Facebook account
9 associated with Co-Defendant Robertson to a Facebook account associated with Deshawn
10 Robinson. In that message, Co-Defendant Robertson and Deshawn Robinson appeared to have
11 a conversation approximately 12 hours before the murder about "hitting a house." During the
12 conversation, Co-Defendant Robertson stated "me u sace and him sace already said yeah."
13 Defendant argues that because the State has reason to believe that Sace is Defendant, he must
14 be severed from his co-defendants' cases because their statements implicate him. Defendant's
15 reliance on Bruton in the instant case is misplaced.

16 In Bruton, the Supreme Court held that the Confrontation Clause in the Sixth
17 Amendment of the United States Constitution prohibits the use of one defendant's statements
18 against another, when the defendant whose statements are used, does not testify. Bruton, 391
19 U.S. at 127-28, 88 S. Ct. at 1623. This is so because admitting such a statement violates the
20 co-defendant's Sixth Amendment right to confront and cross examine the non-testifying
21 declarant.

22 However, not every admission of statements of one codefendant violate this rule. See,
23 e.g., Richardson v. Marsh, 481 U.S. 200, 208, 107 S. Ct. 1702 (1987). In Richardson, the
24 Court explained that Bruton is only implicated when the non-testifying co-defendant's
25 statements "expressly implicate" the defendant or are "powerfully incriminating." Id.
26 Additionally, the Court in Richardson, observed that:

27 One might say, of course, that a certain way of assuring compliance
28 would be to try defendants separately whenever an incriminating
statement of one of them is sought to be used. That is not as facile or

1 as just a remedy as might seem. Joint trials play a vital role in the
2 criminal justice system, counting for almost one third of federal
3 criminal trials in the past five years...

4 It would impair both the efficiency and the fairness of the criminal
5 justice system to require on all of these cases of joint crimes where
6 incriminating statements exist, that prosecutors bring separate
7 proceedings, presenting the same evidence again and again, requiring
8 victims and witnesses to repeat the inconvenience (and sometimes
9 trauma) of testifying, and randomly favoring the last - tried defendants
10 who have the advantage of knowing the prosecution's case before
11 hand. Joint trials generally serve the interest of justice by avoiding
12 inconsistent verdicts and enabling more accurate assessment of
13 relative culpability - advantages which sometimes operate to the
14 defendant's benefit. Even apart from these tactical considerations,
15 joint trials generally serve the interest of justice by avoiding the
16 scandal and equity of inconsistent verdicts. The other way of assuring
17 compliance with an expansive Bruton rule would be to forego use of
18 co-defendant's confessions. That price also is too high, since
19 confessions are more than merely 'desirable'; they are essential to
20 society's compelling interest in finding, convicting, and punishing
21 those who violate the law.

22 Id. at 209-210 (Citations omitted).

23 It Richardson, the Court further clarified that a limiting instruction adequately protects
24 a defendant's Confrontation Clause rights when a co-defendant's confession "is redacted to
25 eliminate not only the co-defendant's name, but any reference to his or her existence" so that
26 confession only becomes incriminating when linked with other evidence introduced in the
27 case. See id. at 208-211, 107 S.Ct. 1702.

28 The Nevada Supreme Court has specifically embraced the rule of Bruton to permit the
introduction of redacted statements that do not "facially incriminate" a co-defendant. Lisle v.
State, 113 Nev. 679, 692-93 (1997) (redacted statement of co-defendant which replaced Lisle's
name with "the other guy" was not facially incriminating and did not offend Bruton.).

In the present case, even if the State were to introduce the statement in question,
Defendant is not implicated without further evidence of who Sace is. The State is aware of
the evidentiary implications of Bruton and its progeny. The State is aware of the need to redact
any statement admitted so that assertions which facially incriminate co-defendants are

1 removed and will do so at trial if necessary, thus eliminating the need for severance. However,
2 Defendant fails to point out any situations in which Defendant is directly incriminated by his
3 co-defendants. Accordingly, any claim that Defendant must be severed because his co-
4 defendants implicate him is unpersuasive.

5 **C. Severance is not Necessary nor Justified in the Instant Case**

6 Defendant again argues that severance is warranted based on the prejudice that would
7 arise due to "guilt by association." Def.'s Motion to Sever at 15. Defendant further argues
8 that "there is a strong likelihood that there will be conflicting and irreconcilable defenses"
9 between he and the co-defendants. Id. Defendant's arguments are again misplaced and he
10 fails to demonstrate that severance is warranted due to antagonistic defenses.

11 NRS 174.165 provides that, "[i]f it appears that a defendant...is prejudiced by a
12 joinder...of defendants in an indictment or information, or by such joinder for trial together,
13 the court may...grant a severance of defendants."

14 The Nevada Supreme Court has commented that "while there are situations in which
15 inconsistent defenses may support a motion for severance, the doctrine is a very limited one."
16 Jones v. State, 111 Nev. 848, 854, 899 P.2d 544, 547 (1995).

17 Severance is not mandated merely because conflicting or antagonistic defenses exist.
18 Zafiro v. U.S., 506 U.S. 534, 113 S.Ct. 933 (1993). This is because different defenses are
19 simply a part of the adversarial process when defendants are tried together." Id. 106 Nev. at
20 756, 801 P.2d at 1361.

21 Rather, a joint trial may be prejudicial if the defendants' individual defenses are
22 "antagonistic to the point that they are '*mutually exclusive*'[.]" Rowland v. State, 118 Nev.
23 31, 45, 39 P.3d 114, 122 (2002) (emphasis added).

24 "Defenses are mutually exclusive when the core of the codefendant's defense is so
25 irreconcilable with the core of [the defendant's] own defense that the acceptance of the
26 codefendant's theory by the jury precludes acquittal of the defendant." Marshall v. State, 118
27 Nev. 642, 646, 56 P.3d 376, 378 (2002) (alteration in original) (internal quotations omitted).

28 ///

1 Severance is not warranted or justified simply because each defendant seeks to blame
2 the other for the crime. Marshall v. State, 118 Nev. 642, 56 P.3d 376 (2002). In Marshall, co-
3 defendants Marshall and Currington were tried together and both convicted of first-degree
4 murder, robbery, and conspiracy to commit robbery. At trial, Marshall's strategy was to
5 exclusively blame Currington and Currington's strategy was to blame Marshall. Id. at 644-
6 45, 56 P.3d at 377-78.

7 On appeal, Marshall claimed that the district court erred in not severing his trial from
8 Currington's. Id. at 645, 56 P.3d at 378. He maintained that he and Currington had
9 "antagonistic defenses" in that each argued that the other was responsible for the murder. Id.,
10 56 P.3d at 378. Marshall relied on the standard the Nevada Supreme Court articulated in
11 Rowland v. State, 118 Nev. 31, 39 P.3d 114 (2002).

12 In deciding the issue in Marshall, the Court expressed concern that the Rowland
13 decision implied severance was justified in too broad of circumstances. The court explained
14 the Rowland holding and limited the standard under which severance is appropriate. It stated:

15 To the extent that this language suggests that prejudice requiring
16 severance is presumed whenever acceptance of one defendant's
17 defense theory logically compels rejection of another defendant's
18 theory, it is too broadly stated. As we have explained elsewhere,
19 where there are situations in which inconsistent defenses may support
20 a motion for severance, the doctrine is a very limited one. A defendant
21 seeking severance must show that the codefendants have conflicting
22 and irreconcilable defenses and that *there is a danger that the jury
23 will unjustifiably infer that this conflict alone demonstrates that
24 both are guilty*. We take this opportunity to further clarify this issue.

25 Marshall, 118 Nev. at 646, 56 P.3d at 378 (emphasis added). The court then explained the
26 standard for severance.

27 The decisive factor in any severance analysis remains prejudice to the
28 defendant. NRS 174.165(1) provides in relevant part: "If it appears
that a defendant . . . is prejudiced by a joinder . . . of defendants . . . for
trial together, the court may order an election or separate trials of
counts, grant a severance of defendants or provide whatever other
relief justice requires." **Nevertheless, prejudice to the defendant is
not the only relevant factor: a court must consider not only the
possible prejudice to the defendant but also the possible prejudice**

1 to the State resulting from expensive, duplicative trials. Joinder
2 promotes judicial economy and efficiency as well as consistent
3 verdicts and is preferred as long as it does not compromise a
4 defendant's right to a fair trial. Despite the concern for efficiency and
5 consistency, the district court has a continuing duty at all stages of the
6 trial to grant a severance if prejudice does appear. Joinder of
7 defendants is within the discretion of the district court, and its decision
8 will not be reversed absent an abuse of discretion. **To establish that
joinder was prejudicial requires more than simply showing that
severance made acquittal more likely;** misjoinder requires reversal
only if it has a substantial and injurious effect on the verdict.

9 Id. at 646-47, 56 P.3d at 378-79 (citations omitted).

10 Significantly, the Nevada Supreme Court specifically held that antagonistic defenses
11 are a factor, but not in themselves sufficient grounds upon which to grant severance. Indeed,
12 in Marshall, even though the defenses offered by Marshall and co-defendant Currington were
13 antagonistic and each one accused the other, the Nevada Supreme Court held that the joinder
14 of the defendants at trial was proper. Id. at 648, 56 P.3d at 378. Finding Marshall's assertion
15 that his and Currington's defenses were prejudicial by virtue of their antagonistic nature
16 unpersuasive, the court explained that to prevail on the ground that severance was warranted,
17 *Marshall had to show that the "joint trial compromised a specific trial right or prevented the
18 jury from making a reliable judgment about guilt or innocence."* Id. at 648, 56 P.3d at 380.

19 The United States Supreme Court conducted a similar analysis in Zafiro v. United
20 States, 506 U.S. 534, 113 S. Ct. 933 (1993). In that case, petitioners contended that a joint
21 trial was prejudicial whenever two defendants each claim innocence and accuse the other of
22 the crime. Id. at 538, 113 S. Ct. at 938. The United States Supreme Court rejected this
23 contention, holding that "mutually antagonistic defenses are not prejudicial per se." Id., 113
24 S. Ct. at 938. The Court explained that severance should only be granted if there is a serious
25 risk that a joint trial would compromise a specific trial right of one of the defendants or prevent
26 the jury from making a reliable judgment about guilt or innocence. Id. at 539, 113 S. Ct. at
27 938. It is not prejudicial for a co-defendant to introduce relevant, competent evidence that
28 would be admissible against defendant at a severed trial. Id. at 540, 113 S. Ct. at 938. *The*

1 Court also noted that the trial court can cure any potential prejudice by properly instructing
2 the jury that it must consider the case against each defendant separately. See Id. at 540-41,
3 113 S. Ct. at 939.

4 It is the Defendant's burden to demonstrate what prejudice he contends he will face by
5 a joint trial and in meeting the burden necessary to cause the Court to grant a severance. Here,
6 the Defendant's argument for severance fails. Defenses become "mutually exclusive" when
7 "the core of the codefendant's defense is so irreconcilable with the core of [the defendant's]
8 own defense that the acceptance of the codefendant's theory by the jury precludes acquittal of
9 the defendant." United States v. Throckmorton, 87 F.3d 1069, 1072 (9th Cir. 1996) (cited with
10 approval in Rowland v. State, 118 Nev. 31, 39 P.3d 114 (2002)).

11 Defendant provides no factual basis to find that his proffered defense is mutually
12 exclusive of his codefendants' defenses. It is the State's belief that Defendant's defense is that
13 he wasn't present at the scene of the crime. Regardless of the co-defendant's defenses, there
14 is no scenario in which this defense is so irreconcilable that the acceptance of the codefendant's
15 theory by the jury would precludes acquittal of the defendant. Defendant argues that "it is
16 certainly conceivable that the co-defendant may attempt to [defend] themselves by attempting
17 to use the same defense: that they had left the others before the shooting ant that [Defendant],
18 therefore, was one of the four present that Mr. Mason saw." Def.'s Motion to Sever at 16.
19 However, such defenses are not "mutually exclusive." Even to the extent that the co-
20 defendants may directly point the finger at Defendant, such a defense would not warrant
21 severance.

22 Simply stated, Defendant has not shown that he would suffer a loss of a specific trial
23 right, given that his ability to challenge the State's case is no different with Lofton-Robinson
24 and/or Robertson as co-defendants.

25 Even if the Court finds that the defenses are mutually antagonistic, that does not
26 automatically mean that the Defendant will suffer a prejudice because of joinder. The
27 Defendant must show that a joint trial would result in a specific instance of prejudice, or that

28 ///

1 there is a serious risk that a joint trial will compromise a specific trial right of one of the
2 defendants, or prevent the jury from making a reliable judgment about guilt or innocence.

3 Defendant has failed to make such showing of prejudice. Defendant has not shown that
4 joinder would prohibit him from presenting his theory of the case or that there is additional
5 evidence he would be able to present at a severed trial. Defendant has also failed to show that
6 his defense will be hindered in any way.

7 Since Defendant has failed to show that the defenses in this case are mutually
8 antagonistic or that a joint trial would result in serious prejudice and prevent the jury from
9 making a reliable decision, the Motion to Sever should not be granted.

10 **III. JUDICIAL ECONOMY SUPPORTS A JOINT TRIAL**

11 Judicial economy is a relevant factor for the Court to consider in determining whether
12 or not to grant severance. The Nevada Supreme Court has stated that while prejudice to the
13 defendant is a relevant factor, it is not the only factor and that "a court must consider not only
14 the possible prejudice to the defendant but also the possible prejudice to the State resulting
15 from expensive duplicative trials." Marshall at 646, 56 P.2d at 379, citing Lisle v. State, 113
16 Nev. 679, 688-89, 941 P.2d 459, 466 (1997).

17 Here, judicial economy supports having a joint trial against the defendants. The same
18 witnesses would be testifying at each trial and to have them testify on two different occasions
19 (or possibly more if the other Defendants move for severance) would not promote judicial
20 economy. The trial involves dozens of witnesses, including multiple lay witness, multiple
21 expert witnesses, and the murder victim's relatives. Having so many witnesses testify twice
22 (or possibly three times) would be a great drain on the community and its resources. In the
23 instant case, it would serve the interest of justice to try all of the Defendants together. Doing
24 so would prevent the county from State from having to present the same evidence numerous
25 times and victim's family members from to repeat the same traumatic story over and over
26 again.

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1 CONCLUSION

2 Based on the foregoing, the State respectfully requests that Defendant's Motion to
3 Sever Defendants be DENIED. To the extent, Defendant seeks to sever Counts 1-4, the State
4 submits said request to the Court's discretion.

5 DATED this 15th day of January, 2019.

6 Respectfully submitted,

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

10 BY

Amy L. Ferrell
11 RACHEL O'HALLORAN
12 Deputy District Attorney
13 Nevada Bar #12840

14 CERTIFICATE OF ELECTRONIC FILING

15 I hereby certify that service of the above and foregoing, was made this 15th day of
16 January, 2019 by Electronic Filing to:

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

19 BY:

Mary Bouley
20 Secretary for the District Attorney's Office
21
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28 17F14369X/RO/mlb/dvu

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

January 16, 2019

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

January 16, 2019 08:30 AM Defendant's Motion to Sever Co-Defendants

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

RECORDER: Santi, Kristine

REPORTER:

PARTIES PRESENT:

Giancarlo Pesci

Attorney for Plaintiff

James J. Ruggeroli

Attorney for Defendant

Rachel O'Halloran

Attorney for Plaintiff

State of Nevada

Plaintiff

JOURNAL ENTRIES

Following arguments by counsel regarding the Motion to Sever, COURT ORDERED, Motion DENIED.

CUSTODY

Steven D. Grierson

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 WEDNESDAY, JANUARY 16, 2019

14 **RECORDER'S TRANSCRIPT RE:**
15 **DEFENDANT'S MOTION TO SEVER CO-DEFENDANTS**

16 APPEARANCES:

17 For the Plaintiff:

GIANCARLO PESCI, ESQ.
RACHEL O'HALLORAN, ESQ.
Chief Deputy District Attorneys

18
19 For the Defendant:

JAMES J. RUGGEROLI, ESQ.

20
21
22
23
24 RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 16, 2019

2 * * * * *

3 [Case called at 8:59 a.m.]

4 THE COURT: State of Nevada versus Davontae Wheeler, Case
5 C328587. He's present and he's in custody.

6 Good morning.

7 MS. O'HALLORAN: Good morning, Your Honor, Rachel O'Halloran
8 and Giancarlo Pesci on behalf of the State.

9 MR. RUGGEROLI: James Ruggeroli on behalf of Mr. Wheeler, who's
10 present in custody.

11 THE COURT: Okay. I'm assuming you got a copy of the State's
12 opposition.

13 MR. RUGGEROLI: I did, Judge.

14 THE COURT: Okay.

15 MR. RUGGEROLI: Judge, I am prepared to go forward.

16 THE COURT: Go ahead.

17 MR. RUGGEROLI: Judge, the basis for this motion is that we don't
18 believe that Mr. Wheeler – under the facts and circumstances as alleged by the
19 State, Mr. Wheeler cannot have a fair trial, and so we're seeking severance
20 based on the statute, *Bruton* and other case law.

21 When you look at the evidence, I think it is a fair statement that the
22 evidence against Mr. Wheeler is circumstantial. The State is going to claim that
23 he was seen in a convenience store on video surveillance with a open-carry
24 firearm with at least three other people. And it's our contention that the
25 independent witness would indicate, although, he did equivocate a little bit as to

1 whether there was four or five, but certainly at multiple points in his statements to
2 the police he did indicate that there were five. So our contention is, and this is
3 supported by Mr. Wheeler's statement to the police, that Mr. Wheeler met up with
4 the co-defendants. There were four other individuals. They went to the
5 convenience store together and then prior to going to the neighborhood where
6 the shooting took place, Mr. Wheeler left the company of the other four
7 individuals.

8 Now, this fact is also supported by the jogger, who the State kind of
9 hangs their whole case on in trying to implicate Mr. Wheeler. The jogger, Mr.
10 Mason, said that there were four individuals present, not five. He indicated that
11 they all had dark skin. Mr. Wheeler in comparison to the co-defendants has light
12 skin and that is an important fact.

13 Moreover, the State has now presented an expert to verify that Mr.
14 Wheeler's gun was analyzed and it has been shown that it was not used in the
15 commission of this crime. It wasn't fired. However, the co-defendants' firearms –
16 each of the two co-defendant's firearms that were later obtained at their
17 residence were confirmed to have been used in this shooting. So you have a
18 situation where the evidence against Mr. Wheeler is at best circumstantial, but
19 the evidence against the co-defendants –

20 THE COURT: Well, there's – you've read the State's opposition.
21 There's going to be some direct evidence.

22 MR. RUGGEROLI: Well, there's no direct evidence that Mr. Wheeler,
23 as identified by that name, was present at the shooting. What they claim is direct
24 evidence is that there were four unknown individuals that match very stereotyped
25 descriptions of black males present at the jogging scene. Other than that, all

1 they have is the convenience store video from, you know, at least 30 minutes
2 prior to the shooting, but Mr. Wheeler's statements to the police were that he left
3 prior to that. And so when you add the independent witness saying that there
4 was five people, you've got a situation where it makes sense that Mr. Wheeler
5 would've left the four other individuals prior to the shooting. So our position is
6 that it is circumstantial.

7 So if you have a joint trial, especially – and I did file a supplement
8 regarding the additional charges that Mr. Robertson is facing – you have a
9 situation where an individual is sitting at counsel table, where his co-defendant
10 has evidence that his gun was used in the commission of the crime, where he
11 made statements essentially amounting to admissions. There is evidence of, I
12 think, *Bruton* issues. The State tries to, I guess, kind of sweep that issue away,
13 but you can't redact this, and the identification of an individual by the moniker
14 Sace, and that's S-a-c-e for the record, they're going to try and establish that
15 Sace is Mr. Wheeler and there's no way to redact that portion. So, given the law,
16 Mr. Wheeler cannot have a fair trial if he's joined and severance is justified and
17 necessary in this case.

18 THE COURT: Thank you.

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

20 Essentially, what counsel's argument boils down to is circumstantial
21 against the Defendant, overwhelming evidence against the other ones. Disparity
22 of evidence is simply not a reason to sever a case and case law is clear about
23 that. Specifically, in *Lisle v. State*, I'm reading directly from the case, it says,
24 severance of defendants will not be granted based on guilt by association alone.
25 Merely having a better chance at acquittal if the defendants are tried at separate

1 trials is not sufficient to establish prejudice. And in addition, defendant is not
2 entitled to severance merely because the evidence admissible against a co-
3 defendant is more damaging than the evidence admissible against the moving
4 party. The circumstantial evidence placing Defendant at the scene is compelling
5 and, as Your Honor pointed out, there will be direct evidence in terms of
6 testimony from a co-conspirator that directly places the Defendant at the scene of
7 the crime.

8 The disparity here is simply not sufficient in order to warrant
9 severance. Mr. Ruggeroli relies on, you know, the evidence of the fifth person.
10 That's disputed by the surveillance footage. The surveillance footage is clear
11 that there's four people in that car. You do not see a fifth person in that car at
12 any point and the surveillance shows the car the entire time. It shows four
13 people get out. It doesn't show anybody else in the car when those four people
14 get out. It shows four people get back in and it shows the vehicle leave. So
15 there's simply – despite counsel's argument, there is no corroborating evidence
16 regarding this fifth person.

17 Regarding *Bruton*, the State, obviously, is not going to introduce any
18 *Bruton* evidence. Any of the statements, which there's only one that's been
19 pointed out by counsel, can be redacted, or there can be limiting instructions to
20 prevent any prejudice. So I think that the *Bruton* issue really can be kind of
21 summarily dealt with based on that.

22 And then we didn't discuss it today but antagonistic defenses.
23 Defendant hasn't even really alleged any defenses in this case that are going to
24 be antagonistic to his client, specifically, to the point where they're mutually
25 exclusive to any other defenses, Your Honor. Public policy in this case dictates

1 that we try these defendants together. There's three defendants. The State has
2 35-40 witnesses subpoenaed in this particular case. To require two or three
3 separate trials with that many witnesses and this much evidence does not
4 promote judicial economy. And we would submit with that, Your Honor.

5 THE COURT: Thank you.

6 Anything else?

7 MR. RUGGEROLI: Judge, just very briefly. Public policy has to give
8 way to a defendant's right to a fair trial, additionally, the other rights that are
9 implicated in this circumstance. There are going to be mutually antagonistic or
10 exclusive defenses because Mr. Wheeler's contention is likely going to be:
11 you've got the four individuals, although one of them is unnamed, that do not
12 include him that were present at the scene. So he's essentially going to be
13 pointing the finger at the co-defendants, not directly, but his position is: I'm not
14 there, but the evidence speaks for itself. Their guns were used; mine wasn't.
15 There is an independent witness that corroborates the fact that there were five
16 individuals. We didn't manufacture this. This was a witness that the –

17 THE COURT: No. I've read his testimony.

18 MR. RUGGEROLI: But this witness is a witness that Metro found and
19 that indicated that there were five individuals. The surveillance does not
20 establish that there was not five people present. It just shows that four got out of
21 the car, but the view does not show what – who else was in the car. So they do
22 have video, but it doesn't exclude a fifth person being present in the car. It just
23 doesn't show by the angle that it had.

24 The spill-over effect of prejudice is going to be too great and, in light of
25 all these circumstances, you can't redact, you can't sufficiently give limiting

1 instructions and because of that severance is justified. And I would point out in
2 terms of public policy, I think, given the evidence against the co-defendants, the
3 practical reality is that they will probably very likely take a negotiation prior to trial
4 and this issue about multiple trials may be moot.

5 THE COURT: Okay. At this time, the Court is going to deny the
6 motion. And you have your next court appearance April 17th at 8:30.

7 MR. RUGGEROLI: Thank you, Judge.

8 THE COURT: Thank you.

9 THE DEFENDANT: Excuse me. May I ask a question? May I ask,
10 why would you deny – why did you feel like it's – the motion should be denied?
11 Because I don't know why if that's the state of – if it's for me to have a fair trial –
12 if, honestly, if I'm supposed to have a fair trial by my – by the State I'm supposed
13 to have a fair trial. I don't feel like that even – that's even – it's not even right for
14 you all to even say that I shouldn't have – be able to have a fair trial, like it was
15 already said, and it's nothing pointing to me at all. Do you feel me? But at the
16 same time, it's like you wanted me to be in trial with co-defendants when,
17 honestly, the spill-over effect is a real law out here. Whereas, one of my co-
18 defendants –

19 THE COURT: Mr. Kajioka, what page are you on?

20 THE DEFENDANT: – gets charged with something I can be charged
21 with the same exact thing. So, with that being said, it's basically saying, forget if
22 I'm being – if it's a fair trial or not. So may I ask if – by Your Honor – if you can at
23 least tell me why you feel like it's – it should be a dismissed thing, instead of just
24 saying it's dismissed?

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THE COURT: Okay. I denied the motion.

[Proceedings concluded at 9:08 a.m.]

* * * * *

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



KRISTINE SANTI
Court Recorder

Steven D. Grierson

JAMES J. RUGGEROLI
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Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Plaintiff,

Case No. C-17-328587-3

vs.

Dept No. XII

DAVONTAE AMARRI WHEELER,
#5909081.

Defendant.

**MOTION TO STAY PROCEEDINGS AND MOTION FOR WRITTEN ORDER
DENYING DEFENDANT'S MOTION TO SEVER**

COMES NOW Defendant, DAVONTAE AMARRI WHEELER, through JAMES J. RUGGEROLI, ESQ., submits the following Motion. This Motion is based on the following Points and Authorities, the pleadings and papers on file herein, the exhibits and affidavits and any oral argument by counsel permitted at the hearing on this matter.

DATED this 28th day of January, 2019.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Motion will be heard in Department XII before the District Court Judge of the above entitled court on the 5th day of March, 2019 at the hour of 8:30 a.m. or as soon thereafter as counsel can be heard.

DATED this 29th day of January, 2019.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mr. Wheeler intends to seek extraordinary remedy in the appellate or Nevada Supreme Court by way of a writ of mandamus and prohibition concerning the district court's denial of his Motion to Sever. As such, in light of the likely delay in an appellate ruling on that matter, and due to NRAP 8(a)'s requirement for a stay to be made in the first instance in the district court, Mr. Wheeler necessarily seeks a stay in his proceedings. Also, Mr. Wheeler respectfully requests that the court issue a written order concerning the denial of the Motion to Sever for the purposes of the extraordinary writs. See State v. Mewes, 929 P.2d 505, 506 (1997).

II. FACTS

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

2. Mr. Wheeler filed his Motion to Sever defendants on or about December 14, 2018. See motion on file herein.

3. In the Motion, Mr. Wheeler sought to sever his case from the co-defendants.

1 4. On January 4, 2019, Mr. Wheeler filed a Supplement to Motion to Sever
2 Defendants which additionally sought to sever Counts 1-4 from the remaining counts.

3 5. Counts 1-4 involve charges against only Co-Defendant Robertson.

4 6. The State filed its opposition to both the Motion to Sever and the Supplement the
5 Motion to Sever Defendants on or about January 15, 2019.

6 7. On January 16, 2019, the district court denied Mr. Wheeler's Motion to Sever,
7 and presumably, also denied Mr. Wheeler's Supplement, which sought to sever Counts 1-4 as
8 well. See a true and accurate copy of the minutes attached hereto as **Exhibit A**.

9 8. At this time, there has been no written order concerning the court's denial of the
10 Motion to Sever filed.

11 For the reasons set forth below, Mr. Wheeler respectfully requests a stay in the
12 proceedings and for the State to prepare a written order regarding the denial of the motion.

13 **III. LAW AND ARGUMENT**

14 **A. LAW REGARDING AUTHORITY**

15 This Court has authority to grant the Defendant's pre-trial request to stay these
16 proceedings pending review of Defendant's soon-to-be-filed petition for writ of mandamus.
17 Procedurally, NRAP 8(a) requires that an application for a stay pending appeal be made to the
18 district court in the first instance. See Nelson v. Heer, 121 Nev. Adv. Op. 81 (2005). "This
19 requirement is grounded in the district court's vastly greater familiarity with the facts and
20 circumstances of the particular case." Id. Additionally, the Supreme Court considers the district
21 court to be better positioned to resolve any factual disputes concerning the underlying issues
22 supporting a request for a stay. See Id., citing Round Hill Gen. Imp. Dist. v. Newman, 97 Nev.
23 601, 604, 637 P.2d 534, 536 (1981).

24 NRAP 8(c) provides that stays be had in accordance with the provisions of NRS 177.095,
25 et seq. The relevant sections provide as follows: NRS 177.095 — a sentence of death shall be
26 stayed on appeal; NRS 177.105 — a sentence of imprisonment shall be stayed on appeal if the
27 defendant is admitted to bail; NRS 177.115 — a sentence to pay a fine may be stayed on appeal;
28 and NRS 177.125 — an order placing a defendant on probation may be stayed on appeal. There

1 is an absence of any other statute regarding stays in criminal proceedings. See Adler v. State, 569
2 P.2d 403, 404 (1977) comparing, State v. Perry, 10 Wash. App. 159, 516 P.2d 1104 (1973).

3 *Nevertheless*, it is clear that NRAP 8(a) requires applications for a stay to be made, in the
4 first instance, in the district court and that situations beyond the delineated statutory grounds
5 provided for in NRS 177.095, et seq. must necessarily exist in which the district court's *inherent*
6 *authority* to grant a stay of proceedings provides the court's power to do so.

7 The Nevada Supreme Court has repeatedly and consistently held that "the courts of this
8 state have the power to make their own procedural rules." State v. Second Judicial District Court,
9 11 P.3d 1209, 1213 (2000). "The judiciary, of course, has the inherent power to govern its own
10 procedures; and that power includes the right to adopt and promulgate rules of procedure." Id.
11 citing, Whitlock v. Salmon, 104 Nev. 24, 26, 752 P.2d 210, 211 (1988). "[T]here are regulating
12 ... powers of the Judicial Department that are within the province of the judicial function, i.e.,
13 promulgating and prescribing any and all rules necessary or desirable to handle the business of
14 the courts or their judicial functions." Id. citing Galloway v. Truesdell, 83 Nev. 13, 23, 422 P.2d
15 237, 244 (1967). See also Goldberg v. District Court, 93 Nev. 614, 617, 572 P.2d 521, 523
16 (1977).

17 The origin and nature of the inherent powers of the judiciary are definitively explained in
18 Galloway v. Truesdell, 83 Nev. 13, 422 P.2d 237 (1967):

19 "Judicial Power" is the capability or potential capacity to exercise a judicial
20 function. That is, "Judicial Power" is the authority to hear and determine
21 justiciable controversies. Judicial power includes the authority to enforce any
22 valid judgment, decree or order. A mere naked power is useless and meaningless.
23 The power must be exercised and it must function to be meaningful.... Judicial
function includes the right to exercise any lesser power that can be subsumed
under, or is included as an integral part of, the broader heading of "Judicial
Power"; that is, any power or authority that is inherent or incidental to a judicial
function is properly within the realm of judicial power, as described above.

24 Id. at 20, 422 P.2d at 242. Moreover:

25 In addition to the constitutionally expressed powers and functions of each Department,
26 (the Legislative, the Executive, and the Judicial) each possesses inherent and incidental powers
27 that are properly termed ministerial. Ministerial functions are methods of implementation to
28 accomplish or put into effect the basic function of each Department. No Department could

properly function without the inherent ministerial functions. Without the inherent powers of ministerial functions each Department would exist in a vacuum. It would be literally helpless. Id. at 21, 422 P.2d at 243.

B. ARGUMENT

No specific statute authorizes a district court's pre-trial stay of proceedings for appellate review of a petition for writ of mandamus. However, the district court's *inherent authority* or *incidental power* authorizes a district court to grant a stay in circumstances not specifically provided for by statute. As this Court is aware, a writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). Further, a writ of prohibition may be issued if a lower court acts in excess of its jurisdiction. See NRS 34.320; Goicoechea v. District Court, 96 Nev. 287, 607 P.2d 1140 (1980). Neither mandamus nor prohibition will issue, however, where the petitioner has a plain, speedy and adequate remedy, such as an appeal, in the ordinary course of law. NRS 34.170; 34.330. See also Heilig v. Christensen, 91 Nev. 120, 532 P.2d 267 (1975), cert. denied 423 U.S. 1055, 96 S.Ct. 787, 46 L.Ed.2d 645 (1976). Mandamus and prohibition are extraordinary remedies, and the decision of whether a petition will be entertained lies within the discretion of the Supreme Court. See Poulos v. District Court, 98 Nev. 453, 652 P.2d 1177 (1982) (mandamus); Bowler v. District Court, 68 Nev. 445, 234 P.2d 593 (1951)(prohibition).

NRAP 8 outlines four relevant factors that the Supreme Court considers concerning a stay of judgment or order that are relevant considerations for a district court to consider as well:

(1) Whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) Whether the respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) Whether appellant/petitioner is likely to prevail on the merits of the appeal.

See Hansen v. Dist. Ct. ex rel. Cty. Of Clark, 116 Nev. 650, 6 P.3d 982 (2000); see also Mikohn Gaming Corp v. McCrea, 120 Nev. 248, 89 P.3d 36 (2004) (holding that while no one factor is

1 more important, "if one or two factors are especially strong, they may counterbalance other weak
2 factors.") Moreover, the very purpose of a stay of a district court order pending appeal is to
3 preserve, not change, the status quo. See U.S. v. State of Mich., 505 F. Supp. 467 (W.D. Mich.
4 1980).

5 In the case at hand, this Court has inherent authority or incidental power to grant the
6 Defendant's motion to stay, and a stay of these proceedings is justified (1) to maintain the pre-
7 trial status quo pending review of the appellate court of the granting of the State's Motion, (2) to
8 prevent certain irreparable harm to the Mr. Wheeler and his ability to have a "fair trial," and (3)
9 to provide the Supreme Court with a justified opportunity to resolve the Defendant's claim prior
10 to trial.

11 NRAP 8(a) requires that the application for a stay be made in the district court in the first
12 instance, which is now formally made. The object of the writ petition will be defeated if the stay
13 is denied. Moreover, the Defendant will suffer irreparable injury if the stay is denied, but the
14 State will suffer no injury if the stay is granted. Additionally, although this Court will clearly
15 disagree in light of its ruling to the contrary, the Defense maintains that it has a legitimate claim
16 to prevail on the merits of the mandamus. See factors contained in NRAP 8.

17 In this case, admission of evidence will have a *defining impact on the trial* in this matter.
18 Additionally, the Defendant has *no other plain, speedy or adequate remedy* prior to trial to
19 challenge the Court's order other than a petition for writ of mandamus, and the Defendant will be
20 *irreparably harmed* if the Court does not grant the stay, since trial on this matter will proceed
21 without time for appellate review. Without the stay, trial in this matter will proceed with what the
22 Defense maintains amounts to impermissibly prejudicial and inadmissible evidence that will
23 necessarily and unjustly result in an *inherently unfair trial*. Finally, in order to present the
24 appellate court with a complete record for review, including an Appendix, pursuant to NRAP 21
25 (a)(4) ("The appendix shall include a copy of any order or opinion, parts of the record before the
26
27
28

1 respondent judge . . . or any other original document that may be essential to understand the
2 matters set forth in the petition.”) and NRAP 30, Mr. Wheeler additionally respectfully requests
3 that the State prepare a written order supporting the district court’s denial of the Motion to Sever.
4 See State v. Mewes, 929 P.2d 505, 506 (1997) (written findings should be required because
5 inadequate findings essentially deny meaningful appellate review).
6

7 **IV. CONCLUSION**

8 The Defendant respectfully requests that this Court order that the proceedings in this
9 matter be stayed and that a written order denying the Motion to Sever be prepared.

10 DATED this 28th day of January, 2019.

11 **JAMES J. RUGGEROLI**

12 By: /s/ James J. Ruggeroli
13 James J. Ruggeroli, Esq.
14 Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

15 **DECLARATION OF JAMES J. RUGGEROLI, ESQ.**

16
17 JAMES J. RUGGEROLI, ESQ., being first duly sworn under oath, deposes and states:

18 1. I am counsel of record for the Defendant and am an attorney at law duly licensed
19 to practice before this Court and make this Declaration of facts from personal knowledge which
20 is known to me, except for those matters stated upon information and belief, and as to those
21 matters, I believe same to be true.

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

24 DATED this 28th day of January, 2019.

25 **JAMES J. RUGGEROLI**

26 By: /s/ James J. Ruggeroli
27 James J. Ruggeroli, Esq.
28 Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101

JAMES J. RUGGEROLI, ESQ.
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
TEL: (702) 258-2022 | FAX: (702) 258-2021

CERTIFICATE OF SERVICE

I certify that on the 29th day of January, 2019 I emailed a copy of this motion to:
motions@clarkcountyda.com; SBindrup@ClarkCountyNV.gov; michael@sanftlaw.com

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

Felony/Gross Misdemeanor

COURT MINUTES

March 05, 2019

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

March 05, 2019 08:30 AM Defendant's Motion to Stay Proceedings and Motion for Written Order Denying Defendant's Motion to Sever

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

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

Following the representations of Mr. Ruggeroli, COURT ORDERED, Stay DENIED; State is to prepare the Order denying the Motion to Sever.

CUSTODY



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DAVONTAE AMARRI WHEELER,

Defendant.

CASE NO. C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

TUESDAY, MARCH 5, 2019

RECORDER'S TRANSCRIPT OF PROCEEDINGS
DEFENDANT'S MOTION TO STAY PROCEEDINGS AND MOTION FOR WRITTEN
ORDER DENYING DEFENDANT'S MOTION TO SEVER

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For the Defendant:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 5, 2019, 9:03 A.M.

2 * * * * *

3 THE COURT: C328587, State versus Davontae Wheeler. Good morning.

4 THE DEFENDANT: Good morning, Your Honor.

5 THE COURT: He's present. And he's in custody. Go ahead.

6 MR. RUGGEROLI: Good morning, Your Honor, James Ruggeroli appearing
7 on his behalf.

8 Judge, I am going to be seeking a *mandamus*, respectfully.

9 THE COURT: Sure.

10 MR. RUGGEROLI: As you know, we filed a motion to sever defendants.
11 There's a codefendant that is charged in this case and he also has additional
12 charges that are totally unrelated that Mr. Wheeler is not charged with. Your ruling
13 did not grant a severance. So right now we would be proceeding to trial with the
14 codefendant and with those additional counts. So respectfully, we intend on
15 pursuing a *mandamus* just because I believe that in order to protect Mr. Wheeler's
16 right to a fair trial, we want to have one more look at this.

17 THE COURT: Sure.

18 MR. RUGGEROLI: The rules of appellate procedure and law require that I
19 make a motion in District Court to stay the proceedings prior to raising that issue in a
20 *mandamus* and so that's what this was on for today. I'm seeking that you would
21 stay the proceedings so that we would have the time to have that issue litigated and
22 decided on before we proceed to trial.

23 THE COURT: Okay. You filed -- you filed a writ already, right?

24 MR. RUGGEROLI: No. It's pending the ruling on this. We will be filing --

25 THE COURT: Okay.

1 MR. RUGGEROLI: -- it as soon as we get a ruling on this.

2 MR. PESCI: So, Judge, I didn't respond because it's a formality. Whether
3 you grant the writ or you don't grant the writ, he just has to ask, and then whatever
4 your ruling is, then he ask for that same stay from the Supreme Court.

5 THE COURT: Okay. At this time the Court's going to deny the stay.
6 However, you indicated that an order had not -- a written order had not been
7 prepared and signed yet?

8 MR. RUGGEROLI: I believe that at the time of the filing of the motion that
9 was accurate. I don't know if that's still accurate.

10 THE COURT: Okay. Well, if an order has not been prepared, the State can
11 prepare an order denying the motion to sever.

12 MR. PESCI: Will do, Your Honor.

13 MR. RUGGEROLI: Thank you for checking, Judge.

14 THE COURT: I didn't check, so I'm not sure. Thank you.

15 MR. PESCI: Thank you.

16 PROCEEDING CONCLUDED AT 9:05 A.M.

17 * * * * *

18

19

20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
22 video recording of this proceeding in the above-entitled case.

23

24

25



SARA RICHARDSON
Court Recorder/Transcriber

Steven D. Grierson

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 MOTION TO SEVER CO-DEFENDANTS**

17 DATE OF HEARING: 1/16/19
18 TIME OF HEARING: 8:30 A.M.

19 THIS MATTER having come on for hearing before the above entitled Court on the
20 16th day of January, 2019, the Defendant being present, REPRESENTED BY JAMES
21 RUGGEROLI, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District
22 Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and the Court
23 having heard the arguments of counsel and good cause appearing therefor,

24 ///

25 ///

26 ///

27 ///

RECEIVED

MAR 13 2019

DEPT. 12

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1 IT IS HEREBY ORDERED that the Defendant's Motion to Sever Co-Defendant's,
2 shall be, and it is Denied.


3 DATED this 14 day of March, 2019.

4
5 
DISTRICT JUDGE

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

TS

9 BY


10 GIANCARLO PESCI
11 Chief Deputy District Attorney
12 Nevada Bar #7135
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27 17F14782X/dd/MVU
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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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 DAVONTAE AMARRI WHEELER
13 #0903141,
14 Defendant.

CASE NO: C-17-328587-3

DEPT NO: XII

RECEIPT OF COPY

17 RECEIPT OF COPY of the above and foregoing disc of Defendant Wheeler's interview
18 with police is hereby acknowledged this 23rd day of April, 2018.

20 JAMES RUGGEROLI
21 ATTORNEY FOR DEFENDANT

22 BY *R. Franky*

23 400 S. 4TH St. #280
24 Las Vegas, Nevada 89101

25 4/23/2019

27 17F14782X jn/MVU
28

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 17, 2019**

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

April 17, 2019 08:30 AM Status Check: Trial Readiness

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

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

Scott Bindrup, Esq., present on behalf of Co-Defendant, Demario Lofton-Robinson. Co-Defendant, Raekwon Robertson, also present.

Mr. Ruggeroli stated they are doing their best to be ready for trial; however, there are still issues with discovery. Further, Mr. Ruggeroli noted the Motion to Sever is in front of the Appellate Court right now. Mr. Bindrup stated he will not be ready for trial in two months requested his client be set with this case for the next Status Check. COURT SO ORDERED.

CUSTODY

CONTINUED TO: 05/15/19 8:30 AM

Steven D. Grierson

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, APRIL 17, 2019

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: TRIAL READINESS**

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For Defendant Robertson:

NO APPEARANCES

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

ALSO PRESENT: SCOTT BINDRUP, DEPUTY SPECIAL PUBLIC DEFENDER

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 17, 2019, 8:57 A.M.

2 * * * * *

3 THE COURT: Are you ready?

4 MR. BINDRUP: Yeah, I just need to make representations on why he's not
5 here because it was not on calendar. It's two defendant -- three defendant case, on
6 page 5, page 6. Mr. Sanft is not here for Mr. Robertson. My client, I believe, by
7 error, is not on calendar. It should have been on for a status check. He's the
8 individual that was at Lake's Crossing.

9 THE COURT: Right. Mr. Lofton.

10 MR. BINDRUP: And has been gone for, like, eight months. So if I can just
11 get on the next status check, if you're going to set it between now and the jury trial in
12 June.

13 THE COURT: Okay. It's Mr. Lofton, correct?

14 MR. BINDRUP: Pardon?

15 THE COURT: Your client is Mr. Lofton, correct?

16 MR. BINDRUP: Yes, Lofton-Robinson.

17 THE COURT: Okay. State versus Robertson and Wheeler, and,
18 Mr. Ruggeroli, the order has been prepared.

19 MR. RUGGEROLI: Yes.

20 THE COURT: Have you gotten a copy of it?

21 MR. RUGGEROLI: Yes, Your Honor.

22 THE COURT: Okay. I just wanted to make sure. Are the parties going to be
23 ready to go?

24 MR. RUGGEROLI: Judge, we are doing everything we can. There's a couple
25 of issues of discovery that I am looking into. I spoke with Mr. Pesci about that this

1 morning. We may have one of the items in particular. But other than that, we're
2 moving forward the best we can. That issue that you just mentioned --

3 THE COURT: Right.

4 MR. RUGGEROLI: -- with the order for my client's edification, has to do with
5 the denial of our motion to sever. That has been briefed and it is before the
6 appellate court now.

7 THE COURT: Oh, good.

8 MR. RUGGEROLI: But they haven't ordered a response from the State at this
9 time. So, other than that, we are just moving forward at this time. I think if we could
10 have another status check in 30 days.

11 THE COURT: Okay.

12 MR. BINDRUP: And just to let Your Honor know, my client, since he's been
13 gone so long, I am not ready for a trial within two months. So I am going to request
14 some sort of continuance of the matter. I don't suspect I'll be asking for a long one,
15 but I definitely need more time at this juncture.

16 THE COURT: Okay. So we'll put it on for 30 days.

17 THE CLERK: 30 days is going to be May 15th at 8:30.

18 MR. BINDRUP: Thank you.

19 THE COURT: Thank you.

20 MR. PESCI: Your Honor, is that as to all three of them?

21 THE COURT: Pardon?

22 MR. PESCI: Is that as to all three of them?

23 THE COURT: Yes. Yes.

24 MR. PESCI: Do you need me to stay for Mr. Sanft? Or no?

25 THE CLERK: I'll just e-mail him the date.

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THE COURT: Right. We'll just let him know.

MR. PESCI: Okay. Perfect.

THE COURT: We'll let him know the date.

MR. PESCI: Thank you.

MR. RUGGEROLI: Thank you, Judge.

THE COURT: Thank you.

PROCEEDING CONCLUDED AT 8:59 A.M.

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 15, 2019

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

May 15, 2019 08:30 AM Status Check: Trial Readiness

HEARD BY: Leavitt, Michelle COURTROOM: RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

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

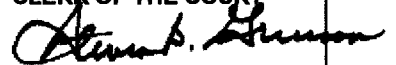
Scott Bindrup, Esq., present on behalf of Co-Defendant, Lofton-Robinson. Michael Sanft, Esq., present on behalf of Co-Defendant, Robertson.

Mr. Bindrup advised his client was in Lakes Crossing and requested this matter be reset as more time is needed. Mr. Ruggeroli advised his client is aware of that and there is also the issue of their Motion for Severance still being with the Appellate Court. Mr. Sanft announced ready and requested the earliest setting. State submitted. Colloquy regarding trial dates. COURT ORDERED, trial dates VACATED and RESET; matter SET for Status Check regarding trial readiness. Mr. Pesci noted Defendant, Raekwon Robertson wrote the State a letter and has provided copies to the Defense. All counsel confirmed it was received.

08/21/19 8:30 AM STATUS CHECK: TRIAL READINESS

11/05/19 8:30 AM CALENDAR CALL

11/19/19 10:30 AM JURY TRIAL



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, MAY 15, 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, MAY 15, 2019, 9:37 A.M.

2 * * * * *

3 THE COURT: State of Nevada versus Lofton-Robinson, Robertson, Wheeler,
4 they're all present and in custody. Will the attorneys make their appearances?

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

6 MR. RUGGEROLI: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. RUGGEROLI: James Ruggeroli on behalf of Mr. Wheeler who's present,
9 in custody. He's to your far left.

10 MR. BINDRUP: Scott Bindrup for Mr. Lofton-Robinson in the center.

11 MR. SANFT: And Michael Sanft on behalf of Mr. Robertson today.

12 THE COURT: Okay. You all are on for trial readiness. You have a trial date
13 pending of June 25th.

14 MR. BINDRUP: As I indicated to the Court last time that it was on calendar as
15 to the codefendants --

16 THE COURT: Right.

17 MR. BINDRUP: -- but I made an appearance anyway, I indicated to the Court
18 that since my client had been in Lake's Crossing for seven to eight months and he
19 just recently came back, I think this is the first time the three defendants have been
20 together at any court appearance, I definitely need more time so I'm requesting the
21 Court consider resetting this matter.

22 THE COURT: Mr. Ruggeroli.

23 MR. RUGGEROLI: Judge, I made my client aware of that. We also have
24 some issues, if you recall.

25 THE COURT: Sure.

1 MR. RUGGEROLI: I have an issue regarding the denial of our motion to
2 sever. It's still at the appellate court level. So we would submit it on that. I think a
3 30-day -- vacating the trial, 30 day to set the trial, we have no opposition.

4 THE COURT: Why can't we set it today? Mr. Sanft, do you have any
5 objection to the motion to continue?

6 MR. SANFT: Well, we would be ready to go. We've been announcing ready
7 the entire time, so we understand that the Court will continue this matter. I've
8 spoken with my client, he understands that as well. We're asking the Court though
9 for whatever the earliest setting would be that would be appropriate for
10 co-defendants' counsel on it. We just don't want it to drag out.

11 MR. PESCI: And, Judge, we submit it.

12 THE COURT: Okay. When do you want me -- when can you be ready?
13 What are you looking at?

14 MR. BINDRUP: I'd request a February setting next year.

15 DEFENDANT WHEELER: No, no.

16 DEFENDANT ROBERTSON: No, no, no, no.

17 THE COURT: You need that much time to get ready?

18 MR. BINDRUP: Well, if you want to set it earlier, if you can suggest a month.

19 THE COURT: What's my last setting this year?

20 MR. BINDRUP: Perhaps October?

21 [Colloquy between the Court and the Clerk]

22 THE CLERK: Status check trial readiness is going to be August 21st, 8:30;
23 calendar call, November 5th, 8:30; jury trial, November 19th, 10:30.

24 MR. RUGGEROLI: And, Judge, on behalf of Mr. Wheeler, if it was possible, I
25 know you're already set the date, but we were not anticipating that it would be quite

1 so long. Our request would be September, if available. I think that would be
2 enough time for co-counsel. But I --

3 THE COURT: It's only six months out in a murder case.

4 DEFENDANT LOFTON: We didn't -- our murder case been actually going on
5 two years. So even though it's five months for my murder case, it still would be
6 enough time to -- it shouldn't take more than five months. It shouldn't take more
7 than four months. Really.

8 THE COURT: Mr. Bindrup.

9 MR. BINDRUP: Anyway, unless --

10 THE COURT: Do you want to be heard?

11 MR. BINDRUP: -- co-counsel or the State have problems with that particular
12 date, I'd ask that you keep it for the November 19th setting.

13 THE COURT: Okay. I'm going to keep the November 19th trial date.

14 MR. PESCI: Judge, if I could make a record as well, Mr. Raekwon Robertson
15 wrote me a letter. He's represented by counsel, so I took that letter and immediately
16 forwarded it to his attorney and I had to provide copies to counsel for the
17 codefendant. So I wish that they would acknowledge that they've received that as
18 well.

19 MR. RUGGEROLI: Judge, I did receive it this morning.

20 MR. BINDRUP: The same, Your Honor.

21 THE COURT: Okay.

22 MR. SANFT: Yes, Your Honor.

23 THE COURT: I'm assuming you received a copy too, Mr. Sanft?

24 MR. SANFT: I did, Your Honor. Thank you.

25 THE COURT: Okay. All right.

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MR. PESCI: Thanks.

THE COURT: Thank you.

MR. BINDRUP: Thank you.

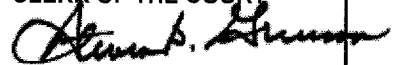
THE COURT: Thank you.

PROCEEDING CONCLUDED AT 9:41 A.M.

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



1 NNEW
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, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

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

Defendants.

CASE NO: C-17-328587-1
C-17-328587-2
C-17-328587-3

DEPT NO: XII

STATE'S SUPPLEMENTAL NOTICE OF WITNESSES
AND/OR EXPERT WITNESSES
[NRS 174.234]

19 TO: DEMARIO LOFTON-ROBINSON, aka Demario Loftonrobinson, Defendant;
20 and

21 TO: SCOTT BINDRUP, Deputy Special Public Defender, Counsel of Record:

22 TO: RAEKWON SETRY ROBERTSON, aka Raekwon Robertson, Defendant; and

23 TO: MICHAEL SANFT, ESQ., Counsel of Record:

24 TO: DAVONTAE AMARRI WHEELER, Defendant; and

25 TO: JAMES RUGGEROLI, ESQ., Counsel of Record:

26 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
27 NEVADA intends to call the following witnesses in its case in chief:

28 ///

	<u>NAME</u>	<u>ADDRESS</u>
1	BAMBARENDAGO, SARATH	5565 W. DEWEY DR., LVN
2	BOGATAY, M.	LVMPD P#7782
3	BUSHMAN, TRACEY	LVMPD P#8618
4	CALLEJA, A.	LVMPD P#9185
5	CATRICALA, W.	LVMPD P#12939
6	COOK, D.	LVMPD P#5730
7	CUSTODIAN OF RECORDS	FIESTA DISCOUNT MARKET
8	CUSTODIAN OF RECORDS	NEVADA DMV
9	DIZON, PELITA	c/o CCDA-VWAC, 200 LEWIS AVE., LVN
10	GARCIA, C.	LVMPD P#8913
11	HONAKER, JAMIE	CCDA INVESTIGATOR
12	JANO, BOB	5536 W. DEWEY DR., LVN
13	JANO, MERCEDITA	5536 W. DEWEY DR., LVN
14	JUSTICE, JANESEA	3300 CIVIC CENTER, N. LAS VEGAS, NV
15	KLASSEN, RAE	SHORTLINE EXPRESS, 7325 S. JONES, LVN
16	MCCARTHY, J.	LVMPD P#4715
17	MENDEZ, LUCY	5224 ZACHARY ST., LVN
18	MERRICK, F.	LVMPD P#7549
19	PARKER, J.	LVMPD P#12936
20	PARRA, JOSEPH	LVMPD P#10025
21	REEVES, ANTHONY	1327 H. ST., LVN
22	ROBINSON, DESHAWN	c/o J.D. EVANS, ESQ.
23	ROMATKO, MARIAH	7101 PINELAKE RD., LVN
24	SANDOVAL, H.	LVMPD P#5819
25	SOLOMON, MARCELL	2043 SOMBRERO DR., LVN
26	TRAMBONI, J.	LVMPD P#9331
27	TRUAX, M.	LVMPD P#13752

1 WILLIAMS, TOD

LVMPD P#3811

2 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
3 NEVADA intends to call the following expert witnesses in its case in chief:

4 **BARRINGER, D. – LVMPD P#7178** (or designee): Expert in the area of cellular
5 phones, including but not limited to, cellular system technology including cell tower
6 generation of calls and ability to determine the location where generated, collection and
7 handling of cellular phones for evidentiary purposes, and the examination, preservation,
8 retrieval and analysis of cellular call and text records/data, photos and/or video and/or any
9 other data kept on a cellular phone. Further, this expert will testify to the results of any and
10 all examinations performed on the cellular phones in this case.

11 **BROWNING, CLAIRE – LVMPD P#15291** (or designee): Expert in the
12 identification, documentation, collection and preservation of evidence, including crime scene
13 analysis and is expected to testify as an expert to the identification, documentation, collection
14 and preservation of evidence in this case.

15 **CHARLTON, NOREEN – LVMPD P#13572** (or designee): Expert in the
16 identification, documentation, collection and preservation of evidence, including crime scene
17 analysis and is expected to testify as an expert to the identification, documentation, collection
18 and preservation of evidence in this case.

19 **CORNEAL, DR. JENNIFER** (or designee): is a medical doctor employed by the
20 Clark County Coroner Medical Examiner. She is an expert in the area of forensic pathology
21 and will give scientific opinions related thereto. She is expected to testify regarding the cause
22 and manner of death of GABRIEL VALENZUELA in this case.

23 **CORNELL, LAURA – LVMPD P#13576** (or designee): Expert in the identification,
24 documentation, collection and preservation of evidence, including crime scene analysis and is
25 expected to testify as an expert to the identification, documentation, collection and
26 preservation of evidence in this case.

27 ***DILORETO, DR. CHRISTINA** (or designee): is a medical doctor employed by the
28 Clark County Coroner Medical Examiner. She is an expert in the area of forensic pathology

1 and will give scientific opinions related thereto. She is expected to testify regarding the cause
2 and manner of death of GABRIEL VALENZUELA in this case.

3 **FLETCHER, SHAWN – LVMPD P#5221** (or designee): Expert in the identification,
4 documentation, collection and preservation of evidence, including crime scene analysis and is
5 expected to testify as an expert to the identification, documentation, collection and
6 preservation of evidence in this case.

7 **FLINK, J. – LVMPD P#6272** (or designee): Expert in the area of cellular phones,
8 including but not limited to, cellular system technology including cell tower generation of calls
9 and ability to determine the location where generated, collection and handling of cellular
10 phones for evidentiary purposes, and the examination, preservation, retrieval and analysis of
11 cellular call and text records/data, photos and/or video and/or any other data kept on a cellular
12 phone. Further, this expert will testify to the results of any and all examinations performed on
13 the cellular phones in this case.

14 **GAVIN, DR. LISA** (or designee): is a medical doctor employed by the Clark County
15 Coroner Medical Examiner. She is an expert in the area of forensic pathology and will give
16 scientific opinions related thereto. She is expected to testify regarding the cause and manner
17 of death of GABRIEL VALENZUELA in this case.

18 **GUERRERO, G. – LVMPD P#15290** (or designee): Expert in the identification,
19 documentation, collection and preservation of evidence, including crime scene analysis and is
20 expected to testify as an expert to the identification, documentation, collection and
21 preservation of evidence in this case.

22 **LESTER, A. – LVMPD P#13771** (or designee): Expert in the area of
23 firearm/toolmark analysis, bullet trajectory comparison and will give opinions related thereto.
24 Additionally, is expected to testify regarding the collection, comparison and analysis of
25 firearms, ammunitions, ballistics and toolmark evidence as it relates to this case.

26 ***MANCINI, DR. CHIARA** (or designee): is a medical doctor employed by the Clark
27 County Coroner Medical Examiner. She is an expert in the area of forensic pathology and will
28

1 give scientific opinions related thereto. She is expected to testify regarding the cause and
2 manner of death of GABRIEL VALENZUELA in this case.

3 **ROQUERO, DR. LEONARDO** (or designee): is a medical doctor employed by the
4 Clark County Coroner Medical Examiner. He is an expert in the area of forensic pathology
5 and will give scientific opinions related thereto. He is expected to testify regarding the cause
6 and manner of death of GABRIEL VALENZUELA in this case.

7 **RUBINO, A. – LVMPD P#14784** (or designee): Expert in the field of DNA
8 extractions, comparisons, analysis and the identification of bodily fluids and is expected to
9 testify thereto.

10 **SCHELLBERG, P. – LVMPD P#5413** (or designee): Expert in the identification,
11 documentation, collection and preservation of evidence, including crime scene analysis and is
12 expected to testify as an expert to the identification, documentation, collection and
13 preservation of evidence in this case.

14 **SCOTT, JEFFREY – LVMPD P#9618** (or designee): Expert in the identification,
15 documentation, collection and preservation of evidence, including crime scene analysis and is
16 expected to testify as an expert to the identification, documentation, collection and
17 preservation of evidence in this case.

18 **SHANNON, J. – LVMPD P#13482** (or designee): Expert in the identification,
19 documentation, collection and preservation of evidence, including crime scene analysis and is
20 expected to testify as an expert to the identification, documentation, collection and
21 preservation of evidence in this case.

22 ***SHUMAN, DR. MARK** (or designee): is a medical doctor employed by the Clark
23 County Coroner Medical Examiner. He is an expert in the area of forensic pathology and will
24 give scientific opinions related thereto. He is expected to testify regarding the cause and
25 manner of death of GABRIEL VALENZUELA in this case.

26 **SIMMS, DR. LARY** (or designee): is a medical doctor employed by the Clark County
27 Coroner Medical Examiner. He is an expert in the area of forensic pathology and will give
28

1 scientific opinions related thereto. He is expected to testify regarding the cause and manner
2 of death of GABRIEL VALENZUELA in this case.

3 **SPEAS, WILLIAM – LVMPD P#5228** (or designee): Expert in the identification,
4 documentation, collection and preservation of evidence, including crime scene analysis and is
5 expected to testify as an expert to the identification, documentation, collection and
6 preservation of evidence in this case.

7 **STEPHENS, EBONY - LVMPD P#5158** (or designee): Expert in the identification,
8 documentation, collection and preservation of evidence, including crime scene analysis and is
9 expected to testify as an expert to the identification, documentation, collection and
10 preservation of evidence in this case.

11 **TAPAY, GLEZZELLE – LVMPD P#15709** (or designee): Expert in the
12 identification, documentation, collection and preservation of evidence, including crime scene
13 analysis and is expected to testify as an expert to the identification, documentation, collection
14 and preservation of evidence in this case.

15 **TOMAINO, D. – LVMPD P#8278** (or designee): Expert in the area of cellular
16 phones, including but not limited to, cellular system technology including cell tower
17 generation of calls and ability to determine the location where generated, collection and
18 handling of cellular phones for evidentiary purposes, and the examination, preservation,
19 retrieval and analysis of cellular call and text records/data, photos and/or video and/or any
20 other data kept on a cellular phone. Further, this expert will testify to the results of any and
21 all examinations performed on the cellular phones in this case.

22 These witnesses are in addition to those witnesses endorsed on the Information or
23 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert
24 Witnesses has been filed.

25 ///

26 ///

27 ///

28 ///

1 The substance of each expert witness' testimony and copy of all reports made by or at
2 the direction of the expert witness has been provided in discovery.

3 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

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

7 BY /s/GIANCARLO PESCI
8 GIANCARLO PESCI
9 Chief Deputy District Attorney
10 Nevada Bar #7135

11
12
13
14
15 CERTIFICATE OF ELECTRONIC TRANSMISSION

16 I hereby certify that service of the above and foregoing was made this 11th day of
17 October, 2019, by electronic transmission to:

18
19 SCOTT BINDRUP, Dep. Special Public Defender
20 Email: Scott.Bindrup@ClarkCountyNV.gov
(Def. LOFTON-ROBINSON)

21 ELIZABETH ARAIZA, SPD Secretary
22 Email: Elizabeth.araiza@clarkcountynv.gov

23 MICHAEL SANFT, ESQ.
24 Email: michael@sanftlaw.com
(Def. ROBERTSON)

25 JAMES RUGGEROLI, ESQ.
26 Email: ruggeroli@icloud.com
(Def. WHEELER)

27
28 BY: /s/ Deana Daniels
Secretary for the District Attorney's Office

Christina Di Loreto, M.D.
1704 Pinto Lane
Las Vegas, NV 89106
(702) 455-3210
Christina.DiLoreto@ClarkCountyNV.gov

EDUCATION

M.D. Boston University School of Medicine, Boston, MA, May 2009
Premedical Studies, Mount Holyoke College, South Hadley, MA, Sep 2002-June 2004
B.F.A. Dance/Philosophy, New York University, New York, NY, Jan 2000
Sarah Lawrence College, Bronxville, NY, Sep 1995-June 1996

POSTGRADUATE TRAINING

7/2016-7/2018 Neuropathology Fellowship, University of California, San Diego Medical Center
7/2015-7/2016 Forensic Pathology Fellowship, San Diego County Medical Examiner's Office
7/2011-7/2015 Pathology Residency-AP/CP, University of California, Davis Medical Center
7/2009-6/2011 Otolaryngology-Head and Neck Surgery Internship/Residency,
State University of New York Downstate Medical Center

LICENSURE AND BOARD CERTIFICATIONS

4/16/2018 Nevada State Board of Medical Examiners, License #17849
5/20/2011 Medical Board of California, License #A117016
9/5/2018 Diplomate, American Board of Pathology, Forensic Pathology
8/7/2017 Diplomate, American Board of Pathology, Anatomic and Clinical Pathology

HONORS AND AWARDS

7/2015 House Staff Professionalism Award
University of California, Davis
School of Medicine Alumni Association
6/2009 Diana Radkowski Award
Boston University School of Medicine
4/2007 Association of Pathology Chairs Honor Society Award
Boston University School of Medicine

PROFESSIONAL MEMBERSHIPS

2017-present American Association of Neuropathologists (AANP)

2014-present	United States and Canadian Academy of Pathology (USCAP)
2011-present	College of American Pathologists (CAP)
2011-present	American Society of Clinical Pathology (ASCP)
2009-present	Alpha Omega Alpha Honor Medical Society

EDUCATIONAL ACTIVITIES

6/2014-5/2015	Chief Resident, Department of Pathology and Laboratory Medicine University of California, Davis Medical Center
Spring 2009	Prosector, Head and Neck Gross Anatomy Boston University School of Medicine
Fall 2008	Instructor, Introduction to Clinical Medicine Boston University School of Medicine

COMMITTEE MEMBERSHIPS

7/2014-6/2015	Resident Representative Residency Advisory Committee, Department of Pathology and Laboratory Medicine University of California, Davis Medical Center
7/2014-6/2015	Resident Representative Residency Recruitment and Review Committee, Department of Pathology and Laboratory Medicine University of California, Davis Medical Center
7/2014-6/2015	Resident Representative Advisory Committee on Education, Department of Pathology and Laboratory Medicine University of California, Davis Medical Center
7/2013-6/2015	Pathology Alternate Representative Resident Medical Staff Committee University of California, Davis Medical Center
7/2013-6/2015	Resident Representative, UC Davis Medical Center American Society of Clinical Pathology

ORAL PRESENTATIONS

"Neuropathology 101: Basic Neuroanatomy and Neuropathology", UC San Diego, Shiley-Marcos Alzheimer's Disease Research Center ORE Core Lunch & Learn, June 26, 2018, San Diego, CA.

"Errors in Surgical Pathology", UC Davis Medical Center Department of Pathology and Laboratory Medicine Grand Rounds, March 11, 2015, Sacramento, CA.

"Postmortem Examination of a High Altitude Diving-Related Fatality 17 Years After the Incident", California Association of Criminalists Northern Study Group Meeting, December 10, 2014, Richmond, CA.

"Now You 'C' It, Now You Don't: Passive Acquisition of Hgb C Variant by Transfusion", California Blood Bank Society 59th Annual Meeting, Apr 30-May 1, 2014, Incline Village, NV.

“Postmortem Examination of a High Altitude Diving-Related Fatality 17 Years After the Incident”, American Academy of Forensic Sciences 66th Annual Scientific Meeting, Feb 17-22, 2014, Seattle, WA.

POSTER PRESENTATIONS

Di Loreto CM, Powers MP, Hansen LA, Malicki DM. “Novel *RYR1* mutation in congenital muscular dystrophy”, AANP 94th Annual Meeting, June 7-10, 2018, Louisville, KY.

Powers MP, **Di Loreto CM**, Hansen LA, Malicki DM. “Infantile high-grade glioma with novel translocation recurring as a ganglion cell tumor”, AANP 94th Annual Meeting, June 7-10, 2018, Louisville, KY.

Snyder VS, **Di Loreto CM**, Chen JY, Hansen LA, Jones KA. “Non-midline H3 K27M-mutant glioma”, AANP 93rd Annual Meeting, June 8-11, 2017, Garden Grove, CA.

Snyder VS, **Di Loreto CM**, Malicki DM, Hansen LA. “Rare variants of gliosarcoma: histologic and molecular findings”, AANP 93rd Annual Meeting, June 8-11, 2017, Garden Grove, CA.

Di Loreto C, Zhang Y. “Follow-up study of 42 patients with benign intraductal papilloma diagnosed on core needle biopsy”, USCAP 2014 Annual Meeting, Mar 1-7, 2014, San Diego, CA.

Di Loreto C, Tomic M, Huang E. “A retrospective review of “suspicious” thyroid fine-needle aspirations at a single institution”, American Society of Cytopathology Annual Scientific Meeting, Nov 8-12, 2013, Orlando, FL.

Di Loreto C, Gandy L, Freeman L, Fernando L, Gresens C, Parsons J. “The passive acquisition of hemoglobin C via red blood cell exchange”, 2013 AABB Annual Meeting, Oct 12-15, 2013, Denver, CO.

Di Loreto C, Bishop JW, Gambarotti, Canter R, Borys D. “Diagnostic challenges and advantages of international telepathology between two medical institutions”, USCAP 2013 Annual Meeting, Mar 2-8, 2013, Baltimore, MD.

Di Loreto C, Tihan T, Jin L-W, Borys E. “Progressing calcifying pseudoneoplasm of the neuraxis”, CAP 2012 The Pathologists’ Meeting, Sep 9-12, 2012, San Diego, CA.

Crosby SS, Mohan S, **Di Loreto C**, Spiegel JH. “Head and neck sequelae of torture”, The Triological Society Eastern Section Meeting, Jan 23-25, 2009, Boston, MA.

PUBLICATIONS

Gerscovich EO, Sekhon S, Visis T, **Di Loreto C**. “Fetal conversion of a 3-vessel to 2-vessel umbilical cord: sonographic depiction”, J Ultrasound Med 2013;32:1303-1305.

Crosby SS, Mohan S, **Di Loreto C**, Spiegel JH. “Head and neck sequelae of torture”, Laryngoscope 2010;120:414-419.

**Clark County Office of the
Coroner/Medical Examiner**
1704 Pinto Lane
Las Vegas, NV 89106
Phone: 702-455-3210
Fax: 702-455-0416

Chiara A. Mancini

Work History	<p>Medical Examiner/Forensic Pathologist Clark County Office of the Coroner/Medical Examiner, Las Vegas, Nevada</p> <p>Forensic Pathology Fellowship Montgomery County Coroner's Office, Dayton, Ohio</p> <p>Pathology Residency (Anatomic Pathology/Clinical Pathology) University of Louisville Hospital, Louisville, Kentucky</p> <p>Clinical Trial Manager Thomas J. Stephens & Associates, Colorado Springs, Colorado</p> <p>Intern, National and Defense Programs Department Computer Sciences Corporation, Alexandria, Virginia</p>	<p>08/18-present</p> <p>07/17-06/18</p> <p>07/13-06/17</p> <p>11/05-06/09</p> <p>06/05-09/05</p>
Education	<p>Doctor of Osteopathic Medicine (D.O.) Cumulative GPA: 3.24 Kansas City University of Medicine & Biosciences, Kansas City, Missouri</p> <p>Master of Arts (M.A.), Bioethics Cumulative GPA: 4.00 Kansas City University of Medicine & Biosciences, Kansas City, Missouri</p> <p>Bachelor of Science (B.S.), Biochemistry Minors: Anatomy & Neurobiology; Chemistry Cumulative GPA: 3.99 Colorado State University, Fort Collins, Colorado</p>	<p>08/09-05/13</p> <p>08/09-05/13</p> <p>08/99-05/03</p>
Certifications	<p>Anatomic Pathology/Clinical Pathology American Board of Pathology</p>	
Licenses	<p>Doctor of Osteopathic Medicine (D.O.) Nevada State Board of Osteopathic Medicine</p> <p>Doctor of Osteopathic Medicine (D.O.) State Medical Board of Ohio</p>	
Professional Memberships	<p>College of American Pathologists National Association of Medical Examiners Sigma Sigma Phi (National Osteopathic Honor Society)</p>	
Research/ Publications	<p>Mancini, C. "Beware the Red Herring: The Importance of the Scene Investigation in Identifying Postmortem Artifacts." <i>OSCA News</i> [Ohio State Coroners Association] (Winter 2017-18): 5-7.</p> <p>Mancini, C., Gibson, B., Parker, J., Applebaum, M., & Alatassi, H. "Anaplastic Supratentorial Cortical Ependymoma in a 62-Year-Old Man." Poster presentation at the College of American Pathologists Conference, October 2015.</p> <p>Gibson, B., Mancini, C., Parker, J., Applebaum, M., & Alatassi, H. "Suprasellar Anaplastic Hemangiopericytoma in a 34-Year-Old Man." Poster presentation at the College of American Pathologists Conference, October 2015.</p> <p>Wedersen, C., Dhanoa, J., Ghotra, A., Grewal, J., Mancini, C., Slone, S., & Rodriguez, C. "Myelodysplastic Syndrome with Myelofibrosis (MDS-F) – Rare Disease with Challenging Diagnosis and Management." Poster presentation at Research!Louisville, September 2014.</p> <p>Rao, V.R., Eilers, A., & Mancini, C. "Select Agents Diagnostic Test Reporting Requirements—Exemptions and Implications to Biosecurity." <i>Applied Biosafety</i> 11(4) (Dec. 2006): 215-221.</p>	

Chiara A. Mancini

Presentations	Coroner's Conference (Trauma Conference) Grandview Medical Center, Dayton, Ohio	09/17, 06/18
	Southern Ohio Forensics and Research Meeting Hamilton County Coroner's Office, Cincinnati, Ohio Montgomery County Coroner's Office, Dayton, Ohio	08/17, 10/17, 03/18, 05/18
	Coroner's Conference (Trauma Conference) Miami Valley Hospital, Dayton, Ohio	07/17, 09/17, 11/17, 01/18, 03/18, 05/18
	Journal Club (Forensic Pathology) Montgomery County Coroner's Office, Dayton, Ohio	07/17, 09/17, 11/17, 12/17, 03/18
Training	Forensic Anthropology Training Elizabeth Murray, Ph.D, Cincinnati, Ohio	06/14/18
	Evidence Technician Training Montgomery County Coroner's Office, Dayton, Ohio	05/07/18-05/18/18
	Mass Fatality Seminar Montgomery County Coroner's Office, Dayton, Ohio	10/19/17
	Postmortem Tissue Donation and Recovery Montgomery County Coroner's Office, Dayton, Ohio	09/28/17
	Fire Scene Investigation and Preservation of Remains Montgomery County Coroner's Office, Dayton, Ohio	08/31/17
	Forensic Entomology Training Neal Haskell, Ph.D., Rensselaer, Indiana	08/07/17-08/09/17
Leadership	Co-Chief Resident, Pathology University of Louisville Hospital, Louisville, Kentucky	07/14-06/15
Committees	At-Large Delegate, House Staff Council University of Louisville Hospital, Louisville, Kentucky	07/16-06/17
	Alternate Resident Delegate, Graduate Medical Education Committee University of Louisville Hospital, Louisville, Kentucky	07/15-06/16
	Delegate, House Staff Council University of Louisville Hospital, Louisville, Kentucky	07/15-06/16
	Member, Chief Residents Committee (Pathology) University of Louisville Hospital, Louisville, Kentucky	07/14-06/17
	Member, Chief Residents Committee (Interdepartmental) University of Louisville Hospital, Louisville, Kentucky	07/14-06/15
	Member, Pathology Education Committee University of Louisville Hospital, Louisville, Kentucky	07/14-06/15
	Member, Pathology Service Committee University of Louisville Hospital, Louisville, Kentucky	07/14-06/15
Awards	David B. Wheeler, D.O., Memorial Award in Pathology Kansas City University of Medicine & Biosciences, Kansas City, Missouri	05/17/13
	Sir William Osler Outstanding Student in Bioethics Award Kansas City University of Medicine & Biosciences, Kansas City, Missouri	05/15/13
	Dr. and Mrs. Donald D. Cucchi Scholarship Kansas City University of Medicine & Biosciences, Kansas City, Missouri	2010, 2011, 2012

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****November 05, 2019**

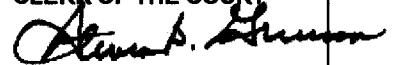
C-17-328587-3 State of Nevada
 vs
 Davontae Wheeler

November 05, 2019 08:30 AM Calendar Call**HEARD BY:** Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Pannullo, Haly**RECORDER:** Santi, Kristine**REPORTER:****PARTIES PRESENT:****Giancarlo Pesci****Attorney for Plaintiff****James J. Ruggeroli****Attorney for Defendant****State of Nevada****Plaintiff****JOURNAL ENTRIES**

Michael Sanft, Esq., present on behalf of Co-Defendant, Robertson. Scott Bindrup, Esq., also present on behalf of Co-Defendant Lofton-Robinson.

Defendant not present. CONFERENCE AT BENCH. COURT ORDERED, trial dates VACATED and RESET; matter SET for Status Check regarding trial readiness. Mr. Sanft and Mr. Ruggeroli announced ready for trial. Mr. Sanft made record that they have been announcing ready since the beginning of this case. Colloquy regarding trial dates. COURT FURTHER ORDERED, Defendant, Lofton-Robinson REFERRED and SET for Competency.

CUSTODY**12/18/19 8:30 AM STATUS CHECK: TRIAL READINESS****12/06/19 10:00 AM FURTHER PROCEEDINGS: COMPETENCY (DEPT 7) (LOFTON-ROBINSON)****02/04/20 8:30 AM CALENDAR CALL****02/10/20 10:30 AM JURY TRIAL**



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

TUESDAY, NOVEMBER 5, 2019

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
CALENDAR CALL**

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, TUESDAY, NOVEMBER 5, 2019, 8:36 A.M.

2 * * * * *

3 THE COURT: Okay. State versus Demario Lofton-Robinson, State versus
4 Raekwon Robertson, Davontae Wheeler.

5 THE CLERK: Mr. Wheeler --

6 THE CORRECTIONS OFFICER: He's not here.

7 THE COURT: Right, that's what I --

8 You understand your client wasn't transported?

9 MR. RUGGEROLI: That's what I was informed, Your Honor.

10 MR. BINDRUP: May we approach, please?

11 THE COURT: Of course.

12 [Bench conference transcribed as follows:]

13 MR. RUGGEROLI: Good morning.

14 THE COURT: Good morning. All the attorneys are here though, right? Okay.
15 Okay.

16 MR. BINDRUP: Okay. My -- this is the competency request that I had
17 submitted last week.

18 THE COURT: Okay.

19 MR. BINDRUP: My staff, instead of submitting it to you like they should have,
20 submitted it to Judge Bell. I don't know how long she had it.

21 THE COURT: Okay.

22 MR. BINDRUP: But at some point it made it to your chambers and then we
23 were called yesterday to pick it up so that I could file it in open court and so I'm
24 doing that.

25 THE COURT: Okay.

1 MR. BINDRUP: Remember he's the one that was -- spent seven months in
2 Lake's Crossing last year and into nearly a part of this year, he still is out there
3 mentally. And, you know, so.

4 THE COURT: Okay. So you want me to refer him back to Competency
5 Court?

6 MR. BINDRUP: Yes. So I think you just need to review that, sign it, and send
7 it to Judge Bell for setting in her department whenever that's going to be.

8 And I know that Pesci, of course, wants to keep everything together, I
9 believe he's going to sent -- be sent back to Lake's Crossing, if he is, I don't how
10 much longer he can try to keep all three together. But in case he's found
11 competent, which I don't expect, then --

12 THE COURT: What happened -- well, I guess --

13 MR. BINDRUP: -- we're -- we're ready to go after that.

14 THE COURT: Well, he was found competent last time when he came back,
15 right?

16 MR. BINDRUP: Yeah. So if that happens, you know, then, of course, I think
17 it's easier to keep all three together. But if he's sent to Lake's Crossing, it might be
18 more of a difficult problem.

19 THE COURT: Okay.

20 MR. BINDRUP: And then the other thing, I heard -- I had requested the trial
21 be moved up a week because I had travel plans out of the country the week of
22 Thanksgiving into December and I heard that -- I don't know if you're dark just on
23 the part of that week or the whole week, but that was the other problem that came
24 up later.

25 THE COURT: Okay.

1 MR. BINDRUP: So, I --
2 THE COURT: So either way, it doesn't look like we're going to go forward?
3 MR. BINDRUP: Well, not for my client. So I don't know how the others want
4 to handle the rest.
5 MR. RUGGEROLI: I had previously filed a motion to sever.
6 THE COURT: Right.
7 MR. RUGGEROLI: That was for both defendants. You denied that.
8 THE COURT: And your guy, apparently --
9 MR. RUGGEROLI: He's not here.
10 THE COURT: I don't even know what happened.
11 MR. RUGGEROLI: Yeah, I don't either.
12 THE COURT: He had a problem with --
13 MR. RUGGEROLI: Right.
14 THE COURT: -- on the way up and that's why they didn't bring him.
15 MR. RUGGEROLI: Right.
16 THE COURT: So, sorry about that.
17 MR. RUGGEROLI: Yeah.
18 THE COURT: Mr. Sanft?
19 MR. SANFT: I'm ready to go.
20 THE COURT: Pardon
21 MR. SANFT: I'm ready.
22 THE COURT: Okay.
23 MR. PESCI: Judge, the State objects to a severance of the case because of
24 competency or defendant's unwillingness to come to court. We need to keep this
25 case --

1 THE COURT: Well, I don't think it was unwillingness. Well, heck, I don't
2 really know what it was to tell you the truth.

3 MR. PESCI: I'm not sure either. That's one thing that I heard, one potential
4 theory. Either way, these defendants have all waived their right to a speedy trial. I
5 do not want to try this case multiple times. For judicial economy, the State objects
6 to a *de facto* severance.

7 THE COURT: But you're ready?

8 MR. RUGGEROLI: I would be, yeah. We just had an issue about if he's
9 going to use my client's recording of the statements to the police. We wanted to go
10 through it. There's a number of things that we need to be redacted. But other than
11 that I think we're pretty good.

12 THE COURT: Okay. If we continued this, so he went to competency, I mean,
13 would you be ready? I mean, would you have been ready but for this issue?

14 MR. BINDRUP: But for, yeah.

15 THE COURT: Okay.

16 MR. BINDRUP: Other than my travel problem.

17 THE COURT: Okay. All right. So I'm going to continue it, but I'm going to
18 continue it for a short period. I mean, I'm going to try to continue it for a short
19 period. If he gets sent to Lake's Crossing, then --

20 MR. BINDRUP: It's a different --

21 THE COURT: -- we definitely have to go to Plan B.

22 MR. BINDRUP: Okay.

23 THE COURT: I don't -- it becomes a different issue.

24 MR. BINDRUP: Can we get --

25 THE COURT: Because you can't hold these guys hostage either. I mean, it

1 may end up having to sever if we continue to have this issue.

2 MR. BINDRUP: Can we either get a first of January or first of February

3 resetting?

4 THE COURT: Sure.

5 MR. RUGGEROLI: February? I have a sex assault in January, the first

6 couple of weeks.

7 THE COURT: So you wouldn't want January? You'd want February instead?

8 We'd have to probably accommodate either one.

9 MR. RUGGEROLI: Well, okay.

10 THE CLERK: We can do February, that's homicide, beginning of February.

11 MR. RUGGEROLI: I'll agree to either and I'll just put in a motion on the other

12 one.

13 THE COURT: Oh, on the other case?

14 MR. RUGGEROLI: Yeah.

15 THE COURT: So you'd rather have this one go first?

16 MR. RUGGEROLI: Yeah.

17 THE COURT: Okay.

18 MR. RUGGEROLI: Unless you want to do a status check on the competency

19 issue?

20 MR. PESCI: Maybe we should get a trial date --

21 THE COURT: Yeah. I'd like to get you a trial date so at least you have a trial

22 date.

23 MR. RUGGEROLI: Okay.

24 THE COURT: And if it -- if we have to move it, then we have to move it.

25 MR. RUGGEROLI: Yeah, thank you, Judge.

1 THE COURT: Okay.

2 [End of bench conference.]

3 THE COURT: Okay. So based on the representations, I'm going to vacate
4 the trial date. I'm going to reset it.

5 [Colloquy between the Court and the Clerk]

6 MR. SANFT: And, Your Honor, just for the record, on behalf of Raekwon
7 Robertson, I believe we were announcing ready for today as well.

8 THE COURT: And, Mr. Ruggeroli, you were ready as well, correct?

9 MR. RUGGEROLI: Yes, Your Honor. Thank you.

10 MR. SANFT: And I just want to make sure that I'm clear here, I think we've
11 been announcing ready since the very beginning on behalf of Mr. Robertson, so
12 we've been ready the entire time, and once again, we'll be delayed with regards to
13 his opportunity to go to trial in this matter. I just wanted to lay that out there that
14 we've been ready to go every single time.

15 THE COURT: Thank you.

16 Does the State want to say anything?

17 MR. PESCI: Judge, the State objects to a severance based on one
18 defendant's alleged incompetency and/or another defendant's nonappearance in
19 court today. Just for the record, Mr. Wheeler is not here.

20 THE COURT: Okay. So the trial date will be vacated. It will be reset.

21 THE CLERK: Calendar call is going to be January 21st, 2020 --

22 DEFENDANT ROBERTSON: Man, no, man, that's too far. That's too far.
23 Man, we've been going for two years already.

24 THE COURT: Okay. I'm setting, I mean, I am trying to accommodate what
25 the lawyers indicated and that's probably the soonest, I mean, it's already

1 November.

2 DEFENDANT ROBERTSON: Yeah, but he ready. Yeah, but he ready.

3 THE COURT: That's basically less than 60 days. I'm sorry?

4 DFEENDANT ROBERTSON: He's ready. He's ready. All the while he want
5 to take it to trial, so, man, let's go to trial.

6 THE COURT: Okay.

7 MR. BINDRUP: Your Honor, I'm out of country again the last two weeks of
8 January, so if you were going to set it that far in January, can we get a first week of
9 February?

10 THE CLERK: Calendar call, December 31st, 2019, 8:30; jury trial, January 6th,
11 2020, 10:30. You want me to do a status check?

12 MR. SANFT: Your Honor --

13 THE COURT: Yeah, we can do December. And we're going to do a status
14 check just to make sure.

15 MR. SANFT: Your Honor, I'm sorry to do this, I -- my entire January is
16 booked. I'll be in a federal trial, my guess would be at the end of January, but I
17 know that I have another trial scheduled for the beginning of January. I think it's
18 actually in this department. So, and I think that's on an invoked status. So if we
19 could set this for February, I -- my schedule works better for February than it is for
20 January.

21 THE COURT: I can --

22 MR. BINDRUP: Any time in February is fine with us.

23 MR. PESCI: Whatever you set, Judge, the State will be ready.

24 THE CLERK: Status check trial readiness is going to be February 18th.

25 THE COURT: Okay.

1 THE CLERK: Or, excuse me, sorry.

2 THE COURT: That's okay.

3 THE CLERK: Sorry, status check trial readiness is going to be

4 December 18th, 8:30. Calendar call is going to be February 4th, 2020, 8:30; jury trial,

5 February 10th, 2020, 10:30.

6 MR. PESCI: Thanks, Your Honor.

7 MR. RUGGEROLI: Thank you, Judge.

8 THE COURT: Thank you.

9 PROCEEDING CONCLUDED AT 8:44 A.M.

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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

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****December 18, 2019**

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

December 18, 2019 08:30 AM Status Check: Trial Readiness

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

RECORDER: Santi, Kristine

REPORTER:

PARTIES PRESENT:

Davontae Amarri Wheeler Defendant

Giancarlo Pesci Attorney for Plaintiff

State of Nevada Plaintiff

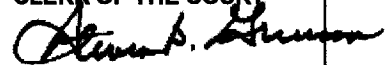
JOURNAL ENTRIES

Michael Sanft, Esq., also present on behalf Defendant Robertson and James Ruggeroli, Esq., for Defendant, Wheeler.

Defendant Wheeler stated he would rather have his attorney present. Mr. Pesci advised Mr. Ruggeroli is stuck in Justice Court and has indicated the Defense is on track for trial. Further, Mr. Pesci noted the Co-Defendant was to Lakes a week ago. Mr. Sanft announced ready for trial. COURT ORDERED, matter CONTINUED. Court stated Defendant Wheeler will be recalled is Mr. Ruggeroli appears.

CUSTODY

CONTINUED TO: 01/15/20 8:30 AM



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, DECEMBER 18, 2019

RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: TRIAL READINESS

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

For Defendant Robertson & Defendant Wheeler: MICHAEL W. SANFT, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, DECEMBER 18, 2019, 8:47 A.M.

2 * * * * *

3 THE COURT: State of Nevada versus Robertson and Davontae Wheeler,
4 case C328587. And they're both present and in custody. And we --

5 MR. SANFT: Your Honor, I'm here on behalf of my client as well as
6 Mr. Wheeler.

7 THE COURT: So we don't have Mr. Ruggeroli here?

8 MR. SANFT: I'll be covering for Mr. Ruggeroli this morning.

9 THE COURT: Okay.

10 DEFENDANT WHEELER: Just like last time, you never know if, I mean, I'd
11 rather wait for my own lawyer to come. He never even spoke to me that he's going
12 to fill in for him. We never had a conversation about anything. So I'd rather wait for
13 my own attorney.

14 THE COURT: Okay. Is Mr. Ruggeroli planning on appearing?

15 DEFENDANT WHEELER: Thank you.

16 MR. SANFT: I don't know --

17 MR. PESCI: Mr. Ruggeroli just told me he was stuck in Justice Court 13,
18 asked if he could stand in. He says that they're on track for the trial setting and that
19 everything seems to be okay. The codefendant was just sent back to Lake's --

20 THE COURT: Right.

21 MR. PESCI: -- a week ago.

22 MR. SANFT: But we would anticipate, on behalf of Mr. Robertson, we would
23 also be ready to do. So I don't know how long the other codefendant will take at
24 Lake's Crossing, but we will be ready to go at this point. Again.

25 THE COURT: Okay. So I'm going to put it on for 30 days.

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MR. SANFT: Thank you, Your Honor.
THE CLERK: January 15th, 8:30 a.m.
MR. PESCI: Thank you, Your Honor.
MR. SANFT: Thank you, Your Honor.
THE COURT: And if Mr. Ruggeroli appears, I'll call your case again.
DEFENDANT WHEELER: Thank you.
THE COURT: But it appears as though he's -- he may not appear today.
DEFENDANT WHEELER: I appreciate it. Thank you.
THE COURT: Thank you.

PROCEEDING CONCLUDED AT 8:48 A.M.

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



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Las Vegas, Nevada 89101
Telephone: (702) 258-2022
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Plaintiff,

Case No. C-17-328587-3

vs.

Dept No. XII

DAVONTAE AMARRI WHEELER,
#5909081.

Defendant.

MOTION TO SEVER COUNTS

COMES NOW Defendant, DAVONTAE AMARRI WHEELER, through JAMES J. RUGGEROLI, ESQ., submits the following Motion to for an order to sever Counts 1-4 from the trial in this matter.

This Motion is based on the following Points and Authorities, the pleadings and papers on file herein, the exhibits and affidavits and any oral argument by counsel permitted at the hearing on this matter.

DATED this 20th day of December, 2019.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Motion will be heard in Department XII before the District Court Judge of the above entitled court on the _____ day of _____, 2019 at the hour of _____ a.m. or as soon thereafter as counsel can be heard.

DATED this 20th day of December, 2019.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mr. Wheeler files the instant motion seeking an order to sever Counts 1-4 from the trial on Counts 5-7 because of the prejudicial impact that will necessarily result if there is a single trial for all of the counts.

II. FACTS

The State has charged Mr. Wheeler and Co-Defendants Demario Lofton-Robinson and Raekwon Setrey Robertson 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.

The State has also charged Co-Defendant Robertson with COUNT 1 BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON, COUNT 2 CONSPIRACY TO COMMIT ROBBERY, and COUNTS 3&4 ROBBERY WITH USE OF A DEADLY WEAPON. Id.

In summary as to Counts 5-7, the State alleges that Mr. Wheeler had been present at a Shortline Express mini-mart located at 7325 South Jones Boulevard, Las Vegas, NV on **August 9, 2017**. Later, Robert Mason, a jogger, observed a suspicious White Grand Marquis and four

1 dark skinned individuals near the Gabriel Valenzuela's home at 5536 West Dewey Dr., near
2 midnight. Tragically, Gabriel Valenzuela was shot and killed shortly thereafter outside of his
3 home on the night of August 9, 2017. The State alleges that Mr. Wheeler participated in a
4 conspiracy to commit robbery, an attempt robbery and the murder with use of a deadly weapon
5 of Mr. Valenzuela.

6 In summary as to Counts 1-4, the State has charged Co-Defendant Robertson with a
7 robbery from **August 2, 2017**. The State alleges that Mr. Robertson conspired with Antonio
8 Jones (an individual not charged in the case at hand with Mr. Wheeler) to enter the Fiesta
9 Discount Market and Smoke Shop located at 701 West Charleston Boulevard, Las Vegas,
10 Nevada and rob Mariah Romatko with the use of a deadly weapon.

11 For the reasons provided below, Counts 1-4 must be severed from Counts 5-7 in this
12 matter.

13 **III. LAW AND ARGUMENT**

14 NRS 173.115 provides that multiple offenses may be charged in the same information if
15 the offenses charged are based either "on the same act or transaction" or "on two or more acts or
16 transactions connected together or constituting parts of a common scheme or plan." Also, if
17 "evidence of one charge would be cross-admissible in evidence at a separate trial on another
18 charge, then both charges may be tried together and need not be severed."

19 NRS 174.165(1) provides that if a defendant is prejudiced by joinder of offenses, the
20 district court may order separate trials of counts "or provide whatever other relief justice
21 requires:"

22 If it appears that a defendant or the State of Nevada is prejudiced by a joinder of
23 offenses or of defendants in an indictment or information, or by such joinder for
24 trial together, the court may order an election or separate trials of counts, grant a
25 severance of defendants or provide whatever other relief justice requires.

26 The decision to join or sever charges falls within the district court's discretion. Weber v.
27 State, 121 Nev. 554, 570, 119 P.3d 107, 119 (2005). A proper basis for joinder exists when the
28 charges are "[b]ased on the same act or transaction; or ... [b]ased on two or more acts or
transactions connected together or constituting parts of a common scheme or plan." Rimer v.

1 State, 351 P.3d 697, 708 (2015) quoting NRS 173.115. However, "for two charged crimes to be
2 'connected together' under NRS 173.115(2), a court must determine that evidence of either
3 crime would be admissible in a separate trial regarding the other crime." Weber, 121 Nev. at
4 573, 119 P.3d at 120.

5 A request for severance essentially calls for a three-part review: (1) the Court must
6 determine whether various claims result from the same transaction or constitute part of a
7 common scheme or plan; (2) if there is no commonality (and thus little or no relevance to
8 each other), the Court must determine if the various claims would be cross-admissible under the
9 terms of an applicable exception under NRS 48.045; and (3) the Court must determine whether
10 the benefits of judicial economy outweigh the risk of unfair prejudice to the Defendant which
11 could result from trying the various claims together.

12 Here, severance is warranted because: (A) Counts 1-4 (charges Mr. Wheeler does not
13 face) are **not "connected together"** with Counts 5-7; (B) moreover, Counts 1-4 are not relevant
14 to Counts 5-7, and, thus, the evidence of the two sets of crimes would **not be cross-admissible**;
15 and (C) even if joinder is permissible under NRS 173.115, this court should sever the offenses
16 because joinder is **"unfairly prejudicial."** See Middleton v. State, 114 Nev. 1089, 1107, 968
17 P.2d 296, 309 (1998).

18 **A. THE COUNTS ARE NOT "CONNECTED TOGETHER"**

19 In Richmond v. State, the court clarified the concept of a *common plan or scheme*, noting
20 that it "requires that each crime should be an integral part of an overarching plan explicitly
21 conceived and executed by the defendant." Richmond v. State, 118 Nev. 924 (2002) (internal
22 citation omitted). The Court continued, noting that:

23 Indeed, this court has stated, "'The test is not whether the other offense has certain
24 elements in common with the crime charged, but whether it tends to establish a
25 preconceived plan which resulted in the commission of that crime.'" We have held
26 that a sexual assault at the same location and perpetrated in the same manner a
27 month before the sexual assault at issue was inadmissible because it did not
28 establish a common plan. [citing Mitchell v. State, 105 Nev. 735, 738 (1989)].
Here, Richmond appeared simply to drift from one location to another, taking
advantage of whichever potential victims came his way. His crimes were not part
of a single overarching plan, but independent crimes, which Richmond did not
plan until each victim was within reach. Id. at 933-934.

1 In Mitchell, *supra* at 738, the Court held that it was error for the defendant to go to trial
2 on four criminal counts--grand larceny and sexual assault of one victim, and sexual assault and
3 murder of a different victim. The Court noted that being 45 days apart, these separate incidents
4 could not be considered part of the same transaction. Nor could taking two different women
5 dancing and later attempting intercourse be considered part of a common plan just because the
6 women were taken in part to the same bar. Id.

7 In Tabish v. State, 72 P.3d 584 (2003) the court found that there was no common
8 scheme or plan between counts and noted that:

9 We agree with appellants, however, that money and greed could be alleged as
10 connections between a great many crimes and thus do not alone sufficiently
connect the incidents

11 The State cites to several Nevada cases defining a common scheme or plan or
12 allowing connected counts to be tried together, but these cases fail to support the
13 State's claim that the Casey and Binion counts were sufficiently connected to
14 support joinder. This court has previously held that even certain similar counts
15 could not be joined because their connection in time was too remote. In Mitchell
16 v. State, for example, this court concluded that two separate incidents forty-five
17 days apart involving social drinks at a particular bar followed by alleged sexual
assaults could not be considered part of a common scheme or plan. In this case,
the joined incidents were dissimilar, and fifty days separated the Casey incident
from the alleged murder and theft of the silver. We are simply not persuaded that
the State sufficiently established the alleged connections between the counts to
demonstrate a common plan or scheme. Id. at 590-591.

18 In Weber v. State, 119 P.3d 107 (2005) the Court considered whether or not counts
19 involving different victims constituted a common scheme or plan. Weber committed crimes
20 against five victims, including sexual abuse of one victim, murder of two other victims, and 10
21 days after the murder, an attack on two more victims. The Court noted and concluded:

22 Determining whether a common scheme or plan existed in this, or any, case
23 requires fact-specific analysis. And such analysis depends on the meaning of the
24 pertinent statutory language "scheme or plan." According to Black's Law
25 Dictionary, a scheme is a "design or plan formed to accomplish some purpose; a
26 system." A plan is "a method of design or action, procedure, or arrangement for
27 accomplishment of a particular act or object. Method of putting into effect an
28 intention or proposal." We conclude that these definitions pertain to "scheme or
plan" as used in NRS 173.115(2). Thus, purposeful design is central to a scheme
or plan, though this does not mean that every scheme or plan must exhibit rigid
consistency or coherency. We recognize that a person who forms and follows a
scheme or plan may have to contend with contingencies, and therefore a scheme
or plan can in practice reflect some flexibility and variation but still fall within an
overall intended design. Nevertheless, we conclude that in this case the facts fail

1 to show that Weber had a single scheme or plan that encompassed his ongoing
2 sexual misconduct, his violence on April 4, and his violence on April 14.

3 Weber v. State, 119 P.3d 107 at 119-120.

4 Taken as a whole, Richmond, Mitchell, Tabish, and Weber demonstrate a requirement in
5 Nevada that there be an "overall intended design" linking various criminal activities before they
6 may be considered part of a "common scheme or plan." Stated simply, the statute requires that a
7 Defendant, upon undertaking each act alleged, must have contemplated the further acts alleged,
8 and that each act taken must have been in furtherance of an over-arching criminal enterprise.
9 Applying that standard in the instant case, it is clear that no such linkage can be shown between
10 counts here.

11 Unlike Mitchell, or Weber, here, these groups of counts allege crimes which happened
12 over a period of more than a week, involved different types of crimes (the robbery of a gas
13 station versus an attempted robbery of an individual on a street), involved different victims, and
14 did not involve all of the defendants in each of the events.

15 This is not a sufficient showing under the statute. As in the cases noted above, there is no
16 evidence that these crimes are connected in an overarching scheme or plan. Perhaps most
17 importantly, the State has joined an entire event and set of crimes that are being charged solely
18 against one of the co-defendants. Joinder will force Mr. Wheeler to sit through a joint trial in
19 which the jury will hear damning evidence against co-defendant Robertson that has nothing to
20 do with Mr. Wheeler. Since there is no common scheme or plan here, joinder is not required
21 under NRS 173.115 and should not be permitted.

22 **B. NO CROSS-ADMISSIBILITY**

23 The counts should also be severed because the evidence of one charge or set of charges
24 will not be cross-admissible in evidence at a separate trial on another charge or set of charges.
25 Since there is no common scheme or plan here, to be cross-admissible under 48.045(2) the State
26 would be required to show that each incident could be admitted in trial on the others to show
27 motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or
28 accident. In addition, before any such evidence can be offered, the Court must first determine

1 outside the presence of the jury that"(1) the incident is relevant to the crime charged; (2) the act
2 is proven by clear and convincing evidence; and (3) the probative value of the evidence is not
3 substantially outweighed by the danger of unfair prejudice." Tinch v. State, 113 Nev. 1170,
4 1176 (1997). Further, "[I]t is 'heavily disfavored' to use prior bad act evidence to convict a
5 defendant 'because bad acts are often irrelevant and prejudicial and force the accused to defend
6 against vague and unsubstantiated charges.'" Richmond v. State, supra. Tavares v. State, 117
7 Nev. 725. 730 (2001); (See Flores v. State, 116 Nev. 659, 662-63 (2000), holding that probative
8 value of evidence of a prior murder to show identity and motive for another murder was far
9 outweighed by the danger of unfair prejudice).

10 Reviewing the instant matter in light of the foregoing, none of the exceptions to the
11 general rule of inadmissibility listed in 48.045(2) are applicable in the instant case. Severance of
12 the counts is therefore justified.

13 **C. THE PREJUDICIAL IMPACT OUTWEIGHS ALL OTHER CONSIDERATIONS**

14 Finally, the Court must weigh the potential for prejudice to the Defendant in trying the
15 Counts together against the Court's interest in judicial economy. NRS 174.165(1) provides that
16 if a defendant is prejudiced by joinder of offenses, the district court may order separate trials of
17 counts. In Rodriguez v. State, 117 Nev. 800 (2001), the Court ruled that severance should be
18 granted when there is a serious risk that ... the jury may not make a reliable judgment about
19 guilt or innocence. In Floyd v. State, 118 Nev. 156 (2002), the Court stated that even if joinder
20 is permissible under NRS 173.115, a trial court should sever the offenses if the joinder is
21 "unfairly prejudicial." The Court must determine "whether joinder is so manifestly prejudicial
22 that it outweighs the dominant concern with judicial economy and compels the exercise of the
23 court's discretion to sever." Tabish, supra at 591.

24 Here any benefit based on judicial economy is negligible compared with the severe
25 prejudice that will be imputed to Mr. Wheeler in a joint trial. Granting a severance would
26 simply result in two trials, which is not an unreasonable burden for the State.

27 While the benefits of judicial economy are negligible here, the prejudice to the defendant
28

1 is substantial. As stated in Floyd, there are several types of prejudice that can result from
2 joinder of charges:

3 [The] first kind of prejudice results when the jury considers a person facing
4 multiple charges to be a bad man and tends to accumulate evidence against him
5 until it finds him guilty of something. The second type of prejudice manifests
6 itself when proof of guilt on the first count in an information is used to convict the
7 defendant of a second count even though proof would be inadmissible at a
8 separate trial on the second count. The third kind of prejudice occurs when the
9 defendant wishes to testify on his own behalf on one charge but not on another." Floyd v. State, 42 P.3d 249, 254, citing State v. Campbell, 189 Mont. 107 (Mont. 1980).

10 Here, there can be little doubt that extreme prejudice will result from a joint trial. Clearly,
11 a taint of prejudice will develop from the additional and more founded charges (Counts 1-4)
12 would impute to Mr. Wheeler. (See Lisle v. State, 113 Nev. 679, 941 P.2d 459 (1997) where a
13 codefendant is entitled to a separate trial if he presents sufficient showing of facts demonstrating
14 that substantial prejudice would result in joint trial.)

15 Counts 1-4 involve the robbery from a Fiesta Discount Market gas station/minimart. The
16 entire story of the State's case for counts 5-7, *coincidentally*, begins with video surveillance
17 taken from inside an unrelated Speedymart convenience store *a week later* that occurred within
18 about an hour of the shooting of Mr. Valenzuela, the victim in Counts 5-7. Although Counts 5-7
19 have absolutely nothing to do with conduct at the Speedymart, the Speedymart video footage
20 will be an important part of the State's case because of identification issues. Thus, the "spillover
21 effect" from the Fiesta Discount Market convenient store robbery in Counts 1-4 will necessarily
22 result in prejudice. The idea conveyed to the jury (whether it is intentional or unintentionally
23 insinuated) will be that since a convenience store robbery happened in Counts 1-4 related to the
24 Fiesta Discount Market, the same setup happened in Counts 5-7 beginning at the Speedymart a
25 short time prior to the shooting of Mr. Valenzuela.

26 The State may argue that they could remedy any prejudice with a limiting instruction.
27 However, such an instruction is meaningless where the prejudicial nature of the charges simply
28

1 overwhelms any benefit of the instruction. The court addressed this very issue in Tabish:

2 In this case, the district court instructed the jury that it was not allowed to
3 consider evidence from the Casey counts in determining Murphy's guilt as to the
4 counts alleged against her. Murphy argues that this limiting instruction was
5 inadequate, partly because the evidence in the Casey counts was so "graphic."
6 Moreover, Murphy contends, the State "guaranteed that the jury would consider
7 the Casey matter in determining whether the Binion crimes were committed" by
8 emphasizing in its closing arguments its view of the similarities between the
9 Casey incident and the separate allegations in the other counts against both
10 appellants.

11 In light of the graphic nature of the Casey evidence, coupled with the State's
12 closing argument, we are unable to conclude beyond a reasonable doubt that the
13 limiting instruction was sufficient to mitigate the prejudicial impact of the joinder
14 on the jury's consideration of appellants' guilt on the remaining counts. The
15 erroneous joinder was especially prejudicial in Murphy's case, although it was
16 manifestly prejudicial to Tabish's trial on the other counts as well.

17 Additionally, the limiting instruction was inadequate to prevent the improper
18 "spillover" effect of inappropriate joinder. In Bean v. Calderon, (163 F.3d 1073,
19 1083 (9th Cir. 1998)) the prosecution joined counts alleging two separate murders.
20 The Ninth Circuit Court of Appeals reversed one of the murder convictions
21 because the consolidation of cases led the jury to infer criminal propensity. In
22 other words, there was an unacceptable risk that the jury found the defendant
23 guilty of the second murder simply because it thought he was a bad person for
24 having committed the first murder. In Bean, this impermissible inference allowed
25 the jury to convict on the prosecution's weak case for one of the murders by
26 relying on the stronger evidence of the other murder. Similarly, here the State's
27 weaker case on the Binion counts was bolstered by combining it with the stronger
28 case against Tabish on the Casey counts. Thus, the prejudice in this case
constitutes the same type of due process violation that was found in Bean.

Tabish v. State, 119 Nev. 293, 305 (Nev. 2003).

Here, as in Tabish, a limiting instruction would not overcome the prejudice to the
defendant and would allow the jury to convict him based on alleged criminal propensity. It is
expected that the State will make a similar argument as in Tabish.

However, as the Court held in Floyd:

When a trial court considering a defendant's motion for severance of unrelated
counts has determined that the evidence of the joined offenses is not 'cross-
admissible,' it must then assess the relative strength of the evidence as to each
group of severable counts and weigh the potential impact of the jury's
consideration of 'other crimes' evidence. i.e., the court must assess the likelihood
that a jury not otherwise convinced beyond a reasonable doubt of the defendant's
guilt of one or more of the charged offenses might permit the knowledge of the
defendant's other criminal activity to tip the balance and convict him. If the court
finds a likelihood that this may occur, severance should be granted.

Floyd v. State, 42 P.3d 249, 254 (2002), citing People v. Bean, 46 Cal. 3d 919 (1988).

1 Thus, a jury cannot reasonably be expected to compartmentalize the evidence pertaining
2 to Fiesta Market and the Speedymart incidents in this case in a joint trial even if there were a
3 limiting instruction issued. As such, there is no way to properly protect Mr. Wheeler from the
4 taint of guilt by association with Mr. Robertson, the spill-over impact from the additional charges
5 and the resulting prejudice that will occur in a joint trial.
6

7 To allow this case to go to trial without severing would in fact tip the balance in favor of
8 conviction. That would be a violation of the Defendant's right to due process and a fair trial for
9 Mr. Wheeler. Severance of the counts is therefore respectfully requested.

10 **IV. CONCLUSION**

11 Severance is warranted here because: (A) Counts 1-4 are **not "connected together"** with
12 Counts 5-7; (B) Counts 1-4 are not relevant to Counts 5-7, and, thus, the evidence of the two sets
13 of crimes would **not be cross-admissible**; and (C) even if joinder is permissible under NRS
14 173.115, this court should sever the offenses because joinder is **"unfairly prejudicial."** See
15 Middleton v. State, 114 Nev. 1089, 1107, 968 P.2d 296, 309 (1998).

16 DATED this 20th day of December, 2019.

17 **JAMES J. RUGGEROLI**

18 By: /s/ James J. Ruggeroli
19 James J. Ruggeroli, Esq.
20 Nevada Bar No. 7891
21 400 South 4th Street, Suite 280
22 Las Vegas, Nevada 89101
23 Attorney for Defendant
24
25
26
27
28

DECLARATION OF JAMES J. RUGGEROLI, ESQ.

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

1. I am counsel of record for the Defendant and 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. 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 20th day of December, 2019.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on the 20th day of December, 2019 I emailed a copy of this motion to:
motions@clarkcountyda.com.

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

Steven D. Grierson

JAMES J. RUGGEROLI
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Telephone: (702) 258-2022
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Plaintiff,

Case No. C-17-328587-3

vs.

Dept No. XII

DAVONTAE AMARRI WHEELER,
#5909081.

Defendant.

MOTION TO COMPEL PRODUCTION OF INDUCEMENT INDEX

COMES NOW Defendant, DAVONTAE AMARRI WHEELER, through JAMES J. RUGGEROLI, ESQ., submits the following Motion to for an order to compel the production of records maintained as an "Inducement Index" by the State of Nevada. This Motion is based on the following Points and Authorities, the pleadings and papers on file herein, the exhibits and affidavits and any oral argument by counsel permitted at the hearing on this matter.

DATED this 9th day of December, 2019.

JAMES J. RUGGEROLI

By: */s/ James J. Ruggeroli*
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

JAMES J. RUGGEROLI, ESQ.
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
TEL: (702) 258-2022 | FAX: (702) 258-2021

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Motion will be heard in Department XII before the District Court Judge of the above entitled court on the _____ day of _____, 2019 at the hour of _____ a.m. or as soon thereafter as counsel can be heard.

DATED this 9th day of December, 2019.

JAMES J. RUGGEROLI

By: */s/ James J. Ruggeroli*
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mr. Wheeler files the instant motion seeking an order to compel the production of records maintained as an "Inducement Index" by the State of Nevada.

II. FACTS

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

In summary, the State alleges that Mr. Wheeler had been present at a Shortline Express mini-mart located at 7325 South Jones Boulevard, Las Vegas, NV on August 9, 2017. Sometime later, Robert Mason, a jogger, saw a White Grand Marquis and four dark skinned individuals near the Gabriel Valenzuela's home at 5536 West Dewey Dr., near midnight. Tragically, Gabriel Valenzuela was later shot and killed outside of his home on the night of August 9, 2017. The State alleges that Mr. Wheeler participated in a conspiracy to commit robbery, an attempt robbery and the murder with use of a deadly weapon of Mr. Valenzuela.

////

////

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

1 **V. CONCLUSION**

2 Based on the foregoing, Mr. Wheeler respectfully requests that this Honorable Court
3 grant the instant motion, and order compelling the State to produce its "Inducement Index" for
4 any witnesses in this case.

5 DATED this 9th day of December, 2019.

6 **JAMES J. RUGGEROLI**

7 By: /s/ James J. Ruggeroli
8 James J. Ruggeroli, Esq.
9 Nevada Bar No. 7891
 400 South 4th Street, Suite 280
 Las Vegas, Nevada 89101
 Attorney for Defendant

10 **DECLARATION OF JAMES J. RUGGEROLI, ESQ.**

11
12 **JAMES J. RUGGEROLI, ESQ.**, being first duly sworn under oath, deposes and states:

13 1. I am counsel of record for the Defendant and am an attorney at law duly licensed
14 to practice before this Court and make this Declaration of facts from personal knowledge which
15 is known to me, except for those matters stated upon information and belief, and as to those
16 matters, I believe same to be true.

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

19 DATED this 9th day of December, 2019.

20 **JAMES J. RUGGEROLI**

21 By: /s/ James J. Ruggeroli
22 James J. Ruggeroli, Esq.
23 Nevada Bar No. 7891
24 400 South 4th Street, Suite 280
25 Las Vegas, Nevada 89101
26 Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on the 10th day of December, 2019 I emailed a copy of this motion to:
motions@clarkcountynyda.com. I further certify that on the date provided, I caused the foregoing
document to be served upon those persons designated by the parties in the E-Service Master List
for the above-referenced matter in the Eighth Judicial District Court e-Filing System in
accordance with the mandatory electronic service requirements of Administrative Order 14-2 and
the Nevada Electronic Filing and Conversion Rules.

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

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EXHIBIT A

DA's office must turn over witness payment documents, judge rules



District Judge Susan W. Scann listens closely to deliberations from attorneys representing the Las Vegas Review-Journal and the district attorney's office in a dispute over access to public records denied by the DA's office, March 5, 2015. (Michael Quine/Las Vegas Review-Journal)

By DAVID FERRARA
LAS VEGAS
REVIEW-JOURNAL



April 2, 2015 - 7:53 pm

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The Clark County District
Attorney's Office must make

public dozens of records about payments made to witnesses in criminal cases, a judge ruled Thursday.

District Judge Susan Scann gave prosecutors until the end of the month to turn over documents to the Las Vegas Review-Journal, which filed a lawsuit after the county's top prosecutor, Steve Wolfson, refused to give the newspaper access to a database that contains details of benefits offered to people in exchange for their cooperation with prosecutors.

But the judge also ruled that some information may be kept secret. Prosecutors can withhold case information that could identify witnesses or informants who have not testified in court, Scann said.

Otherwise, Scann decided, prosecutors must make public the

case number, the prosecutor assigned to the case, along with the incentive paid. That applies to 12 cases out of 130 in the database known as an Inducement Index. It's up to the newspaper to dig up more information about the identity of the person who complied with the prosecution, the judge decided.

Only three people within the district attorney's office were allowed access to the database, said Matthew Christian, a civil attorney for the office. Last month, prosecutors turned over a sample of nine entries from the index for the judge to review in private.

"It really is weighing two public interests," Scann said. "There's the public represented by the public safety concept in being able to use confidential informants and not have them

disclosed versus the public interest in disclosure.”

The newspaper requested the documents in relation to a series of articles published in August about payments made by prosecutors but not always disclosed to defense counsel.

Those articles prompted District Attorney Steve Wolfson to say his office would begin disclosing the witness payments to the defense.

Maggie McLetchie, a lawyer for the newspaper, had argued the public has a right to know what prosecutors are doing to move cases through the court system.

McLetchie said it's unclear what the database covers, and the newspaper wants to know if the index is accurate.

The Review-Journal in court papers also has contended that the district attorney has either

withheld or redacted numerous requested emails relating to the Victim Witness Assistance Center and its ledger.

On Thursday, the judge ordered prosecutors to hand over more than two dozen of those emails.

"The court ordered the production of a lot of key documents that we want in this case," McLetchie said after the hearing. "And I'm encouraged by that. ... There was no legal basis for a lot of the documents to be withheld."

Review-Journal Editor Michael Hengel lauded the judge's decision.

"This ruling is really important to us and the public," he said. "And we are going to be aggressive about pursuing public records requests when we feel like we need to be."

Among other records, Wolfson refused to make public an unredacted ledger for his Victim Witness Assistance Center's checking account. A copy provided to the newspaper lacked such basic information as filing numbers for cases that involved payments to prosecution witnesses. Witness names and reasons for payments also were redacted.

Scann said the ledger should be turned over, though prosecutors may redact the names and addresses of witnesses who have not testified in court.

Christian had argued that identifying witnesses who cooperated could put them in future danger, even after they had already testified in open court. He also said that releasing details about informants or witnesses in ongoing cases could hamper a

defendant's right to a fair trial.

McLetchie called that
"disingenuous" and "pure
speculation."

Contact reporter David Ferrara at
dferrara@reviewjournal.com or
702-380-1039. Find him on
Twitter: @randompoker

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questioned witness payment
sooner

Steven D. Grierson

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Telephone: (702) 258-2022
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Plaintiff,

Case No. C-17-328587-3

vs.

Dept No. XII

DAVONTAE AMARRI WHEELER,
#5909081.

Defendant.

MOTION TO DISCLOSE INFORMANTS

COMES NOW Defendant, DAVONTAE AMARRI WHEELER, through JAMES J. RUGGEROLI, ESQ., submits the following Motion to for an order directing the State to reveal the identity of any and all confidential informants, promises or understandings with any witness or informant (explicit or implicit), and to whether any threats, benefits or inducements of any nature whatsoever have been made regarding any witness or informant. This Motion is based on the following Points and Authorities, the pleadings and papers on file herein, the exhibits and affidavits and any oral argument by counsel permitted at the hearing on this matter.

DATED this 9th day of December, 2019.

JAMES J. RUGGEROLI

By: */s/ James J. Ruggeroli*
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

Page 1 of 6

JAMES J. RUGGEROLI, ESQ.
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
TEL: (702) 258-2022 | FAX: (702) 258-2021

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Motion will be heard in Department XII before the District Court Judge of the above entitled court on the _____ day of _____, 2019 at the hour of _____ a.m. or as soon thereafter as counsel can be heard.

DATED this 9th day of December, 2019.

JAMES J. RUGGEROLI

By: */s/ James J. Ruggeroli*
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mr. Wheeler files the instant motion seeking an order directing the State to reveal the identity of any and all confidential informants, promises or understandings with any witness or informant (explicit or implicit), and to whether any threats, benefits or inducements of any nature whatsoever have been made regarding any witness or informant.

II. FACTS

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

In summary, the State alleges that Mr. Wheeler had been present at a Shortline Express mini-mart located at 7325 South Jones Boulevard, Las Vegas, NV on August 9, 2017. Some time later, Robert Mason, a jogger, saw a White Grand Marquis and four dark skinned individuals near the Gabriel Valenzuela's home at 5536 West Dewey Dr., near midnight. Tragically, Gabriel Valenzuela was later shot and killed outside of his home on the night of August 9, 2017. The State alleges that Mr. Wheeler participated in a conspiracy to commit robbery, an attempt robbery and the murder with use of a deadly weapon of Mr. Valenzuela.

III. LAW AND ARGUMENT

The Defense has a right to disclosure of the informants utilized in this case pursuant to the rationale set forth in the seminal case of Rovario vs. United States, 353 U.S. 53, 62, 77 S. Ct 623, 628, 1 L.Ed.2d 639 (1957), in which the United States Supreme Court held that:

A further limitation on the applicability of the privilege arises from the fundamental requirements of fairness. Where the disclosure of an informer's identity, or of the contents of his communications, *is relevant and helpful to the defense of the accused, or is essential to a fair determination of a cause, the privilege must give way.*

Id. at 60, 77 S. Ct at 628 (emphasis added).

Although the State's claim of privilege is entitled to consideration, such assertion of privilege does not end the inquiry.

One of the more basic limitations on the scope of the [informant] privilege was recognized by the Supreme Court in Rovario: "[w]here the disclosure of an informer's identity, or of the contents of his communications is relevant and helpful to the defense of an accused, or is essential to a fair determination of the cause, the privilege must give way. . . . As such, the Governments' mere assertion of a colorable claim of privilege does not end the trial court's inquiry, for the court must determine whether the potential helpfulness of informant's testimony to the defendant cannot be tried fairly absent disclosure.

United States vs. Brodie, 871 F.2d 125, 128 (D.C. Cir. 1989).

Accordingly, Defendant requests disclosure of the names and addresses of the confidential informant(s) utilized by the State in the case at bar, including who have or may have information that would be material to the case. "The government has a limited privilege to withhold the identity of confidential informants". United States vs. Sai Keing Wong, 886 F.2d 252, 255 (9th Cir. 1989).

In practice [the relevant factors] have focused on 1) whether the testimony would be "relevant and helpful" to the defendant's case, especially in terms of the relationship between the asserted defenses and likely testimony of the informant...., which in turn will often depend on the degree of involvement by the informant in the charged crimes. . . , and 2) the government's interest in protecting the safety of the informant. . . .

Id., at 255-56 (citations omitted).

NRS 49.335 codifies the common-law police privilege against disclosure of the informants. However, the Nevada Supreme Court has recognized that disclosure of the identity

1 of an informant should be ordered where "the confidential informant could supply information to
2 substantiate a defense or rebut an element of the offense." Twigg v. Sheriff, 95 Nev. 112, 114,
3 590 P.2d 630 (1979); Sheriff of Washoe County v. Vasile, 96 Nev. 5, 604 P.2d 809 (1980). In
4 determining the relevant balance between the competing interests, courts consider the following
5 three factors:

6 (1) The degree of the informant's involvement in the criminal activity; (2) the
7 relationship between the defendant's asserted defense and the likely testimony of
8 the informant; and (3) the government interest in nondisclosure.

8 United States v. Gonzalo Beltran, 915 F.2d 487,489 (9th Cir. 1990).

9 If there have been any confidential informants involved in the investigation and
10 prosecution of this matter, Defendant requests disclosure of same. In particular, Defendant
11 requests the State reveal the following facts and information concerning any informants in this
12 case:

13 1. The full name and address of each confidential informant upon whose statements
14 the investigation of the accused was predicated and all the information that was related to law
15 enforcement officials, including but not limited to, the names, addresses and substance of
16 information of the confidential informants who advised investigating officers that Mr. Wheeler
17 had committed the charged offenses or was in any way connected with these allegations.

18 2. The full nature and extent of all immunity, express or implied, granted to each
19 informant and to any confidential informant (whether she or he testified at trial or not), including
20 the nature and detail of all crimes for which immunity was granted;

21 3. The full nature of any consideration that has been given or promised to any
22 confidential informant by state that relates to the investigation and prosecution of this crime,
23 including the nature and details of any consideration given or promised;

24 4. Whether any threats, force, promises, inducements, or any other such devices
25 were used to make or induce any individual to relate information to the state that relates to the
26 investigation and prosecution of this crime, including the nature and details of any such devices
27 used; and

JAMES J. RUGGEROLI, ESQ.

400 South 4th Street, Suite 280

Las Vegas, Nevada 89101

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

1 5. All records, notes, memoranda, and documents in the possession of the state
2 relating to the grant of immunity, promises, consideration, threats or any other inducements to
3 any individual to obtain information or testimony about this crime by the state and any of its law
4 enforcement or other agencies.

5 **V. CONCLUSION**

6 Based on the foregoing facts, Mr. Wheeler respectfully requests that this Honorable Court
7 grant the instant motion, and order immediate disclosure of the aforementioned items, as
8 required by Due Process. Giglio v. United States, 405 U.S. 150 (1972); Napue v. Illinois, 360
9 U.S. 264 (1959); Brady v. Maryland, 373 U.S. 83 (1963); United States v. Pitt, 717 F.2d 1334
10 (11th Cir. 1983).

11 DATED this 9th day of December, 2019.

12 **JAMES J. RUGGEROLI**

13 By: /s/ James J. Ruggeroli
14 James J. Ruggeroli, Esq.
15 Nevada Bar No. 7891
16 400 South 4th Street, Suite 280
17 Las Vegas, Nevada 89101
18 Attorney for Defendant

JAMES J. RUGGEROLI, ESQ.

400 South 4th Street, Suite 280

Las Vegas, Nevada 89101

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

DECLARATION OF JAMES J. RUGGEROLI, ESQ.

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

1. I am counsel of record for the Defendant and 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. 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 9th day of December, 2019.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on the 10th day of December, 2019 I emailed a copy of this motion to: motions@clarkcountyda.com. I further certify that on the date provided, I caused the foregoing document to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth judicial District Court e-Filing System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

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

Steven D. Grierson

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ruggeroli@icloud.com
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Plaintiff,

Case No. C-17-328587-3

vs.

Dept No. XII

DAVONTAE AMARRI WHEELER,
#5909081.

Defendant.

**MOTION TO SUPPRESS, OR, IN THE ALTERNATIVE, MOTION FOR JACKSON v.
DENNO HEARING**

COMES NOW Defendant, DAVONTAE AMARRI WHEELER, through JAMES J. RUGGEROLI, ESQ., submits the following Motion. This Motion is based on the following Points and Authorities, the pleadings and papers on file herein, the exhibits and affidavits and any oral argument by counsel permitted at the hearing on this matter.

DATED this 20th day of December, 2019.

JAMES J. RUGGEROLI

By: */s/ James J. Ruggeroli*
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

JAMES J. RUGGEROLI, ESQ.

400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
TEL: (702) 258-2022 | FAX: (702) 258-2021

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Motion will be heard in Department XII before the District Court Judge of the above entitled court on the _____ day of _____, 2019 at the hour of _____ a.m. or as soon thereafter as counsel can be heard.

DATED this 20th day of December, 2019.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mr. Wheeler's statements to police, made on or about August 15, 2017, should be suppressed because the statements were the product of coercive interrogation tactics and were therefore involuntary under the totality of circumstances.

II. PERTINENT FACTS

The State has charged Mr. Wheeler by way of Indictment with: COUNT 5 CONSPIRACY TO COMMIT ROBBERY; COUNT 6 ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON; COUNT 7 MURDER WITH USE OF A DEADLY WEAPON. See Indictment on file herein. Personnel from the LVMPD Criminal Apprehension Team (CAT) took Wheeler into custody after executing a warrant on August 15, 2017. During the execution, police slammed Mr. Wheeler's head into a wall and made several threatening statements despite his cooperation while being taken into custody. Police thereafter transported Mr. Wheeler to LVMPD Headquarters for questioning. See Arrest Report, page 4 of 4; see also Wheeler's Voluntary Statement at pgs. 19 and 143 on file herein.

Several important facts concern the interrogation of Mr. Wheeler by Metro Detectives R. Jaeger and J. Hoffman of the LVMPD Homicide Section. Mr. Wheeler was only 22 years old at

1 the time. He had an incomplete education, having never graduated from high school. Other than
2 receiving his Miranda warning, Mr. Wheeler received no advice concerning his constitutional
3 rights. At the time of the interrogation, Mr. Wheeler had not eaten and had been awake without
4 sleep for several hours. Additionally, he had been under the influence of *methylenedioxy-*
5 *methamphetamine* (MDMA), commonly referred to as ecstasy, which is a synthetic drug that
6 alters perception, prior to and during the questioning. Perhaps most important, during the
7 interview, the detectives conducted a prolonged interrogation through repeated, confusing and
8 deceptive questions, demeaning statements which disparaged Mr. Wheeler and through the use
9 of physical intimidation tactics.

10 The detectives' interview began at 1722 (5:22 p.m.) and continued to 2001 (8:01 p.m.) on
11 August 15, 2017. Transcripts of the interrogation demonstrate several instances of disparaging
12 statements, derogatory questions, lies about facts in the case or statement of verbal abuse from
13 the detectives:

- 14 1. referred to Wheeler as a monster at p. 28;
- 15 2. lied that the victim's autistic sister watched the victim him die and attempted to
16 pick up the blood and "little chunks" of the victim's skull after the shooting, at p. 34;
- 17 3. referred to Wheeler as a heartless monster at p. 40;
- 18 4. claimed that Wheeler did not have a soul at p. 40;
- 19 5. claimed that Wheeler was a heartless prick at p. 66
- 20 6. indicated that the detective had no time for in-humans like Wheeler at p. 66;
- 21 7. lied to Wheeler that Wheeler's phone could be traced to the crime scene at p. 88;
- 22 8. lied to Wheeler that his sister and girlfriend positively identified Wheeler from a
23 surveillance video of a Speedy Mart just prior to the incident at p. 91;
- 24 9. derogatorily referred to Wheeler (an African American) as "son," at p. 94;
- 25 10. insinuated that Wheeler did not believe in God or demeaned Wheeler's faith in
26 God at p. 100;
- 27 11. again claimed that Wheeler had no soul at p. 116;
- 28 12. referenced one of the defendants being a piece of garbage at p. 129;

1 13. claimed that Wheeler's conscience was so perverted that he did not know right
2 from wrong at p. 147.

3 Furthermore, video surveillance of the interview reveals a disturbing pattern of physical
4 intimidation in which detectives:

- 5 1. poked Wheeler on the upper arm/shoulder at 5:52:38;
- 6 2. touched Wheeler on back/shoulder at 5:53:09;
- 7 3. touched/patted Wheeler on back/shoulder at 5:53:57;
- 8 4. physically touched side of Wheeler's head and forehead at 6:42:32;
- 9 5. got close to Wheeler's face at 6:57:40, 6:58:45;
- 10 6. touched Wheeler's shoulder at 7:21:40;
- 11 7. gripped Wheeler's shoulder and holds him while pointing a finger at his face from
12 7:24:30 to 7:25:39;
- 13 8. grips Wheeler's shoulder and touches his face to turn Wheeler's face to look at
14 detectives at 7:25:39;
- 15 9. grips Wheeler's forearm and shoulder at 7:26:30;
- 16 10. touched/gripped Wheeler's shoulder at 7:36:34;
- 17 11. touched Wheeler's arm at 7:36:48;
- 18 12. patted Wheeler on the back at 8:00:35.

19 For the reasons set forth below, a Jackson v. Denno hearing is requested, and Mr.
20 Wheeler's statements should be suppressed. Should the court deny this motion, Mr. Wheeler also
21 requests that any video, audio or transcript from the hearing be redacted to prevent inadmissible
22 evidence from being included for use at trial.

23 II. LAW AND ARGUMENT

24 A. STANDARD

25 Before the State may introduce an accused's statements before a jury, there must be a
26 "Jackson v. Denno" hearing, 378 U.S. 368, 84 S.Ct. 1774 (1964), held outside of the presence of
27 the jury. Once ordered, the State should bear the burden to present the circumstances under
28

1 which the suspect made the alleged statements, and the State should demonstrate what the
2 alleged statements specifically consisted of. The Court should then decide whether the
3 statements were voluntary, under the totality of circumstances, and whether the statements were
4 given after proper Miranda warnings. Should the Court determine that the statements were
5 involuntary, the statements must be suppressed and cannot be used for any purpose. See Mincey
6 v. Arizona, 437 U.S. 385, 98 S.Ct. 2408 (1978). If the Court concludes the statements were
7 made voluntarily but in violation of Miranda, the statements may be used only for impeachment
8 if the defendant testifies during the trial and contradicts the statement. Harris v. New York, 401
9 U.S. 222, 91 S.Ct. 643 (1978) and Oregon v. Hass, 420 U.S. 714, 95 S.Ct. 1215 (1975), McGee
10 v. State, 105 Nev. 718, 782 P.2d 1329 (1989) (use of Un-Mirandized statement in perjury
11 prosecution).

12
13 Should the Court permit a defendant's statements to be heard by the jury, the jury
14 nevertheless retains the authority to decide the voluntariness of a statement, if voluntariness has
15 been raised as an issue, Dawson v. State, 108 Nev. 112, 825 P.2d 593 (1992), Varner v. State, 97
16 Nev. 486, 634 P.2d 1205 (1981) and the burden is on the State to prove by a preponderance of
17 the evidence that it was made voluntarily. Brimmage v. State, 93 Nev. 434, 567 P.2d 54 ((1977),
18 Falcon v. State, 110 Nev. 530, 874 P.2d 772 (1994) and Colorado v. Connelly, 479 U.S. 157, 107
19 S.Ct. 515 (1986). Moreover, the voluntariness issue should be presented to the jury through the
20 use of jury instructions which clearly provide the appropriate law governing the issue. See
21 Carlson v. State, 84 Nev. 534, 445 P.2d 157 (1968), Ogden v. State, 96 Nev. 258, 607 P.2d 576
22 (1980).

23 B. ARGUMENT

24
25 Mr. Wheeler contends that statements he made after receiving the Miranda warnings
26 were the product of coercive interrogation tactics, and therefore, should be suppressed.
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1 In Passama v. State, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987), the Court listed
2 several factors which are relevant in determining whether a defendant's statement was voluntary:
3 "[t]he youth of the accused; his lack of education or his low intelligence; the lack of any advice
4 of constitutional rights; the length of detention; the repeated and prolonged nature of
5 questioning; and the use of physical punishment such as the deprivation of food or sleep."
6

7 Here, Mr. Wheeler was only 22 years old at the time of the questioning and had a limited
8 education. He received no advice concerning his constitutional rights but for the Miranda
9 warning. At the time of the interrogation, Mr. Wheeler had not eaten and had been awake
10 without sleep for several hours. Additionally, he had been under the influence of ecstasy, which
11 is a synthetic drug that alters perception, prior to and during the questioning. Perhaps most
12 important, as provided above, during the interview, the detectives conducted a prolonged
13 interrogation through repeated and confusing questions, demeaning statements which disparaged
14 Mr. Wheeler and through the use of physical intimidation tactics.

15 When a confession is challenged and a hearing is requested under Jackson v. Denno, 378
16 U.S. 368, 380 (1964), the State must prove by a preponderance of the evidence that the
17 defendant's incriminatory statements are admissible. Dewey v. State, 123 Nev. 483, 492, 169
18 P.3d 1149, 1154 (2007). When a defendant has been subjected to "custodial interrogation," the
19 State must first demonstrate the police administered Miranda warnings prior to initiating any
20 questioning. See State v. Taylor, 114 Nev. 1071, 1081, 968 P.2d 315, 323 (1998). If the warnings
21 were properly given, the State must then prove the defendant voluntarily, knowingly, and
22 intelligently understood his constitutional right to remain silent and/or to have an attorney
23 present during any questioning, and agreed to waive those rights. See Mendoza v. State, 122
24 Nev. 267, 276, 130 P.3d 176, 181-82 (2006); see also Miranda v. Arizona, 384 U.S. 436 (1966).
25 Even where such warnings were properly administered and waived, the State must also
26 separately show that the defendant's incriminatory statements were voluntary under the totality
27
28

1 of the circumstances. See Falcon v. State, 110 Nev. 530, 534, 874 P.2d 772, 775 (1994).

2 "A confession is admissible as evidence only if it is made freely, voluntarily, and
3 without compulsion or inducement." Echavarria v. State, 108 Nev. 734, 742, 839 P.2d 589, 595
4 (1992) (quoting Franklin v. State, 96 Nev. 417, 421, 610 P.2d 732, 734 (1980)); see also
5 Passama v. State, 103 Nev. 212, 213-14, 735 P.2d 321, 322 (1987) ("In order to be voluntary, a
6 confession must be the product of a rational intellect and a free will." (internal quotation marks
7 omitted)). Voluntariness must be determined by reviewing the totality of the circumstances,
8 including such factors as the defendant's age, education, and intelligence; his knowledge of his
9 rights; the length of his detention; the nature of the questioning; and the physical conditions
10 under which the interrogation was conducted. Passama, 103 Nev. at 214, 735 P.2d at 323. A
11 "confession is involuntary if it was coerced by physical intimidation or psychological pressure."
12 Brust v. State, 108 Nev. 872, 874, 839 P.2d 1300, 1301 (1992). The ultimate inquiry is whether
13 the defendant's will was overborne by the government's actions. Chambers v. State, 113 Nev.
14 974, 981, 944 P.2d 805, 809 (1997).

15 In the case at hand, the totality of circumstances demonstrate that Mr. Wheeler's
16 statements were not voluntary. His youth, incomplete education, intoxication through a
17 hallucinogenic drug and lack of sleep and food all give credence to this argument, but the tactics
18 utilized by the detectives during this interview clearly tip the scales towards an ultimate
19 conclusion that the police overwhelmed Mr. Wheeler's will. During the nearly 3 hour interview,
20 the detectives' tactics unfairly and inaccurately solicited statements from Mr. Wheeler that, while
21 not actual confessions, will certainly be used by the State against him at trial. The detectives'
22 overall method undermined a fair application of Mr. Wheeler's Miranda rights, and his
23 statements can justly be determined to be involuntary and inadmissible. A hearing is therefore
24 necessary and justified. See Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964).

1 DATED this 20th day of December, 2019.

2 JAMES J. RUGGEROLI

3 By: /s/ James J. Ruggeroli
4 James J. Ruggeroli, Esq.
5 Nevada Bar No. 7891
6 400 South 4th Street, Suite 280
7 Las Vegas, Nevada 89101
8 Attorney for Defendant

9 **DECLARATION OF JAMES J. RUGGEROLI, ESQ.**

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

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

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

17 DATED this 20th day of December, 2019.

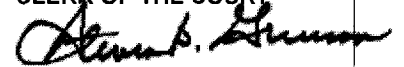
18 JAMES J. RUGGEROLI

19 By: /s/ James J. Ruggeroli
20 James J. Ruggeroli, Esq.
21 Nevada Bar No. 7891
22 400 South 4th Street, Suite 280
23 Las Vegas, Nevada 89101
24 Attorney for Defendant

25 **CERTIFICATE OF SERVICE**

26 I certify that on the 20th day of December, 2019 I emailed a copy of this motion to:
27 motions@clarkcountyda.com.

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



JAMES J. RUGGEROLI
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rugggeroli@icloud.com
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Plaintiff,

Case No. C-17-328587-3

vs.

Dept No. XII

DAVONTAE AMARRI WHEELER,
#5909081.

Defendant.

MOTION TO COMPEL PRODUCTION OF DISCOVERY & BRADY MATERIAL

COMES NOW Defendant, DAVONTAE AMARRI WHEELER, through JAMES J. RUGGEROLI, ESQ., submits the following Motion to Compel Production of Discovery & Brady Material. This Motion is based on the following Points and Authorities, the pleadings and papers on file herein, the exhibits and affidavits and any oral argument by counsel permitted at the hearing on this matter.

DATED this 20th day of December, 2019.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Motion will be heard in Department XII before the District Court Judge of the above entitled court on the _____ day of _____, 2018 at the hour of _____ a.m. or as soon thereafter as counsel can be heard.

DATED this 20th day of December, 2019.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mr. Wheeler files the instant motion seeking records and information not yet disclosed, as more fully provided below.

II. FACTS

The State has charged Mr. Wheeler by way of Indictment with: COUNT 5 CONSPIRACY TO COMMIT ROBBERY; COUNT 6 ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON; COUNT 7 MURDER WITH USE OF A DEADLY WEAPON. See Indictment on file herein. Trial in this matter is presently scheduled fo

In summary, the State alleges that Mr. Wheeler had been present at a Shortline Express mini-mart located at 7325 South Jones Boulevard, Las Vegas, NV on August 9, 2017. Robert Mason, a jogger, later saw a White Grand Marquis and four dark skinned individuals near the Gabriel Valenzuela's home at 5536 West Dewey Dr., near midnight. Sadly, Gabriel Valenzuela was later shot and killed outside of his home on the night of August 9, 2017.

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DISCOVERY REQUESTS

A. SPECIFIC DISCOVERY REQUESTS

Mr. Wheeler specifically seeks:

1. The juvenile and/or mental health records from State's witness "D.R.;"
2. Production and notification of all phone and/or Facebook records the State intends to use at trial, including designation and disclosure of any jail calls intended to be used at trial.

B. GENERAL DISCOVERY REQUESTS

Mr. Wheeler's seeks the following general information, *if it has not already been provided by the State*:

1. The Defendant's Statements and Any Potential Co-Defendants' Statements

All statements made by the Defendant and any co-defendants, regardless of whether the statements were written or recorded, including but not limited to:

- a. Comments made at the time of arrest or during transport to the detention center,
- b. All conversations, telephonic or otherwise, intercepted by any law enforcement agencies, including federal authorities, and
- c. The substance of any statements, conversations, or correspondence overheard or intercepted by any jail personnel or other inmates which have not been recorded or memorialized.

2. Potential Witnesses' Statements

- a. All written or recorded statements of witnesses and potential witnesses, including, but not limited to:
- b. Audio and video recording in any form collected by investigating officers or any other law enforcement agent as part of the investigation of this matter, as well as any related matters,
- c. Notes of interviews, such as notes of patrol officers, or notes of phone

1 calls made to potential witnesses, or attempts to contact such witnesses, and

2 d. Interviews of the following individuals: B.W., Jennifer Long, Jose Garcia
3 and any other witness or investigative official involved in the instant matter and any related
4 matter.

5 3. Records Related to Investigation

6 All records of the Las Vegas Metropolitan Police Department and any other law
7 enforcement agencies involved in the investigation of this or any related matter, including, but
8 not limited to:

- 9 a. Copies of handwritten or other notes,
10 b. Investigative leads that were not followed up on,
11 c. Any other matter bearing on the credibility of any State witness,
12 d. Information pertaining to this case or any witnesses in this case, no matter
13 what the form or title of the report, including,
14 e. "Case Monitoring Forms,"
15 f. Use of Force reports,
16 g. 911 recordings,
17 h. Dispatch logs, and
18 i. Information regarding leads or tips provided to law enforcement or a
19 crime tip organization such as Crime Stoppers, including any reward or benefit received for
20 such tip.

21 4. Crime Scene Analysis, Evidence Collection, and Forensic Testing

22 All requests, results, reports, and bench notes pertaining to all crime scene analysis,
23 evidence collection and forensic testing performed in this case, including, but not limited to

- 24 a. Photographic, video, and audio recordings of evidence collection and
25 testing,
26 b. Fingerprint Evidence: All latent prints recovered in the instant matter,
27 regardless of their value for identification, as well as exemplars compiled in connection with the

1 investigation of this matter, including:

2 c. Photographs, reports, and recordings related to collecting and testing of
3 fingerprints,

4 d. Results of fingerprint collection and comparison, and

5 e. Automated Fingerprint Identification System (AFIS) searches and results,

6 f. DNA Evidence: DNA testing, raw data and Combined DNA Index System
7 (CODIS) searches and results,

8 g. Scientific Evidence: toxicological, chemical, biochemical, laboratory, and
9 other laboratory or forensic analyses, including trace evidence analyses, crime scene
10 reconstruction or blood spatter analysis, and

11 h. Forensic Analysis: reports and notes related to any forensic analysis and
12 requests for forensic analysis, regardless of the outcome of such request.

13 5. Medical Records

14 All records, including photos, reports, imaging studies, test results, and notes pertaining
15 to:

16 a. All records generated pursuant to treatment provided in connection with
17 the instant matter; including, without limitation, all emergency medical, fire department,
18 hospital, or other medical care provider records, including all relevant prior medical records,

19 b. All pathological, neuropathological, toxicological, or other medical
20 evaluations including all relevant prior medical records and

21 c. The name and badge number of any paramedics who responded to the
22 scene, and all documentation, notes, reports, charts, conclusions, or other diagnostic,
23 prognostic, or treatment information pertaining to any person evaluated, assessed, treated, or
24 cleared by a paramedic at the scene, or transported to a hospital from the scene.

25 d. All notes and records of any physical exams done on the alleged victim or
26 anyone else in connection with this case, including. This includes any photographs, videos, or
27 recordings taken in conjunction with such exam, and any lab or toxicology reports done in
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1 conjunction with such exam. This includes all documents recording what physical evidence
2 was taken in the case, where it was stored, and any related chain of custody documents.

3 6. Preservation of and Access to Raw Evidence

4 Access to and preservation of all material collected in the investigation of this case to
5 include but not limited to:

6 a. forensic material, raw data, biological samples and toxicological samples;
7 and

8 b. video surveillance, photographic negatives, and digital negatives.

9 7. Electronic Communications and Associated Warrants

10 All intercepted communications, whether electronic oral or otherwise, as well as
11 communications sent to and from a handset, telephone, or computer obtained by any law
12 enforcement agency, including federal authorities via subpoena, interception, or other means,
13 pertaining to the instant matter or any related matter, including but not limited to:

14 a. Audio, Push to Talk, Data, and Packet Data

15 b. Electronic messaging such as: Global System for Mobile Communications
16 (GMS), Short Message Service (SMS), Multimedia Messaging Service (MMS), and Internet
17 Relay Chat,

18 c. File Transfer Protocol (FTP), Internet Protocol (IP), Voice Over Internet
19 Protocol (VOIP), Transmission Control Protocol (TCP), and

20 d. Electronic mail or other internet based communications.

21 8. Law Enforcement Video or Audio Recordings

22 All video and audio recordings obtained by the Las Vegas Metropolitan Police
23 Department recording device, including but not limited to:

24 a. Dashboard cameras,

25 b. Body-mounted officer cameras,

26 c. Any other recording equipment operational during the investigation of this
27 case, and

1 9. Monitoring, Tracking, and Associated Warrants

2 All data, recordings, reports, and documentation of the following: voice monitoring
3 devices, geographic tracking devices, pen registers, trap and trace devices installed pursuant to
4 interception, warrant, or other means, obtained by law enforcement pertaining to the instant
5 matter or any related matter.

6 10. 911 and 311 Calls

7 Any and all 911 and 311 recordings to include, but not limited to:

- 8 a. Car-to-car audio communications,
9 b. Car-to-dispatch radio communications, and
10 c. Unit Log incident print out related to the event.

11 11. Chain of Custody

12 All relevant chain of custody reports, including reports showing the destruction of any
13 evidence in the case.

14 12. Witness Contact Information

15 All updated witness contact information, including last known addresses and phone
16 numbers. This includes the names and contact information for witnesses who may have
17 information tending to exculpate the Defendant.

18 13. Alternative Suspects

19 All information which shows that the Defendant did not commit the crimes alleged, or
20 which shows the possibility of another perpetrator, co-conspirator, aider and abettor, or
21 accessory after the fact, including the names of those individuals. This includes, but is not
22 limited to, any information concerning the arrest of any other individual for the charged crimes
23 and any information suggesting that someone other than the Defendant perpetrated one or more
24 of the charged crimes.

25 14. Identification and Mis-Identification

26 All statements of identification associated with this case, including any information
27 concerning witnesses who did not identify the Defendant as the perpetrator of the alleged
28

1 crimes. This request includes:

- 2 a. Statements identifying another person as the perpetrator of this offense,
3 b. Prior non-identifications by eyewitnesses now identifying the Defendant
4 as the perpetrator, and
5 c. Color copies of all photographic lineups shown to any witness as well as
6 any other identification procedures used to identify suspects including show-ups, lineups,
7 photo-array lineups, single photo show-ups, photo compilations and composite drawings. This
8 request includes:

- 9 (1) The identification of each witness who was shown an identification
10 procedure,
11 (2) The date and time such procedures occurred,
12 (3) The names of all persons who were present when the procedures
13 took place,
14 (4) Instructions given to the witnesses prior to the procedure,
15 (5) The results of the procedure, including an accounting of each
16 witness's statements before, during and after the identification procedure; the amount of time
17 taken by each witness to make an identification; and any hesitancy or uncertainty of each
18 witness in making an identification, and
19 (6) Whether officers informed any witness that he identified the
20 suspect officers believed committed the crime.

21 15. Witness Benefits

22 Disclosure of all express or implied compensation, promises of favorable treatment or
23 leniency, or any other benefit that any of the State's witnesses received in exchange for their
24 cooperation with this or any related prosecution. This includes, but is not limited to:

- 25 a. Records and notes from the CCDA Victim Witness Office, including
26 records of any expectation of any benefit or assistance to be received, or already received by
27 any witness in this case,

1 b. Monetary benefits received as well as any express or implied promises
2 made to any witness to provide counseling, treatment, or immigration assistance as a result of
3 the witness's participation in this case,

4 c. Names of all agencies, workers or other referrals that were given to any
5 witness or his family member, relative, or guardian in connection with this case or any related
6 matter, and

7 d. Estimate of future benefits to be received by any witness during or after
8 the trial, including travel expenses.

9 16. Prior Witness Statements

10 Disclosure of any and all statements, tangible or intangible, recorded or unrecorded,
11 made by any witness that are in any manner inconsistent with the written or recorded statements
12 previously provided to the defense. This includes oral statements made to an employee or
13 representative of the CCDA or any other government employee, local or federal, during pre-
14 trial conferences or other investigative meetings.

15 17. Law Enforcement Impeachment Information—Henthorn Request

16 The Defendant hereby requests the prosecutor review the personnel files of each officer
17 involved in this case. After review, the prosecutor must disclose all impeachment information
18 located in the personnel files of any police witness called to testify at trial or any pretrial
19 hearing in this matter, including, but not limited to, any Statement of Complaint regarding the
20 witness or this investigation, any Employee Notice of Internal Investigation, any Internal
21 Affairs Investigative Report of Complaint, any witness statement, any Bureau Investigation
22 Supervisory Intervention, and any other document maintained or generated by the Office of
23 Internal Affairs, Critical Incident Review Panel, or other investigative agency.

24 18. Criminal History Information

25 Criminal history information on any actual or potential witness, showing specific
26 instances of misconduct, instances from which untruthfulness may be inferred or instances
27 which could lead to the discovery of admissible evidence. The defense further requests that the
28

1 NCIC information be provided to defense counsel as soon as possible and that prosecutors
2 identify those individuals for whom no NCIC information is found. While the defense is not
3 insisting that prosecutors run NCICs on expert or law enforcement witnesses, the defense
4 requests that the State be ordered to comply with its Brady obligations with respect to these
5 witnesses. The instant criminal history request includes, but is not limited to:

- 6 a. Juvenile records,
- 7 b. Misdemeanors,
- 8 c. Out-of-state arrests and convictions,
- 9 d. Outstanding arrest warrants or bench warrants,
- 10 e. Cases which were dismissed or not pursued by the prosecuting agency,
- 11 and
- 12 f. Any other information that would go to the issues of credibility or bias, or
- 13 lead to the discovery of information bearing on credibility or bias, regardless of whether the
- 14 information is directly admissible by the rules of evidence.

15 19. Mental Health Worker Records and Notes

16 All records and notes of any mental health workers who have had contact with the
17 alleged victim or any other person related to events in this case. This request includes any
18 records reflecting the mental state or cognitive abilities of the alleged victim or any other
19 government witness, including the individuals listed herein, that are relevant to each
20 individual's competency as a witness.

21 **IV. LAW AND ARGUMENT**

22 Prior to trial, prosecutors are required to disclose both inculpatory and exculpatory
23 information within their actual or constructive possession.

24 **A. DISCLOSURE OF INCULPATORY EVIDENCE**

25 NRS 174.235 requires prosecutors to disclose evidence "within the possession, custody or
26 control of the state, the existence of which is known, or by the exercise of due diligence may
27 become known," including, if any:

- The Defendant's written or recorded statements or alleged confessions, if any,
- Any witness's written or recorded statements the prosecuting attorney intends to call during the witness during the State's case in chief,
- Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case, and
- Books, papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the State's case in chief.

NRS 174.235(1)(a)-(c).

1. Mandatory Disclosure of Regardless of State's Intended Use

Prosecutors may not lawfully withhold inculpatory information from the defense simply because they do not intend to present the information in the government's case-in-chief. State v. Harrington, 9 Nev. 91, 94 (1873); People v. Carter, 312 P.2d 665, 675 (Cal.1957); People v. Bunyard, 756 P.2d 795, 809 (Cal. 1988). Any holding to the contrary would allow prosecutors to engage in unfair surprise by withholding inculpatory material from the government's case-in-chief, only to surprise the defense by using it in rebuttal. Thus, prosecutors must disclose all inculpatory evidence of which they are actually or constructively aware, including material not necessarily intended for introduction in the prosecution's case-in-chief.

2. All Statements Made by a Defendant Under NRS 174.235

While NRS 174.235 obligates prosecutors to disclose a defendant's written or recorded statements, fundamental fairness requires disclosure of unrecorded statements and statements for which a defendant can be held vicariously liable. Courts have recognized the fundamental fairness involved in "granting the accused equal access to his own words, no matter how the government came by them." U.S. v. Caldwell, 543 F.2d 1333, 1353 (D.D.C. 1974). This includes allowing an accused access to his unrecorded words, including adoptive or vicarious admissions. Since these admissions are admissible at trial whether recorded or not, NRS 174.235 must be construed to require pretrial disclosure of any unrecorded statements or

admissions, including those for which the Defendant can be held vicariously liable.

B. DISCLOSURE OF EXCULPATORY EVIDENCE

The United States and Nevada Constitutions require prosecutors to disclose all exculpatory information of which they are actually or constructively aware. U.S. Const. Amend. V, VI, XIV; Nev. Const. Art. 1, Sect. 8; Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S. 419, (1995). A prosecutor's failure to disclose exculpatory evidence violates the Due Process Clause. Jimenez v. State, 112 Nev. 610, 618 (1996). A due process violation occurs when exculpatory evidence is withheld, regardless of the prosecution's motive. Jimenez, 112 Nev. 610.

1. Brady Requires Broad Disclosure

Exculpatory evidence is information favorable to the defendant that is material to the issue of guilt or punishment. U.S. v. Bagley, 473 U.S. 667, 675 (1985). Evidence is material and favorable to the accused if its non-disclosure undermines confidence in the outcome of the trial. Kyles, 514 U.S. at 434-35. This evidence must be disclosed even in the absence of a Brady request. Bagley, 473 U.S. at 680-82.

Ultimately, prosecutors are tasked with a "broad duty of disclosure." Strickler, 527 U.S. at 281; cf. U.S. v. Agurs, 427 U.S. 97, 108 (1976) (holding that "the prudent prosecutor will resolve doubtful questions in favor of disclosure"). As the Nevada Supreme Court has explained:

Due process does not require simply the disclosure of "exculpatory" evidence. Evidence also must be disclosed if it provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks. Furthermore, "discovery in a criminal case is not limited to investigative leads or reports that are admissible in evidence." Evidence "need not have been independently admissible to have been material."

Mazzan v. Warden, 116 Nev. 48, 67 (2000) (internal citations omitted). Thus, any question as to whether certain material, information, or evidence falls within the purview of Brady should be resolved in favor of disclosure. Agurs, 427 U.S. at 108; see also Kyles, 514

1 U.S. at 439 (“a prosecutor anxious about tacking too close to the wind will disclose a favorable
2 piece of evidence.”).

3 **2. Favorable Evidence Includes Impeachment Information**

4 The Due Process Clause of the Fifth and Fourteenth Amendments requires prosecutors to
5 disclose “any information about its witnesses that could cast doubt on their credibility.” U.S. v.
6 Jennings, 960 F.2d 1488, 1490 (9th Cir. 1992). A witness can be attacked by “revealing possible
7 biases, prejudices, or ulterior motives of the witnesses as they may relate directly to issues or
8 personalities in the case at hand. The partiality of a witness is . . . always relevant [to]
9 discrediting the witness and affecting the weight of his testimony.” Davis, 415 U.S. at 316; see
10 also Lobato v. State, 120 Nev. 512 (2004) (discussing the nine basic modes of impeachment).
11 Accordingly, favorable evidence includes impeachment information pertaining to all government
12 witnesses. Giglio v. U.S., 405 U.S. 150, 154 (1972); Youngblood v. West Virginia, 547 U.S.
13 867 (2006); U.S. v. Bagley, 473 U.S. at 676 (requiring disclosure of all impeachment evidence).

14 a. **Impeachment Information: Cooperation Agreements and Benefits**

15 Impeachment information includes all cooperation agreements between a government
16 witness and prosecutors. Giglio v. U.S., 405 U.S. 150, 154 (1972) (requiring disclosure of
17 cooperation agreement between government witness and prosecutors). It also includes benefits
18 provided to a government witness, regardless of whether an explicit deal is outlined. Browning
19 v. State, 120 Nev. 347, 369 (2004). It is the witness’s own anticipation of reward, not the intent
20 of the prosecutor, which gives rise to the required disclosure. Moore v. Kemp, 809 F.2d 702,
21 726, 729-30 (11th Cir. 1987); Duggan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989)
22 (noting that agreements need not be express or formal arrangements, and recognizing favorable
23 treatment that is merely implied, suggested, insinuated, or inferred to be of possible benefit to a
24 witness constitutes proper material for impeachment).

25 Notably, benefits are not limited to agreements made in relation to the case in which they
26 are sought. Jimenez, 112 Nev. at 622-23. Benefits include evidence that a witness acted as a
27 paid informant on one or more occasions. State v. Bennett, 119 Nev. 589, 603 (2003).

1 Additionally, benefits include travel and lodging compensation, immigration assistance of any
2 kind, whether actual or anticipatory, as well as counseling, treatment, or other assistance
3 provided to any witness. These benefits are relevant to issues regarding possible bias,
4 credibility, and motive to lie, all of which constitute impeachment evidence. Davis v. Alaska,
5 415 U.S. 308 (1974).

6 b. Witness Criminal History Constitutes Impeachment Information

7 Impeachment information includes evidence relating to a witness's criminal history.
8 Briggs v. Raines, 652 F.2d 862, 865-66 (9th Cir. 1981). Under Brady, prosecutors must produce
9 criminal histories useful to demonstrating a witness's history of, or propensity for, a relevant
10 character trait. Id. Prosecutors must also produce criminal histories disclosing a witness's bias,
11 prejudice or motive to lie. Davis, 415 U.S. at 354.

12 A witness's entire criminal record should be disclosed, even if it is more than ten years
13 old. Moore, 809 F.2d 702. Prosecutors are often under the mistaken impression that they must
14 disclose only felony convictions within the last ten years that can be utilized for impeachment
15 under NRS 50.095. However, in Davis, the U.S. Supreme Court found that a witness can be
16 attacked by "revealing possible biases, prejudices, or ulterior motives The partiality of a
17 witness is . . . always relevant [to] discrediting the witness and affecting the weight of his
18 testimony." 415 U.S. at 354 (internal quotations omitted). The Davis Court found that the
19 policy interest in protecting offender records must yield to the defendant's right to cross-examine
20 as to bias. Id. at 356; see also Lobato v. State, 120 Nev. 512 (2004), discussing the "nine basic
21 modes of impeachment." Therefore, even juvenile records, misdemeanors, and older criminal
22 records may yield information relevant to many forms of impeachment other than that outlined in
23 NRS 50.095.

24 Prosecutors must also produce criminal history information maintained by law
25 enforcement agencies other than the Las Vegas Metropolitan Police Department, such as the
26 federal government's National Crime Information Center ("NCIC") database. "[K]nowledge [of
27 the NCIC database] may be imputed to the prosecutor, or a duty to search may be imposed, in

1 cases where a search for readily available background information is routinely performed, such
2 as routine criminal background checks of witnesses.” Odle v. Calderon, 65 F. Supp. 2d 1065,
3 1072 (N.D. Cal. 1999), rev’d on other grounds by Odle v. Woodford, 238 F.3d 1084 (9th Cir.
4 2001). A prosecutor’s lack of knowledge regarding a witness’s criminal history does not relieve
5 the prosecutorial obligation to obtain and produce that information. Martinez v. Wainwright,
6 621 F.2d 184, 187-89 (5th Cir. 1980) (defendant entitled to criminal records of state-government
7 witnesses, including data obtainable from the FBI; prosecutor’s lack of awareness of alleged
8 victim’s criminal history did not excuse duty to obtain and produce rap sheet).

9 Requiring prosecutors to run background checks on their witnesses is not a novel
10 proposition. See U.S. v. Perdomo, 929 F.2d 967 (3d Cir. 1991) (adopting 5th Circuit’s rationale
11 in requiring government to obtain complete criminal history on prosecution witnesses). It is the
12 prosecutor’s “obligation to make a thorough inquiry of all enforcement agencies that had a
13 potential connection with the witnesses” U.S. v. Thornton, 1 F.3d 149 (3d Cir. 1993). If the
14 witness has no criminal history, the prosecutor is not required to produce the NCIC printout, as it
15 need not disclose a lack of criminal history. U.S. v. Blood, 435 F.3d 612, 627 (6th Cir. 2006).
16 Thus, prosecutors must run a thorough background check on every witness they intend to call,
17 and produce all criminal history information to the defense.

18 c. Impeachment Information: Contradicting a Government Witness

19 Impeachment evidence encompasses prior inconsistent statements and other evidence that
20 contradicts government witnesses. Accordingly, prosecutors must disclose prior inconsistent
21 statements by prosecution witnesses. Lay v. State, 116 Nev. 1185, 1199 (2000). Prosecutors
22 must also disclose other evidence contradicting the testimony of government witnesses. Rudin v.
23 State, 120 Nev. 121, 139 (2004).

24 d. Disclosure of Confidential Records for Impeachment

25 Impeachment evidence can derive from privileged or confidential material. When this
26 occurs, the privileged or confidential nature of the material at issue must yield to a defendant’s
27 constitutionally secured right to confront and cross-examine those who testify against him.

1 Davis, 415 U.S. at 356 (finding the State's interest in maintaining confidentiality of juvenile
2 records must yield to defendant's right to cross-examine as to bias); see also U.S. v. Nixon, 418
3 U.S. 683, 713 (1974) (generalized assertion of privilege must yield to demonstrated, specific
4 need for evidence in a pending criminal case). Thus, prosecutors must obtain and disclose
5 privileged and confidential records when the records contain information bearing on witness
6 credibility.

7 This includes mental health records. U.S. v. Lindstrom, 698 F.2d 1154, 1166-67 (11th
8 Cir. 1983); U.S. v. Robinson, 583 F.3d 1265, 1271-74 (10th Cir. 2009); Wyman v. State, 125
9 Nev. 592, 607-08 (2009). It also includes Child Protective Services (or the functional
10 equivalent) and school records. See Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987) (defendant
11 entitled to *in camera* review of Child and Youth Services records); and State v. Cardall, 982 P.3d
12 79, 86 (Utah 1999) (defendant entitled to complainant's school psychological records indicating
13 she had propensity to lie and had fabricated prior rape allegations). It further includes adult and
14 juvenile parole, probation, jail, and prison records. U.S. v. Strifler, 851 F.2d 1197, 1201 (9th
15 Cir. 1988); Carriger v. Stewart, 132 F.3d 463, 479-82 (9th Cir. 1997) (requiring production of
16 Department of Corrections file on principle government witness); Davis, 415 U.S. at 356; see
17 also Bennett, 119 Nev. at 603 (2003) (failure to disclose co-conspirator's juvenile records in
18 penalty hearing amounted to Brady violation). Thus, prosecutors cannot refuse disclosure of
19 impeachment information on the basis that the information is privileged or confidential.

20 e. Prior Allegations of Sexual Misconduct and Prior Knowledge

21 Under Nevada law, prior false allegations of sexual misconduct amount to an exception
22 to rape shield laws. Miller v. State 105 Nev. 497 (1989). Accordingly, Nevada law authorizes
23 disclosure of prior false allegations, including those made by juvenile complainants. NRS
24 432B.290(3) specifically authorizes child welfare agencies to disclose "the identity of a person
25 who makes a report or otherwise initiates an investigation . . . if a court, after reviewing the
26 record *in camera* and determining that there is reason to believe that the person knowingly made
27 a false report, orders the disclosure." Similarly, the Ninth Circuit recognizes it is error to
28

1 exclude evidence of minor's prior false sexual assault allegations as this evidence "might
2 reasonably have influenced the jury's assessment of [the complainant's] reliability or credibility .
3 . . ." Fowler v. Sacramento Co. Sheriff's Dept., 421 F.3d 1027, 1032-33; 1040 (9th Cir. 2005).

4 Impeachment evidence in sexual misconduct cases further includes evidence of a
5 complainant's prior sexual conduct to show sexual knowledge. Summitt v. State, 101 Nev. 159
6 (1985); see also Holley v. Yarborough, 568 F.3d 1091, 1099-1100 (9th Cir. 2009) (finding it was
7 error to exclude evidence that complainant made comments to friends regarding a prior sexual
8 encounter and claimed other boys expressed a desire to engage in sexual acts with her, as this
9 evidence revealed complainant's active sexual imagination, and may have altered jury's
10 perception of the complainant's credibility and reliability of her claims). Thus, prosecutors must
11 disclose evidence of a complainant's prior accusations of sexual misconduct as well as evidence
12 of a complainant's prior sexual conduct in cases where such evidence bears on the charged
13 crimes.

14 f. Police Personnel Files May Contain Impeachment Information

15 Under U.S. v. Henthorn, 931 F.2d 29, 31 (9th Cir. 1991), prosecutors must examine law
16 enforcement personnel files upon defense request. See also U.S. v. Cadet, 727 F.2d 1453 (9th
17 Cir. 1984). A defendant is not required to make an initial showing of materiality before
18 prosecutors must examine the files—the examination obligation arises solely from the
19 defendant's request. Henthorn, 931 F.2d at 31. "Absent such an examination, [the State] cannot
20 ordinarily determine whether it is obligated to turn over the files." Id. Once examined,
21 prosecutors must "disclose information favorable to the defense that meets the appropriate
22 standard of materiality If the prosecution is uncertain about the materiality of the
23 information within its possession, it may submit the information to the trial court for an in
24 camera inspection and evaluation" Henthorn, 931 F.2d at 30-31 (quoting Cadet, 727 F.2d at
25 1467-68). Thus, if requested to do so by the defense, the prosecution must canvass relevant law
26 enforcement personnel files for information material to the case.

27 3. Disclosure of Witnesses with Exculpatory Information

Prosecutors must disclose the identity of witnesses possessing exculpatory information, as no legitimate interest is served by precluding the defense from calling such witnesses for trial. U.S. v. Eley, 335 F.Supp. 353 (N.D. Ga. 1972); U.S. v. Houston, 339 F.Supp. 762 (N.D. GA 1972).

4. Disclosure of Evidence of Third-Party Guilt

The U.S. Constitution guarantees a criminal defendant the right to present evidence of third-party guilt. See Holmes v. South Carolina, 547 U.S. 319 (2006) (holding that refusal to allow defendant to present evidence of third party guilt deprives him of a meaningful right to present a complete defense under the Sixth and Fourteenth Amendments to the U.S. Constitution). Under Brady, prosecutors must disclose all evidence suggesting another perpetrator committed the charged crimes. Lay, 116 Nev. at 1195-96. This includes evidence that another individual was arrested in connection with the charged crime. Banks v. Reynolds, 54 F.3d 1508, 1518 n.21 (10th Cir. 1995). It also includes evidence of investigative leads pointing to other suspects. Jimenez, 112 Nev. at 622-23 (withholding evidence of investigative leads to other suspects, regardless of admissibility, constitutes Brady violation).

Additionally, prosecutors must provide the actual documents, evidence, and reports pertaining to evidence of third-party guilt; it is not enough for prosecutors to provide the defense with a summary of the information relating to other suspects. Mazzan, 116 Nev. at 69 (summary of prosecutor's perspective on written reports relating to potential suspects were constitutionally inadequate; actual reports should have been disclosed pursuant to Brady); Bloodworth v. State, 512 A.2d 1056, 1059-60 (Md. 1986). Thus, prosecutors must disclose any information or evidence indicating someone other than the instant Defendant committed the charged crimes.

5. Disclosure of All Evidence That May Mitigate a Defendant's Sentence

Favorable evidence also includes evidence which could serve to mitigate a defendant's sentence upon conviction. Jimenez, 112 Nev. 610. Accordingly, prosecutors must disclose any evidence tending to mitigate punishment in the instant matter.

C. DISCLOSURE OF NOTES PURSUANT NRS 174.235 & BRADY

1 Raw notes made by any law enforcement officer or other prosecution agent in connection
2 with the investigation of instant matter must be disclosed to the defense. See, e.g., State v.
3 Banks, 2014 WL 7004489 (Nev. S.Ct. Dec. 10, 2014) (unpublished) (court did not take issue
4 with lower court's order requiring preservation and disclosure of police officer's rough notes);
5 see also U.S. v. Clark, 385 F.3d 609, 619 (6th Cir. 2004) (finding rough notes discoverable under
6 F.R.C.P. 16); U.S. v. Molina-Guevara, 96 F.3d 698, 705 (3d Cir. 1996) (remanding on other
7 grounds but noting that, on remand, production of rough notes required under F.R.C.P. 16); U.S.
8 v. Harris, 543 F.2d 1247 (9th Cir. 1976) (noting as important, and requiring preservation of, law
9 enforcement rough notes). Notably, this does not include information amounting to work
10 product.

11 In Hickman v. Taylor, 329 U.S. 495, 508-11 (1947), the U.S. Supreme Court recognized
12 the privileged nature of discussions relating to the preparation of a case for trial. The work
13 product doctrine announced in Hickman shelters not only material generated by an attorney in
14 preparation for trial, but by his agent, as well:

15 At its core, the work product doctrine shelters the mental processes of the attorney,
16 providing a privileged area within which he can analyze and prepare his client's case. But the
17 doctrine is an intensely practical one, grounded in the realities of litigation in our adversary
18 system. One of those realities is that attorneys often must rely on the assistance of investigators
19 and other agents in preparation for trial. It is therefore necessary that the doctrine protect
20 material prepared by agents for the attorney as well as those prepared by the attorney himself.
21 Moreover, the concerns reflected in the work-product doctrine do not disappear once trial has
22 begun

23 U.S. v. Nobles, 422 U.S. 225, 238-39 (1975). Codifying this, NRS 174.235(2) exempts
24 from discovery:

- 25 a) An internal report, document or memorandum that is prepared by or on
26 behalf of the prosecuting attorney in connection with the investigation or
27 prosecution of the case.
28 b) A statement, report, book, paper, document, tangible object or any other
type of item or information that is privileged or protected from disclosure or

1 inspection pursuant to the constitution or laws of this state or the Constitution of
2 the United States.

3 Accordingly, only raw notes generated by, or on behalf of, the prosecutor are exempted
4 from disclosure under the work product doctrine. Any other raw notes compiled during the
5 investigation of this matter must be turned over pursuant to the disclosure obligations imposed
6 by NRS 174.235 and Brady.

7 **D. DISCLOSURE: ACTUAL/CONSTRUCTIVELY POSSESSED MATERIAL**

8 Prosecutors must turn over all material related to the case in the possession, control and
9 custody of any government agent or agency. See U.S. v. Blanco, 392 F.3d 382, 388 (9th Cir.
10 2004). Prosecutors are responsible for disclosing evidence in their possession as well as
11 evidence held or maintained by other government agents, as “it is appropriate to charge the State
12 with constructive knowledge” of evidence held by any investigating agency. Bennett, 119 Nev.
13 at 603.

14 This constructive possession rule applies to evidence that is *withheld* by other agencies.
15 Bennett, 119 Nev. at 603. Even if investigating officers withhold reports without the
16 prosecutor’s knowledge, “the state attorney is *charged with constructive knowledge and*
17 *possession of evidence withheld by other state agents*, such as law enforcement officers.” Id.
18 (internal quotations and citation omitted) (emphasis added). “Exculpatory evidence cannot be
19 kept out of the hands of the defense just because the prosecutor does not have it, where an
20 investigative agency does.” U.S. v. Zuno-Arce, 44 F.3d 1420, 1427 (9th Cir. 1995). “It is a
21 violation of due process for the prosecutor to withhold exculpatory evidence, and his motive for
22 doing so is immaterial.” Jimenez, 112 Nev. at 618.

23 In fact, a prosecutor has an *affirmative obligation* to obtain Brady material and provide it
24 to the defense, *even if the prosecutor is initially unaware of its existence*. “The prosecution’s
25 affirmative duty to disclose evidence favorable to a defendant can trace its origins to early 20th
26 century strictures against misrepresentation and is of course most prominently associated with
27 this Court’s decision in Brady” Kyles, 514 U.S. at 432. This obligation exists even where
28 the defense does not make a request for such evidence. Id. As the U.S. Supreme Court

1 explained:

2 This in turn means that the individual prosecutor *has a duty to learn* of any
3 favorable evidence known to the others acting on the government's behalf in the
4 case, including the police. But whether the prosecutor succeeds or fails in
5 meeting this obligation (whether, that is, a failure to disclose is in good faith or
6 bad faith), the prosecution's responsibility for failing to disclose known, favorable
7 evidence rising to a material level of importance is inescapable. . . . Since then,
8 the prosecutor has the means to discharge the government's Brady responsibility
9 if he will, any argument for excusing a prosecutor from disclosing what he does
10 not happen to know about boils down to a plea to substitute the police for the
11 prosecutor, and even for the courts themselves, as the final arbiters of the
12 government's obligation to ensure fair trials.

13 Kyles, 514 U.S. at 437-38 (emphasis added) (citations and footnotes omitted); see also Carriger,
14 132 F.3d at 479-82 (holding that "the prosecution has a duty to learn of any exculpatory evidence
15 known to others acting on the government's behalf. *Because the prosecution is in a unique*
16 *position to obtain information known to other agents of the government, it may not be excused*
17 *from disclosing what it does not know but could have learned.*" (citations omitted) (emphasis
18 added). Thus, the disclosure obligations outlined above extend not only to material directly in
19 the possession of prosecutors, but material prosecutors constructively possess, as well.

20 **E. "OPEN FILE" POLICY DOES NOT OBVIATE STATE'S OBLIGATION**

21 The Clark County District Attorney's Office (CCDA) has employed a policy in which
22 prosecutors allow defense counsel to review the discovery contained in the government's trial
23 file. While the CCDA currently may not be adhering to this practice, it is worth noting that an
24 open file policy does not vitiate above-referenced disclosure obligations. Strickler, 527 U.S. at
25 283 (holding that a prosecutor's open file policy does not in any way substitute for or diminish
26 the State's obligation to turn over Brady material). "If a prosecutor asserts that he complies with
27 Brady through an open file policy, defense counsel may reasonably rely on that file to contain all
28 materials the State is constitutionally obligated to disclose under Brady." Strickler, 527 U.S. at
29 283, n.23.; see also Amando v. Gonzalez, 758 F.3d 1119, 1136 (9th Cir. 2014); McKee v. State,
30 112 Nev. 642, 644 (1996) (reversing a judgment of conviction based on prosecutorial
31 misconduct where the prosecutor did not make available all relevant inculpatory and exculpatory
32 evidence consistent with the county district attorney's open file policy); see also Furbay v. State,

1 116 Nev. 481 (2000) (discussing prosecution's duty to provide all evidence in its possession
2 where it has promised to do so). Accordingly, if the defense relies on the government's
3 assurance of an open file policy, the defense is not required to hunt down information otherwise
4 obtained and maintained pursuant to that policy.

5 **F. ADJUDICATION OF THE INSTANT MOTION NECESSARY**

6 NRS 174.235 requires disclosure of (1) written and recorded statements of a defendant or
7 any witness the prosecutor intends to call in his case-in-chief; (2) results and reports of any
8 examinations or tests conducted in connection with the case at bar; and (3) any document or
9 tangible object the prosecutor intends to introduce in his case in chief—upon the request of the
10 defense. Additionally, constitutional jurisprudence requires disclosure of any evidence tending
11 to exculpate the accused. The instant Motion is brought, *inter alia*, to ensure the availability of
12 appropriate sanctions should later discovery issues arise. This requires a Court Order compelling
13 the production of the information and material sought herein. Donovan v. State, 94 Nev. 671
14 (Nev. 1978).

15 **1. Nevada's Judicial Oversight of the State's Discovery Obligations**

16 Eighth Judicial District Court Rule (EDCR) 3.24 governs discovery motions in local
17 criminal practice. It states:

18 (a) Any defendant seeking a court order for discovery pursuant to the provisions
19 of NRS 174.235 or NRS 174.245 may make an oral motion for discovery at the
20 time of initial arraignment. The relief granted for all oral motions for discovery
21 will be as follows:

22 (1) That the State of Nevada furnish copies of all written or recorded
23 statements or confessions made by the defendant which are within the possession,
24 custody or control of the State, the existence of which is known or by the exercise
25 of due diligence may become known to the district attorney.

26 (2) That the State of Nevada furnish copies of all results or reports of
27 physical or mental examinations, and of scientific tests or experiments made in
28 connection with this case which are within the possession, custody or control of
the State, the existence of which is known or by the exercise of due diligence may
become known to the district attorney.

(3) That the State of Nevada permit the defense to inspect and copy or
photograph books, papers, documents, tangible objects, buildings, places, or
copies or portions thereof, which are within the possession, custody or control of

1 the State, provided that the said items are material to the preparation of the
2 defendant's case at trial and constitute a reasonable request.

3
4 (b) Pursuant to NRS 174.255, the court may condition a discovery order upon a
5 requirement that the defendant permit the State to inspect and copy or photograph
6 scientific or medical reports, books, papers, documents, tangible objects, or copies
7 or portions thereof, which the defendant intends to produce at the trial and which
8 are within the defendant's possession, custody or control provided the said items
9 are material to the preparation of the State's case at trial and constitute a
10 reasonable request.

11 Thus, EDCR 3.24 specifically provides for the discovery motion brought in the instant matter.

12 The Nevada Supreme Court has held that a discovery motion and corresponding order is
13 a prerequisite to obtaining relief under NRS 174.295 for later discovery violations:

14 Although NRS 174.295 provides relief for a prosecutor's failure to notify defense
15 counsel of all discoverable material, that statute is only operative in situations
16 where a previous defense motion has been made and a court order issued. That
17 provision is not applicable to any informal arrangements that are made, as here
18 between counsel without benefit of court sanction.

19 Donovan, 94 Nev. 671 (internal citations omitted).

20 This comports with other portions of NRS 174, which, by implication, suggests criminal
21 discovery is a matter that must be pursued by way of motion rather than a simple written or oral
22 request. For example, NRS 174.285 states that "a request made pursuant to NRS 174.235 or
23 174.245 may be made only within 30 days after arraignment or at such reasonable time *as the*
24 *court may permit*. A party shall comply with a request made pursuant to NRS 174.235 or
25 174.245 not less than 30 days before trial or at such reasonable later time *as the court may*
26 *permit*." (Emphasis added). The judicial permission required for late discovery requests and late
27 compliance contemplates judicial oversight of discovery matters.

28 Similarly, NRS 174.125 contemplates discovery requests via written motion. NRS
174.125 requires that, any motion "which by [its] nature, if granted, delay[s] or postpone[s] the
time of trial must be made before trial, unless an opportunity to make such a motion before trial
did not exist or the moving party was not aware of the grounds for the motion before trial." A
discovery request, depending on the timing and nature of the request, may necessarily cause a
trial delay. Accordingly, under NRS 174.125, discovery requests should be made via motion

1 prior to trial. Id.

2 Thus, the statutorily-based discovery requests set forth herein are properly brought before
3 this Honorable Court and must be adjudicated. Refusal to adjudicate the instant Motion obviates
4 the Defendant's statutorily created liberty interest in (1) ensuring access to the discoverable
5 material covered by NRS 174 and (2) ensuring application of the enforcement and sanction
6 provisions outlined in NRS 174. Such an arbitrary deprivation of a state-created liberty interest
7 violates the Due Process Clause. See Hicks v. Oklahoma, 447 U.S. 343, 346 (1980) (arbitrary
8 deprivation of state-created liberty interest amounts to Due Process violation).

9 **2. Brady Material and Relevant Authority**

10 Brady and related authority also contemplate pre-trial regulation and adjudication of
11 prosecutorial disclosures. Brady is not a discovery rule but a rule of fairness and minimum
12 prosecutorial obligation. Curry v. U.S., 658 A.2d 193, 197 (D.C. 1995) (internal quotations and
13 citations omitted). It does not require the production of specific documents. It requires the
14 production of information. This prosecutorial obligation is non-delegable—it is not contingent
15 on, nor is the defense required to make, specific Brady requests. See Strickler, 527 U.S. at 281-
16 82 (setting forth the elements of a Brady claim and clarifying that there is no requirement that
17 defense make request).

18 However, to prevail on a Brady claim, should one arise, a defendant must establish that
19 (1) the prosecution was in actual or constructive possession of favorable information; (2) the
20 prosecution failed to disclose this information to the defense in a timely fashion or at all; and (3)
21 the withheld information was material to the outcome of the trial. Strickler, 527 U.S. at 281-82.
22 The standard for determining materiality depends upon whether defense counsel requested the
23 information at issue and, if a request was made, whether the request was specific or general in
24 nature. "If a defendant makes no request or only a general request for information, the evidence
25 is material when a reasonable *probability* exists that the result would have been different had it
26 been disclosed." Bennett, 119 Nev. at 600 (emphasis added). Yet, "if the defense request is
27 specific, the evidence is material upon the lesser showing that a reasonable *possibility* exists of a
28

1 different result had there been disclosure.” Id. (emphasis added) Accordingly, the fact and
2 nature of a Brady request is critical to later adjudication of alleged Brady violations.

3 Defense counsel enjoys to the right to pursue Brady requests—and thereby construct the
4 record on them—in the manner counsel sees fit. The best way to ensure that the record
5 adequately reflects the nature and scope of a Brady request is via pre-trial discovery motion—a
6 motion, as set forth above, specifically provided for by Nevada law. See Myles v. State, 127
7 Nev. 1161 (2011) (unpublished) (no discovery violation where undisclosed photo not requested
8 as part of discovery motion).

9 A cursory review of federal discovery jurisprudence reveals the broad authority with
10 which trial courts are vested to regulate pretrial Brady disclosures and thereby ensure that this
11 constitutional rule—which exists to prevent a miscarriage of justice—works as it should.
12 Bagley, 473 U.S. at 675; U.S. v. Odom, 930 A.2d 157, 158 (D.C. 2007); see also U.S. v. W.R.
13 Grace, 526 F.3d 499, 509 (9th Cir. 2008) (affirming trial court’s order requiring government to
14 disclose its finalized witness list a year prior to trial as an exercise of the court’s inherent
15 authority to manage its docket”); U.S. v. Coppa, 267 F.3d 132, 146 (2d Cir. 2001)
16 (acknowledging trial court’s discretion to order pretrial disclosures as a matter of sound case
17 management); U.S. v. Rigas, 779 F. Supp. 408, 414 (M.D. Pa. 2011 (recognizing authority of
18 trial court to order pretrial disclosure of Brady material to ensure effective administration of
19 criminal justice system); U.S. v. Cerna, 633 F. Supp. 2d 1053, 1057 (N.D. Cal. 2009) (exercising
20 power to issue Brady order); U.S. v. Thomas, 2006 WL 3095956 (D.N.J. 2006) (issuing pretrial
21 order regulating, *inter alia*, Brady disclosures).

22 Indeed, trial courts must, as a constitutional matter, exercise this oversight power. Boyd
23 v. U.S., 908 A.2d 39, 61 (D.C. 2006) (“courts have the obligation to assure that [prosecutorial
24 discretion] is exercised in a manner consistent with the right of the accused to a fair trial”); see
25 also Smith v. U.S., 665 A.2d 962 (D.C. 2008) (abuse of discretion for court to refuse to review a
26 transcript *in camera* where prosecution concede there were “minor inconsistencies in the
27 testimony as to how the shooting happened”). As such, judicial oversight of Brady disclosures is
28

1 commonplace in federal criminal prosecutions. See, e.g., U.S. v. Johnson, 2010 WL 322143
2 (W.D. Pa. 2010) (trial court ordering government to disclose all Brady material, including
3 impeachment material no later than ten days prior to trial); U.S. v. Lekhtman 2009 WL 5095379
4 at 1 (E.D.N.Y. 2009) (ordering disclosure of Brady material as it is discovered and Giglio
5 material two weeks before commencement of trial); U.S. v. Rodriguez, 2009 WL 2569116 at 12
6 S.D.N.Y. 2009) (ordering government to turn over Brady material as it is discovered and Giglio
7 material twenty-one days before trial); U.S. v. Libby, 432 F. Supp. 2d 81, 86-87 (D.D.C. 2006)
8 (ordering immediate production of all Brady material); U.S. v. Thomas, 2006 CR 553, 2006 WL
9 3095956 (D.N.J. 2006) (unpublished) (ordering disclosure of “[a]ny material evidence favorable
10 to the defense related to issues of guilt, lack of guilt, or punishment . . . within the purview of
11 Brady and its progeny” within ten days of order). Thus, the constitutionally-based Brady
12 requests set forth herein are properly brought before this Honorable Court and must be
13 adjudicated to preserve the Defendant’s rights.

14 **G. ADJUDICATION OF MOTION REGARDLESS OF ACTUAL DISPUTE**

15 A dispute over the discoverability of certain material is not a prerequisite to compelling
16 production of discovery and exculpatory information. This is because such disputes rarely
17 occur. With the exception of records that are otherwise privileged (such as CPS or medical
18 records), prosecutors typically do not inform defense counsel of material they intend to withhold
19 from the defense. They simply keep the information hidden. The withheld information is later
20 discovered by the defense either through subsequent defense investigation, fortuitous
21 circumstances, or during the post-conviction discovery process.

22 Recognizing this, the U.S. Supreme Court has not required defense counsel to divine (and bring
23 to the Court’s attention) particular information within the government’s file that is being shielded
24 from defense view:

25 We rejected a similar argument in Strickler. There, the State contended that
26 examination of a witness’s trial testimony, alongside a letter the witness published
27 in a local newspaper, should have alerted the petitioner to the existence of
28 undisclosed interviews of the witness by the police. We found this contention
insubstantial. In light of the State’s open file policy, we noted, ‘it is especially
unlikely that counsel would have suspected that additional impeaching evidence

1 was being withheld. Our decisions lend no support to the notion that defendants
2 must scavenge for hints of undisclosed Brady material when the prosecution
3 represents that all such material has been disclosed. As we observed in Strickler,
defense counsel has no 'procedural obligation to assert constitutional error on the
basis of mere suspicion that some prosecutorial misstep may have occurred.

4 Banks, 540 U.S. at 695-96 (internal citations omitted). Thus, a dispute need not exist over the
5 discoverability of a particular piece of information in order for this Court to entertain motions
6 such as that brought here and enforce the government's discovery obligations. Accordingly, the
7 Defendant respectfully requests that this Honorable Court adjudicate his Motion to Compel
8 Production of Discovery.

9 **H. STATE'S OPPOSITION OR CONCESSION REQUIRED**

10 Prosecutors often respond to discovery requests some combination of the following: (1)
11 the government is aware of its discovery obligation and will act accordingly; (2) the government
12 has complied with the requests or will facilitate review of discovery as needed; or (3) the request
13 is objectionable as overbroad, immaterial, or not authorized by law. Only the last of these is
14 responsive to a particular request; the first two are not. Each request needs to be opposed or
15 conceded. Saying "we have complied" or "we are aware of our discovery obligations" or "we
16 will facilitate a review of detective notebooks" is nothing more than attempt to subvert a ruling
17 enforcing the discovery provisions mandated by state and federal law. It is a way to goad the
18 court into believing the issue is moot. Discovery is a continuing obligation. A criminal
19 defendant is entitled to an order enforcing the discovery provisions outlined by state and federal
20 law, regardless of whether the prosecutor has already provided certain requested material, is
21 aware of pertinent discovery rules, and is willing to facilitate further discovery review. The
22 prosecutor needs to oppose or concede each request. The Court needs to rule on each request,
23 accordingly.

24 **I. TIMELY DISCLOSURE REQUIRED**

25 NRS 174.285(1) requires that any discovery request pursuant to NRS 174.235 be made
26 "within 30 days after arraignment or at such reasonable later time as the court may permit."
27 NRS 174.285(2) mandates that "A party shall comply with a request made pursuant to NRS
28

1 174.235 . . . not less than 30 days before trial or at such reasonable later time as the court may
2 permit.”

3 Accordingly, the Defendant requests that this Honorable Court enter an order directing
4 prosecutors to provide the discovery sought herein within a reasonable time in advance of trial so
5 as to enable counsel to effectively prepare. Further, the Defense requests that this Honorable
6 Court order that prosecutors be precluded from admitting at trial any discovery or evidence not
7 timely produced. See NRS 174.295 (“If at any time during the course of the proceedings it is
8 brought to the attention of the court that a party has failed to comply with the provisions of NRS
9 174.235 to 174.295, inclusive, the court may order the party to permit the discovery or inspection
10 of materials not previously disclosed, grant a continuance, or *prohibit the party from introducing*
11 *in evidence the material not disclosed*, or it may enter such other order as it deems just under the
12 circumstances.”) (emphasis added).

13 **V. CONCLUSION**

14 Based on the foregoing, the Defendant respectfully requests that this Honorable
15 Court grant the instant motion and order the timely disclosure of the material sought herein
16 pursuant to NRS 174.235; Brady v. Maryland, 373 U.S. 83 (1963); U.S.C.A. V, VI, XIV; and
17 Nev. Const. Art. 1 § 8.

18 DATED this 20th day of December, 2019.

19 **JAMES J. RUGGEROLI**

20 By: /s/ James J. Ruggeroli
21 James J. Ruggeroli, Esq.
22 Nevada Bar No. 7891
23 400 South 4th Street, Suite 280
24 Las Vegas, Nevada 89101
25 Attorney for Defendant
26
27
28

DECLARATION OF JAMES J. RUGGEROLI, ESQ.

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

1. I am counsel of record for the Defendant and 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. 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 20th day of December, 2019.


JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on the 20th day of December, 2019 I emailed a copy of this motion to:
motions@clarkcountyda.com; SBindrup@ClarkCountyNV.gov; michael@sanftlaw.com

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



JAMES J. RUGGEROLI
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Telephone: (702) 258-2022
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Plaintiff,

Case No. C-17-328587-3

vs.

Dept No. XII

DAVONTAE AMARRI WHEELER,
#5909081.

Defendant.

MOTION IN LIMINE TO PRECLUDE JAIL PHONE CALLS

COMES NOW Defendant, DAVONTAE AMARRI WHEELER, through JAMES J. RUGGEROLI, ESQ., submits the following Motion for an order precluding the use of any recordings of Mr. Wheeler's phone conversations recorded on jail telephones or furnished to the State.

This Motion is based on the following Points and Authorities, the pleadings and papers on file herein, the exhibits and affidavits and any oral argument by counsel permitted at the hearing on this matter.

DATED this 20th day of December, 2019.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

Page 1 of 5

985

12-20-19

JAMES J. RUGGEROLI, ESQ.
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
TEL: (702) 258-2022 | FAX: (702) 258-2021

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Motion will be heard in Department XII before the District Court Judge of the above entitled court on the _____ day of _____, 2019 at the hour of _____ a.m. or as soon thereafter as counsel can be heard.

DATED this 20th day of December, 2019.

JAMES J. RUGGEROLI

By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

The State has charged Mr. Wheeler and Co-Defendants Demario Lofton-Robinson and Raekwon Setrey Robertson 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.

In summary as to Counts 5-7, the State alleges that Mr. Wheeler had been present at a Shortline Express mini-mart located at 7325 South Jones Boulevard, Las Vegas, NV on **August 9, 2017**. Later, Robert Mason, a jogger, observed a suspicious White Grand Marquis and four dark skinned individuals near the Gabriel Valenzuela's home at 5536 West Dewey Dr., near midnight. Tragically, Gabriel Valenzuela was shot and killed shortly thereafter outside of his home on the night of August 9, 2017. The State alleges that Mr. Wheeler participated in a conspiracy to commit robbery, an attempt robbery and the murder with use of a deadly weapon of Mr. Valenzuela.

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II. LAW AND ARGUMENT

Only relevant evidence is admissible at trial. NRS 48.025(1). Evidence that is not relevant is not admissible. NRS 48.025(2). “Relevant evidence” is evidence that has “any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable.” NRS 48.015. Even if relevant, evidence “may be excluded if its probative value is substantially outweighed by considerations of undue delay, waste of time or needless presentation of cumulative evidence.” NRS 48.035(2). However, the evidence must be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.” NRS 48.035(1). When the proffered testimony or evidence is not relevant or has little probative value, its prejudicial effect outweighs its relevance, and the substance of the proffered testimony or evidence is collateral to the issues his trial and only serve to confuse and mislead the jury. See e.g. Uniroyal Goodrich Tire Co. v. Mercer, 111 Nev. 318, 890 P.2d 785 (1995); Larsen v. State, 102 Nev. 448, 725 P.2d 1214 (1986).

Here, Mr. Wheeler seeks to preclude the State’s use of his telephone conversations at trial. Mr. Wheeler’s private conversations at the Clark County Detention Center are not relevant to the pending charges, contain inadmissible hearsay, and are unduly prejudicial. Many of the conversations relate to personal or family information and his daily activities and have no bearing on any fact of consequence to the instant case.

Without knowing which, if any, of Mr. Wheeler’s calls the State intends to use at trial, Defense counsel cannot conduct a meaningful analysis as to whether such calls should be admissible at trial. Similarly, if the State intends to introduce portions of different calls, Mr. Wheeler is allowed to have the jury be presented with a complete picture of the conversations, which could include demanding that the jury hear the entire phone call or a series of other calls or statements which bear upon the portion being offered by the State. NRS 47.120; see also Beech Aircraft Corp. v. Rainey, 488 U.S. 153 (1998). However, that determination cannot be made unless and until the State identifies which calls it intends to present at trial.

1 Accordingly, Mr. Wheeler seeks to exclude all recordings of his telephone conversations
2 that were recorded on jail telephones and furnished to the State. Alternatively, the State should
3 be required to identify which calls it intends to present at trial.

4 **III. CONCLUSION**

5 Based on the foregoing facts, Mr. Wheeler respectfully requests that this Honorable Court
6 grant the instant motion, and issue an order excluding recordings of Mr. Wheeler's telephone
7 conversations. Alternatively, the State should be required to identify which calls it intends to
8 present at trial so that Defense counsel can conduct a meaningful analysis as to their
9 admissibility.

10 DATED this 20th day of December, 2019.

11 **JAMES J. RUGGEROLI**

12 By: /s/ James J. Ruggeroli
13 James J. Ruggeroli, Esq.
14 Nevada Bar No. 7891
15 400 South 4th Street, Suite 280
16 Las Vegas, Nevada 89101
17 Attorney for Defendant

18 **DECLARATION OF JAMES J. RUGGEROLI, ESQ.**

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

20 1. I am counsel of record for the Defendant and am an attorney at law duly licensed
21 to practice before this Court and make this Declaration of facts from personal knowledge which
22 is known to me, except for those matters stated upon information and belief, and as to those
23 matters, I believe same to be true.

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

26 DATED this 20th day of December, 2019.

27 **JAMES J. RUGGEROLI**

28 By: /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280

JAMES J. RUGGEROLI, ESQ.

400 South 4th Street, Suite 280

Las Vegas, Nevada 89101

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

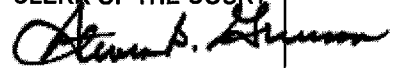
CERTIFICATE OF SERVICE

I certify that on the 20th day of December, 2019 I emailed a copy of this motion to:
motions@clarkcountyda.com.

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
12/20/2019 4:24 PM
Steven D. Grierson
CLERK OF THE COURT



State of Nevada
vs
Davontae Wheeler

Case No.: C-17-328587-3

Department 12

NOTICE OF HEARING

Please be advised that the Defendant's Motion to Suppress or, in the Alternative, Motion for Jackson v. Denno Hearing, Motion to Disclose Informants, Motion to Compel Production of Inducement Index, Motion to Sever Counts, Motion to Compel Production of Discovery & Brady Material, Motion in Limine to Preclude Jail Phone Calls in the above-entitled matter is set for hearing as follows:

Date: December 31, 2019

Time: 8:30 AM

Location: RJC Courtroom 14D
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

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

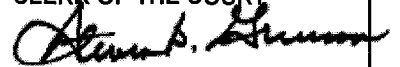
STEVEN D. GRIERSON, CEO/Clerk of the Court

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

CERTIFICATE OF SERVICE

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

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



1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #1565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #7135
8 RACHEL O'HALLORAN
9 Nevada Bar #12840
10 200 Lewis Avenue
11 Las Vegas, Nevada 89155-2212
12 (702) 671-2500
13 Attorney for Plaintiff

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,
12 Plaintiff,

13 -vs-

CASE NO: C-17-328587-3

DEPT NO: XII

14 DEMARIO LOFTON-ROBINSON, aka,
15 Demario Loftonrobinson, #5318925
16 RAEKWON SETREY ROBERTSON,
17 aka, Raekwon Robertson, #8252804
18 **DAVONTAE AMARRI WHEELER,**
19 **#5909081**

Defendant(s).

18 **STATE'S RESPONSE TO DEFENDANT'S MOTION TO SEVER COUNTS 1-4**
19 **FROM THE TRIAL**

20 DATE OF HEARING: 12/31/2019
21 TIME OF HEARING: 8:30 A.M.

22 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
23 District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and hereby
24 submits the attached Response to Defendant's Motion To Sever Counts.

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

28 ///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On December 14, 2017, Defendant, Davontae Wheeler (“Defendant”) was charged by
4 way of Indictment as follows: COUNT 5 – CONSPIRACY TO COMMIT ROBBERY
5 (Category B Felony – NRS 200.380, 199.480); COUNT 6 – ATTEMPT ROBBERY WITH
6 USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.330, 193.165); and
7 COUNT 7 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS
8 200.010, 200.030, 193.165).

9 On December 19, 2017, Defendant pled not guilty and waived his right to a speedy
10 trial. On February 8, 2018, Defendant filed a pre-trial Petition for Writ of Habeas Corpus. On
11 March 2, 2018 the State filed its Return; and on March 8, 2018, Defendant filed a Reply. On
12 March 13, 2018, Defendant filed a Motion for Own Recognizance Release with House Arrest,
13 or, Setting of Reasonable Bail. The Defendant’s Writ and Motion for Own Recognizance
14 Release were denied. On December 20, 2019, the Defendant filed a Motion to Disclose
15 Informants, a Motion To Compel Production of Inducement Index, a Motion Limine to
16 Preclude Jail Phone Calls, a Motion To Compel Production of Discovery and Brady Material,
17 a Motion to Suppress, or, in the Alternative Motion to for Jackson v. Denno Hearing, and the
18 instant Motion to Sever Counts.

19 **STATEMENT OF FACTS**

20 In the early morning hours of August 9, 2017, Gabriel Valenzuela (“Mr. Valenzuela”)
21 was shot in the driveway of his own home, located at 5536 Dewey Drive, in Las Vegas,
22 Nevada. Immediately prior to the shooting, Robert Mason was jogging in the neighborhood
23 of Mr. Valenzuela’s home and he noticed four suspicious individuals standing in front of Mr.
24 Valenzuela’s home. Mr. Mason described these individuals as black males wearing dark
25 colored clothing. After observing the four suspicious individuals standing in Mr. Valenzuela’s
26 driveway, Mr. Mason saw an unoccupied white Mercury Grand Marquis with NV license plate
27 of 473YZB. Mr. Mason informed his wife of this information and at 12:11 a.m. she called
28 police to report the suspicious individuals.

1 One minute later, at 12:12 a.m., Mr. Valenzuela's cousin, John Relato called 911 to
2 report that Mr. Valenzuela had been shot. Mr. Valenzuela was pronounced dead at 12:55 a.m.
3 Three .45 caliber cartridge cases and one .22 caliber cartridge case were found at the scene of
4 the murder. The .45 caliber cartridge cases bore three separate head-stamps: R-P 45 AUTO,
5 NFCR, and WINCHESTER 45 AUTO. The .22 caliber cartridge case bore a head stamp of
6 "C."

7 During the investigation, detectives learned that on August 8, 2017, immediately
8 preceding the murder, the same Mercury Grand Marquis seen by Mr. Mason at the scene of
9 the murder was captured on surveillance footage at a convenience store located at 7325 S.
10 Jones Boulevard. This convenience store is located less than one mile from the Mr.
11 Valenzuela's residence. The vehicle was seen on surveillance footage arriving to the store at
12 approximately 11:25 p.m. and leaving the store at approximately 11:45 p.m., roughly 25
13 minutes before the murder. Surveillance footage also shows four black males arriving in the
14 vehicle. One of the black males was carrying a handgun in a holster on his right hip. This
15 individual was later identified as Defendant. In the surveillance footage, he was wearing a red
16 hoodie type shirt, a white baseball hat with an unknown symbol, torn black jeans, and red
17 high-top shoes.

18 As part of their initial investigation, Detectives were able to determine the identities of
19 two suspects based on an investigation stemming from the license plate of the Mercury Grand
20 Marquis. Those two suspects are Co-Defendant Demario Lofton-Robinson and his younger
21 brother. Both of these suspects admitted their involvement in the murder and admitted that
22 two other individuals were involved. However, both suspects had limited information
23 regarding the identities of the two additional suspects.

24 During his confession, Co-Defendant Lofton-Robinson indicated that the original plan
25 was to rob Mr. Valenzuela but when he fought back, Mr. Valenzuela was shot multiple times.
26 Co-Defendant Lofton-Robinson indicated that he was in possession of a .45 caliber firearm
27 and fired one shot at Mr. Valenzuela. He also told detectives that the other two suspects would
28 be listed in his phone under the names of "Rae" and "Sace."

1 In searching Co-Defendant Lofton-Robinson's phone, Detectives were able to locate a
2 recent text message between Lofton-Robinson and "Sace." "Sace's" phone number was
3 associated with a Facebook account of "Young Sace Versace" who officers were able to
4 identify as Defendant, Devonte Wheeler. "Rae" was later identified as Co-Defendant
5 Raekwon Robertson.

6 The Criminal Apprehension Team of the Las Vegas Metropolitan Police Department
7 ("LVMPD") later apprehended Defendant at his address of 3300 Civic Center Drive,
8 apartment F. During a search of the residence, officers located a .45 caliber firearm. The
9 magazine of the firearm contained 6 rounds of live ammunition bearing the head stamp of R-
10 P 45 AUTO (the same head stamp as one of the .45 cartridges found at the scene of the murder).
11 Detectives also recovered a pair of red tennis shoes and a black and white baseball cap which
12 appeared to be the items worn by Defendant in the surveillance footage from the convenience
13 store. Defendant's sister and his fiancé both identified Defendant as the person in the
14 surveillance footage carrying the firearm.

15 Officers with LVMPD executed several additional search warrants at various locations.
16 During those search warrants, a .22 caliber semi-automatic firearm was located at 6647 West
17 Tropicana, an address associated with Co-Defendant Raekwon Robertson. While searching
18 6647 West Tropicana, officers also located ammunition bearing the headstamp "C." This
19 ammunition matches the .22 caliber cartridge case found at the murder scene. Ballistic testing
20 revealed that the .22 caliber cartridge case found at the scene of the murder was fired from this
21 firearm.

22 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
23 Co-Defendant Lofton-Robinson. During the search of that residence, officers located a .45
24 caliber firearm and ammunition bearing a headstamp of R-P 45, which matched one of .45
25 caliber cartridge cases found at the scene of the murder. Ballistic testing revealed that three
26 .45 caliber cartridge cases found at the scene of the murder were fired from this firearm.

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RESPONSE

Without accepting the Defendant's arguments, the State has no objection to severing Counts 1 through 4 from the remaining counts in the Indictment and proceeding first on Counts 5 through 7.

DATED this 26th day of December, 2019.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565

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

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 26th day of December, 2019, by electronic transmission to:

JAMES RUGGEROLI, ESQ.
Email: ruggeroli@icloud.com
(Def. WHEELER)

BY: /s/ Stephanie Johnson
Secretary for the District Attorney's Office

17F14369ABC/saj/MVU