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1 **OPPS**
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

DISTRICT COURT
CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,
12 Plaintiff,

13 -vs-

14 DEMARIO LOFTON-ROBINSON, aka,
15 Demario Loftonrobinson, #5318925
16 RAEKWON SETREY ROBERTSON,
17 aka, Raekwon Robertson, #8252804
18 **DAVONTAE AMARRI WHEELER,**
19 **#5909081**
20 Defendant(s).

CASE NO: C-17-328587-3

DEPT NO: XII

21 **STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE**
22 **JAIL PHONE CALLS**

23 DATE OF HEARING: 12/31/2019
24 TIME OF HEARING: 8:30 A.M.

25 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
26 District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and hereby
27 submits the attached Points and Authorities in opposition to Defendant's Motion in Limine to
28 Preclude Jail Phone Calls.

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

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On December 14, 2017, Defendant, Davontae Wheeler (“Defendant”) was charged by
4 way of Indictment as follows: COUNT 5 – CONSPIRACY TO COMMIT ROBBERY
5 (Category B Felony – NRS 200.380, 199.480); COUNT 6 – ATTEMPT ROBBERY WITH
6 USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.330, 193.165); and
7 COUNT 7 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS
8 200.010, 200.030, 193.165).

9 On December 19, 2017, Defendant pled not guilty and waived his right to a speedy
10 trial. On February 8, 2018, Defendant filed a pre-trial Petition for Writ of Habeas Corpus. On
11 March 2, 2018 the State filed its Return; and on March 8, 2018, Defendant filed a Reply. On
12 March 13, 2018, Defendant filed 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 a
18 Motion to Sever Counts.

19 The State hereby opposes Defendant’s Motion in Limine to Preclude Jail Phone Calls.

20 **STATEMENT OF FACTS**

21 In the early morning hours of August 9, 2017, Gabriel Valenzuela (“Mr. Valenzuela”)
22 was shot in the driveway of his own home, located at 5536 Dewey Drive, in Las Vegas,
23 Nevada. Immediately prior to the shooting, Robert Mason was jogging in the neighborhood
24 of Mr. Valenzuela’s home and he noticed four suspicious individuals standing in front of Mr.
25 Valenzuela’s home. Mr. Mason described these individuals as black males wearing dark
26 colored clothing. After observing the four suspicious individuals standing in Mr. Valenzuela’s
27 driveway, Mr. Mason saw an unoccupied white Mercury Grand Marquis with NV license plate
28

1 of 473YZB. Mr. Mason informed his wife of this information and at 12:11 a.m. she called
2 police to report the suspicious individuals.

3 One minute later, at 12:12 a.m., Mr. Valenzuela's cousin, John Relato called 911 to
4 report that Mr. Valenzuela had been shot. Mr. Valenzuela was pronounced dead at 12:55 a.m.
5 Three .45 caliber cartridge cases and one .22 caliber cartridge case were found at the scene of
6 the murder. The .45 caliber cartridge cases bore three separate head-stamps: R-P 45 AUTO,
7 NFCR, and WINCHESTER 45 AUTO. The .22 caliber cartridge case bore a head stamp of
8 "C."

9 During the investigation, detectives learned that on August 8, 2017, immediately
10 preceding the murder, the same Mercury Grand Marquis seen by Mr. Mason at the scene of
11 the murder was captured on surveillance footage at a convenience store located at 7325 S.
12 Jones Boulevard. This convenience store is located less than one mile from the Mr.
13 Valenzuela's residence. The vehicle was seen on surveillance footage arriving to the store at
14 approximately 11:25 p.m. and leaving the store at approximately 11:45 p.m., roughly 25
15 minutes before the murder. Surveillance footage also shows four black males arriving in the
16 vehicle. One of the black males was carrying a handgun in a holster on his right hip. This
17 individual was later identified as Defendant. In the surveillance footage, he was wearing a red
18 hoodie type shirt, a white baseball hat with an unknown symbol, torn black jeans, and red
19 high-top shoes.

20 As part of their initial investigation, Detectives were able to determine the identities of
21 two suspects based on an investigation stemming from the license plate of the Mercury Grand
22 Marquis. Those two suspects are Co-Defendant Demario Lofton-Robinson and his younger
23 brother. Both of these suspects admitted their involvement in the murder and admitted that
24 two other individuals were involved. However, both suspects had limited information
25 regarding the identities of the two additional suspects.

26 During his confession, Co-Defendant Lofton-Robinson indicated that the original plan
27 was to rob Mr. Valenzuela but when he fought back, Mr. Valenzuela was shot multiple times.
28 Co-Defendant Lofton-Robinson indicated that he was in possession of a .45 caliber firearm

1 and fired one shot at Mr. Valenzuela. He also told detectives that the other two suspects would
2 be listed in his phone under the names of "Rae" and "Sace."

3 In searching Co-Defendant Lofton-Robinson's phone, Detectives were able to locate a
4 recent text message between Lofton-Robinson and "Sace." "Sace's" phone number was
5 associated with a Facebook account of "Young Sace Versace" who officers were able to
6 identify as Defendant, Devonte Wheeler. "Rae" was later identified as Co-Defendant
7 Raekwon Robertson.

8 The Criminal Apprehension Team of the Las Vegas Metropolitan Police Department
9 ("LVMPD") later apprehended Defendant at his address of 3300 Civic Center Drive,
10 apartment F. During a search of the residence, officers located a .45 caliber firearm. The
11 magazine of the firearm contained 6 rounds of live ammunition bearing the head stamp of R-
12 P 45 AUTO (the same head stamp as one of the .45 cartridges found at the scene of the murder).
13 Detectives also recovered a pair of red tennis shoes and a black and white baseball cap which
14 appeared to be the items worn by Defendant in the surveillance footage from the convenience
15 store. Defendant's sister and his fiancé both identified Defendant as the person in the
16 surveillance footage carrying the firearm.

17 Officers with LVMPD executed several additional search warrants at various locations.
18 During those search warrants, a .22 caliber semi-automatic firearm was located at 6647 West
19 Tropicana, an address associated with Co-Defendant Raekwon Robertson. While searching
20 6647 West Tropicana, officers also located ammunition bearing the headstamp "C." This
21 ammunition matches the .22 caliber cartridge case found at the murder scene. Ballistic testing
22 revealed that the .22 caliber cartridge case found at the scene of the murder was fired from this
23 firearm.

24 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
25 Co-Defendant Lofton-Robinson. During the search of that residence, officers located a .45
26 caliber firearm and ammunition bearing a headstamp of R-P 45, which matched one of .45
27 caliber cartridge cases found at the scene of the murder. Ballistic testing revealed that three
28 .45 caliber cartridge cases found at the scene of the murder were fired from this firearm.

1 ARGUMENT

2 In his motion the Defendant requests that this Court, “grant the instant motion, and
3 issue an order excluding recordings of Mr. Wheeler’s telephone conversations. Alternatively,
4 the State should be required to identify which calls it intends to present at trial so that Defense
5 counsel can conduct a meaningful analysis as to their admissibility.” (Defendant’s Motion,
6 Page 4, Lines 5-9). The request is based on the allegation that the Defendant’s, “private
7 conversations at the Clark County Detention Center are not relevant to the pending charges,
8 contain inadmissible hearsay, and are unduly prejudicial.” (Defendant’s Motion, Page 3, Lines
9 16-17). The Defendant provided nothing specific to support these allegations so there is no
10 way for the Court to analyze what is relevant or not and what is prejudicial. Moreover, clearly
11 the Defendant’s assertion of “inadmissible hearsay” is completely without merit as under NRS
12 51.035 (3)(a), the Defendant’s statements on the jail calls are admissible as, “the party’s own
13 statement” and as such, do not constitute hearsay.

14 Moreover, the State is under no obligation to identify what, if any, calls it intends to
15 offer as evidence. The State is, however, obligated to provide the calls in its possession, which
16 it has done. Any of those calls may be presented during trial. However, the State is under no
17 obligation to highlight in advance of trial for the defense the calls it deems relevant. Moreover,
18 what may seem irrelevant now could become relevant during trial as issues arise. Thus, a
19 narrowed down list may prove inaccurate as it could change as the case unfolds.
20 Consequently, any of the calls provided may potentially be used during trial. The defense
21 should prepare accordingly. If the defense feels that a particular call is irrelevant, or otherwise
22 objectionable, they can make the objection. Otherwise, at the present time, Defendant’s
23 request to exclude the evidence is premature.

24 Furthermore, if the defense feels that another portion of a call is relevant and
25 appropriate under the completeness doctrine, such an argument can be raised and addressed
26 by the Court when there is an actual call to analyze. But prior to trial, such a blanket assertion
27 without any specificity prevents this Court from ruling in any meaningful way. The
28 admissibility of any item of evidence can be affected by the dynamics of trial and other

1 evidence. It is impossible for the Court to make any ruling at this point. As such, the Court
2 should deny the Defendant's motion.

3 **CONCLUSION**

4 Based on the foregoing, the Defendant's Motion to Preclude Jail Phone Calls should be
5 DENIED.

6 DATED this 26th day of December, 2019.

7 Respectfully submitted,

8 STEVEN B. WOLFSON
9 Clark County District Attorney
Nevada Bar #1565

10 BY /s/ Giancarlo Pesci
11 GIANCARLO PESCI
12 Chief Deputy District Attorney
13 Nevada Bar #007135

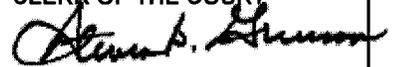
14
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16 **CERTIFICATE OF ELECTRONIC TRANSMISSION**

17 I hereby certify that service of the above and foregoing was made this 26th day of
18 December, 2019, by electronic transmission to:

19
20 JAMES RUGGEROLI, ESQ.
21 Email: ruggeroli@icloud.com
(Def. WHEELER)

22
23 BY: /s/ Stephanie Johnson
24 Secretary for the District Attorney's Office

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28 17F14369ABC/saj/MVU



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OPPS
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GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #7135
RACHEL O'HALLORAN
Nevada Bar #12840
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DEMARIO LOFTON-ROBINSON, aka,
Demario Loftonrobinson, #5318925
RAEKWON SETREY ROBERTSON,
aka, Raekwon Robertson, #8252804
DAVONTAE AMARRI WHEELER,
#5909081

Defendant(s).

CASE NO: C-17-328587-3

DEPT NO: XII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL
PRODUCTION OF INDUCEMENT INDEX**

DATE OF HEARING: 12/31/2019
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in opposition to Defendant's Motion to Compel Production of Inducement Index.

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

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On December 14, 2017, Defendant, Davontae Wheeler (“Defendant”) was charged by
4 way of Indictment as follows: COUNT 5 – CONSPIRACY TO COMMIT ROBBERY
5 (Category B Felony – NRS 200.380, 199.480); COUNT 6 – ATTEMPT ROBBERY WITH
6 USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.330, 193.165); and
7 COUNT 7 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS
8 200.010, 200.030, 193.165).

9 On December 19, 2017, Defendant pled not guilty and waived his right to a speedy
10 trial. On February 8, 2018, Defendant filed a pre-trial Petition for Writ of Habeas Corpus. On
11 March 2, 2018 the State filed its Return; and on March 8, 2018, Defendant filed a Reply. On
12 March 13, 2018, Defendant filed 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 a
18 Motion to Sever Counts.

19 The State hereby opposes Defendant’s Motion to Compel Production of Inducement
20 Index.

21 **STATEMENT OF FACTS**

22 In the early morning hours of August 9, 2017, Gabriel Valenzuela (“Mr. Valenzuela”)
23 was shot in the driveway of his own home, located at 5536 Dewey Drive, in Las Vegas,
24 Nevada. Immediately prior to the shooting, Robert Mason was jogging in the neighborhood
25 of Mr. Valenzuela’s home and he noticed four suspicious individuals standing in front of Mr.
26 Valenzuela’s home. Mr. Mason described these individuals as black males wearing dark
27 colored clothing. After observing the four suspicious individuals standing in Mr. Valenzuela’s
28 driveway, Mr. Mason saw an unoccupied white Mercury Grand Marquis with NV license plate

1 of 473YZB. Mr. Mason informed his wife of this information and at 12:11 a.m. she called
2 police to report the suspicious individuals.

3 One minute later, at 12:12 a.m., Mr. Valenzuela's cousin, John Relato called 911 to
4 report that Mr. Valenzuela had been shot. Mr. Valenzuela was pronounced dead at 12:55 a.m.
5 Three .45 caliber cartridge cases and one .22 caliber cartridge case were found at the scene of
6 the murder. The .45 caliber cartridge cases bore three separate head-stamps: R-P 45 AUTO,
7 NFCR, and WINCHESTER 45 AUTO. The .22 caliber cartridge case bore a head stamp of
8 "C."

9 During the investigation, detectives learned that on August 8, 2017, immediately
10 preceding the murder, the same Mercury Grand Marquis seen by Mr. Mason at the scene of
11 the murder was captured on surveillance footage at a convenience store located at 7325 S.
12 Jones Boulevard. This convenience store is located less than one mile from the Mr.
13 Valenzuela's residence. The vehicle was seen on surveillance footage arriving to the store at
14 approximately 11:25 p.m. and leaving the store at approximately 11:45 p.m., roughly 25
15 minutes before the murder. Surveillance footage also shows four black males arriving in the
16 vehicle. One of the black males was carrying a handgun in a holster on his right hip. This
17 individual was later identified as Defendant. In the surveillance footage, he was wearing a red
18 hoodie type shirt, a white baseball hat with an unknown symbol, torn black jeans, and red
19 high-top shoes.

20 As part of their initial investigation, Detectives were able to determine the identities of
21 two suspects based on an investigation stemming from the license plate of the Mercury Grand
22 Marquis. Those two suspects are Co-Defendant Demario Lofton-Robinson and his younger
23 brother. Both of these suspects admitted their involvement in the murder and admitted that
24 two other individuals were involved. However, both suspects had limited information
25 regarding the identities of the two additional suspects.

26 During his confession, Co-Defendant Lofton-Robinson indicated that the original plan
27 was to rob Mr. Valenzuela but when he fought back, Mr. Valenzuela was shot multiple times.
28 Co-Defendant Lofton-Robinson indicated that he was in possession of a .45 caliber firearm

1 and fired one shot at Mr. Valenzuela. He also told detectives that the other two suspects would
2 be listed in his phone under the names of "Rae" and "Sace."

3 In searching Co-Defendant Lofton-Robinson's phone, Detectives were able to locate a
4 recent text message between Lofton-Robinson and "Sace." "Sace's" phone number was
5 associated with a Facebook account of "Young Sace Versace" who officers were able to
6 identify as Defendant, Devonte Wheeler. "Rae" was later identified as Co-Defendant
7 Raekwon Robertson.

8 The Criminal Apprehension Team of the Las Vegas Metropolitan Police Department
9 ("LVMPD") later apprehended Defendant at his address of 3300 Civic Center Drive,
10 apartment F. During a search of the residence, officers located a .45 caliber firearm. The
11 magazine of the firearm contained 6 rounds of live ammunition bearing the head stamp of R-
12 P 45 AUTO (the same head stamp as one of the .45 cartridges found at the scene of the murder).
13 Detectives also recovered a pair of red tennis shoes and a black and white baseball cap which
14 appeared to be the items worn by Defendant in the surveillance footage from the convenience
15 store. Defendant's sister and his fiancé both identified Defendant as the person in the
16 surveillance footage carrying the firearm.

17 Officers with LVMPD executed several additional search warrants at various locations.
18 During those search warrants, a .22 caliber semi-automatic firearm was located at 6647 West
19 Tropicana, an address associated with Co-Defendant Raekwon Robertson. While searching
20 6647 West Tropicana, officers also located ammunition bearing the headstamp "C." This
21 ammunition matches the .22 caliber cartridge case found at the murder scene. Ballistic testing
22 revealed that the .22 caliber cartridge case found at the scene of the murder was fired from this
23 firearm.

24 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
25 Co-Defendant Lofton-Robinson. During the search of that residence, officers located a .45
26 caliber firearm and ammunition bearing a headstamp of R-P 45, which matched one of .45
27 caliber cartridge cases found at the scene of the murder. Ballistic testing revealed that three
28 .45 caliber cartridge cases found at the scene of the murder were fired from this firearm.

1 ARGUMENT

2 If the State intends to call an individual at trial who was offered an inducement,
3 pursuant to Giglio, the State must disclose the inducement.

4 Courts recognize that “[p]romises made by the state to a witness in exchange for his
5 testimony relate directly to the credibility of the witness.” Alderman v. Zant, 22 F.3d 1541,
6 1554 (11th Cir.), cert. denied 115 S. Ct. 673 (1994). Therefore, “pursuant to Giglio, the
7 Government must disclose impeachment evidence, including all promises, inducements, or
8 threats made to a witness in order to gain the cooperation of that witness in the investigation
9 or prosecution of the defendant.” United States v. Mathur, 2012 U.S. Dist. LEXIS 7085 (Nev.
10 2012). The rule requires that the jury know of any “promise which induces a key government
11 witness to testify on the government’s behalf.” United States v. Cawley, 481 F.2d 702 (5th
12 Cir. 1973). However:

13
14 The [Giglio] rule does not address nor require the disclosure of all factors which
15 may motivate a witness to cooperate. The simple belief by a defense attorney
16 that his client may be in a better position to negotiate a reduced penalty should
17 he testify against a codefendant is not an agreement within the purview of Giglio.
Alderman, 22 F.3d at 1555.

18 The United States Supreme Court has recognized three “promises” to witnesses that
19 constitute an inducement. Napue v. Illinois, 360 U.S. 264, 266 (1959) (promise of a reduced
20 sentence); Giglio v. United State, 405 U.S. 150, 151 (1972) (promise of nonprosecution);
21 United States v. Bagley, 473 U.S. 667, 671 (1985) (promise to pay informant money
22 commensurate with services rendered).

23 The State understands its obligation under Giglio and its progeny and the Defendant’s
24 right to impeach witnesses. The right to impeach witnesses is based on the Confrontation
25 Clause of the constitution. The United States Supreme Court has held that the Confrontation
26 Clause is not “a constitutionally compelled right of pretrial discovery.” Pennsylvania v.
27 Ritchie, 480 U.S. 39, 52, 107 S. Ct. 989, 999 (1987). Instead, the right to confrontation is a
28 trial right, “designed to prevent improper restrictions on the types of questions that defense

1 counsel may ask during cross-examination.” It “does not include the power to require the
2 pretrial disclosure of any and all information that might be useful in contradicting unfavorable
3 testimony.” It guarantees the opportunity for effective cross-examination, “not cross-
4 examination that is effective in whatever way, and to whatever extent the defense might wish.”
5 Id. at 53, 107 S. Ct. 999, citing Delaware v. Fensterer, 474 U.S. 15, 20, 106 S. Ct. 292, 294
6 (1985).

7 The State understands its obligation and will comply with its obligation under Brady,
8 Giglio and its progeny.

9 **CONCLUSION**

10 Therefore, the State asks this Court to deny the Defendant’s Motion to Compel
11 Production of the Inducement Index.

12 DATED this 26th day of December, 2019.

13 Respectfully submitted,

14 STEVEN B. WOLFSON
15 Clark County District Attorney
16 Nevada Bar #1565

17 BY /s/ Giancarlo Pesci
18 GIANCARLO PESCI
19 Chief Deputy District Attorney
20 Nevada Bar #007135

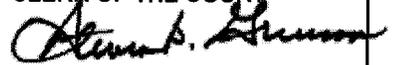
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25 Email: ruggeroli@icloud.com
26 (Def. WHEELER)

27 BY: /s/ Stephanie Johnson
28 Secretary for the District Attorney's Office

17F14369ABC/saj/MVU



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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DEMARIO LOFTON-ROBINSON, aka,
Demario Loftonrobinson, #5318925
RAEKWON SETREY ROBERTSON,
aka, Raekwon Robertson, #8252804
DAVONTAE AMARRI WHEELER,
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Defendant(s).

CASE NO: C-17-328587-3

DEPT NO: XII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISCLOSE
INFORMANTS**

DATE OF HEARING: 12/31/2019
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in opposition to Defendant's Motion to Disclose Informants.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

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4 way of Indictment as follows: COUNT 5 – CONSPIRACY TO COMMIT ROBBERY
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8 200.010, 200.030, 193.165).

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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
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22 was shot in the driveway of his own home, located at 5536 Dewey Drive, in Las Vegas,
23 Nevada. Immediately prior to the shooting, Robert Mason was jogging in the neighborhood
24 of Mr. Valenzuela’s home and he noticed four suspicious individuals standing in front of Mr.
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26 colored clothing. After observing the four suspicious individuals standing in Mr. Valenzuela’s
27 driveway, Mr. Mason saw an unoccupied white Mercury Grand Marquis with NV license plate
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1 of 473YZB. Mr. Mason informed his wife of this information and at 12:11 a.m. she called
2 police to report the suspicious individuals.

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16 vehicle. One of the black males was carrying a handgun in a holster on his right hip. This
17 individual was later identified as Defendant. In the surveillance footage, he was wearing a red
18 hoodie type shirt, a white baseball hat with an unknown symbol, torn black jeans, and red
19 high-top shoes.

20 As part of their initial investigation, Detectives were able to determine the identities of
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4 recent text message between Lofton-Robinson and "Sace." "Sace's" phone number was
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15 store. Defendant's sister and his fiancé both identified Defendant as the person in the
16 surveillance footage carrying the firearm.

17 Officers with LVMPD executed several additional search warrants at various locations.
18 During those search warrants, a .22 caliber semi-automatic firearm was located at 6647 West
19 Tropicana, an address associated with Co-Defendant Raekwon Robertson. While searching
20 6647 West Tropicana, officers also located ammunition bearing the headstamp "C." This
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22 revealed that the .22 caliber cartridge case found at the scene of the murder was fired from this
23 firearm.

24 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
25 Co-Defendant Lofton-Robinson. During the search of that residence, officers located a .45
26 caliber firearm and ammunition bearing a headstamp of R-P 45, which matched one of .45
27 caliber cartridge cases found at the scene of the murder. Ballistic testing revealed that three
28 .45 caliber cartridge cases found at the scene of the murder were fired from this firearm.

1 ARGUMENT

2 **I. DEFENDANT HAS NOT SHOWN GOOD CAUSE FOR RELEASE ON HIS**
3 **OWN RECOGNIZANCE.**

4 This Court must determine whether the Defendant has provided sufficient reason to
5 force the State to disclose the identity of a confidential informant. Initially, this Court must
6 acknowledge that the Nevada Legislature has sought to protect the identity of informants. See
7 NRS 49.335 and 49.345. This privilege is of course limited. See NRS 49.365. The issue
8 therefore is whether this Court determines that absent a concerned citizen's identity, the
9 Defendant would be denied a fair trial.

10 The Nevada Supreme Court has recognized that a defendant is entitled to discovery of
11 an informer's identity when the informer both set up the meeting between the officer and
12 defendant and witnessed the actual transaction. See Sheriff v. Vasile, 96 Nev. 5, 604 P.2d 809
13 (1980). In Vasile the police officer testified that he was introduced to Vasile through the
14 confidential informant and the informant was present for the actual drug transaction. Vasile
15 requested the name of the informant from the officer. The State objected under the applicable
16 statutes and the objection was upheld by the Justice Court. Ultimately, Vasile sought relief in
17 District Court where the case was dismissed. Thereafter the State appealed. The Supreme
18 Court affirmed, holding:

19
20 In Routhier v. Sheriff, supra, the informant set up and witnessed the transaction
21 which led to the criminal charges. That was precisely the situation involved in
22 the present case. The informant here was seated in the undercover police car
23 with Officer Douglas and Vasile. He was apparently the only independent
24 witness who could hear and see the transaction in question. He was a material
25 witness whose identity should have been disclosed. The magistrate's refusal to
26 require disclosure or dismiss the charges was error. Id. at 8, 604 P.2d at 810-11.

27 The Vasile court, however, acknowledged that a request for the identity of an informer
28 need not result in the automatic disclosure of the informer's identity.

In fact, the identity of an informant need not be disclosed where he is not a material
witness, because he can neither supply information constituting a defense nor rebut a necessary

1 element of an offense. Id. at 8 (citing Twigg v. Sheriff, 95 Nev. 112, 590 P.2d 630 (1979) and
2 State v. Stiglitz, 94 Nev. 158, 576 P.2d 746 (1979)). Hence, this Court must determine whether
3 any confidential informant involved in the present case could provide information that requires
4 disclosure.

5 The State has already provided to the defense the guilty plea agreement of the co-
6 defendant. Thus, the Defendant has already been given the information he is requesting,
7 without acknowledging his receipt of this information in his motion. The State is otherwise
8 not aware of any potential witnesses who have not been identified to the defense both by name
9 and other identifying characteristics. Moreover, the State is unaware of any confidential
10 informant who could provide information material to Wheeler's defense.

11 **CONCLUSION**

12 As information has already been provided to the Defendant and he has not met his
13 burden under the statute and case law, the Defendant's Motion to Disclose Informants should
14 be DENIED.

15 DATED this 26th day of December, 2019.

16 Respectfully submitted,
17 STEVEN B. WOLFSON
18 Clark County District Attorney
19 Nevada Bar #1565

20 BY /s/ Giancarlo Pesci
21 GIANCARLO PESCI
22 Chief Deputy District Attorney
23 Nevada Bar #007135

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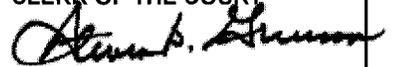
CERTIFICATE OF ELECTRONIC TRANSMISSION

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



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #1565
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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-

14 DEMARIO LOFTON-ROBINSON, aka,
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17 aka, Raekwon Robertson, #8252804
18 **DAVONTAE AMARRI WHEELER,**
19 **#5909081**

20 Defendant(s).

CASE NO: C-17-328587-3

DEPT NO: XII

21 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL**
22 **PRODUCTION OF DISCOVERY & BRADY MATERIAL**

23 DATE OF HEARING: 12/31/2019
24 TIME OF HEARING: 8:30 A.M.

25 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
26 District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and hereby
27 submits the attached Points and Authorities in opposition to Defendant's Motion to Compel
28 Production of Discovery and Brady Material.

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

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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
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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
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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 a
18 Motion to Sever Counts.

19 The State hereby opposes Defendant’s Motion in Limine to Preclude Jail Phone Calls.

20 **STATEMENT OF FACTS**

21 In the early morning hours of August 9, 2017, Gabriel Valenzuela (“Mr. Valenzuela”)
22 was shot in the driveway of his own home, located at 5536 Dewey Drive, in Las Vegas,
23 Nevada. Immediately prior to the shooting, Robert Mason was jogging in the neighborhood
24 of Mr. Valenzuela’s home and he noticed four suspicious individuals standing in front of Mr.
25 Valenzuela’s home. Mr. Mason described these individuals as black males wearing dark
26 colored clothing. After observing the four suspicious individuals standing in Mr. Valenzuela’s
27 driveway, Mr. Mason saw an unoccupied white Mercury Grand Marquis with NV license plate
28

1 of 473YZB. Mr. Mason informed his wife of this information and at 12:11 a.m. she called
2 police to report the suspicious individuals.

3 One minute later, at 12:12 a.m., Mr. Valenzuela's cousin, John Relato called 911 to
4 report that Mr. Valenzuela had been shot. Mr. Valenzuela was pronounced dead at 12:55 a.m.
5 Three .45 caliber cartridge cases and one .22 caliber cartridge case were found at the scene of
6 the murder. The .45 caliber cartridge cases bore three separate head-stamps: R-P 45 AUTO,
7 NFCR, and WINCHESTER 45 AUTO. The .22 caliber cartridge case bore a head stamp of
8 "C."

9 During the investigation, detectives learned that on August 8, 2017, immediately
10 preceding the murder, the same Mercury Grand Marquis seen by Mr. Mason at the scene of
11 the murder was captured on surveillance footage at a convenience store located at 7325 S.
12 Jones Boulevard. This convenience store is located less than one mile from the Mr.
13 Valenzuela's residence. The vehicle was seen on surveillance footage arriving to the store at
14 approximately 11:25 p.m. and leaving the store at approximately 11:45 p.m., roughly 25
15 minutes before the murder. Surveillance footage also shows four black males arriving in the
16 vehicle. One of the black males was carrying a handgun in a holster on his right hip. This
17 individual was later identified as Defendant. In the surveillance footage, he was wearing a red
18 hoodie type shirt, a white baseball hat with an unknown symbol, torn black jeans, and red
19 high-top shoes.

20 As part of their initial investigation, Detectives were able to determine the identities of
21 two suspects based on an investigation stemming from the license plate of the Mercury Grand
22 Marquis. Those two suspects are Co-Defendant Demario Lofton-Robinson and his younger
23 brother. Both of these suspects admitted their involvement in the murder and admitted that
24 two other individuals were involved. However, both suspects had limited information
25 regarding the identities of the two additional suspects.

26 During his confession, Co-Defendant Lofton-Robinson indicated that the original plan
27 was to rob Mr. Valenzuela but when he fought back, Mr. Valenzuela was shot multiple times.
28 Co-Defendant Lofton-Robinson indicated that he was in possession of a .45 caliber firearm

1 and fired one shot at Mr. Valenzuela. He also told detectives that the other two suspects would
2 be listed in his phone under the names of "Rae" and "Sace."

3 In searching Co-Defendant Lofton-Robinson's phone, Detectives were able to locate a
4 recent text message between Lofton-Robinson and "Sace." "Sace's" phone number was
5 associated with a Facebook account of "Young Sace Versace" who officers were able to
6 identify as Defendant, Devonte Wheeler. "Rae" was later identified as Co-Defendant
7 Raekwon Robertson.

8 The Criminal Apprehension Team of the Las Vegas Metropolitan Police Department
9 ("LVMPD") later apprehended Defendant at his address of 3300 Civic Center Drive,
10 apartment F. During a search of the residence, officers located a .45 caliber firearm. The
11 magazine of the firearm contained 6 rounds of live ammunition bearing the head stamp of R-
12 P 45 AUTO (the same head stamp as one of the .45 cartridges found at the scene of the murder).
13 Detectives also recovered a pair of red tennis shoes and a black and white baseball cap which
14 appeared to be the items worn by Defendant in the surveillance footage from the convenience
15 store. Defendant's sister and his fiancé both identified Defendant as the person in the
16 surveillance footage carrying the firearm.

17 Officers with LVMPD executed several additional search warrants at various locations.
18 During those search warrants, a .22 caliber semi-automatic firearm was located at 6647 West
19 Tropicana, an address associated with Co-Defendant Raekwon Robertson. While searching
20 6647 West Tropicana, officers also located ammunition bearing the headstamp "C." This
21 ammunition matches the .22 caliber cartridge case found at the murder scene. Ballistic testing
22 revealed that the .22 caliber cartridge case found at the scene of the murder was fired from this
23 firearm.

24 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
25 Co-Defendant Lofton-Robinson. During the search of that residence, officers located a .45
26 caliber firearm and ammunition bearing a headstamp of R-P 45, which matched one of .45
27 caliber cartridge cases found at the scene of the murder. Ballistic testing revealed that three
28 .45 caliber cartridge cases found at the scene of the murder were fired from this firearm.

1 ARGUMENT

2 Defendant’s Motion should be summarily denied as Brady¹ does not create a right to
3 pretrial discovery and discovery statutes only permit discovery orders where the State *refuses*
4 to comply with the statutes. Even if the Court considers Defendant’s substantive requests, the
5 vast majority of the requests are vague and overly broad, requesting material beyond the scope
6 of that required to be disclosed by statute or Brady. Additionally, much of what has been
7 requested has already been provided and the Defendant has failed to acknowledge as much.
8 Finally, the State does not have a duty to produce for the defense that which the defense can
9 produce itself through an ordinary exercise of diligence. There has been no showing that the
10 defense has done anything other than make a list of things it wants without doing anything to
11 obtain the requested material.

12 **I. General law related to discovery**

13 **The court can only compel “discovery” under the Nevada Revised Statutes**

14 Under Common Law, a defendant has no right of discovery. State v. Wallace, 399 P.2d
15 909, 97 Ariz. 296 (1965). This, of course, can be superseded by statutory enactment and that
16 is the case in Nevada. Regarding the law of discovery in the State of Nevada, NRS 174.235,
17 *et. seq.* controls. The Nevada Supreme Court has held that even an accused’s statement is not
18 constitutionally compelled through pre-trial discovery. Mears v. State, 83 Nev. 3, 7, 422 P.2d
19 230, 232 (1967), Thompson v. State, 93 Nev. 342, 565 P.2d 1011 (1977).

20 In Franklin v. Eighth Judicial District Court, 85 Nev. 401, 455 P.2d 919 (1969),
21 the Nevada Supreme Court noted that the discovery provisions outlined in NRS 174.235
22 through 174.295 “represent the legislative intent with respect to the scope of allowable pre-
23 trial discovery and are not lightly to be disregarded.”

24 From the aforementioned, it is clear that Nevada’s discovery statutes are to be strictly
25 construed and adhered to since no Common Law right of discovery existed. It should,
26 therefore, also be clear that the defendant’s motion, so far as it exceeds the requirements of
27 NRS 174.235, *et. seq.*, must be denied.

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¹ Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963).

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NRS 174.235 outlines what discovery is to be provided by the State of Nevada.

It includes:

1. Except as otherwise provided in NRS 174.233 to 174.295, inclusive, at the request of a defendant, the prosecuting attorney shall permit the defendant to inspect and to copy or photograph any:
 - (a) Written or recorded statements or confessions made by the defendant or any witness the State intends to call during the case in chief of the State, within the custody of the State or which the State can obtain by an exercise of due diligence.
 - (b) Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection to the case, within the control of the State, or which the State may learn of by an exercise of due diligence.
 - (c) Books, papers, documents, tangible objects which the State intends to introduce during its case in chief, within the possession of the State, or which the State may find by an exercise of due diligence.
2. The defendant is not entitled, pursuant to the provisions of this section, to the discovery or inspection of:
 - (a) An internal report, document or memorandum that is prepared by or on behalf of the prosecuting attorney in connection with the investigation or prosecution of the case.
 - (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 inspection pursuant to the constitution or laws of this state or the Constitution of the United States.
3. The provisions of this section are not intended to affect any obligation placed upon the prosecuting attorney by the constitution of this state or the Constitution of the United States to disclose exculpatory evidence to the defendant.

The statute makes clear the defense is not entitled to any internal report, document or memorandum prepared by the State in connection with the investigation or prosecution of the case. Id. at (2)(a). Nor is the defense entitled to any report or document that is privileged.

II. Brady and its progeny

The State has an obligation to disclose exculpatory evidence pursuant to Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963). Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763 (1972), requires that certain impeaching material be disclosed as well. The rule of Brady v. Maryland, 373 U.S. 83 (1963), which requires the State to disclose to the defendant exculpatory evidence, is founded on the constitutional requirement of a fair trial. Brady is not

1 a rule of discovery, however. As the Supreme Court held in Weatherford v. Bursy, 429 U.S.
2 545, 559, 97 S. Ct. 837, 846 (1977):

3 There is no general constitutional right to discovery in a criminal case, and Brady
4 did not create one... ‘the Due Process Clause has little to say regarding the
5 amount of discovery which the parties must be afforded....’ Wardius v. Oregon,
6 412 U.S. 470, 474, 93 S. Ct. 2208, 2212, 37 L.Ed.2d 82 (1973).

7 In addition, Brady does not require the State to conduct trial preparation and
8 investigation on behalf of the defense. The obligation is to produce exculpatory information
9 which the defense would not be able to obtain itself through an ordinary exercise of diligence.

10 While defense attorneys routinely claim they need to be provided the information in
11 order to conduct the investigation to determine if there is any exculpatory information that is
12 simply not the law. In the Ninth Circuit, the obligation for the prosecution to examine
13 information is triggered by a defense request with no requirement that the defense make a
14 showing that the information is likely to contain helpful information. United States v.
15 Henthorn, 931 F.2d 29, 31 (9th Cir. 1990) (holding that the “government is incorrect in its
16 assertion it is the defendant’s burden to make an initial showing of materiality,” rather the
17 “obligation to examine the files arises by virtue of making a demand for their production”);
18 United States v. Santiago, 46 F.3d 885, 895 (9th Cir. 1995) (“[u]nder Henthorn, the government
19 has a duty, upon defendant’s request for production, to inspect for material information the
20 personnel records of federal law enforcement officers who will testify at trial, regardless of
21 whether the defense has made a showing of materiality”); accord Sonner v. State, 112 Nev.
22 1328, 930 P.2d 707 (1996) (requiring materiality before a review of a police officer’s
23 personnel file).

24 The State makes the determination at its own peril if it will disclose the information,
25 not the defense nor the court.

26 This, of course, does not mean that files are produced for the defense. Henthorn
27 explains that following that examination, “the files need not be furnished to the defendant or
28 the court unless they contain information that is or may be material to the defendant’s case.”

1 Id. Thus, the only time disclosure is required is if the State finds information that qualifies as
2 Brady material. If the prosecutor is unsure, the information should be provided to the court for
3 review. As the court explained:

4
5 We stated that the government must ‘disclose information favorable to the
6 defense that meets the appropriate standard of materiality If the prosecution
7 is uncertain about the materiality of information within its possession, it may
8 submit the information to the trial court for an in camera inspection and
9 evaluation. . . .’ As we noted in Cadet, the government has a duty to examine
10 personnel files upon a defendant’s request for their production.

11 Id. at 30-31 (internal citation omitted). Despite this procedure, Defendant’s routinely
12 request the Court to order production of information to them, or to the Court. It is not the
13 Court’s responsibility under the Constitution. It is the prosecution’s responsibility.

14 Moreover, Brady and its progeny are remedies *post trial* for the prosecution’s failure
15 to perform its responsibility. Brady does not support the defense’s request to conduct an
16 investigation independent of the prosecution, or to ensure the prosecution completes its duty.

17 **III. Timing of disclosures**

18 **A. True Brady material**

19 Traditionally, Brady material is information which indicates that Defendant did not
20 commit the crime, or his sentence should be less based upon culpability. The State’s duty
21 under Brady is ongoing. When reviewing cases on appeal, however, courts decide allegations
22 of tardy Brady disclosures according to the facts surrounding the disclosure and if the alleged
23 Brady information was used in the trial. The Ninth Circuit has recognized that “Brady does
24 not necessarily require that the prosecution turn over exculpatory material before trial. To
25 escape the Brady sanction, disclosure ‘must be made at a time when [the] disclosure would be
26 of value to the accused.’” United States v. Gordon, 844 F.2d 1397, 1403 (9th Cir. 1988). With
27 this precedent, the Ninth Circuit has typically found no prejudice when alleged Brady
28 information was disclosed at some point before trial. Notwithstanding, whenever the State is

1 in possession of true Brady material, it is the practice of the undersigned to immediately turn
2 over such information.

3 **B. Impeachment material**

4 From Brady, a line of cases related to the credibility of testifying witnesses, the Court
5 established rules and requirements for impeachment material, or Giglio material. The right to
6 impeach witnesses is based on the Confrontation Clause of the constitution. The United States
7 Supreme Court has held that the Confrontation Clause is not “a constitutionally compelled
8 right of pretrial discovery.” Pennsylvania v. Ritchie, 480 U.S. 39, 52, 107 S. Ct. 989, 999
9 (1987). Instead, the right to confrontation is a trial right, “designed to prevent improper
10 restrictions on the types of questions that defense counsel may ask during cross-examination.”
11 It “does not include the power to require the pretrial disclosure of any and all information that
12 might be useful in contradicting unfavorable testimony.” It guarantees the opportunity for
13 effective cross-examination, “not cross-examination that is effective in whatever way, and to
14 whatever extent the defense might wish.” Id. at 53, 107 S. Ct. 999 (citing Delaware v.
15 Fensterer, 474 U.S. 15, 20, 106 S. Ct. 292, 294 (1985)).

16 Almost universally, courts have held that there is no Giglio obligation if the witness
17 does not testify.² See United States v. Green, 178 F.3d 1099, 1109 (10th Cir. 1999) (holding
18 that Giglio did not apply when the government “did not ever call” its confidential informant
19 as a witness); United States v. Mullins, 22 F.3d 1365, 1372 (6th Cir. 1994) (finding “no
20 authority that the government must disclose promises of immunity made to individuals the
21 government does not have testify at trial,” and holding that a grant of immunity could not be
22 “‘favorable to the accused’ as impeachment evidence because the government did not call [the
23 witness] and, thus, there was no one to impeach”); see also United States v. Pena, 949 F.2d
24 751, 758-59 (5th Cir. 1991) (impeachment evidence regarding a non-testifying witness is an
25 insufficient basis upon which to grant a new trial); United States v. Storey, 956 F. Supp. 934,
26 942 (D. Kan. 1997) (holding that while impeachment evidence falls within the Brady rule,
27 “[s]uch evidence as it pertains to an informant, however is only discoverable if the informant

28 ² The exception to this rule is where the witness will not testify, but the witness’ hearsay statement will be admitted, then the witness’ credibility may be in issue. See United States v. Jackson, 345 F.3d 59, 70-71 (2nd Cir. 2003).

1 testifies”); Kowalczyk v. United States, 936 F. Supp. 1127, 1149 (E.D.N.Y. 1996) (holding
2 that “[t]he Government was not obligated to produce the Janis arrest record, assuming the
3 prosecution was in possession of such information, as Janis was not a witness at trial”); United
4 States v. Hill, 799 F. Supp. 86, 90 (D. Kan. 1992), (denying defense request for any
5 information which could be used to impeach non-witnesses); United States v. Villareal, 752
6 F. Supp. 851, 853 (N.D. Ill. 1991) (holding that “[a]s for statements by government witnesses
7 that qualify as impeachment materials, the government is under no obligation to disclose this
8 information before trial,” and that “the government is under no obligation at any time to
9 provide impeachment evidence for non-witnesses”); United States v. Coggs, 752 F. Supp. 848,
10 849, (N.D. Ill. 1990) (holding that the government is not required to produce impeachment
11 evidence impacting non-witnesses, reasoning that “[r]equiring that the government provide
12 impeachment evidence for non-witnesses will not further the interest sought to be served by
13 Giglio-allowing for a meaningful determination of witness credibility”). Finally, evidence of
14 impeachment of a witness need not be disclosed until the witness testifies. United States v.
15 Rinn, 586 F.2d 113 (9th Cir. 1978) (“[S]ince information concerning “favors or deals” merely
16 goes to the credibility of the witness, it need not be disclosed prior to the witness testifying.”).
17 Thus, unless the witness is going to testify, there is no basis to disclose any impeachment
18 material.

19 Defendant’s assertion that the State must run background checks is unavailing and
20 without merit

21 Although a witnesses’ criminal record may be material under some circumstances, it is
22 not always relevant. Hill v. Superior Court, 112 Cal Rptr. 257, 518 P.2d 1353 (1974). In Hill
23 the defense sought production of a witness’s felony conviction record. Because the witness
24 was the only eyewitness other than the defendants, and the corroboration of his report was not
25 strong, the court found the requisite materiality and granted the defense motion. However, the
26 court concluded, “[w]e do not hold that good cause exists in every case in which a defendant
27 charged with a felony seeks discovery of any felony convictions any “rap sheet” of prosecution
28 witnesses.” Id. at 1358.

1 In the present case, Defendant has requested that the State provide criminal histories
2 of, "any actual or potential witness" Although Defendant liberally touts Brady v. Maryland,
3 373 U.S. 83 (1963) as the basis for his criminal history request, the defense has failed to
4 establish that the requested criminal history information falls within the scope of Brady, that
5 is, that it might in some way be exculpatory or that it might somehow constitute impeachment
6 evidence. Moreover, Defendant has not shown how such information might be "material." In
7 other words, the defense has failed to show that the lack of any State witnesses' criminal
8 history information will somehow result in an unfair trial or will produce a verdict that is not
9 worthy of confidence. See Kyles v. Whitley, 514 U.S. 419, 434 (1995).

10 The Supreme Court has stated that information is considered material if there is a
11 "reasonable probability that, had the evidence been disclosed to the defense, the result of the
12 proceeding would have been different." U.S. v. Bagley, 473 U.S. 667, 682 (1985). The
13 Supreme Court defined reasonable probability as probability sufficient to "undermine
14 confidence in the outcome" of the trial. Id. In addition, the Court in Bagley, stated that
15 "[i]mpeachment evidence . . . as well as exculpatory evidence, falls within the Brady rule." Id.
16 at 675. The Court defined impeachment evidence as "evidence favorable to an accused . . . so
17 that, if disclosed and used effectively, it may make the difference between conviction and
18 acquittal." Id. (internal quotes omitted).

19 In the present case, Defendant has failed to articulate even an arguable use of the
20 witnesses' criminal history information that would comport with the requirements as outlined
21 by the Supreme Court in Brady, Kyles and Bagley. Defendant is simply looking for any
22 information that he can use to cloud the facts of the case at bar and to cast aspersions on those
23 witnesses. The State adamantly objects to this fishing expedition.

24 **A. The State Is Prohibited From Providing Information Contained In NCIC**
25 **Reports To Anyone Other Than Legitimate Law Enforcement Personnel**

26 The Defendant has requested NCIC "information" of the witnesses. Pursuant to 28
27 C.F.R. §20.33(b) as codified under 28 U.S.C.A. § 534 (2002), criminal history information
28 may only be disseminated to law enforcement agencies, those hired by law enforcement

1 agencies and to those who have entered into signed agreements for the specific and authorized
2 use of criminal background information. Pursuant to 28 C.F.R. §20.25,

3
4 Any agency or individual violating subpart B of these regulations shall be
5 subject to a civil penalty not to exceed \$10,000 for a violation occurring before
6 September 29, 1999, and not to exceed \$11,000 for a violation occurring on after
September 29, 1999.

7 In addition, pursuant to 28 C.F.R. §20.38, Access to systems managed or maintained
8 by the FBI is subject to cancellation in regard to any agency or entity that fails to comply with
9 the provisions of subpart C of this part.

10 If the State is forced to disseminate such information to the defense in this matter, the
11 State and/or the individual who actually provides the NCIC information runs the risk of civil
12 penalties and loss of future access to the NCIC system. In addition, the Multi-System Guide 4
13 (MSG4) published by the Las Vegas Metropolitan Police Department (LVMPD) states that
14 “[d]ata stored in each of our criminal justice systems . . . must be protected to ensure correct,
15 legal and efficient dissemination and use.” P. 21. The MSG4 further states that
16 “[d]issemination of CHI [Criminal History Information] that does not belong to the LVMPD
17 or is obtained through NCIC, NCJIS or NLETS is prohibited.” Id.

18 As a user of the National Crime Information Center (NCIC) database, the State is
19 prohibited from disseminating criminal history information to non-criminal justice agencies
20 as defined by Title 28 Code of Federal Regulations (CFR)§ 20.33, which describes a criminal
21 justice agency as: (1) Courts; and (2) a government agency or any subunit thereof which
22 performs the administration of criminal justice pursuant to a statute or executive order, and
23 which allocates a substantial part of its annual budget to the administration of criminal justice.
24 Unless specifically authorized by federal law, access to the NCIC/III for non-criminal justice
25 purposes is prohibited.

26 A 1989 United States Supreme Court case looked at this issue from the standpoint of
27 an invasion of privacy and ruled accordingly:

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1 Accordingly, we hold as a categorical matter that a third party's request for law
2 enforcement records or information about a private citizen can reasonably be
3 expected to invade that citizen's privacy, and that when the request seeks no
4 "official information" about a Government agency, but merely records that the
5 Government happens to be storing, the invasion of privacy is "unwarranted."

6 United States Department of Justice v. the Reporters Committee for Freedom of the
7 Press, 109 S.Ct. 1468, 1485 (1989).

8 Criminal defense attorneys, public or private, are not within the definition of "criminal
9 justice agency," nor is the criminal defense function considered a "criminal justice purpose."
10 Therefore, Defendant is not entitled to the criminal history information he seeks.

11 **B. NCIC Policy of the District Attorney's Office as of June 11, 2008**

12 If the District Attorney runs an NCIC inquiry on a witness and that NCIC inquiry is in
13 our file, the FBI has NO policy prohibiting us from disclosing that NCIC inquiry. If, on the
14 other hand, we have not run the NCIC report already, it is a violation of FBI regulations to run
15 it on request of defense counsel, or court order.

16 In short, if the State already has it, the State will decide--pursuant to our obligations
17 under Brady and Giglio--whether or not to divulge any information contained in the NCIC
18 report. If the State doesn't have the NCIC report in our file, the defense has to follow FBI-
19 outlined procedures to get it.

20 The defense must obtain an order from the judge directed to the FBI requested
21 describing specifically what they need. The FBI then reviews the judge's order and almost
22 always complies with it, but the FBI sends the NCIC report to the judge, who then reviews the
23 information and decides on its admissibility before turning anything over to the defense.

24 **Defendant's Specific Discovery Requests**

25 **1. The juvenile and/or mental health records from the State's witness "D.R."**

26 The Defendant fails to acknowledge in his motion that the State has already provided
27 the Defense with juvenile records regarding D.R., in addition to his Guilty Plea Agreement.
28 Moreover, while it is the State's obligation is to produce material exculpatory information
which the defense would not be able to obtain itself through an ordinary exercise of diligence.,

1 Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998); Rippo v. State, 113 Nev. 1239,
2 1257-58, 946 P.2d 1017, 1028-29 (1997); Browning v. State, 120 Nev. 347, 355-56, 370, 91
3 P.3d 39, 46, 55 (2004), the Defendant needs to do his own due diligence. The Defendant has
4 not explained to this Court what he has done in his own due diligence to procure the requested
5 items. As such, the Defendant's request should be denied

6 **2. Production and notification of all phone and/or Facebook records the State**
7 **intends to use at trial, including designation and disclosure of any jail calls**
8 **intended to be used at trial.**

9 The State has provided the Defendant with the Facebook and jail calls from this case.
10 The State is under no obligation, via discovery statutes or case law, to "designate" what the
11 State intends to use at trial. In fact, this request is, in essence, a repetition of the Defendant's
12 Motion in Limine to Preclude Jail Phone Calls. As such, the State references this Court to its
13 opposition to the Motion in Limine to Preclude Jail Phone Calls and incorporates by reference
14 herein the response.

15 **Defendant's "General" Discovery Requests**

16 **1. The Defendant and Co-Defendant's Statement**

17 Defendant requests recorded and unrecorded statements from Defendant. Under
18 Defendant's request, the State would have to provide the defense with every word Defendant
19 uttered from the time police stopped him on the day of the offense to the time he was released.
20 Such is not feasible, is completely unreasonable, and not required by Brady and/or statute. As
21 discussed *supra*, Defendant's proposed reading of NRS 174.235 directly contravenes the plain
22 language of the statute. Accordingly, the State objects to this request as overbroad and far
23 beyond the requirements of NRS 174.235 and Brady. The State has disclosed will disclose any
24 written or recorded statements made by Defendant within the State's custody as required by
25 NRS 174.235(1)(a). However, because NRS 174.235 does not require the State to turn over
26 unrecorded or unwritten statements made to any person, Defendant's request is overly broad.
27 Further, Defendant's statements do not fall within the purview of Brady as they are within his
28 knowledge.

1 The State will comply with NRS 174.235, Brady, and its progeny. The State objects to
2 any attempt to obligate it to furnish additional information beyond that required by statute.
3 The State notes that Defendant's request is overbroad and directly contradicts NRS
4 174.235(1). To the extent that the State has written or recorded statements by the Defendant,
5 those will be disclosed if they have not already been, pursuant to NRS 174.235. If there is
6 Brady material in other statements by the Defendant, to which he does not have access by the
7 exercise of reasonable diligence, the State will comply with Brady and its progeny.

8 Where Defendant seeks production of his own inculpatory statements the Nevada
9 Supreme Court has determined he has no right under Brady or NRS 174.235 to production of
10 such material. Inculpatory material, such as incriminating statements in recorded jail calls, is
11 not encompassed under Brady because it is not exculpatory, and it is not in the exclusive
12 possession of the State because the defendant made the statements. Lisle v. State, 113 Nev.
13 540, 547, 937 P.2d 473, 478 (1997) (noting it would constitute "a novel interpretation of
14 Brady" to construe suppression of a defendant's confession as a due process violation);
15 Thompson v. State, 93 Nev. 342, 330, 565 P.2d 1011, 1012 (1977) ("Pretrial discovery of the
16 accused's statements is not constitutionally compelled by the Fourteenth Amendment."
17 Further, voluntary disclosure is not contemplated by our statutory provisions concerning
18 criminal discovery. See NRS 174.235(1).") quoting Mears v. State, 83 Nev. 3, 7, 422 P.2d
19 230, 232 (1967). Because Defendant is a party to the conversation, defense counsel has access
20 to the evidence through their client. Steese, 114 Nev. at 495, 960 P.2d at 331. The State
21 therefore does not violate Brady by failing to inform defense counsel about such
22 conversations, should they exist. See Doe v. United States, 487 U.S. 201, 210, 108 S. Ct. 2341
23 (1988).

24 **2. Potential Witness Statements**

25 The State objects to this request as being overbroad. The State will comply with NRS
26 174.235, Brady and progeny. The State objects to any attempt to obligate it to furnish
27 additional information beyond that required by statute. Moreover, the State is not aware of
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1 the specific individuals requested, “B.W., Jennifer Long, Jose Garcia” (Defendant’s Motion,
2 Page 4, Line 2).

3 **3. Records Related to Investigation**

4 The State objects to this request as being vague and overbroad . The State will comply
5 with NRS 174.235, Brady and progeny. The State objects to any attempt to obligate it to
6 furnish additional information beyond that required by statute.

7 **4. Crime Scene Analysis, Evidence Collection, and Forensic Testing**

8 NRS 174.235(1)(b) states the following:

9 “(1)(b) Results or reports of physical or mental examinations, scientific tests or
10 scientific experiments made in connection with the particular case, or copies thereof, within
11 the possession, custody or control of the State, the existence of which is known, or by the
12 exercise of due diligence may become known, to the prosecuting attorney.”

13 This statute has been and will be complied with. However, nothing per the statute or
14 the case law requires disclosure of testing ordered but not completed. Additionally, that
15 section of the statute, and the entirety of NRS 171.1965 for that matter, is completely void of
16 the word, “notes” yet the Defendant erroneously asserts that he is entitled to such notes under
17 the statute. He is not. As such, the Defendant’s request must be denied under the law.

18 **5. Medical Records**

19 The State has provided to the defense the autopsy report, as well as the photos
20 associated with the autopsy. Beyond that the State objects to this request as being vague and
21 overbroad. The State will comply with NRS 174.235, Brady and progeny. The State objects
22 to any attempt to obligate it to furnish additional information beyond that required by statute.

23 **6. Preservation of and Access to Raw Evidence**

24 The Defendant has been provided the evidence from this case and has access to the
25 evidence in this case. He has made no showing that he has been denied access to anything or
26 shown how anything specific must be preserved. Regarding “preservation,” Defendant’s
27 request is overbroad. Under the due process clause of the Fourteenth Amendment, the
28 government has a limited duty to preserve evidence for the defense. The duty to preserve

1 derives from the due process guarantee to “fundamental fairness” in trial which requires that
2 defendants have access to exculpatory evidence. California v. Trombetta, 467 U.S. 479, 104
3 S.Ct. 2528 (1984). The Supreme Court first addressed the duty as it related to breath samples
4 in DUI cases. Id. The Court explained that the duty to preserve was related, but distinct from
5 that required by Brady, and therefore must be more limited – specifically, to evidence that
6 might be expected to play a significant role in the suspect’s defense. Trombetta, 467 U.S. 479,
7 104 S.Ct. 2528. The Supreme Court refused to impose an overly broad duty to preserve on the
8 government, noting that, even in the Brady context, it had repeatedly found the government is
9 not required to turn over its entire case file or to outline all police investigatory work. Id.

10 Thus, for due process to require the government to preserve evidence, two conditions
11 must be met – (1) the evidence possesses obvious exculpatory value prior to its destruction;
12 and (2) the defendant cannot obtain comparable information by other reasonably available
13 means. Id. The Nevada Supreme Court has construed the second requirement as “prejudice.”
14 Leonard v. State, 117 Nev. 53, 17 P.3d 397 (2001). In demonstrating prejudice, it is not
15 sufficient to allege a “merely hoped-for conclusion” or that the “examination of the evidence
16 would have been helpful in preparing a defense.” Id.

17 In Trombetta, the United States Supreme Court found the breath samples failed to meet
18 either criteria to amount to a due process violation. Id. The original breathalyzer tests all
19 indicated the defendants were intoxicated, therefore the chances that the samples possessed
20 any exculpatory value was incredibly low. Id. Additionally, defendants had the opportunity to
21 challenge the results of the breathalyzer tests via other means, including cross examination
22 and inspections. Id. Similarly, in Leonard v. State, the police failed to preserve a voice message
23 left by defendant Leonard on a witness’s pager indicating that “ten more people gonna die.”
24 Leonard, 117 Nev. 53. The Nevada Supreme Court found no due process violation occurred
25 as Leonard failed to demonstrate police could be reasonably anticipate the message had any
26 exculpatory value. Id.

27 The Supreme Court later considered whether the government had a duty to preserve
28 evidence which was not material, but only potentially useful, in that it could have led to further

1 investigation by the defense. Arizona v. Youngblood, 488 U.S. 51, 109 S.Ct. 333 (1988)
2 (government failed to preserve child sex assault victim's clothing for further testing); Illinois
3 v. Fisher, 540 U.S. 544, 124 S.Ct. 1200 (2004) (government failed to preserve narcotics). The
4 Court has refused to extend due process so far, emphasizing again that the State is not required
5 to turn over a detailed accounting of all investigatory work, much less preserve such materials.
6 Youngblood, 488 U.S. 51 (1988). The Court rejected the notion that due process imposed an
7 undifferentiated and absolute duty to retain and preserve all material that might be of
8 conceivable evidentiary significance in a particular prosecution. In an effort to reasonably limit
9 the duty to preserve, the Court found destruction of evidence that was only potentially useful
10 only violates due process if the destruction was in bad faith. Id. The bad faith requirement
11 "limits the extent of police obligation to preserve evidence to reasonable bounds and confines
12 it to classes of cases where interest of justice most clearly require it, i.e., those cases in which
13 the police themselves by their conduct indicate that the evidence could form a basis for
14 exonerating the defendant." Youngblood, 488 U.S. at 58; Fisher, 540 U.S. at 549.

15 Whether the defense requests preservation of evidence does not change the standard of
16 protection afforded by due process. In Fisher, 540 U.S. 544, the defendant requested the State
17 preserve any evidence in his controlled substance case. However, after defendant bench
18 warranted, the drugs in question were destroyed in the ordinary course of business. Fisher, 540
19 U.S. 544. The Supreme Court did not treat the case any differently than those where no request
20 had been made, and found no violation of due process because the drugs were not exculpatory
21 and the government did not act in bad faith. Id. In so ruling, the Supreme Court once again
22 noted the very reason the bad faith requirement was implemented was to "limit the extent of
23 the police's obligation to preserve evidence to reasonable grounds." Id.

24 Similarly, in Sheriff v. Warner, 112 Nev. 1234, 926 P.2d 775 (1996), defendant Warner
25 was charged with arson and murder in connection with a fire in his mobile home which killed
26 his wife. Although Warner obtained a court order to preserve the mobile home and its contents,
27 the entire mobile home was relinquished to the mortgagor. Id. Despite the court order, the
28 Nevada Supreme Court treated the case as any other destruction of evidence case and found

1 no due process violation occurred as Warner failed to demonstrate how the unavailability of
2 any of the evidence prejudiced him. Id. The Supreme Court explicitly rejected the lower
3 court's holding that the state's failure to preserve evidence amounted to a due process violation
4 because he was unable to refute the State's version of events and/or corroborate his own
5 version of events. Id. In so doing, the Supreme Court reiterated that mere assertions that
6 examination of evidence could have potentially revealed exculpatory evidence does not
7 amount to prejudice. Id.

8 Defendant does not cite, nor could the State discover, any authority to support the
9 contention that the duty to preserve evidence supports a defense request to preserve items for
10 which no evidentiary value has been shown. The State acknowledges its duty to preserve under
11 the due process clause of the Fourteenth Amendment, as outlined above, and will comply with
12 said duty, as it must even in the absence of a court order. Thus, Defendant's request for
13 preservation should be denied as moot.

14 To the extent Defendant's Motion seeks to preserve specific items, the specific requests
15 should be denied as they are unduly vague and constitute a fishing expedition which imposes
16 an unreasonable burden on law enforcement. Defendant's requests essentially amount to a
17 request that the Las Vegas Metropolitan Police Department preserve every item ever
18 connected to the instant event, so that Defendant can later review it to decide whether the
19 information is of value to him. However, such is exactly what the Supreme Court refused to
20 find was required by due process in Youngblood when it explained it would not extend due
21 process to an undifferentiated and absolute duty to retain and preserve all material that might
22 be of conceivable evidentiary significance in a particular prosecution. Youngblood, 488 U.S.
23 51.

24 Based upon the foregoing, this request should be denied to the extent it requests
25 disclosure beyond that required by statute and constitution, and the preservation request should
26 be denied as vague and overbroad.

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7. Electronic Communications and Associated Warrants

The State objects to this request as overbroad and far beyond the requirements of NRS 174.235 and Brady.

8. Law Enforcement Video or Audio Recordings

The Defense has been provided with the Body Worn Camera video from this case, which the Defendant has not acknowledged in his motion. Additionally, the State will comply with NRS 174.235, Brady and progeny. The State objects to any attempt to obligate it to furnish additional information beyond that required by statute.

9. Monitoring, Tracking, and Associated Warrants

The Defense has been provided with the evidence from this case. Additionally, the State will comply with NRS 174.235, Brady and progeny. The State objects to any attempt to obligate it to furnish additional information beyond that required by statute.

10. 911 and 311 Calls

The Defendant has been provided with the 911 calls from this case, which the Defendant has not acknowledged in his motion. Additionally, the State will comply with NRS 174.235, Brady and progeny. The State objects to any attempt to obligate it to furnish additional information beyond that required by statute.

11. Chain of Custody

The State will comply with NRS 174.235, Brady, Giglio, and their progenies. Chain of custody information is memorialized on the evidence itself pursuant to LVMPD policy. If Defendant wishes “access” to view the evidence in the case, he may have his counsel make an appointment with the LVMPD evidence vault.

12. Witness Contact Information

The State objects to this request to the extent that it obligates the State to disclose anything more than the last known address of the witnesses the State intends to call in its case-in-chief. See NRS 174.234(1)(a)(2). Defendant’s request is overly broad. NRS 174.234 provides the law regarding the notice of witnesses. It provides that both sides must disclose witness names and addresses it intends to call in its case-in-chief not less than 5 judicial days

1 before trial. See NRS 174.234(1)(a)(2). Statute only requires the State to provide names and
2 addresses for witnesses the State intends to call in its case-in-chief. The State will comply with
3 statutory notice requirements, but Defendant's request at this juncture is premature.

4 Further, the State is not required by statute or Brady to turn over phone numbers for
5 any person, or contact information for persons other than those it intends to call in its case in
6 chief. In sum, this request should be denied to the extent it requests disclosure beyond that
7 required to be disclosed by statute and constitution.

8 **13. Alternative Suspects**

9 Defendant requests any information which shows that another individual committed
10 the charged crimes. It is the State's current understanding that no other individuals are being
11 investigated as suspects. The State understands its obligations and will comply with NRS
12 174.235, Brady, and its progeny. The State acknowledges such may be Brady information if
13 such amounted to material impeachment or exculpatory information within the State's
14 constructive possession not otherwise available to the defense via due diligence investigation.
15 The State will comply with Brady.

16 **14. Identification and Mis-Identification**

17 The State objects to this request as being overbroad. The State will comply with NRS
18 174.235, Brady and progeny. The State objects to any attempt to obligate it to furnish
19 additional information beyond that required by statute. Regarding any photographic lineups
20 and inclusive information, this is traditionally provided to defense; and, if any exists in this
21 case, it will be provided. Regarding potential impeachment information, the State
22 acknowledges that such may be Brady information if such amounted to material impeachment
23 or exculpatory information within the State's constructive possession not otherwise available
24 to the defense via due diligence investigation. The State understands its obligations and will
25 comply with Brady.

26 **15. Witness Benefits**

27 The State will comply with NRS 174.235, Brady, Giglio, and progeny. In fact, the
28 Defendant has already been informed of and provided the information regarding the deal

1 struck with the co-defendant in this case, including the Guilty Plea Agreement and Agreement
2 to Testify.

3 **16. Prior Witness Statements**

4 The State objects to this request as being vague and overbroad. The State will comply
5 with NRS 174.235, Brady and progeny. The State objects to any attempt to obligate it to
6 furnish additional information beyond that required by statute. From Brady, a line of cases
7 related to the credibility of testifying witnesses, the Court established rules and requirements
8 for impeachment material, or Giglio material. The right to impeach witnesses is based on the
9 Confrontation Clause of the constitution. The United States Supreme Court has held that the
10 Confrontation Clause is not “a constitutionally compelled right of pretrial
11 discovery.” Pennsylvania v. Ritchie, 480 U.S. 39, 52, 107 S. Ct. 989, 999 (1987). Instead,
12 the right to confrontation is a trial right, “designed to prevent improper restrictions on the types
13 of questions that defense counsel may ask during cross-examination.” It “does not include the
14 power to require the pretrial disclosure of any and all information that might be useful in
15 contradicting unfavorable testimony.” It guarantees the opportunity for effective cross-
16 examination, “not cross-examination that is effective in whatever way, and to whatever extent
17 the defense might wish.” Id. at 53, 107 S. Ct. 999, citing Delaware v. Fensterer, 474 U.S. 15,
18 20, 106 S. Ct. 292, 294 (1985).

19 Almost universally, courts have held that there is no Giglio obligation if the witness
20 does not testify.^[1] See United States v. Green, 178 F.3d 1099, 1109 (10th Cir. 1999) (holding
21 that Giglio did not apply when the government “did not ever call” its confidential informant
22 as a witness); United States v. Mullins, 22 F.3d 1365, 1372 (6th Cir. 1994) (finding “no
23 authority that the government must disclose promises of immunity made to individuals the
24 government does not have testify at trial,” and holding that a grant of immunity could not be
25 “‘favorable to the accused’ as impeachment evidence because the government did not call [the
26 witness] and, thus, there was no one to impeach”); see also United States v. Pena, 949 F.2d

27 ^[1] The exception to this rule is where the witness will not testify, but the witness’ hearsay
28 statement will be admitted, then the witness’ credibility may be in issue. See United States v.
Jackson, 345 F.3d 59, 70–71 (2nd Cir. 2003).

1 751, 758-59 (5th Cir. 1991) (impeachment evidence regarding a non-testifying witness is an
2 insufficient basis upon which to grant a new trial); United States v. Storey, 956 F. Supp. 934,
3 942 (D. Kan. 1997) (holding that while impeachment evidence falls within the Brady rule,
4 “[s]uch evidence as it pertains to an informant, however is only discoverable if the informant
5 testifies”); Kowalczyk v. United States, 936 F. Supp. 1127, 1149 (E.D.N.Y. 1996) (holding
6 that “[t]he Government was not obligated to produce the Janis arrest record, assuming the
7 prosecution was in possession of such information, as Janis was not a witness at trial”); United
8 States v. Hill, 799 F. Supp. 86, 90 (D. Kan. 1992), (denying defense request for any
9 information which could be used to impeach non-witnesses); United States v. Villareal, 752
10 F. Supp. 851, 853 (N.D. Ill. 1991) (holding that “[a]s for statements by government witnesses
11 that qualify as impeachment materials, the government is under no obligation to disclose this
12 information before trial,” and that “the government is under no obligation at any time to
13 provide impeachment evidence for non-witnesses”); United States v. Coggs, 752 F. Supp. 848,
14 849, (N.D. Ill. 1990) (holding that the government is not required to produce impeachment
15 evidence impacting non-witnesses, reasoning that “[r]equiring that the government provide
16 impeachment evidence for non-witnesses will not further the interest sought to be served by
17 Giglio-allowing for a meaningful determination of witness credibility”). Finally, evidence of
18 impeachment of a witness need not be disclosed until the witness testifies. United States v.
19 Rinn, 586 F.2d 113 (9th Cir. 1978) (“[S]ince information concerning “favors or deals” merely
20 goes to the credibility of the witness, it need not be disclosed prior to the witness testifying.”).
21 Thus, unless the witness is going to testify, there is no basis to disclose any impeachment
22 material.

23 **17. Law Enforcement Impeachment Information—Henthorn Request**

24 The Defendant claims that the State must review the personnel files of the officers
25 involved in this case and make the determination of relevant information. Defendant
26 referenced United States v. Henthorn, 931 F.2d 31 (9th Cir. 1991) in his motion. The
27 prosecution is not required to comb through the personnel files of the testifying officers to
28 uncover Brady material. In fact, such a claim is completely without merit. Kyles v. Whitley,

1 201 U.S. 419, 131 L. Ed. 2d 490, 115 S.Ct. 1555 (1995). The Ninth Circuit unequivocally
2 holds that courts do not have the authority to order prosecutors to personally review officer
3 personnel files. Case law further holds that before judicial examination is required, the Court
4 is not to review personnel files based on mere speculation that some helpful evidence may
5 exist.

6 As the Supreme Court held in Weatherford v. Bursy, 429 U.S. 545, 559, 97 S. Ct. 837,
7 846 (1977):

8 There is no general constitutional right to discovery in a criminal
9 case, and Brady did not create one... 'the Due Process Clause has
10 little to say regarding the amount of discovery which the parties
11 must be afforded....' Wardius v. Oregon, 412 U.S. 470, 474, 93 S.
12 Ct. 2208, 2212, 37 L.Ed.2d 82 (1973).

13 In addition, a defendant has no right of discovery under Common Law either. State v.
14 Wallace, 399 P.2d 909, 97 Ariz. 296 (1965). This, of course, can be superseded by statutory
15 enactment which is the case in Nevada. Regarding the law of discovery in the State of Nevada,
16 NRS 174.235, *et. seq.* controls. The Nevada Supreme Court has held that even an accused's
17 statement is not constitutionally compelled through pre-trial discovery. Mears v. State, 83
18 Nev. 3, 7, 422 P.2d 230, 232 (1967); Thompson v. State, 93 Nev. 342, 565 P.2d 1011 (1977).

19 In Franklin v. Eighth Judicial District Court, 85 Nev. 401, 455 P.2d 919 (1969), the
20 Nevada Supreme Court held that the lower court erred in granting defendant's Motion for
21 Discovery, seeking to inspect and copy statements of all persons to be called by the prosecution
22 as witnesses at trial. The Court reasoned that NRS 174.245 does not authorize discovery of
23 inspection of statements made by State witnesses or perspective State witnesses to agents of
24 the State, nor does the defendant enjoy a constitutional right to discover them. With regard to
25 the discovery statutes previously alluded to, the Court stated that:

26 Those provisions (NRS 174.235-174.295) represent the legislative
27 intent with respect to the scope of allowable pre-trial discovery
28 and are not lightly to be disregarded.

26 Id.
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1 From the aforementioned, it is clear that Nevada's discovery statutes are to be strictly
2 construed and adhered to since no Common Law right of discovery exists.

3 In addition to discovery required by statute, as noted above, the prosecution must also
4 disclose exculpatory evidence pursuant to Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194
5 (1963); see also Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763 (1972) (requiring that
6 certain impeaching material be disclosed as well). However, as noted above, Brady is not a
7 rule of discovery. See United States v. Agurs, 427 U.S. 97, 109, 96 S. Ct. 2392, 49 L. Ed. 2d
8 342 (1976) ("Whether or not procedural rules authorizing such broad discovery might be
9 desirable, the Constitution surely does not demand that much"). And although defense
10 attorneys would have the court believe different, and often cite Mazzan v. Warden, 116 Nev.
11 48, 993 P.2d 25 (2000) at oral argument on discovery motions, all case law under Brady holds
12 the same, that the prosecutor determines whether evidence is material and favorable to the
13 defendant and what must ultimately be disclosed. See Mazzan v. Warden, 116 Nev. at 67, 993
14 P.2d at 36 ("The prosecutor is responsible for determining whether evidence is material and
15 should be disclosed"); see also Pennsylvania v. Ritchie, 480 U.S. 39, 59, 94 L.Ed. 2d 40, 107
16 S.Ct. 989 (1987) ("the prosecutor's decision on disclosure is final").

17 *A. The Ninth Circuit Unequivocally Holds that Courts Cannot Order a
18 Prosecutor to Personally Review Officer Personnel Files*

19 United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991) and quick shepardization of
20 Henthorn shows that its progeny unequivocally hold that courts *cannot* order the prosecuting
21 attorney to personally review personnel files. In addition, the Court is not required to conduct
22 this review either. In United States v. Jennings, 960 F.2d 1488 (9th Cir. 1992), the trial court
23 had ordered the prosecutor to personally review the officer personnel files. Id. at 1489. On
24 appeal, the Ninth Circuit reversed the lower court.

25 We have never held that the prosecutor's obligations under *Brady*,
26 *Bagley*, or *Giglio* require the personal effort demanded of the
27 AUSA by the district court.... Other courts have indicated that
28 such a personal effort is not demanded because it places too much
of a burden on the prosecutor. See United States v. Smith, 552
F.2d 257, 262 (8th Cir. 1984) (per curiam). This view is
persuasive, particularly in light of the government's expressed

1 willingness to undertake a review of its law enforcement officer
2 personnel files and to submit for in camera review any materials
3 that may have arguably exculpatory value.

4 Id. at 1491-92 (emphasis added).

5 In United States v. Herring, 83 F.3d 1120 (9th Cir. 1996), the Ninth Circuit reaffirmed
6 Jennings stating:

7 In United States v. Jennings, 960 F.2d 1488 (9th Cir. 1992), we
8 held that an Assistant United States Attorney ("AUSA") may not
9 be ordered by a district court to conduct that examination
10 personally. Id. at 1491. Rather, **we approved a policy proposed**
11 **by the Department of Justice for the appropriate agency to**
12 **examine its personnel files and notify the AUSA of any**
13 **potential Brady material**, as long as the AUSA makes the
14 determination whether the material should be disclosed. Id. at
15 1492 & n.3.

16 In this case, defendant Maurice Herring filed a pre-trial motion for
17 a ruling that the AUSA must personally review the personnel files
18 of testifying federal agents. Relying on *Jennings*, the district court
19 initially denied Herring's request, but later reconsidered its ruling
20 sua sponte in light of Kyles v. Whitley, 131 L. Ed. 2d 490, 115 S.
21 Ct. 1555 (1995), and ruled that *Kyles* "effectively" overruled
22 *Jennings*. District Court Opinion, filed August 18, 1995, at 5.
23 When the district court issued a new order directing the AUSA
24 personally to review the files, the government filed a notice of
25 noncompliance, stating that the AUSA was refusing to review the
26 files personally. Because of the government's noncompliance, the
27 district court suppressed the testimony of the federal law
28 enforcement witnesses. When the government conceded that it
would be unable to prove its case without the excluded witnesses,
the district court dismissed the indictment without prejudice. The
government now appeals the order of dismissal.

The question we must decide is whether *Jennings* was effectively
overruled by *Kyles*. We hold that it was not principally because
Kyles did not address the question presented by *Jennings* and this
case - whether the district court has the authority to issue a pre-
trial order requiring a prosecutor to review personnel files of
testifying officers personally. **Rather, *Kyles* was a post-
conviction case involving the application of the well-
established *Brady* rule that the prosecution's failure to disclose**

1 **Brady material justifies a new trial**, regardless of whether that
2 failure "is in good faith or bad faith." Kyles, 115 S. Ct. at 1567. In
3 Kyles, the *Brady* material was known to the police but not to the
4 prosecutor, from whom the police had withheld it. Id. at 1568. The
5 State of Louisiana argued that *Brady's* requirement of a new trial
6 should not apply in these circumstances because the State should
7 not be accountable for evidence known only to police and not to
8 the prosecutor. Id. The Court rejected that argument, explaining
9 that "to accommodate the State in this manner would . . . amount
10 to a serious change of course from the *Brady* line of cases." Id.
11 Instead, it stressed the prosecutor's duty to "learn of any favorable
12 evidence known to the others acting on the government's behalf in
13 the case, including the police," and reaffirmed that "whether the
14 prosecutor succeeds or fails in meeting this obligation (whether,
15 that is, a failure to disclose is in good faith or bad faith), the
16 prosecution's responsibility for failing to disclose known,
17 favorable evidence rising to a material level of importance is
18 inescapable." Id. at 1567-68 (citation omitted). In so doing, the
19 Court acknowledged that this rule places a burden on government,
20 given that "police investigators sometimes fail to inform a
21 prosecutor of all they know," Id. at 1568, but observed that
22 prosecutors could alleviate this burden by establishing procedures
23 and regulations to facilitate the communication of relevant
24 information. Id.

25 In interpreting Kyles as "effectively" overruling Jennings, the
26 district court relied primarily on the language in Kyles that "the
27 individual prosecutor has a duty to learn of any favorable evidence
28 known to the others acting on the government's behalf in the case,
including the police." Kyles, 115 S. Ct. at 1567. We must
respectfully disagree with the district court that this language
provides a basis for declaring that Jennings does not survive Kyles
as the law of our circuit. There is no reason to believe that when
the Supreme Court decided Kyles, it even had in mind the Jennings
question of a district court's authority to issue pre-trial discovery
orders requiring prosecutors to conduct searches for *Brady*
material and to impose sanctions for noncompliance. ***Kyles* was a
post-conviction case, not a pre-trial discovery order case.**
Whatever the Court may have had in mind in using the "duty"
language in the context of a post-conviction case, the language
provides no guidance for deciding whether a district court may
issue pre-trial discovery orders requiring prosecutors to review
personnel files personally.

1 **We hold that *Jennings* survives *Kyles* as the law of our circuit.**
2 **Accordingly, we VACATE the district court's order dismissing**
3 **the indictment without prejudice and its order granting the**
4 **defendant's request that the AUSA be required to review the**
5 **personnel files of testifying agents personally, and REMAND**
6 for further proceedings. In so doing, we express no opinion as to
7 whether the method by which the AUSA proposes to locate and
8 identify *Brady* material in this particular case satisfies the
9 requirements of *Henthorn*. We hold only that *Jennings* survives
10 *Kyles* as the law of the circuit.

11 United States v. Herring, 83 F.3d 1120 (9th Cir. 1996) (emphasis added).

12 It cannot be any more clear-cut. After Henthorn was decided, Jennings held that courts
13 cannot order prosecutors to personally examine officer personnel files. Jennings, 960 F.2d at
14 1492. Moreover, Jennings approved the policy of having the law enforcement agency
15 **examine its own personnel files and notify the AUSA of any *potential Brady* material,**
16 **and then letting the AUSA make the determination on disclosure.** Id. at 1492 & n.3. Later,
17 in Herring, the trial court had ordered the prosecutor to personally review the files, reasoning
18 that Kyles v. Whitley, 131 L. Ed. 2d 490, 115 S. Ct. 1555 (1995) overruled Jennings. Herring,
19 83 F.3d at 1121. The Ninth Circuit disagreed and again made it clear that courts cannot order
20 prosecutors to personally review officer personnel files. Id.

21 On January 26, 2016, the U.S. District Court of Nevada denied a similar motion as the
22 instant case. In doing so, the court explained:

23 If the prosecution is uncertain as to whether the information is
24 material, "it may submit the information to the trial court for an in
25 camera inspection and evaluation." Henthorn, 931 F.2d at 31
26 (quoting United States v. Cadet, 727 F.2d 1453, 1467-68 (9th Cir.
27 1984)). A defendant has no burden to make an initial showing of
28 materiality; the mere demand to produce the files triggers the
 government's duty to examine the files. Id. **However, the**
 attorney assigned to a case need not personally review the files.
 United States v. Jennings, 960 F.2d 1488, 1491-92 & n.3 (9th Cir.
 1992). Following its examination, the prosecution need not furnish
 the files "to the defendant or the court unless they contain
 information that is or may be material to the defendant's case."
 Henthorn, 931 F.2d at 31.

1 United States v. McKee, Order Denying Defendant's Motion to Order Government to Inspect
2 and Produce the Personnel Files of all Federal Agents and Officers it Intends to Call as
3 Witnesses at Trial, 2016 U.S. Dist. LEXIS 8898 (U.S. Dist. Ct. Nev. 2016) (emphasis added).

4 *B. The Decision on how to Comply With Brady is Within the District*
5 *Attorney's Executive Function and the Current Practice of the Clark*
6 *County District Attorney was Upheld by the Ninth Circuit.*

7 In addition, there is no requirement that a licensed lawyer must review the personnel
8 files to comply with Brady and Giglio. The District Attorney's authority is founded, among
9 other things, on the principle of separation of powers, and generally is not subject to
10 supervision by the judicial branch. People v. Birks, 19 Cal.4th 108, 134 (Cal. 1998).

11 In Jennings, the Ninth Circuit approved the practice of allowing the law enforcement
12 agency to review its own files and then alert the prosecutor of any potential information.

13 Jennings, 960 F.2d at 1492. In doing so, the court opined:

14 The supervisory power, however, is not without its limits. One
15 such limit is our government's separation of powers. See United
16 States v. Dominguez-Villa, 954 F.2d 562 (9th Cir. 1992);
17 Simpson, 927 F.2d at 1089; United States v. Moody, 778 F.2d
18 1380, 1384 (9th Cir. 1985), *amended on other grounds*, 791 F.2d
19 707 (9th Cir. 1986); United States v. Gatto, 763 F.2d 1040, 1046
20 (9th Cir. 1985); United States v. Chanen, 549 F.2d 1306, 1313 (9th
21 Cir.), *cert. denied*, 434 U.S. 825, 54 L. Ed. 2d 83, 98 S. Ct. 72
22 (1977).

23 The judiciary does not have a license to intrude into the authority,
24 powers and functions of the executive branch, for judges are not .
25 . . . executive officers, vested with discretion over law enforcement
26 policy and decisions. . . . The supervisory power . . . empowers
27 judges to formulate procedural rules not specifically contemplated
28 by Congress or the Constitution, but it does not justify a
chancellor's foot veto over activities of coequal branches of
government. Simpson, 927 F.2d at 1089 (internal citations and
quotation omitted).

We therefore interfere in the practices of the executive branch only
when there is "a clear basis in 'fact and law' for doing so." Gatto,
763 F.2d at 1046 (*quoting* Chanen, 549 F.2d at 1313); see also
United States v. DeBright, 730 F.2d 1255, 1257 (9th Cir. 1984)
(en banc). Absent a violation of a recognized right under the
Constitution, a statute, or a procedural rule, a district court is not

1 entitled to exclude evidence as a sanction against government
2 practices disapproved of by the court. Gatto, 763 F.2d at 1046;
3 see also Schwartz, 857 F.2d at 658; cf. United States v. Miller,
4 722 F.2d 562, 565 (9th Cir. 1983) ("Courts . . . should avoid
creating broad rules that limit traditional prosecutorial
independence.").

5 Jennings, 960 F.2d at 1491.

6 [T]he presumption is that official duty will be done, and hence that
7 the procedure instituted by the Department of Justice to ensure
8 compliance with *Henthorn* will be tailored to those concerns.
9 Adherence to this procedure would indicate that the AUSA is
10 fulfilling his responsibility for ensuring government compliance
11 with *Brady*. **Personal review by the AUSA after being alerted
12 to the presence of potential *Brady* material by agency staff**
lessens the chance that exculpatory information will go
undiscovered by personnel unfamiliar with the facts of the case or
the relevant criminal law involved.

13 Id. at 1492.

14 The United States Supreme Court in Giglio recognized a prosecutor's burden to learn
15 of information within his constructive possession and noted that "procedures and regulations
16 can be established to carry that burden and to insure communication of all relevant information
17 on each case...." Giglio, 405 U.S. at 154. Brady does not, however, empower a defendant to
18 dictate the procedures and regulations by which prosecutors carry out their burden with respect
19 to police personnel files.

20 The Clark County District Attorney's practice is to allow Las Vegas Metropolitan
21 Police Department to review its own officer personnel files upon the request of the prosecutor.
22 Metro reviews the files for any potential Brady material and notifies the prosecutor of any and
23 all truthfulness violations or discipline. Truthfulness violations can include things as trivial
24 taking a day of sick leave when really on vacation. Discipline can include tardiness for work.
25 If there is any potential Brady material in the files, then the prosecutor will review each
26 disciplinary action or truthfulness violation and make the final determination as to whether it
27 is material to the case and needs to be disclosed. As discussed below, if the prosecutor is
28 unsure about materiality after conducting the personal review, the prosecutor may submit

1 materials to a court for in-camera review. As the Ninth Circuit in Jennings stated in approving
2 exactly this type of process for law enforcement personnel files:

3 **Personal review by the AUSA after being alerted to the**
4 **presence of potential *Brady* material by agency staff** lessens the
5 chance that exculpatory information will go undiscovered by
6 personnel unfamiliar with the facts of the case or the relevant
7 criminal law involved

8 Jennings, 960 F.2d at 1492.

9 **18. Criminal History Information**

10 The State's incorporates by reference its earlier NCIC-related response above.
11 Additionally, the Defendant appears to assert an entitlement to the entirety of the criminal
12 histories of every possible State witness. When incorporating the requirements of Brady and
13 Giglio, Defendant's complaint cannot stand. The State consistently agrees to disclose any
14 felony convictions within the preceding ten years of witnesses expected to testify, along with
15 any convictions for crimes which bear upon the witness's character for veracity. Such
16 convictions are the only material, and thus Brady information in a criminal history. See NRS
17 50.095 (stating that evidence of a conviction within the preceding ten years of a felony is
18 admissible to attack the witness's credibility); Wood v. Bartholomew, 516 U.S. 1, 6–8, 116 S.
19 Ct. 7 (1995) (holding that the prosecution did not violate Brady by not disclosing information
20 which would not have been admissible because its inadmissibility made it immaterial); Sheriff
21 v. Hawkins, 104 Nev. 70, 75, 752 P.2d 769, 773 (1988) ("Furthermore, we note that by specific
22 provision of the Code, mere arrests and convictions for misdemeanors may not ordinarily be
23 admitted even for the limited purpose of attacking a witness's credibility.").

24 This Court's authority to order discovery is limited by Statute, though the State will
25 comply with this Court's discovery orders grounded in law, and with Brady and its progeny.
26 Finally, the State notes that in a recent decision by the Nevada Supreme Court, albeit
27 unpublished, the Court recognized that a defendant has no right to access a witness's felony
28 convictions, nor the details of the underlying arrests. See Fleming v. State, Order of
Affirmance, Docket No. 66801, filed August 10, 2016 at 9–10 ([I]f, as we recognized in

1 *Corbin*, a defendant has no right to access a witness’s felony convictions, he certainly is not
2 entitled to the details of the underlying arrests, much less that witness’s entire arrest record.”)
3 (emphasis in original).

4 **19. Mental Health Worker Records and Notes**

5 This request is misplaced as it refers to mental health workers, “who have had contact
6 with the alleged victim . . .” Defendant’s Motion, Page 10, Lines 16-17). The actual and not
7 alleged victim is dead. Hence, no mental health workers had contact with him. As the request
8 also asks for this information from, “any other person related to the events in this case” it is
9 overbroad, vague, and should be, therefore, denied. Beyond that, the State will comply with
10 NRS 174.235, Brady, and its progeny. The State objects to any attempt to obligate it to furnish
11 additional information beyond that required by statute.

12 **IV. State’s request for reciprocal discovery**

13 The State hereby requests this Court order reciprocal discovery as enumerated in NRS
14 174.245. This includes:

15 (a) Written or recorded statements made by a witness the defendant intends to call
16 during the case in chief of the defendant, or copies thereof, within the possession, custody or
17 control of the defendant, the existence of which is known, or by the exercise of due diligence
18 may become known, to the defendant;

19 (b) Results or reports of physical or mental examinations, scientific tests or scientific
20 experiments that the defendant intends to introduce in evidence during the case in chief of the
21 defendant, or copies thereof, within the possession, custody or control of the defendant, the
22 existence of which is known, or by the exercise of due diligence may become known, to the
23 defendant; and

24 (c) Books, papers, documents or tangible objects that the defendant intends to introduce
25 in evidence during the case in chief of the defendant, or copies thereof, within the possession,
26 custody or control of the defendant, the existence of which is known, or by the exercise of due
27 diligence may become known, to the defendant. Id.

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CONCLUSION

Based upon the foregoing, the State respectfully requests this Court order discovery consistent with statute and case-law, and consistent with the State's responses. Further the State respectfully requests this Court order reciprocal discovery as outlined in NRS 174.245.

DATED this 27th 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

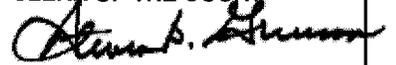
CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 27th 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



1 **OPPS**
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 Deputy District Attorney
10 Nevada Bar #12840
11 200 Lewis Avenue
12 Las Vegas, Nevada 89155-2212
13 (702) 671-2500
14 Attorney for Plaintiff

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DEMARIO LOFTON-ROBINSON, aka,
Demario Loftonrobinson, #5318925
RAEKWON SETREY ROBERTSON,
aka, Raekwon Robertson, #8252804
DAVONTAE AMARRI WHEELER,
#5909081

Defendant(s).

CASE NO: C-17-328587-3

DEPT NO: XII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS, OR, IN THE
ALTERNATIVE, MOTION FOR JACKSON v. DENNO HEARING**

DATE OF HEARING: 12/31/2019
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Suppress, or, in the Alternative, Motion for Jackson v. Denno Hearing.

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

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On December 14, 2017, Defendant, Davontae Wheeler (“Defendant”) was charged by
4 way of Indictment as follows: COUNT 5 – CONSPIRACY TO COMMIT ROBBERY
5 (Category B Felony – NRS 200.380, 199.480); COUNT 6 – ATTEMPT ROBBERY WITH
6 USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.330, 193.165); and
7 COUNT 7 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS
8 200.010, 200.030, 193.165).

9 On December 19, 2017, Defendant pled not guilty and waived his right to a speedy
10 trial. On February 8, 2018, Defendant filed a pre-trial Petition for Writ of Habeas Corpus. On
11 March 2, 2018 the State filed its Return; and on March 8, 2018, Defendant filed a Reply. On
12 March 13, 2018, Defendant filed 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 a
18 Motion to Sever Counts.

19 The State hereby opposes Defendant’s Motion to Suppress.

20 **STATEMENT OF FACTS**

21 In the early morning hours of August 9, 2017, Gabriel Valenzuela (“Mr. Valenzuela”)
22 was shot in the driveway of his own home, located at 5536 Dewey Drive, in Las Vegas,
23 Nevada. Immediately prior to the shooting, Robert Mason was jogging in the neighborhood
24 of Mr. Valenzuela’s home and he noticed four suspicious individuals standing in front of Mr.
25 Valenzuela’s home. Mr. Mason described these individuals as black males wearing dark
26 colored clothing. After observing the four suspicious individuals standing in Mr. Valenzuela’s
27 driveway, Mr. Mason saw an unoccupied white Mercury Grand Marquis with NV license plate
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1 of 473YZB. Mr. Mason informed his wife of this information and at 12:11 a.m. she called
2 police to report the suspicious individuals.

3 One minute later, at 12:12 a.m., Mr. Valenzuela's cousin, John Relato called 911 to
4 report that Mr. Valenzuela had been shot. Mr. Valenzuela was pronounced dead at 12:55 a.m.
5 Three .45 caliber cartridge cases and one .22 caliber cartridge case were found at the scene of
6 the murder. The .45 caliber cartridge cases bore three separate head-stamps: R-P 45 AUTO,
7 NFCR, and WINCHESTER 45 AUTO. The .22 caliber cartridge case bore a head stamp of
8 "C."

9 During the investigation, detectives learned that on August 8, 2017, immediately
10 preceding the murder, the same Mercury Grand Marquis seen by Mr. Mason at the scene of
11 the murder was captured on surveillance footage at a convenience store located at 7325 S.
12 Jones Boulevard. This convenience store is located less than one mile from the Mr.
13 Valenzuela's residence. The vehicle was seen on surveillance footage arriving to the store at
14 approximately 11:25 p.m. and leaving the store at approximately 11:45 p.m., roughly 25
15 minutes before the murder. Surveillance footage also shows four black males arriving in the
16 vehicle. One of the black males was carrying a handgun in a holster on his right hip. This
17 individual was later identified as Defendant. In the surveillance footage, he was wearing a red
18 hoodie type shirt, a white baseball hat with an unknown symbol, torn black jeans, and red
19 high-top shoes.

20 As part of their initial investigation, Detectives were able to determine the identities of
21 two suspects based on an investigation stemming from the license plate of the Mercury Grand
22 Marquis. Those two suspects are Co-Defendant Demario Lofton-Robinson and his younger
23 brother. Both suspects admitted their involvement in the murder and admitted that two other
24 individuals were involved. However, both suspects had limited information regarding the
25 identities of the two additional suspects.

26 During his confession, Co-Defendant Lofton-Robinson indicated that the original plan
27 was to rob Mr. Valenzuela but when he fought back, Mr. Valenzuela was shot multiple times.
28 Co-Defendant Lofton-Robinson indicated that he was in possession of a .45 caliber firearm

1 and fired one shot at Mr. Valenzuela. He also told detectives that the other two suspects would
2 be listed in his phone under the names of "Rae" and "Sace."

3 In searching Co-Defendant Lofton-Robinson's phone, Detectives were able to locate a
4 recent text message between Lofton-Robinson and "Sace." "Sace's" phone number was
5 associated with a Facebook account of "Young Sace Versace" who officers were able to
6 identify as Defendant, Devonte Wheeler. "Rae" was later identified as Co-Defendant
7 Raekwon Robertson.

8 Officers with LVMPD executed several additional search warrants at various locations.
9 During those search warrants, a .22 caliber semi-automatic firearm was located at 6647 West
10 Tropicana, an address associated with Co-Defendant Raekwon Robertson. While searching
11 6647 West Tropicana, officers also located ammunition bearing the headstamp "C." This
12 ammunition matches the .22 caliber cartridge case found at the murder scene. Ballistic testing
13 revealed that the .22 caliber cartridge case found at the scene of the murder was fired from this
14 firearm.

15 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
16 Co-Defendant Lofton-Robinson. During the search of that residence, officers located a .45
17 caliber firearm and ammunition bearing a headstamp of R-P 45, which matched one of .45
18 caliber cartridge cases found at the scene of the murder. Ballistic testing revealed that three
19 .45 caliber cartridge cases found at the scene of the murder were fired from this firearm.

20 On August 15, 2017, the Criminal Apprehension Team of the Las Vegas Metropolitan
21 Police Department ("LVMPD") apprehended Defendant at his address of 3300 Civic Center
22 Drive, apartment F. During a search of the residence, officers located a .45 caliber firearm.
23 The magazine of the firearm contained 6 rounds of live ammunition bearing the head stamp
24 of R-P 45 AUTO (the same head stamp as one of the .45 cartridges found at the scene of the
25 murder). Detectives also recovered a pair of red tennis shoes and a black and white baseball
26 cap which appeared to be the items worn by Defendant in the surveillance footage from the
27
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1 convenience store. Defendant was transported to LVMPD Headquarters and was interviewed
2 by Homicide Detectives.¹

3 Defendant was brought into the interview room at 5:05:41. See Video of Defendant's
4 Interview attached as Exhibit 1 ("Exhibit 1"). At that time, Defendant was wearing his
5 personal clothing which consisted of pants and a T-shirt. Id. Approximately three minutes
6 later, Detective Jaeger with LVMPD entered the room; introduced himself; and secured
7 Defendant to the interview table. Id. at 5:08:45. At that time, Detective Jaeger asked
8 Defendant if he was comfortable with the temperature in the room, noting that it was currently
9 71 degrees. Id. Defendant answered in the affirmative at which point Detective Jaeger left
10 the room. Id.

11 Detective Jaeger and Detective Hoffman returned to the interview room at 5:22:46, at
12 which time the interview with Defendant began. Id. At 5:25:05, Defendant was advised of
13 his Miranda rights. Id. Defendant acknowledged that he understood his rights and he agreed
14 to speak to police. Id. The entirety of Defendant's interview lasted approximately 2 hours
15 and 39 minutes. See generally id. During the interview, there was a fifteen-minute break from
16 6:15 p.m. to 6:30 p.m., during which Detective Jaeger and Detective Hoffman left the room
17 and Defendant remained inside by himself. Id. At 7:17 p.m. Detective Jaeger and Detective
18 Hoffman left the room for approximately two minutes. Id. Detective Jaeger returned with
19 Detective Dosch and the interview reconvened. Id. Throughout his interview, Defendant
20 denied any involvement in Gabriel Valenzuela's murder. Id. Additionally, when shown a still
21 photograph of himself inside the convenience store on August 8, 2017, Defendant denied that
22 the person depicted in the photograph was him. Id.

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28 ¹ Defendant's interview was video recorded and later transcribed. The video recording is attached hereto as Exhibit 1 and the transcript is attached as Exhibit 2. The times shown in Exhibit 1 and cited herein correlate with the real time on August 15, 2017.

1 ARGUMENT

2 I. LEGAL STANDARD

3 A. Admission of Statement

4 Once voluntariness of a confession has been raised as an issue, there must be a hearing
5 pursuant to Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964), before an accused's
6 statements are brought before a jury. At this hearing, the Court must hear evidence concerning
7 what the defendant told the police and the circumstances under which the defendant made the
8 statements. The Court must then decide (1) whether his statement was voluntary using the
9 totality of the circumstances, and (2) whether Miranda was violated.

10 The State's burden of proof at a Jackson v. Denno hearing is a preponderance of the
11 evidence, both with respect to voluntariness (Brimmage v. State, 93 Nev. 434, 567 P.2d 54
12 (1977), Falcon v. State, 110 Nev. 530, 874 P.2d 772 (1994)), and with respect to Miranda.
13 Falcon, 110 Nev. 530, 874 P.2d 772. In making this determination, the Court is to look at the
14 totality of the circumstances. See Alward v. State, 112 Nev. 141, 912 P.2d 243 (1996);
15 Passama v. State, 103 Nev. 212, 735 P.2d 321 (1987).

16 If the Court finds that the statement was involuntary, it ceases to exist legally and cannot
17 be used for any purpose. Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408 (1978). If it was
18 voluntary but Miranda was violated, it can only be used for impeachment if the defendant
19 testifies and contradicts the statement. Harris v. New York, 401 U.S. 222, 91 S.Ct. 643 (1971);
20 Oregon v. Hass, 420 U.S. 714, 95 S.Ct. 1215 (1975); McGee v. State, 105 Nev. 718, 782 P.2d
21 1329 (1989).

22 When a defendant is fully advised of his Miranda rights and makes a free, knowing and
23 voluntary statement to the police, such statements are fully admissible at trial. Miranda v.
24 Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966); Stringer v. State, 108 Nev. 413, 417, 836 P.2d
25 609, 611-612 (1992). *Coercive police conduct is a "necessary predicate" to a finding that a*
26 *Defendant's statement is involuntary such that its admission violates the Defendant's Due*
27 *Process rights.* Colorado v. Connelly, 479 U.S. 157, 167, 107 S.Ct. 515, 522 (1986) (emphasis
28 added).

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B. Determination of Voluntariness

“A confession is admissible only if it is made freely and voluntarily, without compulsion or inducement.” Franklin v. State, 96 Nev. 417, 421, 610 P.2d 732, 734-35 (1980). In order to be considered voluntary, a confession must be the product of free will and rational intellect. Blackburn v. Alabama, 361 U.S. 199, 208, 80 S. Ct. 274, 280 (1960). A confession is involuntary if it is the product of physical intimidation or psychological torture. Townsend v. Sain, 372 U.S. 293, 307, 83 S. Ct. 745, 754 (1963). To determine the voluntariness of a confession, the court must consider the effect of the totality of the circumstances on the will of the defendant. Passama, 103 Nev. 212, 213, 735 P.2d 321, 323 (2009). Essentially, the question is whether the defendant’s will was overborne when he confessed. Id.

In Passama, the Nevada Supreme Court, citing Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041 (1973), delineated the following factors to be considered when evaluating the voluntariness of a confession:

the youth of the accused; his lack of education or his low intelligence; the lack of any advice of constitutional rights; the length of detention; the repeated and prolonged nature of questioning; and the use of physical punishment such as the deprivation of food or sleep.

Id.²

The Nevada Supreme Court has ruled that a defendant’s statement is not deemed involuntary when made as a result of police misrepresentations. In Sheriff v. Bessey, 112 Nev. 322, 914 P.2d 618 (1996), the Supreme Court reversed a pre-trial petition for a writ of habeas corpus where the district court found that the detective had improperly fabricated evidence and ruled that the defendant’s inculpatory statements should have been suppressed and

² The Nevada Supreme Court has examined whether a confession was voluntary or not on several occasions. See e.g., Franklin, 96 Nev. at 421, 610 P.2d at 735 (detective’s statements did not amount to promises of leniency inducing defendant to confess, thereby rendering defendant’s confession involuntary, where detective promised to release defendant on his own recognizance if he cooperated with authorities from another state and to recommend lighter sentences); Barren v. State, 99 Nev. 661, 664, 669 P.2d 725, 727 (1983) (detective’s statement to appellant that he would be “going home” was not a promise of leniency, but rather an ambiguous, but innocuous statement that detective would drive appellant home after the interview); Chambers v. State, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997) (where defendant walked into hospital and shouted to anyone around that there was a dead body in his hotel room, and later claimed he did so only because he was intoxicated and not well rested but appeared relatively coherent in his interactions with police, his confession was not involuntary where he was questioned for four hours after having been stabbed).

1 dismissed the information. The Bessey court recognized that under Passama, it is a totality of
2 the circumstances test to determine whether a confession is voluntary. While police deception
3 was a relevant factor in determining whether a confession is voluntary; “[A]n officer’s lie
4 about the strength of the evidence against the defendant, in itself, is insufficient to make the
5 confession involuntary.” Id. (citing Holland v. McGinnis, 963 F.2d 1044, 1051 (7th Cir.
6 1992), *cert. denied*, 113 S.Ct. 1053 (1993)).

7 Further, “cases throughout the country support the general rule that confessions
8 obtained through the use of subterfuge are not vitiated so long as the methods used are not of
9 a type reasonably likely to procure an untrue statement.” Id. As the Bessey court noted, lying
10 to a suspect regarding the suspect’s connection to the crime is “the least likely to render a
11 confession involuntary.” Id. (citing Holland, *supra*).

12 The Bessey court determined that the detective’s lie and the false lab report were only
13 part of the consideration of the totality of the circumstances. The court found:

14 Bessey went to the police station voluntarily and the length of the
15 interview was relatively short. The only factor that was out of the
16 ordinary was the production of the falsified lab report. Based on the
17 law in this area and the facts of this case, there is no reason to belief
that Bessey’s inculpatory statements were not voluntary.

18 Id.

19 Additionally, in Bessey, the Court discussed State v. Kelekolio, 74 Haw. 479, 849 P.2d
20 58 (1993), wherein it noted the difference between intrinsic and extrinsic falsehoods. Quoting
21 the Hawaii Supreme Court, this Court stated:

22 [E]mployment by the police of deliberate falsehoods *intrinsic* to the
23 facts of the alleged offense in question will be treated as one of the
24 totality of circumstances surrounding the confession or statement to
25 be considered in assessing its voluntariness; on the other hand,
26 deliberate falsehoods *extrinsic* to the facts of the alleged offense,
27 which are of a type reasonably likely to procure an untrue statement
or to influence the accused to make a confession regardless of guilt,
will be regarded as coercive *per se*, thus obviating the need for a
“totality of circumstances” analysis of voluntariness.

28 Bessey, 112 Nev. 322 at 326 (quoting Kelekolio, 849 P.2d at 73).

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In Bessey, the Court further stated:

Examples of intrinsic falsehoods would include misrepresentations regarding the existence of incriminating evidence such as placement of the defendant's vehicle at the crime scene, physical evidence linked to the victim in the defendant's car, presence of defendant's fingerprints at the crime scene or in the getaway car, positive identification by reliable eyewitnesses, and identification of the defendant's semen in the victim or at the crime scene. Examples of extrinsic falsehoods of a type reasonably likely to procure an untrue statement or to influence an accused to make a confession regardless of guilt would include the following: assurances of divine salvation upon confession, promises of mental health treatment in exchange for confession, assurances of more favorable treatment rather than incarceration in exchange for confession, misrepresenting the consequences of a particular conviction, representation that welfare benefits would be withdrawn or children taken away unless there is a confession or suggestion of harm or benefit to someone.

Bessey, 112 Nev. 322 at 326 (internal citations omitted).

Finally, the Bessey court recognized that many of the investigative techniques designed to elicit incriminating statements often involve some degree of deception.

Several techniques which involve deception include under-cover police officers, sting operations, and interrogation techniques such as offering false sympathizing, blaming the victim, minimizing or suggesting that there is sufficient evidence when there is not. *As long as the techniques do not tend to produced inherently unreliable statements or revolt our sense of justice, they should not be declared violative of the United States or Nevada Constitutions.*

Id. (emphasis added).

In the instant case, after consideration of the totality of the circumstances, the record clearly demonstrates that Defendant's confession was made freely and voluntarily and it should therefore not be suppressed.

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1 **II. DEFENDANT'S STATEMENT WAS VOLUNTARY AND SHOULD NOT**
2 **BE SUPPRESSED**

3 In his motion, Defendant indicates that the statement he made *after he was advised of*
4 *his Miranda rights*, was “the product of coercive interrogation tactics, and therefore should be
5 suppressed.” Def.’s Motion at 5. However, Defendant asserts no authority that the actions
6 displayed by Detectives constitute coercive tactics or otherwise impermissible behavior.
7 Rather, the Detectives were completely within the confines of the law in the use of their
8 interview techniques in this case.

9 In the instant case, Defendant’s interview was video-recorded and transcribed.
10 Accordingly, the facts therein are undisputed. Although Defendant asserts that his will was
11 overborne by the police conduct through coercive police tactics, the interview speaks for itself
12 and reflects otherwise.

13 Defendant’s argument focuses on the factors outlined in Passama, i.e., the youth of the
14 accused; his lack of education or his low intelligence; the lack of any advice of constitutional
15 rights; the length of detention; the repeated and prolonged nature of questioning; and the use
16 of physical punishment such as the deprivation of food or sleep. Passama, 103 Nev. 212 at
17 214. Additionally, Defendant claims that he was under the influence of MDMA prior to and
18 during questioning. Each argument is addressed in turn.

19 **A. Defendant’s Age**

20 As Defendant points out in his motion, Defendant was 22 years old at the time of his
21 interview. Def.’s Motion at 2, 6. Accordingly, Defendant was of sufficient age and maturity
22 for purposes of a police interview. Twenty-two years old is beyond the age of adulthood and
23 as such, concerns that are present when interview juveniles are not present in the instant case.
24 Certainly, Defendant’s age does not weigh in favor of finding his statement involuntary.

25 **B. Defendant’s Level of Education & Intelligence**

26 Defendant argues that his statement should be suppressed because he had an incomplete
27 education, having never graduated from high school. Def.’s Motion at 3. The State would
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1 note that Defendant does not specify how far he went in school nor does he provide any
2 evidence to establish the veracity of his claim that he didn't complete high school.

3 Notably, Defendant provides no authority that the lack of a high school diploma weighs
4 in favor of finding a Defendant's statement involuntary. In fact, the Supreme Court of Nevada
5 has noted that even a lower than average intelligence does not render a confession involuntary.
6 Young v. State, 103 Nev. 233, 235, 737 P.2d 512, 514 (1987) (wherein evidence was adduced
7 at trial that the defendant functioned at the level of a nine-year-old child and his score on an
8 adult intelligence test placed him in the bottom two percent of society).

9 Regardless, while Defendant claims that he had a "limited education," there is no claim
10 or indication whatsoever that Defendant is of below average intelligence. Defendant has not
11 alleged that he was a bad student; that he struggled in school; or that he has a low I.Q. In fact,
12 in watching Defendant's interview, Defendant appears to be very articulate and at one point
13 indicates to Detectives that he was on the honor roll. See Transcription of Defendant's
14 Interview, attached hereto as Exhibit 2 at 29 ("Exhibit 2"). Throughout the entirety of his
15 interview, Defendant is responsive to officer's questions and never appears to be confused
16 about the situation or the questions posed by Detectives. Defendant is active in the
17 conversation with Detectives and he certainly does not come across as someone of less than
18 average intelligence. As such, even if Defendant were to establish that he lacked a high school
19 education at the time of his interview, it would be of little consequence as Defendant clearly
20 understood the nature of the interview and the contents therein.

21 Accordingly, this factor does not weigh in favor of finding Defendant's statement
22 involuntary.

23 **C. Advice on Constitutional Rights**

24 The State concedes that Defendant was in custody at the time of his interview.
25 According, Detectives advised Defendant of his Miranda rights. Exhibit 2 at 4.

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1 Specifically, Detective Jaeger read Defendant his Miranda rights from his department
2 issued card as follows:

3 You have the right to remain silent, and anything you say can be used
4 against you in the court of law. You have the right to consult with an
5 attorney before questioning. You have the right to the presence of an
6 attorney during questioning. If you cannot afford an attorney, one'll
be appointed before questioning. Do you understand the rights?

7 Id.

8 When asked if he understood his rights, Defendant answered in the affirmative.³
9 Defendant cites to this fact as a factor in favor of finding his statement involuntary.
10 Specifically, Defendant indicates that “he received no advice concerning his constitutional
11 rights but for the Miranda warning.” Def.’s Motion at 6.

12 It is entirely disingenuous for Defendant to suggest that his statement should be
13 suppressed because Detectives appropriately advised him of his Miranda rights after which he
14 indicated that he understood them. As would be expected, Defendant provides no authority
15 to assert that anything more is required nor does he assert any other actions that Detectives
16 should have taken in the area.

17 Accordingly, this factor does not weigh in favor of finding Defendant’s statement
18 involuntary.

19 **D. Length of Detention**

20 The length of an interview, in and of itself, is not dispositive of voluntariness. Alward
21 v. State, 112 Nev. 141, 155–56, 912 P.2d 243, 252–53 (1996), overruled on other grounds by
22 Rosky v. State, 121 Nev. 184, 111 P.3d 690 (2005). In Alward, the defendant was questioned
23 for four to five hours. However, he had been read Miranda warnings and was not subject to
24 coercive techniques such as food or sleep deprivation. Id. The Nevada Supreme Court held
25 that, despite the length of the interrogation, the confession was voluntarily made. Id.
26 Similarly, in Rowbottom, the Nevada Supreme Court upheld the voluntariness of the
27 defendant’s confession even though the interview was in excess of ten hours. Rowbottom v.

28 ³ The transcript of Defendant’s interview indicates that his response was “Mm-hm” (Exhibit 2 at 4), however the video
of Defendant’s interview appears to indicate that his response was “yeah” (Exhibit 1 at 5:25:22).

1 State, 105 Nev. 472, 482, 779 P.2d 934, 940 (1989), overruled on other grounds by Jezdik v.
2 State, 121 Nev. 129, 110 P.3d 1058 (2005), and overruled on other grounds by Bigpond v.
3 State, 128 Nev. 108, 270 P.3d 1244 (2012)

4 Furthermore, in Rowbottom, the Nevada Supreme Court declined to establish any set
5 time limitation on police questioning. Id.

6 Here, Defendant's interview commenced at 5:22 p.m. and ended at 8:01 p.m., lasting a
7 total of 2 hours and 39 minutes. See generally Exhibit 1. This length of time does not
8 constitute a prolonged amount of time for purposes of a custodial interrogation. Additionally,
9 at 6:15 p.m., Defendant was given a break in the interview at which time Detectives left the
10 room. Exhibit 1 at 6:15:26-6:30:16. This fact further discounts Defendant's claim that his
11 interview was prolonged. It should also be noted that Defendant never indicated to Detectives
12 he was tired or wished, for any reason, to discontinue the interview. He never asked to cease
13 questioning; he never asked for a break; he never asked for food or water; he never indicated
14 he was uncomfortable; in short, Defendant never gave any indication that the interview lasted
15 longer than he wished or that he no longer wanted to be there.

16 Accordingly, the length of Defendant's interview is not a factor in favor of finding his
17 statement involuntary.

18 **E. Nature of Questioning**

19 Defendant claims that "detectives conducted a prolonged interrogation through
20 repeated, confusing and deceptive questions, demeaning statements which disparaged
21 [Defendant] and through the use of physical intimidation tactics." Def.'s Motion at 3.
22 Defendant's assertion is a blanket statement without any specifics allegations to support his
23 contention. Defendant fails to point to a single question he believes to be inappropriately
24 confusing or deceptive so as to render his statement involuntary. Here, it is clear that
25 Defendant's will was not overborn by the Detective's actions because Defendant's statement
26 remained consistent throughout his interview, i.e., that he was not involved in any way with
27 Gabriel Valenzuela's murder.

28

1 Additionally, Defendant's claim that Detectives used physical intimidation tactics is
2 unfounded. Defendant's claim presumably arises from the fact that detectives physically
3 touched Defendant throughout the interview. Defendant points to 12 instances during the
4 interview wherein Detective Jaeger or Detective Dosch made physical contact. However, a
5 review of the video reveals that such contact was not done in a manner that was physically
6 intimidating and Defendant cites to no authority where any similar behavior was considered
7 coercive. While the State concedes that physical contact did occur on multiple occasions, said
8 contact was not aggressive and appeared to be done in a manner so as to make a connection
9 with Defendant. Additionally, at no time did Detectives threaten Defendant or insinuate that
10 he would be harmed. Of note is that Defendant never reacted to the physical touching and
11 certainly did not react in a manner that would indicate the Detectives were acting in an
12 intimidating manner.

13 Defendant further claims that Detectives lied to Defendant thereby rendering his
14 statement involuntary. Def.'s Motion at 3. Defendant specifically points to three instances
15 wherein he claims that Detectives were lying.⁴ Even assuming arguendo that such statements
16 were untrue, none of these statements would be considered extrinsic falsehoods nor does
17 Defendant make any indication of how these alleged misrepresentations were reasonably
18 likely to procure an untrue statement or to influence Defendant to make a confession regardless
19 of guilt. See Bessey, supra.

20 And while the State does not concede that such statements were in fact falsehoods, the
21 Detectives were entirely within the confines of the law to make the statements they did. See
22 United States v. Rutledge, 900 F.2d 1127, 1131 (7th Cir.1990) ([T]he law permits the police
23 to pressure and cajole, conceal material facts, and actively mislead[.]") (citing United States
24 v. Leon Guerrero, 847 F.2d 1363, 1366 (9th Cir. 1988)). Detectives statements did not promise
25 a worse outcome if Defendant did not confess, did not threaten his family or friends, did not

26 _____
27 ⁴ Defendant claims:

- 28
1. Detectives "lied that the victim's autistic sister watched the victim ...die and attempted to pick up the blood and 'little chunks' of the victim's skull after the shooting[.]"
 2. Detectives "lied to [Defendant] that [his] phone could be traced to the crime scene[.]" and
 3. Detectives "lied to [Defendant] that this sister and girlfriend positively identified [Defendant] from a surveillance video of a Speedy Mart just prior to the incident[.]" Def.'s Motion at 3.

1 threaten the safety of Defendant himself, and did not contain an implication of violence—in
2 short, they did not overcome his free will to make a voluntary statement. Also of note is that
3 Defendant’s interview was not dominated by Detectives. Defendant was given the opportunity
4 to speak and answer every question asked of him.

5 Defendant asserts that his will was overborne by the police conduct through
6 psychological pressure; however, the record speaks for itself and reflects otherwise.
7 Accordingly, this factor does not weigh in favor of finding Defendant’s statement to be
8 involuntary.

9 **F. Physical punishment**

10 Simply being tired, or expressing tiredness, during an interview is not the legal standard
11 by which coercion is measured. Rather, the standard is whether sleep deprivation is used as
12 physical punishment by law enforcement. Passama, *supra*; see Reck v. Pate, 367 U.S. 433, 81
13 S. Ct. 1541, 6 L. Ed. 2d 948 (1961).

14 Here, Defendant claims that he “had not eaten and had been awake without sleep for
15 several hours.” Def.’s Motion at 3, 6. Defendant’s claim that he lacked food and sleep is
16 almost laughable. The extent of this claim is stated above, i.e., he had not eaten or slept several
17 hours. Every day, people go several hours without food and sleep; it’s called being awake.

18 Here, the Defendant’s interview took place at 5:22 p.m. Defendant was not dragged
19 out of bed in the middle of the night, or deliberately kept up. His responses are appropriate to
20 the questions asked. He is able to focus on questions and respond appropriately and he does
21 not fall asleep during questioning by Detectives.

22 Defendant never indicated that he was hungry or tired nor did he indicate in any manner
23 that he was uncomfortable or undesiring of continuing the interview. However, at the
24 conclusion of Defendant’s interview, he did request to use the bathroom and his request was
25 granted. Video of Interview at 8:25:15-8:30. This indicates that Defendant was capable of
26 expressing his concerns and desires should they have existed. Furthermore, Detectives
27 provided Defendant with a bottle of water less than an hour into the interview.

28

1 Accordingly, there is no basis to Defendant's claim that he was suffering from food
2 deprivation at the time of his interview with the Detectives.

3 **G. Influence of intoxicants:**

4 "As a general proposition, intoxication is a factor the district court must consider in
5 determining whether a confession was truly voluntary." Gonzales v. State, 131 Nev. 481, 354
6 P.3d 654, n. 2 (Nev. App. 2015). "However, intoxication is not, by itself, sufficient to render
7 a confession involuntary when the totality of the circumstances otherwise indicate that the
8 statements were voluntary." Id., see e.g., Chambers v. State, 113 Nev. 974, 981–82, 944 P.2d
9 805, 809–10 (1997) (confession voluntary even when given with blood alcohol content (BAC)
10 of .27 and other drugs were present in defendant's system, and defendant was in pain from an
11 open stab wound in arm); Kirksey v. State, 112 Nev. 980, 992, 923 P.2d 1102, 1110 (1996)
12 (to render confession involuntary, defendant must have been so intoxicated that "he was
13 unable to understand the meaning of his comments" (internal quotation marks omitted));
14 Falcon v. State, 110 Nev. 530, 533–35, 874 P.2d 772, 774–75 (1994) (confession admitted
15 even though defendant was under influence of illegal narcotics at time of questioning); Tucker
16 v. State, 92 Nev. 486, 487–88, 553 P.2d 951, 952 (1976) (confession admissible even though
17 defendant's BAC was .20 at the time he signed the confession); Wallace v. State, 84 Nev. 603,
18 605, 447 P.2d 30, 31 (1968) (confession voluntary even when given in emergency room after
19 being shot).

20 Defendant claims that his statement was involuntary because he allegedly ingested
21 MDMA in an unknown quantity at an unknown time. Defendant fails to provide any specifics
22 to his claim and fails to provide medical evidence provided to prove that he was under the
23 influence.

24 Contrary to Defendant's claim, when watching Defendant's interview, he does not
25 appear to be intoxicated or under the influence of intoxicants. Rather, Defendant appears alert
26 and active; and throughout the interview, Defendant used his hands in conjunction with his
27 voice to communicate with Detectives in a coherent manner. When Defendant entered the
28 room, he was walking upright and did not appear to have any difficulty maneuvering into the

1 room. It is obvious in watching Defendant's interview, that he did not have difficulty
2 responding to Detectives questions in an intelligent and logical manner.

3 Other than Defendant's self-serving statements, there is absolutely nothing to indicate
4 that Defendant was under to influence or MDMA or the ingestion of said drug interfered with
5 the voluntariness of Defendant's statements.

6 Accordingly, there is no basis to Defendant's claim that he was under the influence of
7 MDMA and such a claim does not weigh in favor of finding Defendant's statement to be
8 involuntary.

9 **CONCLUSION**

10 Based upon the foregoing arguments, the State asserts that Defendant's statement to
11 police was voluntary and Defendant was not coerced in any way. The State, therefore,
12 respectfully requests that this Court deny the Defendant's motion. However, the State does not
13 object to the Court holding a pretrial Jackson v. Denno hearing in this matter.

14 DATED this 30th day of December, 2019.

15 Respectfully submitted,
16 STEVEN B. WOLFSON
17 Clark County District Attorney
18 Nevada Bar #1565

19 BY /s/GIANCARLO PESCI
20 GIANCARLO PESCI
21 Chief Deputy District Attorney
22 Nevada Bar #007135
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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 30th day of December, 2019, by electronic transmission to:

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

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

17F14369C/dd/MVU



EXHIBIT '1'

EXHIBIT '2'

1067

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

December 31, 2019 08:30 AM All Pending Motions

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

DEFENDANT'S MOTION TO SUPPRESS, OR, IN THE ALTERNATIVE, MOTION FOR JACKSON V. DENNO HEARING
COURT ORDERED, matter CONTINUED for Mr. Rugggeroli's appearance.

DEFENDANT'S MOTION IN LIMINE TO PRECLUDE JAIL PHONE CALLS
COURT ORDERED, matter CONTINUED for Mr. Rugggeroli's appearance.

DEFENDANT'S MOTION TO DISCLOSE INFORMANTS
COURT ORDERED, matter CONTINUED for Mr. Rugggeroli's appearance.

DEFENDANT'S MOTION TO SEVER COUNTS
COURT ORDERED, matter CONTINUED for Mr. Rugggeroli's appearance.

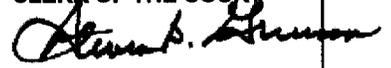
DEFENDANT'S MOTION TO COMPEL PRODUCTION OF DISCOVERY & BRADY MATERIAL
COURT ORDERED, matter CONTINUED for Mr. Rugggeroli's appearance.

DEFENDANT'S MOTION TO COMPEL PRODUCTION OF INDUCEMENT INDEX
COURT ORDERED, matter CONTINUED for Mr. Rugggeroli's appearance.

CUSTODY

CONTINUED TO: 01/15/20 8:30 AM

CLERK'S NOTE: The above minute order has been distributed to:
rugggeroli@icloud.com hvp/1/2/20



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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, DECEMBER 31, 2019

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
ALL PENDING MOTIONS**

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, DECEMBER 31, 2019, 9:50 A.M.

2 * * * * *

3 THE COURT: Mr. Pesci are you here on Wheeler?

4 MR. PESCI: Yes, Judge.

5 THE COURT: Have you heard from Mr. Ruggeroli?

6 MR. PESCI: No, Judge. Other than him filing his motion Friday at 3:03, no.
7 We texted him, he hasn't responded.

8 THE CLERK: I just asked Pam to call him.

9 THE COURT: Okay. Well, we'll call him.

10 MR. PESCI: Thank you.

11 [Proceeding trailed until 10:26 a.m.]

12 THE COURT: Okay. Listen, I don't know what to tell you -- is that
13 Mr. Ruggeroli back there? No.

14 MR. PESCI: No.

15 THE COURT: No. We can't find him. I've had Pam call his office. I don't
16 know what to tell you.

17 MR. PESCI: Yeah, and my co-counsel, Ms. O'Halloran, has been texting, no
18 answer. We'll just pass it for whenever, Judge.

19 THE COURT: Okay. Mr. Wheeler, I mean, it's 10:30, I've done everything in
20 my power to try to find Mr. Ruggeroli. So, I think maybe he took the day off but
21 forgot to tell us. Yeah, because I know I was up last night preparing all these
22 motions too.

23 THE DEFENDANT: I understand completely.

24 THE CLERK: He's here on the 15th, Judge, if you want to just put it to then.

25 THE COURT: The 15th? We'll just put him on the 15th, that's your next --

1 THE DEFENDANT: I actually got a court date on the 15th.

2 THE COURT: I do appreciate the State's quick response too because I had
3 everything fully briefed.

4 MR. PESCI: Sure.

5 THE COURT: Go ahead.

6 THE DEFENDANT: I think we actually got a court date on the 15th.

7 MR. PESCI: We do.

8 THE COURT: We do, so I'm just going to pass these motions 'til the 15th.

9 THE DEFENDANT: So what we -- so the motions will be spoke upon on the
10 15th?

11 THE COURT: Right. There's about six motions that your attorney filed and
12 we'll talk about them and rule on all of them on the 15th. Okay.

13 THE DEFENDANT: Thank you.

14 MR. PESCI: Thank you.

15 THE COURT: Thank you.

16 MR. PESCI: Happy New Year.

17 THE DEFENDANT: Happy New Year.

18 PROCEEDING CONCLUDED AT 10:27 A.M.

19 * * * * *

20

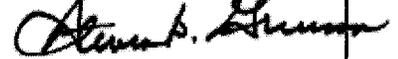
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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.

24 

25 SARA RICHARDSON
Court Recorder/Transcriber

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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

8 DISTRICT COURT
9 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,

18 Defendants.

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

DEPT NO: XII

17 STATE'S SECOND SUPPLEMENTAL NOTICE OF WITNESSES
18 AND/OR EXPERT WITNESSES
19 [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 ///

1	<u>NAME</u>	<u>ADDRESS</u>
2	BAMBARENDAGO, SARATH	5565 W. DEWEY DR., LVN
3	BOGATAY, M.	LVMPD P#7782
4	BUSHMAN, TRACEY	LVMPD P#8618
5	CALLEJA, A.	LVMPD P#9185
6	CATRICALA, W.	LVMPD P#12939
7	COOK, D.	LVMPD P#5730
8	CUSTODIAN OF RECORDS	FIESTA DISCOUNT MARKET
9	CUSTODIAN OF RECORDS	NEVADA DMV
10	DIZON, PELITA	c/o CCDA-VWAC, 200 LEWIS AVE., LVN
11	GARCIA, C.	LVMPD P#8913
12	HONAKER, JAMIE	CCDA INVESTIGATOR
13	JANO, BOB	5536 W. DEWEY DR., LVN
14	JANO, MERCEDITA	5536 W. DEWEY DR., LVN
15	JUSTICE, JANESSA	3300 CIVIC CENTER, N. LAS VEGAS, NV
16	KLASSEN, RAE	SHORTLINE EXPRESS, 7325 S. JONES, LVN
17	MCCARTHY, J.	LVMPD P#4715
18	MENDEZ, LUCY	5224 ZACHARY ST., LVN
19	MERRICK, F.	LVMPD P#7549
20	PARKER, J.	LVMPD P#12936
21	PARRA, JOSEPH	LVMPD P#10025
22	REEVES, ANTHONY	1327 H. ST., LVN
23	ROBINSON, DESHAWN	c/o J.D. EVANS, ESQ.
24	ROMATKO, MARIAH	7101 PINELAKE RD., LVN
25	SANDOVAL, H.	LVMPD P#5819
26	SOLOMON, MARCELL	2043 SOMBRERO DR., LVN
27	TRAMBONI, J.	LVMPD P#9331
28	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 ***MANIGAULT, LINDA**, LVMPD #15987, is employed as a Forensic Scientist I or
4 Designee, with the Las Vegas Metropolitan Police Department. She will testify as an expert
5 as to the procedures, techniques and science employed in fingerprint analysis, all procedures
6 employed in this case and reports provided.

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

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

14 **SCHELLBERG, P. – LVMPD P#5413** (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 **SCOTT, JEFFREY – LVMPD P#9618** (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 **SHANNON, J. – LVMPD P#13482** (or designee): Expert in the identification,
23 documentation, collection and preservation of evidence, including crime scene analysis and is
24 expected to testify as an expert to the identification, documentation, collection and
25 preservation of evidence in this case.

26 **SHUMAN, DR. MARK** (or designee): is a medical doctor employed by the Clark
27 County Coroner Medical Examiner. He is an expert in the area of forensic pathology and will
28

1 give scientific opinions related thereto. He is expected to testify regarding the cause and
2 manner of death of GABRIEL VALENZUELA in this case.

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

7 **SPEAS, WILLIAM – LVMPD P#5228** (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 **STEPHENS, EBONY - LVMPD P#5158** (or designee): Expert in the identification,
12 documentation, collection and preservation of evidence, including crime scene analysis and is
13 expected to testify as an expert to the identification, documentation, collection and
14 preservation of evidence in this case.

15 **TAPAY, GLEZZELLE – LVMPD P#15709** (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 **TOMAINO, D. – LVMPD P#8278** (or designee): Expert in the area of cellular
20 phones, including but not limited to, cellular system technology including cell tower
21 generation of calls and ability to determine the location where generated, collection and
22 handling of cellular phones for evidentiary purposes, and the examination, preservation,
23 retrieval and analysis of cellular call and text records/data, photos and/or video and/or any
24 other data kept on a cellular phone. Further, this expert will testify to the results of any and
25 all examinations performed on the cellular phones in this case.

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

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 CERTIFICATE OF ELECTRONIC TRANSMISSION

12 I hereby certify that service of the above and foregoing was made this 13th day of
13 January, 2020, by electronic transmission to:

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

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

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

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

25 BY: /s/ Stephanie Johnson
26 Secretary for the District Attorney's Office
27
28

17F14369ABC-dd/MVU

Las Vegas Metropolitan Police Department
Forensic Laboratory

CURRICULUM VITAE

Date: 10/31/2017

Name: Linda Manigault P#: 15987 Classification: Forensic Scientist I

Current Discipline of Assignment: Latent Prints

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Toxicology/Blood Alcohol	
Toolmarks		Toxicology/Breath Alcohol	
Trace Evidence		Toxicology/Drugs	
Arson Analysis		Firearms	
Latent Prints	X	Crime Scene Investigations	X
Serology		Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	
Quality Assurance		Technical Support / DNA	
EDUCATION			
<i>Institution</i>	<i>Dates Attended</i>	<i>Major</i>	<i>Degree Completed</i>
Pace University - Manhattan	09/02 – 05/04	BS in Forensic Science	05/2004
John Jay College of Criminal Justice	01/00 – 05/02	N/A	N/A
SUNY at Suffolk County Community College	01/99 – 12/99	AA in Liberal Arts	05/2000
SUNY at College at Old Westbury	01/90 - 05/92	N/A	N/A
ADDITIONAL TRAINING / SEMINARS			
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>	
NYS DCJS Basic Investigative Photography	Southampton Town Police Department	01/11/10 – 01/15/10	
NYS DCJS DNA Evidence Recognition, Collection and Preservation for Law Enforcement	Suffolk County Police Department	02/08/10	

Las Vegas Metropolitan Police Department
Forensic Laboratory

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
NYS DCJS Police Crime Scene and Evidence Specialist Course	Nassau County Police Department	02/22/10 - 03/04/10
NYS DCJS Latent Print Processing Course – Level 1	Division of Criminal Justice Services	04/12/10 – 04/16/10
Introduction to Forensic Digital Image Processing	Monmouth County Prosecutor's Office	05/03/10 – 05/07/10
Forensic Science Program 101 and 201	American Institute of Applied Science	07/10 – 11/10
Advanced Latent Ridgeology Course	Sirchie Education and Training	11/08/10 – 11/12/10
Forensic Fingerprint Analysis Basics	Forensic Training Network Nation Institute of Justice	01/17/11
Automated Fingerprint Identification System	West Virginia University – Online Professional and Continuing Education	02/11 – 05/11
Crime Scene Investigation	West Virginia University – Online Professional and Continuing Education	02/11 – 05/11
Ethics in Forensic Science	West Virginia University – Online Professional and Continuing Education	02/11 – 05/11
Forensic Photography	West Virginia University – Online Professional and Continuing Education	02/11 – 05/11
Perspectives in Expert Testimony	West Virginia University – Online Professional and Continuing Education	02/11 – 05/11
The Science of Fingerprints	West Virginia University – Online Professional and Continuing Education	02/11 – 05/11
Court Room Testimony Training	Office of the Chief of Detectives – Suffolk County Police Academy	03/30/11
NYS DCJS Advanced Latent Print Processing Course – Level 2	Division of Criminal Justice Services	04/12/11 – 04/16/11

Las Vegas Metropolitan Police Department
Forensic Laboratory

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Digital Imaging – Back to Basics	West Virginia University – Forensic Science Institute	08/22/11
The Application of ACE-V to Simultaneous Impressions / 100% Verification of Latent Print Examination Conclusions	West Virginia University – Forensic Science Institute	08/23/11
Scientific Analysis – Applying ACE-V and Daubert to Testimony	West Virginia University – Forensic Science Institute	08/24/11 – 08/26/11
NYS DCJS Certified SAFIS Latent Print Examiner – Level 3	Division of Criminal Justice Services	09/19/11 – 09/23/11
Statewide Automated Biometric Identification System (SABIS)	DCJS/SAFRAN MorphoTrak	01/12
Orientation Clues in Searching for Latent Prints	West Virginia University – Forensic Science Institute	06/04/12 – 06/06/12
Intermediate Photoshop	West Virginia University – Forensic Science Institute	06/07/12 – 06/08/12
Ethics in Forensic Science	West Virginia University – Forensic Science Institute	10/09/12
Processing People: Suspects, Victims and Witnesses	West Virginia University – Forensic Science Institute	10/10/12
Advanced Comparison of Friction Ridge Impressions	West Virginia University – Forensic Science Institute	10/11/12 – 10/12/12
Mideo Systems: Latentworks Training	Nassau County Office of the Medical Examiner	05/13/13
Ron Smith's Advanced Palm Prints Comparison	San Luis Obispo County Sheriff's Office	06/03/13 – 06/05/13
Understanding Exclusion and Sufficiency Decisions	Tucson, AZ Crime Lab	04/14/14 – 04/18/14
Analysis of Distortion in Latent Prints	NYPD – Jamaica Crime Lab	06/08/14 – 06/09/14
Universal Latent Workstation (ULW) Software – The Basics	International Association for Identification Conference – Sacramento, CA	08/04/15

Las Vegas Metropolitan Police Department
Forensic Laboratory

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Examination of Bodies for Fingerprints – Proven Methods, Tried and True	International Association for Identification Conference – Sacramento, CA	08/05/15
Improving Gray Scale Perception of Latent Print Details	International Association for Identification Conference – Sacramento, CA	08/06/15
Exclusionology: Standards and Reducing Errors	Indianapolis State Crime Lab	08/31/15 – 09/02/15
Cognitive Factors in Forensic Science	NYPD – Jamaica Crime Lab	12/09/15 – 12/10/15
Ethics in Forensic Science	West Virginia University – Forensic Science Institute	11/07/16 – 12/19/16
International Association for Identification Educational Conference	Atlanta, GA	08/06/17 – 08-12/17
COURTROOM EXPERIENCE		
<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
Nassau County Criminal Court	Latent Prints	12
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department	Forensic Scientist I	09/12/16 - Present
Nassau County Office of the Medical Examiner	Forensic Scientist II	05/04/12 – 09/06/16
Suffolk County Police Department	Evidence Specialist	12/14/10 – 05/02/12
Suffolk County Police Department	Evidence Specialist Trainee	12/14/09 – 12/13/10
Suffolk County Water Authority	Chemist I	09/11/04 – 12/11/09
PROFESSIONAL AFFILIATIONS		
<i>Organization</i>		<i>Date(s)</i>
International Association of Identification		2010 - Present

Las Vegas Metropolitan Police Department
Forensic Laboratory

PROFESSIONAL AFFILIATIONS	
<i>Organization</i>	<i>Date(s)</i>
NY Division of the IAI	2011 - 2016
Northeastern Association of Forensic Scientists	2014 - 2016
PUBLICATIONS / PRESENTATIONS:	
Recording Post Mortem Impressions – NY Division of the IAI – 10/2014 and 10/2015	
OTHER QUALIFICATIONS:	

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

January 15, 2020 08:30 AM All Pending Motions

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. Ruggero	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

DEFENDANT'S MOTION TO SUPPRESS, OR, IN THE ALTERNATIVE, MOTION FOR JACKSON V. DENNO HEARING
COURT ORDERED, Motion GRANTED; matter SET for Hearing.

DEFENDANT'S MOTION IN LIMINE TO PRECLUDE JAIL PHONE CALLS
COURT ORDERED, Motion DENIED; any objections can be made at the time of trial.

DEFENDANT'S MOTION TO DISCLOSE INFORMANTS
State confirmed the Defense has already been informed. COURT ORDERED, if the State has that information, then the State needs to provide that information.

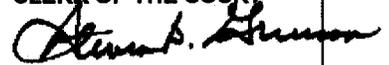
DEFENDANT'S MOTION TO SEVER COUNTS
There being no objection by the State, COURT ORDERED, Motion GRANTED; COUNTS 5 through 7 are to be tried first.

DEFENDANT'S MOTION TO COMPEL PRODUCTION OF DISCOVERY & BRADY MATERIAL
Mr. Ruggero stated he believes everything has been provided. COURT SO NOTED.

DEFENDANT'S MOTION TO COMPEL PRODUCTION OF INDUCEMENT INDEX
Mr. Ruggero stated he believes everything has been provided. COURT SO NOTED.

STATUS CHECK: TRIAL READINESS
Parties announced ready for trial. COURT SO NOTED. COURT FURTHER ORDERED, Mr. Ruggero is to prepare the Order.

02/10/20 10:30 AM JACKSON V DENNO HEARING



DISTRICT COURT
CLARK COUNTY, NEVADA

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4 THE STATE OF NEVADA,

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6 Plaintiff,

7 vs.

8 RAEKWON SETREY ROBERTSON and
9 DAVONTAE AMARRI WHEELER,

10 Defendants.

CASE NO. C-17-328587-2

C-17-328587-3

DEPT. NO. XII

11 BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

12 WEDNESDAY, JANUARY 15, 2020

13 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
14 **STATUS CHECK: TRIAL READINESS (BOTH)**
15 **ALL PENDING MOTIONS (WHEELER)**

16
17
18
19 APPEARANCES:

20 For the State:

GIANCARLO PESCI
Chief Deputy District Attorney

21 For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

22 For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

23
24
25 RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 15, 2020, 9:23 A.M.

2 * * * * *

3 THE COURT: State versus Robertson and Wheeler, case C328587.

4 UNIDENTIFIED DEFENDANT: Good morning, Your Honor.

5 THE COURT: Good morning. They're both present and in custody.

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

7 MR. RUGGEROLI: Good morning, Your Honor, James Ruggeroni on behalf of
8 Mr. Wheeler.

9 MR. SANFT: And, Your Honor, Michael Sanft as well.

10 THE COURT: Good morning. We have a February 10th trial date pending,
11 are the parties going to be ready to go?

12 MR. RUGGEROLI: Yes, Your Honor.

13 MR. SANFT: Yes, Your Honor.

14 MR. PESCI: We anticipate being ready.

15 THE COURT: Okay. I know you have a few motions.

16 MR. RUGGEROLI: Yes, Your Honor.

17 THE COURT: Do you want to start?

18 MR. RUGGEROLI: Please. Judge, starting with the motion to sever the
19 counts, the State filed a response indicating that they don't oppose. I think, to be
20 safe, the State would file an amended indictment and not have those counts
21 included, there's no real argument about that I don't believe.

22 MR. PESCI: And so -- correct.

23 THE COURT: Right. So the motion to sever counts, the State didn't have
24 any objection, so that will be granted. And I believe the State wanted to begin with
25 Counts 5 through 7 first.

1 MR. PESCI: Correct. We'll have an amended by the time of trial.

2 THE COURT: Okay.

3 MR. RUGGEROLI: Thank you, Judge.

4 THE COURT: All right.

5 MR. RUGGEROLI: Judge, as to the motion to suppress statements, Judge, I
6 believe that we've provided sufficient grounds for the Jackson v. Denno hearing. A
7 number of our contentions would require, and I think it would be more beneficial to
8 have the hearing, to have the full argument afterwards. We have some specific
9 contentions and so we would request the Jackson v. Denno hearing.

10 THE COURT: Okay. I'll grant the request for the Jackson v. Denno hearing.
11 Can we do it the first day of trial?

12 MR. PESCI: That's fine with the State.

13 MR. RUGGEROLI: Yes, Judge.

14 THE COURT: Okay. All right. Then the next one is your motion in limine to
15 preclude jail phone calls.

16 MR. RUGGEROLI: Yes, Judge. Your Honor --

17 THE COURT: Do you have any specific thing you're trying to exclude?

18 MR. RUGGEROLI: I'm not aware of anything that has been said by my client
19 that would be a problem. However, sometimes there are different views of what
20 statements actually mean. He's been in custody for quite a long time, so I would
21 suspect that the State has hours and hours and hours of statements that have been
22 made that include other parties. I, as a general motion, am asking that all of the jail
23 calls be suppressed. However, if the Court does not grant that, then I think that the
24 State should at least put us on notice to what specific calls they intend to use, if any.

25 THE COURT: Well, I believe if they're going to use it in their case-in-chief

1 they're required to.

2 MR. PESCI: Correct, Judge. But there's been no specificity as to a particular
3 item that they want to exclude. It's just a blanket request to make everything that
4 my client said not come into trial. There's no legal basis to prohibit a call that's
5 recorded and allowed by statute from the jail to be introduced and we're not going to
6 tell or do for them in advance their job and tell them, hey, maybe you should object
7 to this one.

8 So if there's a piece of evidence when we're seeking to introduce they
9 want to object to, we'll take it up at that point. But we're not going to point it out in
10 advance.

11 THE COURT: Okay. So I'm going to deny the request and any objection can
12 be made at the time of trial.

13 And the motion to disclose informants.

14 MR. RUGGEROLI: Judge, this one's mainly precautionary. We are aware of
15 one informant. I don't have reason to believe that there are others. But if there are,
16 we would like to be informed, we need to be.

17 MR. PESCI: And, Judge, we've already informed them of the individual, given
18 them the materials associated with that, don't know of any other person that would
19 fall into that category, thus we filed our opposition.

20 THE COURT: Okay. I mean, but, again, if the State has any of that
21 information, they're required to turn it over to the defense.

22 The motion to sever the counts was granted.

23 The motion to compel Brady material.

24 MR. RUGGEROLI: Thank you, Judge. Your Honor, I did point out in the
25 motion that to the extent it has not already been provided, we've already done an

1 extensive file review with the State. I believe Mr. Pesci has given us everything.
2 There are really just two issues specifically regarding the witness, D.R., the juvenile
3 and mental health records. And then the second issue was the production and
4 notification of all phone or Facebook records. And I think that the State has given us
5 everything. But we're being very cautious and want to make sure that this was
6 preserved in writing. So that's the basis for the motion.

7 THE COURT: Does the State have any juvenile and mental health records for
8 D.R.?

9 MR. PESCI: We do, and we've already given it to the defense. The defense
10 asked for it. We obtained it for them. And we gave it to them months ago.

11 THE COURT: Okay.

12 MR. RUGGEROLI: Yeah.

13 THE COURT: So is there anything in this motion that hasn't been provided to
14 you?

15 MR. RUGGEROLI: Not that I'm aware of, Judge.

16 THE COURT: Okay. All right. And then motion to compel production of
17 inducement index.

18 MR. RUGGEROLI: Thank you, Judge. I think the State has indicated, and
19 we'll just hold them to their word, that they've provided that it is everything that's
20 been required.

21 MR. PESCI: That's correct.

22 THE COURT: All right. Okay. Thank you very much, and can we just put it
23 on for your calendar call, February 4th?

24 MR. RUGGEROLI: Yes, Judge.

25 MR. SANFT: Yes, Your Honor. Thank you.

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THE COURT: Okay. Thank you. And, Mr. Ruggeroli, you can -- you can prepare your order on your motions.

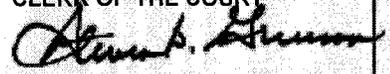
MR. RUGGEROLI: Okay. Thank you, Judge.

PROCEEDING CONCLUDED AT 9:28 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 **MOT**
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 Chief Deputy District Attorney
10 Nevada Bar #12840
11 200 Lewis Avenue
12 Las Vegas, Nevada 89155-2212
13 (702) 671-2500
14 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,

16 Plaintiff,

17 -vs-

18 RAEKWON SETREY ROBERTSON, aka,
19 Raekwon Robertson, #8252804
20 DAVONTAE AMARRI WHEELER,
21 #5909081

22 Defendant(s).

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

DEPARTMENT XII
NOTICE OF HEARING
DATE 2-4-2020 TIME 8:30am
APPROVED BY pc

23 **NOTICE OF MOTION AND MOTION TO PRESENT WITNESS NOREEN
24 CHARLTON THROUGH AUDIOVISUAL TRANSMISSION**

25 DATE OF HEARING: 2/4/20
26 TIME OF HEARING: 8:30 A.M.
27 (HEARING REQUESTED)

28 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and files
this Notice of Motion and Motion to Present Witness Noreen Charlton Through Audiovisual
Transmission.

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

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1 **NOTICE OF HEARING**

2 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned
3 will bring the foregoing motion on for setting before the above entitled Court on the 4th day
4 of February, 2020, at the hour of 8:30 o'clock AM, or as soon thereafter as counsel may be
5 heard.

6 DATED this 28th day of January, 2020.

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

10 BY /s/GIANCARLO PESCI
11 GIANCARLO PESCI
12 Chief Deputy District Attorney
13 Nevada Bar #7135

14 **POINTS AND AUTHORITIES**

15 **STATEMENT OF THE CASE**

16 On December 14, 2017, Defendant, Raekwon Robertson (“Defendant Robertson”) was
17 charged by way of Indictment as follows: COUNT 1 – BURGLARY WHILE IN
18 POSSESSION OF FIREARM (Category B Felony – NRS 205.060); COUNT 2 –
19 CONSPIRACY TO COMMIT ROBBERY (Category B Felony – NRS 200.380, 199.480);
20 COUNTS 3 & 4 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony –
21 NRS 200.380, 193.330, 193.165); COUNT 5 – CONSPIRACY TO COMMIT ROBBERY
22 (Category B Felony – NRS 200.380, 199.480); COUNT 6 – ATTEMPT ROBBERY WITH
23 USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.330, 193.165); and
24 COUNT 7 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS
25 200.010, 200.030, 193.165).

26 On the same day, Defendants Davontae Wheeler (“Defendant Wheeler”) and Demario
27 Lofton-Robinson (“Defendant Lofton-Robinson”) were charged by way of Indictment as
28 follows: COUNT 5 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony – NRS
200.380, 199.480); COUNT 6 – ATTEMPT ROBBERY WITH USE OF A DEADLY

1 WEAPON (Category B Felony – NRS 200.380, 193.330, 193.165); and COUNT 7 –
2 MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS 200.010,
3 200.030, 193.165).

4 On December 19, 2017, all three Defendants pled not guilty and waived their right to a
5 speedy trial.

6 On August 24, 2018, Defendant Lofton-Robinson was referred to Lakes Crossing
7 pending competency findings. On March 8, 2019, Defendant Lofton-Robinson was found
8 competent to proceed to trial. On December 6, 2019, Defendant Lofton-Robinson was again
9 referred to Lakes Crossing pending competency findings. As of the filing of this motion,
10 Defendant Lofton-Robinson has not been deemed competent to proceed to trial.

11 On December 20, 2019, Defendant Wheeler filed a Motion to Sever Counts requesting
12 this court to sever Counts 1-4 from the trial. On January 15, 2020, without opposition from
13 the State, the Court granted Defendant Wheeler’s Motion to Sever.

14 Trial is currently scheduled to begin on February 10, 2020. At that time, the State
15 anticipates proceeding to trial against Defendant Wheeler and Defendant Robertson as to
16 Counts 5-7.

17 The State hereby files the instant Motion to Use Audiovisual Testimony to present the
18 testimony of former Crime Scene Analyst, Noreen Charlton who will be out of the jurisdiction
19 for the scheduled trial date and unable to appear in person.

20 **STATEMENT OF FACTS**

21 In the early morning hours of August 9, 2017, Gabriel Valenzuela (“Mr. Valenzuela”)
22 was shot in the driveway of his own home, located at 5536 Dewey Drive, in Las Vegas,
23 Nevada. Immediately prior to the shooting, Robert Mason was jogging in the neighborhood
24 of Mr. Valenzuela’s home and he noticed four suspicious individuals standing in front of Mr.
25 Valenzuela’s home. Mr. Mason described these individuals as black males wearing dark
26 colored clothing. After observing the four suspicious individuals standing in Mr. Valenzuela’s
27 driveway, Mr. Mason saw an unoccupied white Mercury Grand Marquis with NV license plate
28

1 of 473YZB. Mr. Mason informed his wife of this information and at 12:11 a.m. she called
2 police to report the suspicious individuals.

3 One minute later, at 12:12 a.m., Mr. Valenzuela's cousin, John Relato called 911 to
4 report that Mr. Valenzuela had been shot. Mr. Valenzuela was pronounced dead at 12:55 a.m.
5 Three .45 caliber cartridge cases and one .22 caliber cartridge case were found at the scene of
6 the murder. The .45 caliber cartridge cases bore three separate head-stamps: R-P 45 AUTO,
7 NFCR, and WINCHESTER 45 AUTO. The .22 caliber cartridge case bore a head stamp of
8 "C."

9 During the investigation, detectives learned that on August 8, 2017, immediately
10 preceding the murder, the same Mercury Grand Marquis seen by Mr. Mason at the scene of
11 the murder was captured on surveillance footage at a convenience store located at 7325 S.
12 Jones Boulevard. This convenience store is located less than one mile from the Mr.
13 Valenzuela's residence. The vehicle was seen on surveillance footage arriving to the store at
14 approximately 11:25 p.m. and leaving the store at approximately 11:45 p.m., roughly 25
15 minutes before the murder. Surveillance footage also shows four black males arriving in the
16 vehicle. One of the black males was carrying a handgun in a holster on his right hip. This
17 individual was later identified as Defendant Wheeler. In the surveillance footage, he was
18 wearing a red hoodie type shirt, a white baseball hat with an unknown symbol, torn black
19 jeans, and red high-top shoes.

20 As part of their initial investigation, Detectives were able to determine the identities of
21 two suspects based on an investigation stemming from the license plate of the Mercury Grand
22 Marquis. Those two suspects are Defendant Lofton-Robinson and his younger brother. Both
23 of these suspects admitted their involvement in the murder and admitted that two other
24 individuals were involved. However, both suspects had limited information regarding the
25 identities of the two additional suspects.

26 During his confession, Defendant Lofton-Robinson indicated that the original plan was
27 to rob Mr. Valenzuela but when he fought back, Mr. Valenzuela was shot multiple times.
28 Defendant Lofton-Robinson indicated that he was in possession of a .45 caliber firearm and

1 fired one shot at Mr. Valenzuela. He also told detectives that the other two suspects would be
2 listed in his phone under the names of "Rae" and "Sace."

3 In searching Defendant Lofton-Robinson's phone, Detectives were able to locate a
4 recent text message between Lofton-Robinson and "Sace." "Sace's" phone number was
5 associated with a Facebook account of "Young Sace Versace" who officers were able to
6 identify as Defendant, Devonte Wheeler. "Rae" was later identified as Defendant Raekwon
7 Robertson.

8 Officers with LVMPD executed several search warrants at various locations. During
9 those search warrants, a .22 caliber semi-automatic firearm was located at 6647 West
10 Tropicana, an address associated with Defendant Robertson. While searching 6647 West
11 Tropicana, officers also located ammunition bearing the headstamp "C." This ammunition
12 matches the .22 caliber cartridge case found at the murder scene. Ballistic testing revealed
13 that the .22 caliber cartridge case found at the scene of the murder was fired from this firearm.

14 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
15 Defendant Lofton-Robinson. During the search of that residence, officers located a .45 caliber
16 firearm and ammunition bearing a headstamp of R-P 45, which matched one of .45 caliber
17 cartridge cases found at the scene of the murder. Ballistic testing revealed that three .45 caliber
18 cartridge cases found at the scene of the murder were fired from this firearm.

19 On August 15, 2017, the Criminal Apprehension Team of the Las Vegas Metropolitan
20 Police Department ("LVMPD") apprehended Defendant Wheeler at his address of 3300 Civic
21 Center Drive, apartment F. Crime Scene Analyst, Noreen Charlton ("Ms. Charlton") was
22 present during the search of this residence and of the neighboring apartment. During a search
23 of the residence, officers located a Taurus .45 caliber firearm. The magazine of the firearm
24 contained 6 rounds of live ammunition bearing the head stamp of R-P 45 AUTO (the same
25 head stamp as one of the .45 cartridges found at the scene of the murder). Detectives also
26 recovered a pair of red tennis shoes and a black and white baseball cap which appeared to be
27 the items worn by Defendant Wheeler in the surveillance footage from the convenience store.
28 Each of these items were documented and impounded by Ms. Charlton. Ms. Charlton also

1 processed the Taurus firearm/magazine for latent prints and swabbed the firearm/magazine for
2 DNA. The latent print lifted by Ms. Charlton was ultimately identified to Defendant Wheeler.
3 Ms. Charlton has since retired from the Las Vegas Metropolitan Police department and she
4 resides out of state. In addition, she travels extensively as a part of her new job. During the
5 weeks of February 10, 2020 and February 17, 2020, Ms. Charlton will be traveling from her
6 home state for work. Specifically, Ms. Charlton will be working in West Virginia the week
7 of February 10, 2020. During the following week of February 17, 2020, Ms. Charlton will be
8 working in New Jersey. Due to Ms. Charlton's inability to appear in person, the State hereby
9 requests permission to present her testimony via audiovisual transmission.

10 ARGUMENT

11 **I. AUDIOVISUAL PRESENTATION OF NOREEN CHARLTON IS** 12 **PERMISSIBLE AND SHOULD BE ALLOWED AT TRIAL**

13 In 2013, the Legislature enacted provisions that broadened an already broad principle
14 – that witnesses should be allowed to testify through audiovisual means. The law actually
15 encourages such presentation of witnesses to the extent that it saves resources and that it is
16 feasible. The use of witness testimony via audiovisual transmission in criminal trials is
17 governed by Nevada Supreme Court Rules Part IX-A(B), Rules 1-4.¹

18 Pursuant to Rule 2, “courts may permit a witness to appear by simultaneous audiovisual
19 transmission equipment at appropriate proceedings, including trial.” RNVSC Part IX-A
20 (B)(Rule 2). Pursuant to Rule 3, the “court may follow the procedures set forth in these rules
21 or in NRS 50.330, NRS 172.138, or NRS 171.1975.” RNVSC Part IX-A(B)(Rule 3).

22 Rule 4(1) also states that “a witness may appear by simultaneous audiovisual
23 transmission equipment at trial if the court first makes a case-specific finding that (1) the denial
24 of physical confrontation is necessary to further an important public policy, and (2) the
25 reliability of the testimony is assured...” RNVSC Part IX-A(B)(Rule 4(1)).

26 ///

27 ///

28 _____
¹ A copy of these rules in their entirety are attached as Exhibit 1.

1 Pursuant to NRS 171.1975 and 172.138, the State or defense may present live testimony
2 of a witness by means of audiovisual technology at preliminary hearing and grand jury
3 proceedings. Both statutes refer to three situations when the court must allow the witness to
4 testify via audio visual technology:

- 5 1. Witness resides more than 100 miles away
- 6 2. Witness is unable to attend because of a medical condition
- 7 3. Good cause otherwise exists.

8 NRS § 171.1975, 172.138.

9 Both statutes also reference that a certified court reporter be present to transcribe the
10 testimony, and prior to testifying, the witness must sign a written declaration wherein the
11 witness acknowledges that he is subject to the jurisdiction of the Nevada courts and may be
12 subject to criminal prosecution regarding any crime in connection with his testimony (i.e.
13 perjury), and finally that he or she consents to such jurisdiction. Lastly, the audiovisual
14 technology must allow the witness to be (1) clearly heard and seen, and (2) examined and
15 cross-examined.

16 At the time of the investigation in this case, Noreen Charlton was employed as a Crime
17 Scene Analyst with the Las Vegas Metropolitan Police Department. In the instant case, Ms.
18 Charlton is a necessary witness for the State. Through her employment, she was heavily
19 involved in the search of Defendant Wheeler's residence and she documented/processed
20 evidence the State intends on presenting at trial. Ms. Charlton is the only witness who is able
21 to testify to many aspects of her involvement. Specifically, she impounded the Taurus .45
22 caliber firearm and ammunition found at 3300 Civic Center Drive. She also impounded the
23 clothing found at this residence, which is consistent with the clothing Defendant Wheeler was
24 wearing in the minutes leading up to the murder. Ms. Charlton also processed the Taurus
25 firearm/magazine for latent prints and swabbed the firearm/magazine for DNA. The latent
26 print lifted by Ms. Charlton was ultimately identified to Defendant Wheeler. Without the
27 ability to present Ms. Charlton's testimony via audiovisual means, the State would not be able
28 to lay the proper foundation to admit this fingerprint evidence.

1 In the time since this case initiated, Ms. Charlton retired from LVMPD and she now
2 resides of state. In addition, as a part of Ms. Charlton's new career, she frequently travels
3 from her home state. At the time of the currently scheduled trial, Ms. Charlton will be traveling
4 for work and will therefore be unable to appear in person. While the questioning of Ms.
5 Charlton may extend beyond the subjects discussed above, it is clear that Ms. Charlton is a
6 crucial witness for the State.

7 The Eighth Judicial District Courts have the technology and software in place for such
8 a request. The State will work with District Court I.T. to present Ms. Charlton's testimony
9 through approved audiovisual technology. Notably, Ms. Charlton has previously testified via
10 audiovisual means in the Eighth Judicial District Court and is familiar with the logistics of
11 doing so.

12 Based on the foregoing, the denial of physical confrontation is necessary to further an
13 important public policy; i.e., that the jury be allowed to hear all relevant evidence and that the
14 State be allowed to present its case fully and effectively while also allowing Defendants to
15 proceed with trial at the currently scheduled date. Additionally, the audiovisual transmission
16 procedure, as set forth in Supreme Court Rules Part IX-A(B) will adequately ensure the
17 reliability of the testimony. See Lipsitz v. State, 135 Nev. 131, 132, 442 P.3d 138, 140 (2019).

18 Lastly, the Defendants are not prejudiced by the use of audiovisual technology for
19 Noreen Charlton's testimony. Defense counsel will still have the same ability to cross-
20 examine her under oath, and the jury will be able to observe her physical appearance and
21 demeanor while answering questions to assist in their evaluation of her credibility. As such,
22 the Confrontation Clause rights held by Defendants would not be abridged in any way by
23 presenting Ms. Charlton through audiovisual means.

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CONCLUSION

Based on the foregoing, the State requests that this Court allow Noreen Charlton to testify using audiovisual technology.

DATED this 28th day of January, 2020.

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

BY /s/GIANCARLO PESCI
GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #7135

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 28th day of January, 2020, by electronic transmission to:

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

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

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

17F14369BC/dd/MVU

EXHIBIT '1'

West's Nevada Revised Statutes Annotated Nevada Rules of Court Supreme Court Rules Part IX-a (b) Rules Governing Appearance by Simultaneous Audiovisual Transmission Equipment for Criminal Proceeding

NV Crim Proc Audiovisual Equipment, Rule 1

Rule 1. Definitions

Effective: January 1, 2019

Currentness

In these rules, unless the context or subject matter otherwise requires:

1. "Simultaneous audiovisual transmission equipment" means transmission accomplished through the use of:

(a) One or more cameras at a location other than the courtroom that depict the witness in real time so that the parties, their counsel, the court, and the jury, if any, can see the witness to the same or greater extent than they would see if the witness was present in the courtroom; and

(b) One or more cameras in the courtroom that depict the parties, their counsel, the court, and the jury, if any, in real time on a screen visible to the witness who is at another location.

2. "Court" means a proceeding before a judicial officer, magistrate, judge, or master for all criminal proceedings in the State of Nevada.

3. "Party" shall include the plaintiff, defendant, petitioner, respondent, applicant, and adverse party and also apply to such party's attorney of record.

4. "Witness" shall mean a party or other person testifying in the court proceeding.

5. "Shall" is mandatory, and "may" is permissive.

Credits

Adopted Oct. 17, 2012, eff. Jan. 1, 2013.

Appearance by Audiovisual Equipment, Rule 1, NV ST'S CT AUDIO EQUIP CRIM Rule 1
Current with amendments received through January 1, 2020.

West's Nevada Revised Statutes Annotated Nevada Rules of Court Supreme Court Rules Part IX-a (b) Rules Governing Appearance by Simultaneous Audiovisual Transmission Equipment for Criminal Proceeding

NV Crim Proc Audiovisual Equipment, Rule 2

Rule 2. Policy allowing simultaneous audiovisual transmission equipment appearances

Effective: January 1, 2019

Currentness

The intent of this rule is to promote uniformity in the practices and procedures relating to simultaneous audiovisual transmission appearances. As provided in these rules, courts may permit a witness to appear by simultaneous audiovisual transmission equipment at appropriate proceedings, including trial.

Credits

Adopted effective January 1, 2013. Amended effective February 25, 2019.

Appearance by Audiovisual Equipment, Rule 2, NV ST S CT AUDIO EQUIP CRIM Rule 2

Current with amendments received through January 1, 2020.

End of Document

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West's Nevada Revised Statutes Annotated Nevada Rules of Court Supreme Court Rules Part IX-a (b) Rules
Governing Appearance by Simultaneous Audiovisual Transmission Equipment for Criminal Proceeding

NV Crim Proc Audiovisual Equipment, Rule 3

Rule 3. Application

Effective: January 1, 2019

Currentness

These rules apply to all criminal cases except juvenile and appellate proceedings. A court may follow the procedures set forth in these rules or in NRS 50.330, NRS 172.138, or NRS 171.1975.

Credits

Adopted Oct. 17, 2012, eff. Jan. 1, 2013. Amended eff. Aug. 24, 2015.

Appearance by Audiovisual Equipment, Rule 3, NV ST S CT AUDIO EQUIP CRIM Rule 3

Current with amendments received through January 1, 2020.

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West's Nevada Revised Statutes Annotated Nevada Rules of Court Supreme Court Rules Part IX-a (b) Rules Governing Appearance by Simultaneous Audiovisual Transmission Equipment for Criminal Proceeding

NV Crim Proc Audiovisual Equipment, Rule 4

Rule 4. Personal appearances; appearance by simultaneous audiovisual transmission equipment

Effective: January 1, 2019

Currentness

1. Except as set forth in Rule 3, a witness may appear by simultaneous audiovisual transmission equipment at trial if the court first makes a case-specific finding that (1) the denial of physical confrontation is necessary to further an important public policy, and (2) the reliability of the testimony is assured: and in all other criminal proceedings or hearings where personal appearance is required unless the court determines that the personal appearance of the witness is necessary.

2. If, at any time during a proceeding conducted by simultaneous audiovisual transmission equipment, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance by the witness.

3. A party wishing to offer the appearance of a witness at a criminal proceeding by simultaneous audiovisual transmission equipment under this rule shall, not later than 5 judicial days before that proceeding, notify the opposing party by certified mail in a form substantially similar to Form 1 attached hereto, unless good cause is shown why such notice could not have been provided.

4. **Private vendor; charges for service.** A court may provide simultaneous audiovisual transmission equipment for court appearances by entering into a contract with a private vendor. The contract may provide that the vendor may charge the party appearing by simultaneous audiovisual transmission equipment a reasonable fee, specified in the contract, for its services. The court or the vendor may impose a cancellation fee to a party that orders services and thereafter cancels them on less than 48 hours' notice. A court, by local rule, may designate a particular audiovisual provider that must be used for audiovisual transmission equipment appearances.

5. Procedure.

(a) The court must ensure that the statements of participants are audible and visible to all other participants and the court staff and that the statements made by a participant are identified as being made by that participant. The court may require a party to coordinate with a court-appointed person or persons within a certain time *before* the proceeding to ensure the equipment is compatible and operational.

(b) Upon convening a simultaneous audiovisual transmission proceeding, the court shall:

(1) Recite the date, time, case name, case number, names and locations of the parties and counsel, and the type of proceeding;

Rule 4. Personal appearances; appearance by..., NV ST S CT AUDIO...

(2) Ascertain that all statements of all parties are audible and visible to all participants;

(3) Give instructions on how the proceeding is to be conducted, including notice if necessary, that in order to preserve the record, speakers must identify themselves each time they speak; and

(4) Place the witness under oath and ensure that the witness is subject to cross-examination.

6. Reporting. All proceedings involving simultaneous audiovisual transmission equipment appearances must be reported to the same extent and in the same manner as if the participants had appeared in person.

7. Information on simultaneous audiovisual transmission equipment. The court must publish a notice providing parties with the particular information necessary for them to appear or have a non-party witness testify by simultaneous audiovisual transmission equipment at proceedings in that court under this rule.

8. Public access. The right of public access to court proceedings must be preserved in accordance with law.

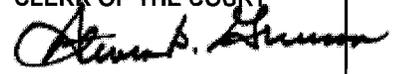
Credits

Adopted effective January 1, 2013. Amended effective August 24, 2015; February 25, 2019.

Appearance by Audiovisual Equipment, Rule 4, NV ST S CT AUDIO EQUIP CRIM Rule 4
Current with amendments received through January 1, 2020.

End of Document

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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
11 Plaintiff,
12
13 -vs-
14 DEMARIO LOFTON-ROBINSON, aka
15 Demario Loftonrobinson, #5318925
16 RAEKWON SETRY ROBERTSON, aka
17 Raekwon Robertson, #8252804
18 DAVONTAE AMARRI WHEELER,
19 #5909081,
20
21 Defendants.

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

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

- 22 TO: DEMARIO LOFTON-ROBINSON, aka Demario Loftonrobinson, Defendant;
23 and
- 24 TO: SCOTT BINDRUP, Deputy Special Public Defender, Counsel of Record:
- 25 TO: RAEKWON SETRY ROBERTSON, aka Raekwon Robertson, Defendant; and
- 26 TO: MICHAEL SANFT, ESQ., Counsel of Record:
- 27 TO: DAVONTAE AMARRI WHEELER, Defendant; and
- 28 TO: JAMES RUGGEROLI, ESQ., Counsel of Record:

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

///

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

1 TRAMBONI, J. LVMPD P#9331
2 TRUAX, M. LVMPD P#13752
3 WILLIAMS, TOD LVMPD P#3811

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

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

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

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

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

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

1 **DILORETO, DR. CHRISTINA** (or designee): is a medical doctor employed by the
2 Clark County Coroner Medical Examiner. She is an expert in the area of forensic pathology
3 and will give scientific opinions related thereto. She is expected to testify regarding the cause
4 and manner of death of GABRIEL VALENZUELA in this case.

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

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

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

20 **GUERRERO, G. – LVMPD P#15290** (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 **LESTER, A. – LVMPD P#13771** (or designee): Expert in the area of
25 firearm/toolmark analysis, bullet trajectory comparison and will give opinions related thereto.
26 Additionally, is expected to testify regarding the collection, comparison and analysis of
27 firearms, ammunitions, ballistics and toolmark evidence as it relates to this case.

28

1 **MANCINI, DR. CHIARA** (or designee): is a medical doctor employed by the Clark
2 County Coroner Medical Examiner. She is an expert in the area of forensic pathology and will
3 give scientific opinions related thereto. She is expected to testify regarding the cause and
4 manner of death of GABRIEL VALENZUELA in this case.

5 ***MANIGAULT, LINDA, LVMPD #15987**, is employed as a Forensic Scientist I or
6 Designee, with the Las Vegas Metropolitan Police Department. She will testify as an expert
7 as to the procedures, techniques and science employed in fingerprint analysis, all procedures
8 employed in this case and reports provided.

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

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

16 **SCHELLBERG, P. – LVMPD P#5413** (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 **SCOTT, JEFFREY – LVMPD P#9618** (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 **SHANNON, J. – LVMPD P#13482** (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 **SHUMAN, DR. MARK** (or designee): is a medical doctor employed by the Clark
2 County Coroner Medical Examiner. He is an expert in the area of forensic pathology and will
3 give scientific opinions related thereto. He is expected to testify regarding the cause and
4 manner of death of GABRIEL VALENZUELA in this case.

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

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

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

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

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

28

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

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

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

7 ***INDICATES ADDITION OR REVISION**

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

12 BY /s/GIANCARLO PESCI
13 GIANCARLO PESCI
14 Chief Deputy District Attorney
15 Nevada Bar #7135

16 CERTIFICATE OF ELECTRONIC TRANSMISSION

17 I hereby certify that service of the above and foregoing was made this 6th day of
18 February, 2020, by electronic transmission to:

19
20 SCOTT BINDRUP, Dep. Special Public Defender
21 Email: Scott.Bindrup@ClarkCountyNV.gov
(Def. LOFTON-ROBINSON)

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

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

26 BY: /s/ Stephanie Johnson
Secretary for the District Attorney's Office

27 17F14369ABC-dd/MVU
28

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

February 11, 2020 10:30 AM Jury Trial

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

COURT CLERK: Pannullo, Haly

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Davontae Amarri Wheeler	Defendant
Giancarlo Pesci	Attorney for Plaintiff
James J. Ruggero	Attorney for Defendant
Parker Brooks	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Michael Sanft, Esq., present on behalf of Co-Defendant.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS:

Amended Indictment FILED IN OPEN COURT.

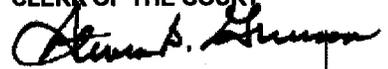
Mr. Pesci requested a Transcript be produced as to the Entry of Plea. COURT SO ORDERED. Mr. Pesci stated the Stipulation and Order for Waiver of Penalty is being provided to the Defense. Mr. Sanft stated his client is going to waive penalty hearing. Mr. Ruggero stated his client is not inclined to waive; however, needs more time. COURT SO NOTED.

Mr. Sanft and Mr. Ruggero advised the Defendants have signed the Stipulation and Order. Court canvassed the Defendants as to waiving penalty hearing and the three possible options for first degree murder. Defendants confirmed their understanding.

PROSPECTIVE JURORS PRESENT:

Voir Dire.

COURT ORDERED, trial CONTINUED.



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	CASE NO. C-17-328587-2
)	CASE NO. C-17-328587-3
Plaintiff,)	
)	DEPT. NO. XII
v.)	
)	
RAEKWON SETREY ROBERTSON,)	
a/k/a RAEKWON ROBERTSON,)	
AND DAVONTAE AMARRI WHEELER,)	
)	
Defendants.)	
)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 11, 2020

RECORDER'S PARTIAL TRANSCRIPT OF PROCEEDINGS:

**JURY TRIAL - DAY 1
(EXCLUDES PROCEEDINGS FROM 10:43 A.M. TO 11:38 A.M.
JACKSON V. DENNO HEARING)**

APPEARANCES:

FOR THE STATE:	GIANCARLO PESCI, ESQ. Chief Deputy District Attorney
	PARKER P. BROOKS, ESQ. Deputy District Attorney
FOR DEFENDANT ROBERTSON:	MICHAEL W. SANFT, ESQ.
FOR DEFENDANT WHEELER:	JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 11, 2020, 1:22 P.M.

2 (Outside the presence of the prospective jurors)

3 (Pause in the proceedings)

4 THE COURT: Okay. State of Nevada vs. Robertson and
5 Wheeler. They're both present in the courtroom. Will the
6 parties make their appearances, please?

7 MR. PESCI: Sorry. Parker Brooks and Giancarlo
8 Pesci for the State.

9 MR. SANFT: Michael Sanft on behalf of Mr.
10 Robertson, who's present.

11 MR. RUGGEROLI: Good morning -- or good afternoon,
12 Your Honor. James Ruggeroli for Mr. Wheeler, who is present
13 in custody.

14 THE COURT: Okay. Have we made a determination as
15 to the penalty phase?

16 MR. SANFT: Yes. On behalf of Mr. Robertson, we
17 have signed the stipulated waiver.

18 THE COURT: Okay.

19 MR. RUGGEROLI: And as to Mr. Wheeler as well, Your
20 Honor.

21 THE COURT: Do you have them?

22 MR. PESCI: Judge, I'm just receiving it now, so I'm
23 going to sign it as well.

24 THE COURT: Okay.

25 MR. PESCI: May I approach?

1 THE COURT: You bet. Is it just one stipulation?

2 MR. PESCI: It's one that covers both defendants.

3 THE COURT: Okay. Okay, and there's no further
4 stipulation regarding the sentence; is that correct?

5 MR. PESCI: No, just within the legal parameters for
6 first degree murder.

7 THE COURT: Okay. Mr. Robertson, if you don't mind
8 standing. You understand, if the jury returned a verdict of
9 first degree murder in this action, that you would have the
10 right to have a penalty hearing and have the jury determine
11 the appropriate penalty?

12 DEFENDANT ROBERTSON: Yes.

13 THE COURT: And you have signed this waiver,
14 indicating that you're waiving your right to have the jury
15 make any determination on a first degree murder conviction,
16 and that the Court would make the determination?

17 DEFENDANT ROBERTSON: Yes, I am.

18 THE COURT: And you know what the three possible
19 penalties are: life without the possibility of parole, life
20 with the possibility of parole after a minimum of 20 years has
21 been served, or a definite term of 50 years with parole
22 eligibility beginning after a minimum of 20 years has been
23 served?

24 DEFENDANT ROBERTSON: Yes.

25 THE COURT: And you had an opportunity to discuss

1 this waiver with your lawyer?

2 DEFENDANT ROBERTSON: Yes.

3 THE COURT: And he answered all of your questions?

4 DEFENDANT ROBERTSON: Yeah, he answered everything.

5 THE COURT: Okay, and you believe that it's in your
6 best interest to waive any penalty hearing?

7 DEFENDANT ROBERTSON: Yeah.

8 THE COURT: And you understand it would only be
9 applicable if the jury returned a first degree murder
10 conviction, and only to that count? And this is your
11 signature on the stipulation?

12 DEFENDANT ROBERTSON: Yes.

13 THE COURT: And you read it before you signed it?

14 DEFENDANT ROBERTSON: Yeah, I read it.

15 THE COURT: And you understood it prior to signing
16 it?

17 DEFENDANT ROBERTSON: Yeah, I understood it.

18 THE COURT: Okay.

19 DEFENDANT ROBERTSON: I asked my attorney questions;
20 he explained it.

21 THE COURT: Okay. And do you have any questions of
22 the Court?

23 DEFENDANT ROBERTSON: No.

24 THE COURT: Okay. Thank you, Mr. Robertson.

25 And Mr. Wheeler, if you don't mind standing. It

1 appears as though you have entered into a stipulation with the
2 State to waive any penalty hearing if there was a conviction
3 for first degree murder in this action; is that correct?

4 DEFENDANT WHEELER: Yes, Your Honor.

5 THE COURT: And you understand that if there was a
6 conviction for first degree murder, you would have the right
7 to have the same jury that we impanel determine the
8 appropriate penalty? You understand that?

9 DEFENDANT WHEELER: Repeat that for me again.

10 THE COURT: Okay. You understand that if there was
11 a -- if the jury returns a verdict of first degree murder, you
12 have the right to have the same jury determine what the
13 appropriate penalty would be?

14 DEFENDANT WHEELER: I understand.

15 THE COURT: You understand that?

16 DEFENDANT WHEELER: Yes, Your Honor.

17 THE COURT: Okay, and that you have entered into an
18 agreement with the State of Nevada to waive any penalty
19 hearing and to have the Court determine the appropriate
20 sentence?

21 DEFENDANT WHEELER: Yes, Your Honor.

22 THE COURT: And that's what you want to do?

23 DEFENDANT WHEELER: Yes, Your Honor.

24 THE COURT: Okay, and you had a chance to discuss
25 this with your lawyer?

1 DEFENDANT WHEELER: Yes, Your Honor.
2 THE COURT: He answered all of your questions?
3 DEFENDANT WHEELER: Yes, Your Honor.
4 THE COURT: You're doing this freely and
5 voluntarily?
6 DEFENDANT WHEELER: Yes, Your Honor.
7 THE COURT: Okay, and you had a chance to read this
8 waiver?
9 DEFENDANT WHEELER: Yes, Your Honor.
10 THE COURT: Okay, and that is your signature on page
11 2?
12 DEFENDANT WHEELER: Yes, Your Honor.
13 THE COURT: And you read it before you signed it?
14 DEFENDANT WHEELER: Yes, Your Honor.
15 THE COURT: Okay. And any questions that you had,
16 your attorney has answered to your satisfaction; is that
17 correct?
18 DEFENDANT WHEELER: Yes, Your Honor.
19 THE COURT: Do you have any questions of the Court?
20 DEFENDANT WHEELER: Not -- not -- no. No, Your
21 Honor.
22 THE COURT: Okay. And you understand what the three
23 options would be if there was a first degree murder
24 conviction?
25 DEFENDANT WHEELER: Can you repeat them for me, Your

1 Honor?

2 THE COURT: Absolutely. Life without the
3 possibility of parole, life with the possibility of parole
4 after a minimum of 20 years has been served, or a definite
5 term of 50 years with parole eligibility beginning after a
6 minimum of 20 years has been served. And of course, if
7 there's a -- if the jury found a deadly weapon enhancement, it
8 would be a consecutive 1 to 20 for the deadly weapon
9 enhancement.

10 DEFENDANT WHEELER: Yes, Your Honor.

11 THE COURT: Okay. Do you have any questions?

12 DEFENDANT WHEELER: No, no, I'll speak with my
13 lawyer about it, but no questions. No.

14 THE COURT: Okay. Is it anything about waiving the
15 penalty hearing?

16 DEFENDANT WHEELER: No, no, Your Honor.

17 THE COURT: Okay, and so you're ready to proceed?

18 DEFENDANT WHEELER: Yes, ma'am. Yes, Your Honor.

19 THE COURT: Okay, all right. I will sign this, and
20 then -- so, obviously, neither side will ask this jury panel
21 any questions about the penalty.

22 MR. SANFT: Yes, Your Honor. That's correct.

23 MR. PESCI: Correct, Your Honor.

24 THE COURT: Okay. Thank you. Anything before we
25 bring this jury panel in?

1 MR. RUGGEROLI: Judge, I had asked the State if we
2 could make a record. I believe we may have done this
3 previously, but --

4 THE COURT: Okay.

5 MR. RUGGEROLI: -- out of an abundance of caution.
6 There was an offer that had been extended quite some time ago.

7 THE COURT: Oh, okay.

8 MR. RUGGEROLI: And I just want to make sure that we
9 preserve it for the record. This would be the most opportune
10 time.

11 THE COURT: Okay.

12 MR. RUGGEROLI: If Mr. Pesci -- there were two
13 alternatives, and I did explain to Mr. Wheeler, and we did
14 reject it, but I want to make sure that there's a record, if
15 we may.

16 THE COURT: Okay, I appreciate that. Thank you.

17 Will the State indicate for the record what the
18 offer was?

19 MR. PESCI: Yes. The offer was a choice between two
20 options, one being plead to first degree murder, or two, plead
21 to second degree murder with use of a deadly weapon and
22 attempt robbery. Both instances, the State and the defense
23 retains the full right to argue within the confines of those
24 particular charges.

25 I'm looking back at my -- I'm trying to go back over

1 things, and I think this was done probably early summer of
2 2019, as far as the offer being extended. And my recollection
3 is that, in court, the defendants rejected it.

4 THE COURT: Okay, and it was the same offer for both
5 Mr. Robertson and Mr. Wheeler?

6 MR. PESCI: Yes, and it's contingent they both would
7 have to take it.

8 THE COURT: Okay. And Mr. Robertson, was that your
9 understanding of the offer made by the State of Nevada?

10 MR. SANFT: I'm sorry, Your Honor, if I could just
11 have a quick second.

12 THE COURT: That's okay.

13 (Pause in the proceedings)

14 MR. SANFT: Yes, Your Honor.

15 THE COURT: Okay. And Mr. Robertson, that's your
16 understanding of what the offer was from the State of Nevada?

17 DEFENDANT ROBERTSON: Yes.

18 THE COURT: And you have decided to reject that
19 offer; is that correct?

20 DEFENDANT ROBERTSON: Yes.

21 THE COURT: Okay. And Mr. Wheeler, that is your
22 understanding of what the offer was from the State of Nevada?

23 DEFENDANT WHEELER: Yeah.

24 THE COURT: And it's my understanding you want to
25 reject that offer and proceed to trial?

1 DEFENDANT WHEELER: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. SANFT: Your Honor, I just want to make sure
4 we're clear. I don't know if the offer was still open. I
5 think we were just making a record of what was offered back
6 last summer, not necessarily that that offer is still open
7 today.

8 MR. PESCI: Yeah. I mean, from the State's
9 perspective, it was rejected when it was previously offered --

10 THE COURT: Okay.

11 MR. PESCI: -- and they rejected it. I'm not
12 hearing them saying they want to take it right now; I'm
13 hearing them saying they're rejecting it.

14 THE COURT: Right. And Mr. Ruggeroi asked me to
15 make that record, so --

16 MR. RUGGEROLI: Thank you.

17 THE COURT: If we did it before, great. But if we
18 didn't, it's clearly on the record now.

19 MR. RUGGEROLI: Yes. And just for clarification for
20 Mr. Wheeler, the State had retained the right to argue -- the
21 full right to argue, which would have meant that on the first
22 option, the State could have asked for life without, and I
23 believe that that's what they were intending to do.

24 THE COURT: That is correct.

25 MR. PESCI: Well, whether we intended or not is a

1 different issue. It's one of the possible forms of punishment
2 under that negotiation, whether we go to trial and get a first
3 degree murder or we do a negotiation.

4 THE COURT: Okay.

5 MR. PESCI: Judge, I apologize. Is it all right if
6 we take a little break? Because it seems like there's some
7 questions.

8 THE COURT: Well, yeah, I'm concerned.

9 MR. PESCI: I want to make sure that they've got --

10 THE COURT: Do you gentlemen want to speak to your
11 lawyers a little bit further?

12 DEFENDANT ROBERTSON: Yes, please.

13 DEFENDANT WHEELER: Yeah, I understand completely.

14 THE COURT: Okay. I mean, we'll give you a few
15 minutes.

16 DEFENDANT ROBERTSON: I'd like to speak with my
17 lawyer.

18 THE COURT: We can give you a few minutes. We'll
19 leave.

20 MR. SANFT: Thank you, Your Honor.

21 MR. PESCI: Your Honor, with your permission, so
22 they can talk, do you want us to go out?

23 THE COURT: Sure.

24 MR. PESCI: Can we go out the back?

25 THE COURT: You can let them talk, and we'll go in

1 the back.

2 MR. SANFT: I'll talk to him in the back.

3 THE COURT: Oh, you want to talk in the back?

4 (Court recessed at 1:34 P.M. until 1:45 P.M.)

5 (Outside the presence of the prospective jurors)

6 THE COURT: Mr. Sanft, Mr. Ruggeroli, are we ready
7 to bring the panel in?

8 MR. RUGGEROLI: We're going to proceed.

9 MR. SANFT: We are going to proceed, Your Honor.

10 THE COURT: Okay.

11 (Pause in the proceedings)

12 THE MARSHAL: All rise for the entering jury,
13 please. Jurors.

14 (Within the presence of the prospective jurors)

15 (Pause in the proceedings)

16 THE COURT: Do we have everybody?

17 THE MARSHAL: Give me one second, ma'am.

18 THE COURT: Okay.

19 (Pause in the proceedings)

20 THE COURT: Okay, does the State stipulate to the
21 presence of the panel?

22 MR. PESCI: Yes, Your Honor.

23 THE COURT: Mr. Sanft?

24 MR. SANFT: Yes, Your Honor.

25 THE COURT: Mr. Ruggeroli?

1 MR. RUGGEROLI: Yes, Your Honor.

2 THE COURT: Okay, thank you.

3 Good afternoon, ladies and gentlemen. Welcome to
4 Department 12 of the Eighth Judicial District Court. My name
5 is Michelle Leavitt. I'm the presiding Judge in this
6 Department.

7 You have been summonsed here today to serve as
8 jurors in a criminal case entitled State of Nevada vs.
9 Wheeler. Can you hear me, sir? Okay, I just want to make
10 sure that everyone can -- somebody over here?

11 UNIDENTIFIED SPEAKER: I can't. Can you speak up,
12 ma'am?

13 THE COURT: Okay. Well, we have earphones that will
14 amplify it, so I'll let the officer get that to you. But yes,
15 I will speak up.

16 THE MARSHAL: Who else? Anybody else need
17 headphones?

18 THE COURT: Okay, is that better, sir?

19 Okay, good.

20 You have been summonsed here today to serve as
21 jurors in a criminal case entitled State of Nevada vs.
22 Robertson and Wheeler. Before I do allow both sides to speak
23 to you and give you a brief statement of the facts, I'm going
24 to introduce the staff in Department 12 and tell you what they
25 all do.

1 You have met Officer Hawkes. He is the Marshal in
2 Department 12. He is the person that you will have the most
3 contact with.

4 Throughout this process of selecting a jury, and
5 after we do have a jury impaneled, myself, the attorneys, the
6 parties, the staff in Department 12, with the exception of
7 Officer Hawkes, are not permitted to have any communication
8 with you whatsoever outside of the courtroom. So if there's
9 anything that you need to communicate to the Court, I'd just
10 ask that you do so in the courtroom in the presence of both
11 sides. Otherwise, you can talk to Officer Hawkes.

12 To my right is Haly. Haly is the Court Clerk in
13 Department 12. She keeps the official record, she keeps the
14 official minutes. She's also the person that will take charge
15 of all of the evidence at the time of trial when it is
16 admitted.

17 To her right is David. David's a licensed attorney
18 in the State of Nevada. He is the Law Clerk in Department 12,
19 and he assists with legal issues.

20 To his right is Sara. Sara is the Court Recorder in
21 Department 12. It's her job to take down everything that's
22 being said during these proceedings. At some point, she'll be
23 called upon by myself to prepare a written transcript of
24 everything that is said during this trial.

25 So when you are called upon to address the Court or

1 the lawyers, before you respond, that you just state your
2 name, the badge number that's been provided to you by the Jury
3 Commissioner before responding so that we have a clear record
4 of who is speaking at all times.

5 At this time, I'm going to allow the attorneys to
6 introduce themselves. They will have an opportunity to give
7 you a brief statement of the facts. Each side will also give
8 you their witness list. I ask that you pay close attention to
9 the names on the witness list because at some point I will ask
10 you if you're familiar with any of the witnesses who will be
11 called to testify in this matter.

12 The State of Nevada?

13 MR. PESCI: Thank you, Your Honor.

14 Ladies and gentlemen, my name is Giancarlo Pesci.
15 This is Parker Brooks. We are the District Attorneys assigned
16 to this case.

17 This case involves three charges. There's a charge
18 of conspiracy to commit robbery, attempted robbery with use of
19 a deadly weapon, and murder with use of a deadly weapon.
20 That's alleged to have occurred here in Clark County, Nevada;
21 specifically, 5536 Dewey Avenue here in Las Vegas, on or about
22 August 9th of 2017.

23 In the process of presenting the case, we, the State
24 of Nevada, will present witnesses. I have a list here of
25 witnesses. As the Court has explained, please listen to see

1 if maybe you know some of them. We will not call all of these
2 names as witnesses, but you may hear of them, even if they are
3 not called as witnesses.

4 Sarath Bambarendago. A Sonny Bogatay. Tracey
5 Bushman. An Officer Calleja. An Officer Catricala.
6 Detective Lara Cody. Detective Darren Cook. Custodian of
7 records for the Nevada Department of Corrections. A custodian
8 of records for Sprint. Custodian of records for T-Mobile.
9 Custodian of records for Metro Dispatch. Custodian of records
10 for the Short Line Express convenience store.

11 A Detective Mitch Dosch. Witness Pelita Dizon. An
12 Officer Garcia. A detective named Ryan Jaeger. A witness
13 named Bob Jano. Mercedita Jano. Janessa Justice. Rae
14 Klassen. Detective Jason McCarthy. Robert Mason. Lucy
15 Mendoza. Officer Fred Merrick. James Newman. Officer
16 Parker. Officer Parra. A John Relato. Anthony Reeves.
17 DeShawn Robinson. Mariah Romatko. Officer Sandoval. Marcell
18 Solomon. Nikolaus Spahn. An Officer Tromboni. Officer
19 Truax, T-r-u-a-x. Officer -- or Detective Tod Williams.
20 Officer Barringer. Crime Scene Analyst Claire
21 Browning. Crime Scene Analyst Noreen Charlton. A doctor with
22 the coroner's office, Jennifer Corneal. A crime scene analyst
23 named Laura Brooke Cornell. A crime scene analyst named Shawn
24 Fletcher. A computer forensic analysis employee with Metro
25 named Jessica Flink. An Officer Guerrero -- or Crime Scene

1 Analyst Guerrero. A firearms expert, Anya Lester. A
2 fingerprint expert of Linda Manigault. A DNA expert, Allison
3 Rubino. A Crime Scene Analyst Schellberg. Crime Scene
4 Analyst Jeffrey Scott. And Crime Scene Analyst Shannon.

5 Additionally, Crime Scene Analyst William Speas. A
6 retired crime scene analyst, Ebony Stephens. A crime scene
7 analyst named Glezzelle Tapay. And an Officer Tomaino. Thank
8 you, Your Honor.

9 THE COURT: Mr. Sanft?

10 MR. SANFT: Yes, Your Honor. Good afternoon. My
11 name's Michael Sanft. I represent Raekwon Robertson.
12 Raekwon, can you stand up for a second? Raekwon's been
13 charged in the crimes that you've heard the State allege here
14 today. He's pled not guilty to those charges. We don't
15 anticipate calling any witnesses, but we anticipate using
16 cross-examination on the State's witnesses in this case.
17 Thank you.

18 THE COURT: Any other witnesses you want to advise
19 the panel of?

20 MR. SANFT: No, Your Honor.

21 THE COURT: Oh, sorry. Mr. Ruggero?li?

22 MR. RUGGEROLI: Thank you, Your Honor.

23 Good afternoon, ladies and gentlemen. My name is
24 James Ruggero?li. I represent Davontae Wheeler; he is
25 standing. He is not guilty of those charges. The State has

1 read a list of witnesses. We would not intend to potentially
2 call anybody other than what they've already called. Thank
3 you.

4 THE COURT: Thank you. At this time, ladies and
5 gentlemen, the clerk's going to call the roll of the panel of
6 prospective jurors. When your name is called, please indicate
7 "present" or "here."

8 (CLERK CALLS ROLL OF PROSPECTIVE JURY PANEL)

9 THE COURT: Okay. Is there anyone whose name was
10 not called by the clerk of the court? Okay, the record will
11 reflect no response from the panel.

12 The questioning of the jury panel is done under
13 oath, so if you'll all please stand and raise your right hand
14 so the Clerk can administer the oath.

15 PROSPECTIVE JURY PANEL SWORN

16 THE CLERK: You may be seated.

17 THE COURT: Thank you.

18 We're about to commence what is called voir dire
19 examination. The term "voir dire" means to tell the truth.
20 During this process, you will be asked questions bearing upon
21 your ability to sit as fair and impartial jurors. To
22 accomplish this result, various questions will be asked of you
23 by myself or counsel for the parties.

24 On occasion, some of these questions will seem
25 somewhat personal. While we do not wish to unnecessarily pry

1 into your personal lives, the questions are necessary so that
2 counsel and the Court can make an intelligent determination as
3 to your capabilities to serve fairly and impartially. I want
4 you to know that myself, and the attorneys, and all other
5 persons involved in this case are concerned with having this
6 matter tried by jurors who are completely open-minded,
7 neutral, objective, and unbiased in their thinking.

8 Wide discretion is vested in the trial judge as to
9 the method of examination of jurors. As I stated previously,
10 I will personally conduct the voir dire, but I will give the
11 attorneys the opportunity to participate in this questioning.

12 It is important that you know the significance of
13 full, complete, and honest answers to all the questions we're
14 about to ask you. I caution you not to try to hide or
15 withhold anything which might indicate bias or prejudice of
16 any sort by any of you. Should you fail to answer truthfully,
17 if you hide or withhold anything touching upon your
18 qualifications, that fact may tend to contaminate your verdict
19 and subject you to further inquiry, even after discharged as
20 jurors. Your decision should be based upon all of the
21 evidence presented during this trial, and not based upon any
22 preconceived prejudice or bias.

23 I will conduct a general voir dire examination of
24 you while you are all seated in the audience. After those
25 general questions, the Clerk will call the first 32 names to

1 fill the jury box.

2 At some point during the process of selecting a
3 jury, the attorneys for both sides will have the right to ask
4 that a particular person not serve as a juror. These requests
5 are called challenges. There are two types of challenges:
6 challenges for cause and peremptory challenges.

7 A challenge for cause means that a juror's been
8 excused because his or her answers to some of the voir dire
9 questions indicate that he or she would have a difficult time
10 in giving a fair and impartial hearing to this case. I will
11 ask the attorneys to pass or waive the prospective jurors for
12 a cause challenge when they are done questioning the jury
13 panel. A peremptory challenge means that a juror can be
14 excused from duty without counsel having to give a reason for
15 that excusal.

16 Please do not be offended should you be excused by
17 either of the challenge procedures. They are simply a part of
18 the procedures designed to protect the rights of the parties
19 under our system of government.

20 Is there anyone on the panel who's ever been
21 convicted of a felony?

22 THE MARSHAL: If you don't mind standing up.

23 THE COURT: Your name and badge number, please?

24 PROSPECTIVE JUROR NO. 600: Jeffrey Hall.

25 THE COURT: And your badge number?

1 PROSPECTIVE JUROR NO. 600: 07-0600.

2 THE COURT: So, 0600? Okay. Mr. Hall, you -- do
3 you currently have a felony conviction?

4 PROSPECTIVE JUROR NO. 600: I was convicted back in
5 '91.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR NO. 600: But when I answered
8 that, they told me I still have to appear.

9 THE COURT: Okay. Do you currently have a felony
10 conviction?

11 PROSPECTIVE JUROR NO. 600: No.

12 THE COURT: Okay. What happened to it? Was it
13 reduced?

14 PROSPECTIVE JUROR NO. 600: I was -- I finished my
15 parole and everything --

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 600: -- in 2009.

18 THE COURT: Okay. 1991 to 2009?

19 PROSPECTIVE JUROR NO. 600: Yes.

20 THE COURT: Okay. And do you believe you still have
21 that felony conviction?

22 PROSPECTIVE JUROR NO. 600: I don't think so.

23 THE COURT: Okay. Was it sealed, or dismissed, or
24 something like that?

25 PROSPECTIVE JUROR NO. 600: No, it wasn't.

1 THE COURT: Okay, here's what I'm going to ask you
2 to do. I'm going to ask you to write down your name, your
3 date of birth, and your social security number, and then hand
4 it to the court Marshal. And when he is done with that, we'll
5 make sure that that information gets shredded.

6 Anyone else that wants to respond to that question?
7 Okay, the record will reflect no further response from the
8 panel.

9 Is there anyone on this panel who is not a citizen
10 of the United States? You can have a seat, sir. Anyone that
11 is not a citizen of the United States? The record will
12 reflect no response from the panel.

13 Is there anyone on this panel who is not a resident
14 of Clark County, Nevada? The record will reflect no response
15 from the panel.

16 Is there anyone who has such a sympathy, prejudice,
17 or bias relating to age, religion, race, gender, or national
18 origin that they feel would affect their ability to be an
19 open-minded, fair, and impartial juror? The record will --
20 okay.

21 PROSPECTIVE JUROR NO. 586: Just hold it here?
22 Okay. My name's Valerie Musial. Juror ID 102114279.

23 THE MARSHAL: No, that's the wrong number.

24 THE COURT: Yeah, that's not the --

25 PROSPECTIVE JUROR NO. 586: 07-0586.

1 THE COURT: 0586? Okay. Go ahead, Ms. Musial.

2 PROSPECTIVE JUROR NO. 586: Both of my parents -- I
3 spent my whole life in foster care. Both of my parents were
4 sent to prison, which I believe they were wrongfully
5 convicted. I believe the black community right now is being
6 disgraced against, and no matter what, I'll plead not guilty
7 if the defendants are African-American.

8 THE COURT: I'm sorry, I don't know what that means,
9 because no one's going to ask you to enter a plea.

10 PROSPECTIVE JUROR NO. 586: Okay. I'm saying
11 though, as far as a decision, I'm not able to make a proper
12 decision because I don't feel like black people are being
13 fairly treated in the United States right now.

14 THE COURT: Okay. So you've made a determination as
15 to what the result would be in this matter --

16 PROSPECTIVE JUROR NO. 586: Correct, unfortunately.

17 THE COURT: Let me finish. Without hearing any
18 evidence?

19 PROSPECTIVE JUROR NO. 586: Yes.

20 THE COURT: So it doesn't matter what the evidence
21 is; you've reached a conclusion?

22 PROSPECTIVE JUROR NO. 586: Correct, as not guilty.

23 THE COURT: Okay, you can have a seat. Thank you.
24 Anyone else that wants to respond to that question?

25 PROSPECTIVE JUROR NO. 474: Dennis Rorabaugh, Juror

1 474.

2 THE COURT: Thank you.

3 PROSPECTIVE JUROR NO. 474: Although I do not
4 recognize the names of the prior -- the law enforcement that
5 will be called, I cannot say that I do not know them, due to
6 prior career and experience living in Las Vegas.

7 THE COURT: Okay. Who do you believe you know?

8 PROSPECTIVE JUROR NO. 474: I've ran across a lot of
9 different law enforcement in Clark County over the years for
10 the last 25 years, and cannot say that I don't know multiple.

11 THE COURT: Okay. Well, it's okay, you're allowed
12 to know a witness. I just need to know if there is anything
13 about that that would affect your ability to be fair and
14 impartial.

15 PROSPECTIVE JUROR NO. 474: I can't say that there's
16 not.

17 THE COURT: I'm sorry?

18 PROSPECTIVE JUROR NO. 474: I can't say that I will
19 not be impartial to a decision due to evidence presided with
20 me knowing or knowing friends of law enforcement.

21 THE COURT: Okay. I'm not sure I'm understanding,
22 okay? Because you're permitted to serve on a jury panel, even
23 if you know the witnesses that would come in and testify. You
24 just have to be able to make a commitment to be fair and
25 impartial to both sides, regardless of who the witnesses are.

1 Do you understand that?

2 PROSPECTIVE JUROR NO. 474: I do understand that,
3 and I'm stating that I'm not sure that I could do that
4 properly.

5 THE COURT: Why?

6 PROSPECTIVE JUROR NO. 474: I don't have an exact
7 answer for you. I'm just trying to state on the record where
8 I'm coming from.

9 THE COURT: Okay. I mean, and you understand that
10 we have to have jurors that will judge this case based solely
11 upon what they see and hear in the courtroom, and nothing
12 else? Do you understand that?

13 PROSPECTIVE JUROR NO. 474: Sure. Yes, I understand
14 that.

15 THE COURT: Okay. And it would be very unfair to
16 these parties if a witness came in and you decided, well, I
17 know that witness, I'm not going to be fair now, I'm going to
18 reach a different result. Do we have to worry about that with
19 you?

20 PROSPECTIVE JUROR NO. 474: That's up to the Court.

21 THE COURT: Well, I'm the Court, and I'm trying to
22 make that determination. Do I have to worry about that with
23 you?

24 PROSPECTIVE JUROR NO. 474: I'm stating that
25 possibly you might, yes.

1 THE COURT: Okay. So what, if you recognize a
2 police officer? I'm trying to figure out -- I mean, so if
3 there's a police officer that comes in --

4 PROSPECTIVE JUROR NO. 474: Due to the
5 circumstances, I'm not sure what would come of evidence or
6 circumstances that may or may not give a unbiased opinion of
7 those circumstances, is I guess what I'm exactly trying to
8 convey.

9 THE COURT: Okay. So we have to wait until you see
10 all the witnesses and hear all the evidence before you will
11 commit to being fair and impartial to both sides?

12 PROSPECTIVE JUROR NO. 474: I'm saying that I
13 possibly might not be able to be fair and impartial on both
14 sides, yes.

15 THE COURT: Okay, and what would cause you to not be
16 fair and impartial to either side?

17 PROSPECTIVE JUROR NO. 474: I wouldn't know exactly.

18 THE COURT: Okay, thank you. You can have a seat.

19 PROSPECTIVE JUROR NO. 474: Thank you, Your Honor.

20 THE COURT: Anyone else that wishes to respond to
21 that question? Okay, the record will reflect no further
22 response from the panel.

23 Are there any of you who are acquainted with the
24 defendants in this matter? The record will reflect no
25 response from the panel.

1 Any of you who are acquainted with their lawyers,
2 Mr. Ruggeroli or Mr. Sanft? The record will reflect no
3 response from the panel.

4 Are there any of you who are acquainted with the
5 deputy District Attorneys that have been assigned to prosecute
6 this matter? The record will reflect no response from the
7 panel.

8 The District Attorney's office employs many deputies
9 and other personnel. Is there anyone who has such a close
10 relationship with either the District Attorney, Mr. Steve
11 Wolfson, his deputies, or other members of his staff that you
12 feel might affect your ability to serve as a fair and
13 impartial juror in this particular case? The record will
14 reflect no response from the panel.

15 Are there any of you on the panel who are acquainted
16 with any of the witnesses whose names were previously
17 mentioned by the lawyers? Okay, the record will reflect no
18 response from the panel.

19 We do expect this case to go through the week, and
20 we do expect it to probably go into next week, and Monday is a
21 holiday. So I do anticipate that it will go into next week.
22 Is there anyone who serving for that period of time would
23 present such an undue burden or hardship such that it's
24 impossible for you to be here? Okay, we're just going to
25 start up on the top, and --

1 THE MARSHAL: Can you pass that down, please?

2 PROSPECTIVE JUROR NO. 410: Sean McGinty, 410.

3 THE COURT: Thank you.

4 PROSPECTIVE JUROR NO. 410: I'll be moving from --
5 we're finishing a move from Texas, beginning on the 23rd of
6 February, so.

7 THE COURT: You're moving to Texas February --

8 PROSPECTIVE JUROR NO. 410: Finishing a move. So we
9 were -- we live here now, but --

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NO. 410: -- we'll be finishing a
12 move. So it's already scheduled, and finishing getting our
13 belongings out, so.

14 THE COURT: How long have you lived here in Clark
15 County?

16 PROSPECTIVE JUROR NO. 410: This will be a
17 year-and-a-half.

18 THE COURT: Okay, and you're still moving?

19 PROSPECTIVE JUROR NO. 410: Still have a business
20 there as well, so --

21 THE COURT: Okay.

22 PROSPECTIVE JUROR NO. 410: Yeah.

23 THE COURT: Okay. And February 23rd is your issue?
24 Is that a yes?

25 PROSPECTIVE JUROR NO. 410: Yes.

1 THE COURT: Okay. Thank you. Thank you, you can
2 have a seat. Anyone else that wishes to address the Court?

3 THE MARSHAL: We'll get back there.

4 PROSPECTIVE JUROR NO. 054: Ana Carias, 54. I'm
5 going out of the country on the 20th, so I'll be back on the
6 3rd, for vacation.

7 THE COURT: You're leaving on February 20th?

8 PROSPECTIVE JUROR NO. 054: Yes.

9 THE COURT: Okay. And is this a -- it's a vacation?

10 PROSPECTIVE JUROR NO. 054: Yes, ma'am.

11 THE COURT: Okay, thank you. Thank you for being
12 here.

13 THE MARSHAL: Can you pass it down, please?

14 THE COURT: Anyone else on this first row? I'm just
15 going to go around the courtroom. I promise, everyone, you'll
16 have an opportunity to speak if you want to.

17 PROSPECTIVE JUROR NO. 403: Samantha Levine, 403.
18 And I have a prior engagement on Friday the 20th, throughout
19 the weekend, that I have already paid for months in advance.
20 And I also --

21 THE COURT: What does that mean? What's a prior
22 engagement?

23 PROSPECTIVE JUROR NO. 403: I have a convention that
24 I'm going to that I had planned out.

25 THE COURT: Okay, in Las Vegas? Elsewhere?

1 PROSPECTIVE JUROR NO. 403: It's in Las Vegas.
2 THE COURT: Okay.
3 PROSPECTIVE JUROR NO. 403: But I had already spent
4 a lot of money planning to go to it.
5 THE COURT: All right. When did you plan this
6 convention?
7 PROSPECTIVE JUROR NO. 403: I've been planning it
8 since last year, since I would say maybe in September.
9 THE COURT: Okay. Is it work-related?
10 PROSPECTIVE JUROR NO. 403: It's not work-related.
11 THE COURT: Okay. All right, thank you.
12 THE MARSHAL: Pass it down, please.
13 THE COURT: Anyone else on that top row?
14 THE MARSHAL: Sir, we're going to get back to you
15 over there.
16 PROSPECTIVE JUROR NO. 432: Austin Pan, 0432. I
17 have to go to the victim sentencing notification. I --
18 THE COURT: Is there a document you want me to look
19 at?
20 PROSPECTIVE JUROR NO. 432: Yeah.
21 (Pause in the proceedings)
22 THE COURT: So this is your notice that you can make
23 a statement on that day --
24 PROSPECTIVE JUROR NO. 432: Uh-huh.
25 THE COURT: -- February 13th?

1 PROSPECTIVE JUROR NO. 432: Yes, I'm one of the
2 victim of the case.

3 THE COURT: Okay, so that's Thursday?

4 Okay. If you were selected to serve on the panel, I
5 would make accommodations for you to make sure you get to give
6 your statement. Okay?

7 Okay, all right. You can have your documents back.

8 THE MARSHAL: Anybody in the middle row? Can you
9 pass it down, please?

10 PROSPECTIVE JUROR NO. 450: Francis Gamboa, 450. So
11 my reason is, I work per diem, and ever since I had a baby, my
12 mom and dad live with me. So I wouldn't be paid if I served
13 during this case.

14 THE COURT: What do you do?

15 PROSPECTIVE JUROR NO. 450: I'm a nurse.

16 THE COURT: Okay. Do you work in a hospital?

17 PROSPECTIVE JUROR NO. 450: A surgery center.

18 THE COURT: Okay, and your employer will not pay you
19 while you're here?

20 PROSPECTIVE JUROR NO. 450: As far as I know,
21 because I'm per diem.

22 THE COURT: Okay. What does that mean, per diem?
23 You get paid by the day?

24 PROSPECTIVE JUROR NO. 450: The only -- no. They
25 only get you if they need you.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 450: And although it's not
3 considered a full-time job, I'm there for the week, because
4 usually they need me.

5 THE COURT: Okay. Are you scheduled every day this
6 week?

7 PROSPECTIVE JUROR NO. 450: So far this week, yes.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 450: The rest of this week.

10 THE COURT: And if you were asked to be here and you
11 weren't able to go to work, how would that affect you
12 financially?

13 PROSPECTIVE JUROR NO. 450: I have a house, paying a
14 mortgage on that, a car, the new baby. It would be pretty --
15 pretty hard.

16 THE COURT: Would you be able to pay your bills?

17 PROSPECTIVE JUROR NO. 450: It would be difficult.

18 THE COURT: Okay, thank you, sir. Thank you for
19 being here.

20 PROSPECTIVE JUROR NO. 450: Thank you.

21 THE MARSHAL: Anybody else in the middle row?

22 THE COURT: Second row?

23 THE MARSHAL: Front row? Can you pass it down this
24 way, please?

25 PROSPECTIVE JUROR NO. 495: Kristine Gallardo, 495.

1 I just wanted to say, I can serve any time, but this
2 week, with the Coronavirus going on -- I work at Prestige
3 Cruises, and I've got 300 clients that are going out in the
4 next two days to Asia, and I have to get them somewhere else.
5 So if I can be excused for this one, I wouldn't mind serving
6 for another one.

7 THE COURT: And what do you do?

8 PROSPECTIVE JUROR NO. 495: I'm a supervisor of
9 customer service.

10 THE COURT: For a travel agency?

11 PROSPECTIVE JUROR NO. 495: Yes, an online travel
12 agency. Yes.

13 THE COURT: Okay, thank you.

14 PROSPECTIVE JUROR NO. 495: And I'm the only
15 breadwinner for a family of five, so.

16 THE COURT: Okay, thank you.

17 PROSPECTIVE JUROR NO. 496: Hi. I'm Angela Segura,
18 496. I am a nurse, and I'm the only breadwinner, and this
19 would take out about five to six days of my paycheck, and --

20 THE COURT: Where do you work?

21 PROSPECTIVE JUROR NO. 496: Valley Hospital.

22 THE COURT: Okay. Did you check with Human
23 Resources to determine whether you would be paid or not?

24 PROSPECTIVE JUROR NO. 496: I have not, no.

25 THE COURT: Okay. When we take a break, why don't

1 you call your Human Resources.

2 PROSPECTIVE JUROR NO. 496: Okay.

3 THE COURT: Because it's my experience that a lot of
4 employers actually pay you.

5 PROSPECTIVE JUROR NO. 496: Oh, that would be
6 awesome.

7 THE COURT: Uh-huh.

8 PROSPECTIVE JUROR NO. 496: Okay.

9 THE COURT: So thank you.

10 PROSPECTIVE JUROR NO. 496: Cool.

11 THE COURT: Thank you for being here.

12 THE MARSHAL: Anybody else in the front here?

13 PROSPECTIVE JUROR NO. 506: Sophie Champion, Badge
14 number 506. I'm a tipped employee, a server. So if this were
15 to go into next week, I would be missing out on hundreds of
16 dollars that I do need to pay my bills.

17 THE COURT: Okay. And are you scheduled to work
18 this week and into next week?

19 PROSPECTIVE JUROR NO. 506: Yes. My days off are
20 consistent, they're always Wednesday, Thursdays, and I work
21 the other five days of the week consistently.

22 THE COURT: Okay. Would you be able to pay your
23 bills if you were asked to be here?

24 PROSPECTIVE JUROR NO. 506: I would have a very
25 difficult time, seeing as February is a shorter month, so less

1 days at work.

2 THE COURT: Okay, thank you.

3 PROSPECTIVE JUROR NO. 509: Luis Ovalles, Badge 509.
4 I'm not sure if this would affect, but I'm an Air Force
5 reservist, and I start my first drill weekend the 23rd and the
6 24th, with a schedule to report time actually of the 22nd. So
7 I'm not sure if that would cut into the time required for the
8 case.

9 THE COURT: So February 22nd, you have to report?

10 PROSPECTIVE JUROR NO. 509: Yes.

11 THE COURT: Where do you report to?

12 PROSPECTIVE JUROR NO. 509: To March Air Force Base,
13 which is in Riverside, California.

14 THE COURT: Okay. Okay, thank you.

15 PROSPECTIVE JUROR NO. 509: You're welcome, Your
16 Honor.

17 PROSPECTIVE JUROR NO. 490: Caesar Castro, 490. I
18 just have a question. Is there a chance this trial goes
19 beyond next week?

20 THE COURT: No, we'll be done next week.

21 PROSPECTIVE JUROR NO. 409: Okay.

22 THE COURT: Okay?

23 PROSPECTIVE JUROR NO. 485: Hi. Shannon Young, 485.
24 I am up for a promotion at my job, and right now, I'm in job
25 training. So if it goes into like next week and stuff like

1 that, like, I'm trying to make an impression so that I can get
2 this position. It's more money for me and my family.

3 THE COURT: Okay. Thank you, Ms. Young.

4 PROSPECTIVE JUROR NO. 485: Thank you.

5 THE COURT: Thank you for being here.

6 THE MARSHAL: Anybody else in this area?

7 THE COURT: Okay, first row over here on the left,
8 anyone? Anyone over here on the left that wishes to address
9 the Court?

10 PROSPECTIVE JUROR NO. 513: Michael Laurie, 513.

11 THE COURT: I'm sorry?

12 PROSPECTIVE JUROR NO. 513: Michael Laurie, 513.

13 THE COURT: 513?

14 PROSPECTIVE JUROR NO. 513: Um-hum.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 513: I'm from Mesquite,
17 Nevada, and it was very difficult for me to get here today. I
18 had to borrow a car from a friend. If I was to return, I
19 would most likely have to take the airport shuttle and figure
20 out a bus route from the airport over to this courthouse.

21 THE COURT: Okay. Would you be able to get here?
22 Would you have transportation to get here?

23 PROSPECTIVE JUROR NO. 513: I'd have to get up
24 probably at 4:00 o'clock in the morning every day. I think
25 the shuttle leaves about 5:30.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 513: Depending -- I don't
3 know when the court -- when court starts, or.

4 THE COURT: Yeah. We don't start that early, but
5 it's either --

6 PROSPECTIVE JUROR NO. 513: Not -- well --

7 THE COURT: -- 8:30 or 10:30 in the morning.

8 PROSPECTIVE JUROR NO. 513: Yeah, it takes an
9 hour-and-a-half to get to Las Vegas from there.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NO. 513: They make several stops.

12 THE COURT: If you were asked to serve, would you be
13 able to make arrangements to be here?

14 PROSPECTIVE JUROR NO. 513: Would I be able -- I'd
15 be able to make arrangements, yes. It would be very difficult
16 though.

17 THE COURT: Okay. Thank you, sir.

18 PROSPECTIVE JUROR NO. 513: Uh-huh.

19 THE MARSHAL: Anybody else in the front row?

20 PROSPECTIVE JUROR NO. 541: Kevin Widdison, 541.
21 I'm slotted to be up in Salt Lake doing training Tuesday
22 through Friday of next week with people flying in from around
23 the country. So if I'm not there, they're flying in for
24 nothing.

25 THE COURT: Okay, so this is work-related?

1 PROSPECTIVE JUROR NO. 541: Yes, it is, ma'am.
2 Completely.

3 THE COURT: And you've had your jury summons for
4 quite some time, correct?

5 PROSPECTIVE JUROR NO. 541: Yes, we have. It's been
6 on the calendar since October for that, but I didn't know this
7 would go into next week.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 541: I just -- I hadn't
10 thought about that.

11 THE COURT: All right. If you're not there, I mean,
12 what would happen? I mean, they could not get on the plane if
13 they knew beforehand.

14 PROSPECTIVE JUROR NO. 541: We would have to try to
15 reschedule it, but yeah.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 541: It's just a work --
18 yeah.

19 THE COURT: Okay, thank you.

20 PROSPECTIVE JUROR NO. 541: Um-hum.

21 THE MARSHAL: Next row?

22 PROSPECTIVE JUROR NO. 554: Roberta Bell, Badge
23 number 554. I have airplane tickets next Friday to go to Salt
24 Lake to take my granddaughter to a gymnastics competition.

25 THE COURT: Okay. I believe we would be done --

1 PROSPECTIVE JUROR NO. 554: Think we would be done?

2 THE COURT: -- but thank you for letting me know
3 that.

4 PROSPECTIVE JUROR NO. 554: Okay.

5 THE COURT: Uh-huh.

6 THE MARSHAL: Anybody else in that middle row? In
7 the back row? Right behind you, please.

8 PROSPECTIVE JUROR NO. 564: Selene Moreno, Badge
9 number 0564. I work late nights at a casino. I'm off at 4:00
10 or 5:00 in the morning, so I'll probably be here with like one
11 hour of sleep.

12 THE COURT: Okay, say that again. I heard -- you
13 work on a casino?

14 PROSPECTIVE JUROR NO. 564: In a casino, yeah.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 564: And I'm off at 4:00 or
17 5:00 in the morning, so --

18 THE COURT: What is your shift?

19 PROSPECTIVE JUROR NO. 564: It's swing shift, so it
20 will be 8:00 to 4:00 in the morning, or 9:00 to 5:00.

21 THE COURT: Okay, so 8:00 o'clock at night until
22 4:00 in the morning?

23 PROSPECTIVE JUROR NO. 564: Yeah, correct.

24 THE COURT: Okay. We do have a 24-hour town, and I
25 tell this to jurors if they are selected to serve: that I

1 would ask you obviously not to work that shift, because I
2 can't have jurors that work all night and then come in here;
3 you'd be too sleepy. Do you understand that?

4 PROSPECTIVE JUROR NO. 564: Right, so I would have
5 to take off the whole week?

6 THE COURT: Yes.

7 PROSPECTIVE JUROR NO. 564: And the next week?

8 THE COURT: Well, you would have to take off in
9 order for you to be here during the day.

10 PROSPECTIVE JUROR NO. 564: But I work on tips. I'm
11 not sure how I'm going to make any money.

12 THE COURT: I'm sorry, you what?

13 PROSPECTIVE JUROR NO. 564: I work on tips.

14 THE COURT: Okay. What do you do?

15 PROSPECTIVE JUROR NO. 564: Cocktail waitress.

16 THE COURT: Okay. Where do you work?

17 PROSPECTIVE JUROR NO. 564: The Cromwell Casino.

18 THE COURT: If you were asked to be here, how would
19 that affect you financially?

20 PROSPECTIVE JUROR NO. 564: That's the only money I
21 make, basically, off of tips.

22 THE COURT: Okay. Would you be able to pay your
23 bills?

24 PROSPECTIVE JUROR NO. 564: No.

25 THE COURT: Okay, thank you.

1 THE MARSHAL: Anybody else back there?

2 PROSPECTIVE JUROR NO. 583: Joseph Campling, Badge
3 number 0583. I have airline tickets already scheduled for
4 this Sunday the 16th and for the week to Florida to visit my
5 mom. I don't know if that's, you know --

6 THE COURT: Okay.

7 PROSPECTIVE JUROR NO. 583: -- a problem.

8 THE COURT: You have plane tickets for this Sunday?

9 PROSPECTIVE JUROR NO. 583: Yes.

10 THE COURT: And it's a vacation?

11 PROSPECTIVE JUROR NO. 583: To visit my mom. Kind
12 of. It depends on what you think --

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 583: -- a vacation is.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR NO. 583: Thanks.

17 THE MARSHAL: Anybody on this side? Can you pass it
18 down, please?

19 PROSPECTIVE JUROR NO. 596: Drew McCarthy, 596. I
20 work the rest of this week, and into the beginning of next
21 week, and I would not be able to pay my bills.

22 THE COURT: Okay. What do you do?

23 PROSPECTIVE JUROR NO. 596: A detailer at Fabulous
24 Freddy's, so tips pay.

25 THE COURT: Okay. And if you were requested to be

1 here through next week, that would make it obviously --

2 PROSPECTIVE JUROR NO. 596: Yeah, difficult to pay.

3 THE COURT: -- not very easy to pay your bills?

4 PROSPECTIVE JUROR NO. 596: Correct, yeah.

5 THE COURT: Okay, thank you, sir. Thank you for
6 being here.

7 THE MARSHAL: Next in that row?

8 PROSPECTIVE JUROR NO. 597: Thank you. 597. My
9 name is Priscilla Schonacher. I actually am -- homeschool my
10 daughter full-time, she's in second grade, and I have tickets
11 to leave to Houston on Thursday.

12 THE COURT: I'm sorry, what to Houston on Thursday?

13 PROSPECTIVE JUROR NO. 597: I have airplane tickets
14 to leave to Houston on Thursday.

15 THE COURT: For?

16 PROSPECTIVE JUROR NO. 597: Two things. I have work
17 there, and also, to have my daughter visit her grandma who has
18 pancreatic cancer that had surgery about four weeks ago.

19 THE COURT: Okay, thank you.

20 PROSPECTIVE JUROR NO. 597: Thank you.

21 THE COURT: Thank you for being here.

22 THE MARSHAL: Anybody else in this front row here?
23 Can you just hand it behind you, please?

24 PROSPECTIVE JUROR NO. 610: Hi. My name is Maria
25 Preciado. My badge number is 610. And the two reason is

1 that, I'm a citizen, but I'm born in Mexico, so my primary
2 language is Spanish. And I don't know if I will be able to
3 understand 100 percent English here --

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 610: -- to be able.

6 THE COURT: And how long have you been in the US?
7 How long have you been in the US?

8 PROSPECTIVE JUROR NO. 610: 28 years, something like
9 that.

10 THE COURT: 28 years?

11 PROSPECTIVE JUROR NO. 610: Yeah.

12 THE COURT: Do you work?

13 PROSPECTIVE JUROR NO. 610: So I understand pretty
14 good, but I don't know --

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 610: -- if any decision
17 here --

18 THE COURT: All right.

19 PROSPECTIVE JUROR NO. 610: And --

20 THE COURT: If at any time, if there's something
21 that you don't understand, I just ask that you raise your hand
22 so that you can let me know that, and we will clarify for you.

23 PROSPECTIVE JUROR NO. 610: Okay.

24 THE COURT: Okay?

25 PROSPECTIVE JUROR NO. 610: The other reason is, I

1 work in casino, and I don't know how it works there about
2 getting paid or getting points.

3 THE COURT: Okay, thank you.

4 PROSPECTIVE JUROR NO. 610: Uh-huh.

5 THE COURT: Thank you for being here. Anyone else
6 that wishes to address the Court?

7 PROSPECTIVE JUROR NO. 426: Badge number 426.
8 Talking this English is a little problem. Your talkings, not
9 understand.

10 THE COURT: Okay. You can't understand me?

11 PROSPECTIVE JUROR NO. 426: Yeah, your talkings, I
12 no understand.

13 THE COURT: Okay. Are you a US citizen?

14 PROSPECTIVE JUROR NO. 426: Yes.

15 THE COURT: How long have you lived in the United
16 States?

17 PROSPECTIVE JUROR NO. 426: Almost 20 years.

18 THE COURT: Do you work here?

19 PROSPECTIVE JUROR NO. 426: As an Uber driver.

20 THE COURT: I'm sorry?

21 PROSPECTIVE JUROR NO. 426: I'm a driver.

22 THE COURT: Okay, thank you. Anyone else that
23 wishes to address the Court? Okay, the record will reflect no
24 further response from the panel.

25 Are there any of you who believe that for any other

1 reason, you would be unable to serve as a juror in this
2 particular case? Okay, there's someone back there. If you
3 don't mind standing up, sir.

4 PROSPECTIVE JUROR NO. 580: Joe Price, 580.

5 THE COURT: Go ahead, Mr. Price.

6 PROSPECTIVE JUROR NO. 580: Back -- sometime back, I
7 ran a Home Depot in Houston, Texas. And when we went to open
8 the store in the morning, we were held by gunpoint and robbed.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 580: And I had to open a
11 safe.

12 THE COURT: All right. And so, I mean, I'm sorry
13 you have to tell us about that. How long ago was that?

14 PROSPECTIVE JUROR NO. 580: It's been maybe ten
15 years.

16 THE COURT: Okay, and I'm assuming you called the
17 police?

18 PROSPECTIVE JUROR NO. 580: Oh, yeah.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 580: Yeah.

21 THE COURT: Right, and they responded?

22 PROSPECTIVE JUROR NO. 580: Yep. Everything --
23 everything went all right, but --

24 THE COURT: Okay. And did they catch the person who
25 did it?

1 PROSPECTIVE JUROR NO. 580: No.
2 THE COURT: Okay, they never caught the person?
3 PROSPECTIVE JUROR NO. 580: No.
4 THE COURT: Okay. Anything about that that would
5 affect your ability to be fair and impartial in this case?
6 PROSPECTIVE JUROR NO. 580: Probably not.
7 THE COURT: Okay. Thank you, sir.
8 PROSPECTIVE JUROR NO. 580: Just -- just stating it.
9 THE COURT: Again, I'm sorry you had to tell us
10 that. Anyone else?
11 PROSPECTIVE JUROR NO. 432: Austin Pan, 432. I
12 think I might be biased, because I own a business, and my
13 restaurant -- my restaurant has been broken into a few times.
14 So I might not have a good impression of people breaking in or
15 robberies.
16 THE COURT: Okay, but do you believe what happened
17 to you has anything to do with the parties that are here
18 today?
19 PROSPECTIVE JUROR NO. 432: I think I might be
20 somewhat biased, because I'm kind of mad because of --
21 THE COURT: Okay.
22 PROSPECTIVE JUROR NO. 432: -- constantly, you know,
23 people breaking into my store.
24 THE COURT: Okay. So who are you going to be unfair
25 to?

1 PROSPECTIVE JUROR NO. 432: The -- these -- the
2 accused party.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 432: Yeah.

5 THE COURT: Because of what happened to you, you
6 can't give these gentlemen a fair trial?

7 PROSPECTIVE JUROR NO. 432: I believe so.

8 THE COURT: Okay, thank you. Anyone else? Okay,
9 the record will reflect no further response from the panel.

10 Is there anyone on this panel who's ever been
11 engaged in law enforcement work, or have a spouse or close
12 relative who has ever been engaged in law enforcement work?

13 PROSPECTIVE JUROR NO. 474: Dennis Rorabaugh, 474.

14 THE COURT: Go ahead.

15 PROSPECTIVE JUROR NO. 474: I've been a former law
16 enforcement officer in Las Vegas.

17 THE COURT: What does that mean? Who did you --
18 where did you work?

19 PROSPECTIVE JUROR NO. 474: I worked for Metro.

20 THE COURT: Okay, and when did you work for Metro?

21 PROSPECTIVE JUROR NO. 474: Around 2010.

22 THE COURT: Around 2010?

23 PROSPECTIVE JUROR NO. 474: Yes, ma'am. It was
24 about for a year.

25 THE COURT: Okay, and you were a police officer?

1 PROSPECTIVE JUROR NO. 474: Technically, yes. I was
2 a jail guard, ma'am.

3 THE COURT: Okay. Anything about your former
4 employment that would affect your ability to be fair and
5 impartial?

6 PROSPECTIVE JUROR NO. 474: In particular, no, but
7 possibly.

8 THE COURT: Okay. And what do you currently do for
9 a living?

10 PROSPECTIVE JUROR NO. 474: Currently, I run a
11 couple of internet businesses, sales businesses.

12 THE COURT: Okay, thank you, sir. Thank you for
13 being here. You can have a seat. Anyone else?

14 PROSPECTIVE JUROR NO. 464: 464, Jeff O'Brien.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 464: I have a former
17 father-in-law who's law enforcement, and have two other family
18 members that are police officers in a different state.

19 THE COURT: Okay. Anything about their employment
20 that would affect your ability to be fair and impartial in
21 this case?

22 PROSPECTIVE JUROR NO. 464: Not in particular.

23 THE COURT: Okay, thank you.

24 PROSPECTIVE JUROR NO. 464: All right.

25 THE COURT: Anyone else?

1 THE MARSHAL: Can you just pass it down to the top
2 row up here (indiscernible)?

3 PROSPECTIVE JUROR NO. 019: Barbara Bruer, 019. My
4 brother was a Federal Marshal and a policeman for Irving,
5 Texas for 20 years.

6 THE COURT: Okay. Any --

7 PROSPECTIVE JUROR NO. 019: But he passed away in
8 2007.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 019: And I don't think it
11 would affect anything.

12 THE COURT: So is there anything about his former
13 employment that would affect your ability to be fair and
14 impartial in this case?

15 PROSPECTIVE JUROR NO. 019: No.

16 THE COURT: Thank you. Thank you for letting us
17 know that.

18 THE MARSHAL: Anybody in the top row? Middle row?
19 In the front? Can you pass it forward, please?

20 THE COURT: We have a juror down here in front.

21 PROSPECTIVE JUROR NO. 485: Shannon Young, 485. I
22 have a brother-in-law in law enforcement, in a different state
23 though. And no, it wouldn't affect me.

24 THE COURT: Okay, thank you.

25 THE MARSHAL: Anybody in the back row right here?

1 On this side?

2 THE COURT: Anyone else that wishes to address the
3 Court?

4 PROSPECTIVE JUROR NO. 464: Yes.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 464: Yeah, I didn't get to
7 finish. I didn't divulge --

8 THE COURT: Your name and badge number?

9 PROSPECTIVE JUROR NO. 464: I apologize. I also
10 have --

11 THE COURT: Your name and badge number?

12 PROSPECTIVE JUROR NO. 464: I'm sorry. 464, Jeff
13 O'Brien.

14 THE COURT: Thank you.

15 PROSPECTIVE JUROR NO. 464: I also am a gunsmith by
16 trade, so --

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 464: -- I work on several of
19 the officers here in town's firearms. I know several of the
20 Metro officers here in town and some in North Las Vegas. I
21 just wanted to make sure --

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 464: -- I let you know.

24 THE COURT: I appreciate you letting me know that.
25 Is there anything about that that would affect your ability to

1 be fair and impartial?

2 PROSPECTIVE JUROR NO. 464: Not that I'm aware of,
3 no.

4 THE COURT: Okay. Thank you, sir. Anyone else?
5 Okay, the record will reflect no further response from the
6 panel.

7 Is there anyone who may not be able to follow all
8 the instructions of the Court on the law, even if the
9 instructions differed from your personal conceptions of what
10 the law ought to be? Anyone who can't follow the law as given
11 to you by the Court? The record will reflect no further
12 response from the panel.

13 As a follow up to the previous question, in any
14 criminal trial, the members of the jury sitting collectively
15 are the judges of the question of fact in this case. As the
16 judge in the case, I am the judge of the questions of law, and
17 it's my responsibility to give instructions on the law that
18 apply to this particular case. It would be a violation of a
19 juror's duty if he or she tried to render a judgment based
20 upon what he or she believed the law to be, if that differed
21 from my instructions.

22 With that in mind, is there anyone who feels that
23 they cannot be fact-finders and follow my instructions on the
24 applicable law in this case? Okay, the -- I'm sorry.

25 THE MARSHAL: Hang on, there's one on the top. Can

1 you pass that down, please?

2 PROSPECTIVE JUROR NO. 403: Samantha Levine, 403.
3 About seven months ago, I had a concussion, and I've had a
4 hard time concentrating and comprehending ever since. It's
5 gotten a lot better, but there are some times where I might
6 hear someone say something, and it might not fully sink in.
7 So I just wanted to make that, like, aware.

8 THE COURT: Okay, thank you. Okay. Anyone that
9 wants to respond to the question that's pending? Okay, the
10 record will reflect no response from the panel.

11 Under our system of government, there are certain
12 principles of law that apply in every criminal trial. They
13 are that the Information or Indictment filed in this case is a
14 mere accusation and is not evidence of guilt; that as the
15 defendants sit here today, they are presumed innocent, and the
16 State therefore must prove that each defendant is guilty by
17 proof beyond a reasonable doubt. Does anyone not understand
18 or believe in these basic precepts of American justice?

19 Will you just state your name and badge number?

20 PROSPECTIVE JUROR NO. 586: Valerie Musial, 586. I
21 mentioned earlier --

22 THE COURT: Okay, other than what you've --

23 PROSPECTIVE JUROR NO. 586: Yeah.

24 THE COURT: -- already told the Court?

25 PROSPECTIVE JUROR NO. 586: Yeah, I don't believe I

1 can come to a partial decision. I believe I would have bias
2 going into it.

3 THE COURT: Okay, thank you. Anyone else? The
4 record will reflect no further response from the panel.

5 Does anybody know anything about this case, other
6 than what has been stated in the courtroom here today? Okay,
7 the record will reflect no -- I'm sorry, sir, did you want to
8 address the Court?

9 PROSPECTIVE JUROR NO. 513: Other than the news?

10 THE COURT: Well, do you know anything about this
11 case, other than what's been stated in the courtroom today?

12 PROSPECTIVE JUROR NO. 513: I --

13 THE COURT: Your name and badge number?

14 PROSPECTIVE JUROR NO. 513: Michael, 513.

15 THE COURT: I'm sorry, say it again.

16 PROSPECTIVE JUROR NO. 513: Michael, 513.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 513: I've made an assumption
19 that I pretty much know what this case is about, yeah.

20 THE COURT: I'm sorry. Will you state your name and
21 badge number again?

22 PROSPECTIVE JUROR NO. 513: Michael, 513.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 513: Michael Laurie.

25 THE COURT: Okay, thank you.

1 PROSPECTIVE JUROR NO. 513: Uh-huh.

2 THE COURT: All right. So you believe that you saw
3 something on the news?

4 PROSPECTIVE JUROR NO. 513: Yes.

5 THE COURT: Okay. You understand that if you were
6 selected to be a juror, you would be required to judge this
7 case solely upon what you see and hear in the courtroom; do
8 you understand that?

9 PROSPECTIVE JUROR NO. 513: Correct.

10 THE COURT: Okay. It doesn't disqualify you because
11 you've seen something in the news. I just have to have your
12 commitment that you would set aside anything you see in the
13 news, and judge this case based on the evidence that you see
14 and hear in the courtroom and the instructions on the law as
15 given to you by the Court. Do you understand that?

16 PROSPECTIVE JUROR NO. 513: Yes.

17 THE COURT: Are you a person that can do that?

18 PROSPECTIVE JUROR NO. 513: Yes.

19 THE COURT: Okay, thank you, sir. Thank you for
20 being here. Anyone else that wishes to address the Court?

21 Okay. At this time, I'm going to ask the lawyers to
22 meet me out in the hallway because it will be easier if you
23 guys stay in here. We'll be a few minutes, and then we'll
24 come back in, and the Clerk will call the first 32 names.

25 (Off-record sidebar)

1 THE COURT: Does the State and the defense stipulate
2 to the presence of the panel?

3 MR. PESCI: Yes, Your Honor.

4 MR. SANFT: Yes, Your Honor.

5 MR. RUGGEROLI: Yes, Your Honor.

6 THE COURT: Okay. At this time, the Clerk's going
7 to call the first 32 names. When your name is called, if
8 you'll please take your seat in the jury box. Some of you
9 will just be sitting in the same seats you're in, or you may
10 need to move down a little bit.

11 THE CLERK: Juror 1, Barbara Bruer.

12 THE COURT: Ms. Bruer, you'll be Juror number 1.
13 And then, Ms. Ana Carias, and Ms. Samantha Levine, and Mr.
14 Lee, if you three don't mind stepping out of the box, and you
15 can take a seat. Hawkes, you're going to have to direct them
16 where they can sit until --

17 THE MARSHAL: Yes, ma'am, I got it.

18 THE COURT: -- we have more seats.

19 THE CLERK: Juror 2 is going to be Vito Casucci, so
20 you're going to scoot over to the second seat. Barbara Bruer,
21 you're still in Seat 1.

22 THE MARSHAL: You're Seat number 1, ma'am.

23 PROSPECTIVE JUROR NO. 019: So I go back over here?

24 THE COURT: Yeah.

25 THE MARSHAL: Yeah, stay in Seat number 1, ma'am.

1 THE COURT: Sorry. Sorry, let's just slow down a
2 little bit. Ms. Bruer, you'll be Juror number 1. Again, most
3 of you will just move down. If I ask you to step down out of
4 the box, you can just take a seat in the gallery wherever
5 there's an open seat.

6 THE CLERK: Juror 2, Vito Casucci. Juror 3, Sean
7 McGinty.

8 THE COURT: So you'll just scoot down.

9 THE CLERK: Juror 4, Mary Newcome. Juror 5, William
10 Bryan. Juror 6, Christopher Devargas. Juror 7, Celeste
11 Hernandez.

12 THE COURT: And Mr. Pan, I'll ask you to step down
13 out of the box.

14 THE CLERK: Juror 8, Sylvia Amoroso. You're going
15 to go up to the back row, next in line.

16 THE COURT: Okay. And then, Mr. Gamboa, if you
17 don't mind stepping out of the box.

18 THE CLERK: Juror 9, Shannon Graham. You're going
19 to also go up next in line. Juror 10, Suzanne Quinn. Juror
20 11, Camille Estrella. You're going to go up to the back row.
21 Juror 12, Jeffory O'Brien. You're going to scoot all the way
22 down. Juror 13, Alexis Newell.

23 THE COURT: Mr. Rorabaugh, if you don't mind
24 stepping down out of the box.

25 PROSPECTIVE JUROR NO. 474: Yes, ma'am.

1 THE CLERK: Juror 14, Danilo Rodriguez. Juror 15 is
2 going to be Cavan Bandics. Juror 16, Jonathan Salazar. Juror
3 17, Lisa Cook. Juror 18, Shannon Young. Juror 19, Markdelan
4 Deperio. Juror 20, Caesar Castro.

5 THE COURT: Ms. Gallardo, if you don't mind stepping
6 out of the box.

7 THE CLERK: Juror 21, Angela Segura. You're going
8 to scoot all the way down on the first row.

9 THE COURT: And Ms. Champion, if you don't mind
10 stepping out of the box, and Mr. Ovalles.

11 THE CLERK: Oh, I'm sorry. You're going to move all
12 the way -- Ms. Segura, you're -- yep, that side.

13 THE COURT: Okay, and Mr. Ovalles, you can step out
14 of the box.

15 THE CLERK: Juror 22, Michael Laurie. Juror 23 is
16 going to be Maria Moreno. Juror 24, Magdalena Perez-Haywood.
17 Juror 25 is Jennifer Mendoza. Juror 26, Dawn Nerdin. Juror
18 27, Staci McCarthy. Juror 28, Kevin Widdison. Juror 29, John
19 Kubota. Juror 30, Roberta Bell. Juror 31 is going to be in
20 this first row on the left, and that's going to be Andrew
21 Delgadillo. Juror 32, Colin Randall.

22 THE MARSHAL: No, all the way to the end, sir,
23 please.

24 THE COURT: Right. And then, now there's open
25 seats. You all can go ahead and have a seat.

1 Juror number 1, Ms. Bruer, can you tell me how long
2 you've lived in Clark County?

3 PROSPECTIVE JUROR NO. 019: Since 2010, so ten
4 years.

5 THE COURT: And what do you do for a living?

6 PROSPECTIVE JUROR NO. 019: I don't do anything.

7 THE COURT: I'm sorry?

8 PROSPECTIVE JUROR NO. 019: I don't do anything.
9 I'm retired.

10 THE COURT: Okay, and how long have you been
11 retired?

12 PROSPECTIVE JUROR NO. 019: Three years this time.

13 THE COURT: What did you do before you retired?

14 PROSPECTIVE JUROR NO. 019: A little bit of
15 everything. I owned a pharmaceutical mail order -- no. The
16 last job, I worked at a pharmaceutical mail order company.

17 THE COURT: Okay. And your education background?

18 PROSPECTIVE JUROR NO. 019: A bachelor's degree in
19 business.

20 THE COURT: Your marital status?

21 PROSPECTIVE JUROR NO. 019: Divorced.

22 THE COURT: Do you have any kids?

23 PROSPECTIVE JUROR NO. 019: One adult son, and he
24 lives in San Antonio. He's in the Air Force, married, with
25 one child.

1 THE COURT: He's in the Air Force?
2 PROSPECTIVE JUROR NO. 019: Yes.
3 THE COURT: Okay. Do you know of any reason why you
4 could not be a fair and impartial juror --
5 PROSPECTIVE JUROR NO. 019: No.
6 THE COURT: -- if you were selected to serve on this
7 panel?
8 PROSPECTIVE JUROR NO. 019: No.
9 THE COURT: Thank you. Thank you for being here.
10 Mr. Vito -- is it Casucci?
11 PROSPECTIVE JUROR NO. 409: Casucci.
12 THE COURT: Okay. How long have you lived in Clark
13 County?
14 PROSPECTIVE JUROR NO. 409: Approximately 15 years.
15 THE COURT: And your education background?
16 PROSPECTIVE JUROR NO. 409: High school graduate.
17 THE COURT: And what do you do for a living?
18 PROSPECTIVE JUROR NO. 409: I run the poker room at
19 the Golden Nugget Casino.
20 THE COURT: Your marital status?
21 PROSPECTIVE JUROR NO. 409: I'm married for 30
22 years.
23 THE COURT: Okay. Is your spouse employed?
24 PROSPECTIVE JUROR NO. 409: She is.
25 THE COURT: What does she do?

1 PROSPECTIVE JUROR NO. 409: She's a compliance
2 director at Barclays -- Barclay Bank.

3 THE COURT: Do you have any children?

4 PROSPECTIVE JUROR NO. 409: I have two children;
5 27-year-old daughter, 24-year-old son.

6 THE COURT: Okay. Are they employed?

7 PROSPECTIVE JUROR NO. 409: They are employed. They
8 don't live in this state anymore, but they -- yes.

9 THE COURT: All right. What does each do for a
10 living?

11 PROSPECTIVE JUROR NO. 409: My daughter works for
12 AT&T. My son manages a bar in Reno, Nevada.

13 THE COURT: Do you know of any reason why you could
14 not be a fair and impartial juror if you were selected to
15 serve on this panel?

16 PROSPECTIVE JUROR NO. 409: No, ma'am.

17 THE COURT: Thank you, sir. Thank you very much for
18 being here.

19 Sean McGinty, how long have you lived in Clark
20 County?

21 PROSPECTIVE JUROR NO. 410: Just over a year.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 410: Would you like me to
24 stand up?

25 THE COURT: You can sit down, that's fine. And you

1 moved from Texas?

2 PROSPECTIVE JUROR NO. 410: Correct.

3 THE COURT: Okay. And your education background?

4 PROSPECTIVE JUROR NO. 410: High school.

5 THE COURT: And what do you do for a living?

6 PROSPECTIVE JUROR NO. 410: I'm CEO and owner of
7 four different companies.

8 THE COURT: You're a CEO of four different
9 companies?

10 PROSPECTIVE JUROR NO. 410: I run four companies.
11 Yes, ma'am.

12 THE COURT: Okay. What kind of companies?

13 PROSPECTIVE JUROR NO. 410: I've got -- one's a
14 marketing and experiential production company, another one is
15 synthetic grass, another one is bus and shuttle services, and
16 another one is in the people moving business, so.

17 THE COURT: Is what, the last one?

18 PROSPECTIVE JUROR NO. 410: People. We move people
19 around, so.

20 THE COURT: People moving business?

21 PROSPECTIVE JUROR NO. 410: Ground transportation.
22 Correct, yeah.

23 THE COURT: Okay. Your marital status?

24 PROSPECTIVE JUROR NO. 410: Married.

25 THE COURT: Is your spouse employed?

1 PROSPECTIVE JUROR NO. 410: No.

2 THE COURT: Okay. Do you have kids?

3 PROSPECTIVE JUROR NO. 410: Two of my own, two boys,
4 and then four stepchildren.

5 THE COURT: Okay. Are any of them old enough to be
6 employed?

7 PROSPECTIVE JUROR NO. 410: All of them.

8 THE COURT: Can you just start at the top and tell
9 me what each does for a living?

10 PROSPECTIVE JUROR NO. 410: One runs a valet service
11 in Texas. Other is an engineer in the oil field. The other
12 is directional drilling in an oil field. One is a plumber.
13 And two -- I'm not sure what they do.

14 THE COURT: Okay. The last two, you're not sure?

15 PROSPECTIVE JUROR NO. 410: They -- you know,
16 they're doing -- they're just trying to find their way.
17 They're younger, so.

18 THE COURT: Okay, all right. Do you know of any
19 reason why you could not be a fair and impartial juror if you
20 were selected to serve on this panel?

21 PROSPECTIVE JUROR NO. 410: It's a tough question.
22 Fair? Yeah, I certainly would be fair, but the workload and
23 commitments on a daily basis, it would be distracting, to say
24 the least, so.

25 THE COURT: Okay, what would be distracting? Being

1 here?

2 PROSPECTIVE JUROR NO. 410: The obligations that I
3 have on a daily basis, so.

4 THE COURT: Okay. But if you were ordered to be
5 here, you would be here, correct?

6 PROSPECTIVE JUROR NO. 410: I would -- if you
7 ordered it, I'd be here.

8 THE COURT: And you would listen to the evidence?

9 PROSPECTIVE JUROR NO. 410: I would. I would be
10 frustrated, but I would be.

11 THE COURT: All right, thank you, sir. I do
12 appreciate your willingness to be here.

13 Ms. Newcome?

14 PROSPECTIVE JUROR NO. 417: Hello.

15 THE COURT: How long have you lived in Clark County?

16 PROSPECTIVE JUROR NO. 417: Since 1961.

17 THE COURT: Your education background?

18 PROSPECTIVE JUROR NO. 417: High school.

19 THE COURT: Okay, and what do you do for a living?

20 PROSPECTIVE JUROR NO. 417: I'm a payroll manager
21 for Las Vegas Painting. Been there for -- since 1985.

22 THE COURT: Okay. Your marital status?

23 PROSPECTIVE JUROR NO. 417: I'm married.

24 THE COURT: Is your spouse employed?

25 PROSPECTIVE JUROR NO. 417: Yes.

1 THE COURT: What does your spouse do?

2 PROSPECTIVE JUROR NO. 417: He's an engineer.

3 THE COURT: Okay. Do you have children?

4 PROSPECTIVE JUROR NO. 417: I do, I have three.

5 THE COURT: Okay, are they old enough to be
6 employed?

7 PROSPECTIVE JUROR NO. 417: They certainly are.

8 THE COURT: Can you tell me what each does for a
9 living?

10 PROSPECTIVE JUROR NO. 417: My oldest daughter,
11 she's a real estate agent, does project management, and she
12 also -- they own -- her and her husband own kickboxing gyms.

13 THE COURT: Okay. I heard the first one, real
14 estate agent. And then, the next --

15 PROSPECTIVE JUROR NO. 417: They also own some
16 kickboxing gyms here in Las Vegas. Kickboxing.

17 THE COURT: Okay. And then --

18 PROSPECTIVE JUROR NO. 417: My son is the second one
19 down. He also works for the same company, and he is -- he
20 bugs the union for the company. He basically runs for the
21 underground division. And my younger daughter is a teacher.

22 THE COURT: Okay. Any reason why you could not be a
23 fair and impartial juror if you were selected to serve on this
24 panel?

25 PROSPECTIVE JUROR NO. 417: Absolutely not.

1 THE COURT: Thank you. Thank you very much for
2 being here.
3 William Bryan, Juror number 5?
4 PROSPECTIVE JUROR NO. 420: Yes.
5 THE COURT: Mr. Bryan, can you tell me how long
6 you've lived in Clark County?
7 PROSPECTIVE JUROR NO. 420: This next May will be
8 three years.
9 THE COURT: Okay. Your education background?
10 PROSPECTIVE JUROR NO. 420: I have a bachelor's
11 degree.
12 THE COURT: And what's your bachelor's degree in?
13 PROSPECTIVE JUROR NO. 420: Biology.
14 THE COURT: Okay. What do you do for a living?
15 PROSPECTIVE JUROR NO. 420: I'm an airline pilot.
16 THE COURT: Your marital status?
17 PROSPECTIVE JUROR NO. 420: Divorced.
18 THE COURT: Do you have kids?
19 PROSPECTIVE JUROR NO. 420: I do.
20 THE COURT: How many?
21 PROSPECTIVE JUROR NO. 420: Two.
22 THE COURT: Are either of them old enough to be
23 employed?
24 PROSPECTIVE JUROR NO. 420: Both.
25 THE COURT: Okay. Can you tell me what each does?

1 PROSPECTIVE JUROR NO. 420: My son works for a
2 currency trading firm in New York, and my daughter is
3 attending university in Tampa, Florida.

4 THE COURT: Do you know of any reason why you could
5 not be a fair and impartial juror if you were selected to
6 serve, Mr. Bryan?

7 PROSPECTIVE JUROR NO. 420: No, I don't.

8 THE COURT: Okay, thank you. Thank you very much
9 for being here. Mr. Devargas, good afternoon.

10 PROSPECTIVE JUROR NO. 429: Good afternoon.

11 THE COURT: How long have you lived in Clark County?

12 PROSPECTIVE JUROR NO. 429: My entire life. Born
13 and raised, minus four years I spent in the Army.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 429: So, 33 years.

16 THE COURT: Your education background?

17 PROSPECTIVE JUROR NO. 429: College. College
18 graduate.

19 THE COURT: I'm sorry, you have a --

20 PROSPECTIVE JUROR NO. 429: College graduate.

21 THE COURT: Okay, and what's your degree in?

22 PROSPECTIVE JUROR NO. 429: A photo journalist. So
23 photo journalism and commercial photography.

24 THE COURT: And what do you do for a living?

25 PROSPECTIVE JUROR NO. 429: Photo journalist for the

1 Las Vegas Sun.

2 THE COURT: Okay. Your marital status?

3 PROSPECTIVE JUROR NO. 429: Married.

4 THE COURT: Is your spouse employed?

5 PROSPECTIVE JUROR NO. 429: Yes.

6 THE COURT: What does your spouse do?

7 PROSPECTIVE JUROR NO. 429: She's an assistant

8 manager at Victoria's Secret.

9 THE COURT: Okay. Do you have children?

10 PROSPECTIVE JUROR NO. 429: No.

11 THE COURT: Do you know of any reason why you could

12 not be a fair and impartial juror if you were selected to

13 serve on this panel, sir?

14 PROSPECTIVE JUROR NO. 429: No.

15 THE COURT: Thank you. Thank you very much for

16 being here.

17 Celeste Hernandez?

18 PROSPECTIVE JUROR NO. 430: Yes.

19 THE COURT: Okay. How long have you lived in Clark

20 County?

21 PROSPECTIVE JUROR NO. 430: For about 20 years.

22 THE COURT: Your education background?

23 PROSPECTIVE JUROR NO. 430: Associate's degree in

24 travel and tourism and event planning.

25 THE COURT: And what do you do for a living?

1 PROSPECTIVE JUROR NO. 430: I host at a high limit
2 lounge inside Cosmopolitan.
3 THE COURT: I'm sorry?
4 PROSPECTIVE JUROR NO. 430: Host at a high limit
5 lounge inside the Cosmopolitan.
6 THE COURT: Your marital status?
7 PROSPECTIVE JUROR NO. 430: Single.
8 THE COURT: Do you have kids?
9 PROSPECTIVE JUROR NO. 430: No.
10 THE COURT: Okay. Do you know of any reason why you
11 could not be a fair and impartial juror if you were selected
12 to serve on this panel?
13 PROSPECTIVE JUROR NO. 430: No.
14 THE COURT: Okay, thank you. Thank you very much
15 for your willingness to be here.
16 Ms. Sylvia Amoroso?
17 PROSPECTIVE JUROR NO. 437: Yes.
18 THE COURT: Okay. How long have you lived in Clark
19 County?
20 PROSPECTIVE JUROR NO. 437: Like, 20 years.
21 THE COURT: I'm sorry?
22 PROSPECTIVE JUROR NO. 437: 20 years.
23 THE COURT: Okay. Your education background?
24 PROSPECTIVE JUROR NO. 437: Like, first year in high
25 school only.

1 THE COURT: Okay. Are you employed?
2 PROSPECTIVE JUROR NO. 437: Yes.
3 THE COURT: What do you do?
4 PROSPECTIVE JUROR NO. 437: Busser. Bus person.
5 THE COURT: Okay. Your marital status?
6 PROSPECTIVE JUROR NO. 437: Widow.
7 THE COURT: Do you have kids?
8 PROSPECTIVE JUROR NO. 437: No.
9 THE COURT: Do you know of any reason why you could
10 not be a fair and impartial juror if you were selected to
11 serve?
12 PROSPECTIVE JUROR NO. 437: No.
13 THE COURT: Okay, thank you. Thank you very much
14 for being here.
15 Ms. Graham?
16 PROSPECTIVE JUROR NO. 451: Yes.
17 THE COURT: Okay, Juror number 9. How long have you
18 lived in Clark County?
19 PROSPECTIVE JUROR NO. 451: Since 2006.
20 THE COURT: And your education background?
21 PROSPECTIVE JUROR NO. 451: Master's in education.
22 THE COURT: Okay. And what do you do for a living?
23 PROSPECTIVE JUROR NO. 451: I'm an elementary school
24 teacher.
25 THE COURT: What grade do you teach?

1 PROSPECTIVE JUROR NO. 451: Fourth grade.
2 THE COURT: How long have you done that?
3 PROSPECTIVE JUROR NO. 451: 15 years, going on 16.
4 THE COURT: Okay. Your marital status?
5 PROSPECTIVE JUROR NO. 451: Married.
6 THE COURT: Is your spouse employed?
7 PROSPECTIVE JUROR NO. 451: Yes, he is.
8 THE COURT: What does he do?
9 PROSPECTIVE JUROR NO. 451: He is a warehouse
10 inventory manager for an HVAC company.
11 THE COURT: Do you have children?
12 PROSPECTIVE JUROR NO. 451: I do. I have a son in
13 college, studying biotech engineering.
14 THE COURT: Okay. Do you know of any reason why you
15 could not be a fair and impartial juror if you were selected
16 to serve?
17 PROSPECTIVE JUROR NO. 451: No, ma'am.
18 THE COURT: Thank you. Thank you very much for
19 being here.
20 Ms. Quinn?
21 PROSPECTIVE JUROR NO. 461: Yes.
22 THE COURT: How long have you lived in Clark County?
23 PROSPECTIVE JUROR NO. 461: Since 2001.
24 THE COURT: And what do you do for a living?
25 PROSPECTIVE JUROR NO. 461: I'm a corporate travel

1 agent.

2 THE COURT: And your education background?

3 PROSPECTIVE JUROR NO. 461: Just high school level.

4 THE COURT: Okay. And your marital status?

5 PROSPECTIVE JUROR NO. 461: Currently engaged.

6 THE COURT: Okay. Is your soon-to-be spouse

7 employed?

8 PROSPECTIVE JUROR NO. 461: Yes.

9 THE COURT: Can you tell us what your spouse does?

10 PROSPECTIVE JUROR NO. 461: Yes, he's a --

11 THE COURT: Soon-to-be spouse.

12 PROSPECTIVE JUROR NO. 461: He's an aircraft

13 mechanic.

14 THE COURT: Do you have children?

15 PROSPECTIVE JUROR NO. 461: No.

16 THE COURT: Do you know of any reason why you could

17 not be a fair and impartial juror if you were selected to

18 serve on this panel?

19 PROSPECTIVE JUROR NO. 461: No, ma'am.

20 THE COURT: Thank you, Ms. Quinn. Thank you for

21 being here.

22 Ms. Camille Estrella?

23 PROSPECTIVE JUROR NO. 462: Yes.

24 THE COURT: How long have you lived in Clark County?

25 PROSPECTIVE JUROR NO. 462: Since 2002.

1 THE COURT: Your education background?
2 PROSPECTIVE JUROR NO. 462: I am a college
3 undergrad.
4 THE COURT: Okay. You're in school right now?
5 PROSPECTIVE JUROR NO. 462: Yes, I'm currently
6 studying in the university for bachelor's of medical lab
7 scientist.
8 THE COURT: Okay. Where are you in school?
9 PROSPECTIVE JUROR NO. 462: CSN.
10 THE COURT: Okay. Are you employed?
11 PROSPECTIVE JUROR NO. 462: No.
12 THE COURT: Okay. Are you in school full-time right
13 now?
14 PROSPECTIVE JUROR NO. 462: Right now, no.
15 THE COURT: Okay. Would you be able to serve as a
16 juror and also make sure you get to class and do your work?
17 PROSPECTIVE JUROR NO. 462: Yes.
18 THE COURT: Okay, so it won't interfere in your
19 school?
20 PROSPECTIVE JUROR NO. 462: Yes.
21 THE COURT: It won't interfere, correct?
22 PROSPECTIVE JUROR NO. 462: No, it won't.
23 THE COURT: Okay. And are you currently employed?
24 PROSPECTIVE JUROR NO. 462: No.
25 THE COURT: All right. And your marital status?

1 PROSPECTIVE JUROR NO. 462: Single.

2 THE COURT: Do you have any kids?

3 PROSPECTIVE JUROR NO. 462: No.

4 THE COURT: Okay. Any reason why you could not be a
5 fair and impartial juror if you were selected to serve on this
6 panel?

7 PROSPECTIVE JUROR NO. 462: No.

8 THE COURT: Okay, thank you. Thank you very much
9 for being here.

10 At this time, we're going to take a recess. During
11 this recess, you're admonished not to talk or converse among
12 yourselves or with anyone else on any subject connected with
13 this trial, or read, watch, or listen to any report of or
14 commentary on the trial, or any person connected with this
15 trial, by any medium of information, including, without
16 limitation, newspapers, television, the internet, or radio, or
17 form or express any opinion on any subject connected with this
18 trial until the case is finally submitted to you.

19 Just one moment. Jeffrey Hall? Okay. Other than
20 Jeffrey Hall, you're all excused for a 15-minute recess.
21 Thank you.

22 THE MARSHAL: Thank you. All rise for the exiting
23 jury, please.

24 THE COURT: Mr. Hall, if you just don't mind
25 staying.

1 THE MARSHAL: Jurors.

2 (Outside the presence of the prospective jurors)

3 (Within the presence of Prospective Juror No. 600)

4 THE COURT: Okay, the record will reflect that the
5 panel is outside.

6 Mr. Hall, I want to thank you very much for being
7 here, and you are excused from your duty. You can take your
8 badge off. There's a -- is there a box out there for his
9 badge?

10 THE MARSHAL: Yes.

11 THE COURT: You can put your badge there. You don't
12 need to go back to Jury Services. You are excused.

13 PROSPECTIVE JUROR NO. 600: Thank you.

14 THE COURT: Thank you for your willingness to be
15 here.

16 THE MARSHAL: Thank you, Mr. Hall.

17 THE COURT: Thank you.

18 (Outside the presence of Prospective Juror No. 600)

19 (Court recessed at 3:06 P.M. until 3:20 P.M.)

20 (Outside the presence of the prospective jurors)

21 MR. PESCI: So we have to make one record.

22 THE COURT: We need to do something outside the
23 presence?

24 MR. PESCI: Yes.

25 MR. SANFT: Yes, Your Honor, if we could.

1 THE COURT: Okay.

2 THE MARSHAL: He's on the way, Your Honor.

3 THE COURT: Okay. Okay, the record will reflect
4 that the hearing is taking place outside the presence of the
5 jury panel.

6 MR. SANFT: Your Honor, while we were on break,
7 apparently, one of the prospective jurors, and this would be
8 Mr. Casucci, Juror number 2 --

9 MR. PESCI: Badge 409.

10 MR. SANFT: -- Badge 409, came to the door and I
11 think entered into the courtroom while myself, and Mr.
12 Ruggeroli, and -- you were here, right?

13 MR. PESCI: Yes, Judge. If I could jump in, Mike?

14 MR. SANFT: Yeah, of course.

15 MR. PESCI: So he didn't get inside the courtroom.
16 He got into the vestibule, the outer doors. Got into that
17 vestibule, did not get into the inner doors, had asked if he
18 could come in, and the Marshal had explained -- or the
19 corrections officer, I'm sorry, had explained he could not
20 come back in, to wait back outside, so he went back outside.
21 I saw it, so I just told defense counsel about it.

22 THE COURT: Okay.

23 MR. SANFT: I guess the concern is that the only
24 people that were in the courtroom at that particular point
25 were just the attorneys. My client was not present, Mr.

1 Ruggero's client was not present, and I know that we go to
2 great pains to make sure that we don't imply that these
3 individuals are in custody.

4 We just wanted to make a record with the Court, and
5 I don't know if there's anything we can do at this particular
6 point. I haven't spoken with Mr. Ruggero. I don't know if
7 it's something that we have to canvass the individual to see
8 what he saw. I just don't know at this particular point,
9 but --

10 THE COURT: But your clients were not in here,
11 correct?

12 MR. SANFT: They were not, no.

13 THE COURT: Okay. Anything, Mr. Ruggero?

14 MR. RUGGEROLI: I don't have any other observations
15 than that as well.

16 THE COURT: Okay. Anything else before we bring
17 them in?

18 MR. PESCI: Yes, please, Your Honor. Badge number
19 600, Jeffery Hall, we had a conversation in the hall --

20 THE COURT: Right.

21 MR. PESCI: -- outside.

22 THE COURT: Uh-huh.

23 MR. PESCI: His name's Hall. And as I understand
24 it, the Court had previously asked for his identification
25 information. I believe he was run as far as criminal history,

1 because he originally told us he had one felony from 1991 and
2 that he finished his parole in 2009, which is an
3 astronomically long --

4 THE COURT: Right.

5 MR. PESCI: -- amount of time to be -- I think your
6 Clerk told us that he has more felonies.

7 THE COURT: Right, right. And that's the gentleman
8 I excused right before the break.

9 MR. PESCI: Right.

10 THE COURT: But yeah, he had -- he -- he was not
11 eligible to serve.

12 MR. PESCI: Right. The statute changed, and so, for
13 certain people, restoration of rights happens. But I think,
14 based on what you're telling us, the additional felonies and
15 the fact that we don't know that he actually had his civil
16 rights restored, that he's not qualified.

17 THE COURT: Right.

18 MR. PESCI: Okay.

19 THE COURT: There were multiple, and so I don't even
20 know how I would do the analysis --

21 MR. PESCI: Right.

22 THE COURT: -- that you may have to go through in
23 the statute in order to determine whether someone could serve.

24 MR. PESCI: And the State has no objection. I would
25 ask for the defense to make a record.

1 THE COURT: And it -- and they were from another
2 state as well; Hawaii.

3 MR. SANFT: Yeah, Your Honor. And just on behalf of
4 Mr. Robertson, we did not have an objection to him being
5 excused at that particular point.

6 MR. RUGGEROLI: Submit it, Judge.

7 THE COURT: Okay, thank you.

8 MR. PESCI: Thank you, Your Honor.

9 (Pause in the proceedings)

10 MR. PESCI: So, Judge, you know, best-case scenario,
11 do we think we get to witnesses tomorrow afternoon?

12 THE COURT: Yeah, sure.

13 MR. PESCI: Okay.

14 (Pause in the proceedings)

15 THE MARSHAL: All rise for the entering jury,
16 please.

17 (Within the presence of the prospective jurors)

18 THE COURT: Does the State stipulate to the presence
19 of the panel?

20 MR. PESCI: Yes, Your Honor.

21 THE COURT: And the defense?

22 MR. SANFT: Yes, Your Honor.

23 MR. RUGGEROLI: Yes, Your Honor.

24 THE COURT: Thank you. Mr. O'Brien?

25 PROSPECTIVE JUROR NO. 464: Yes, Your Honor.

1 THE COURT: Good afternoon. How long have you lived
2 in Clark County?

3 PROSPECTIVE JUROR NO. 464: 21 years.

4 THE COURT: And your education background?

5 PROSPECTIVE JUROR NO. 464: I have a computer
6 science degree.

7 THE COURT: I think you told us earlier you're a
8 gunsmith, correct?

9 PROSPECTIVE JUROR NO. 464: Yes, by trade. At
10 present, I'm working a contract.

11 THE COURT: You're working --

12 PROSPECTIVE JUROR NO. 464: A contract, doing
13 electronics.

14 THE COURT: Okay. Your marital status?

15 PROSPECTIVE JUROR NO. 464: Married.

16 THE COURT: Is your spouse employed?

17 PROSPECTIVE JUROR NO. 464: She is a human resources
18 director.

19 THE COURT: Do you have any kids?

20 PROSPECTIVE JUROR NO. 464: Yes.

21 THE COURT: Okay, how many?

22 PROSPECTIVE JUROR NO. 464: One boy, one girl.

23 THE COURT: Are they old enough to be employed?

24 PROSPECTIVE JUROR NO. 464: Yes. My son is a sales
25 something for furniture.

1 THE COURT: Okay, and your other one?
2 PROSPECTIVE JUROR NO. 464: And my daughter, she
3 works at guest check-in.
4 THE COURT: At where?
5 PROSPECTIVE JUROR NO. 464: At the MGM.
6 THE COURT: I'm sorry.
7 PROSPECTIVE JUROR NO. 464: She's guest services at
8 MGM.
9 THE COURT: Thank you. Do you know of any reason
10 why you could not be a fair and impartial juror if you were
11 selected to serve on this panel?
12 PROSPECTIVE JUROR NO. 464: No.
13 THE COURT: Okay, thank you. Thank you very much
14 for your willingness to be here.
15 Alexis Newell?
16 PROSPECTIVE JUROR NO. 468: Yes.
17 THE COURT: Juror number 13. How long have you
18 lived in Clark County?
19 PROSPECTIVE JUROR NO. 468: 22 years.
20 THE COURT: Your education background?
21 PROSPECTIVE JUROR NO. 468: I'm undergrad at UNLV.
22 THE COURT: You're what at UNLV?
23 PROSPECTIVE JUROR NO. 468: An undergrad at UNLV.
24 THE COURT: Okay, and are you in school full-time?
25 PROSPECTIVE JUROR NO. 468: Yes.

1 THE COURT: What are you studying?
2 PROSPECTIVE JUROR NO. 468: Criminal justice.
3 THE COURT: Okay. And if you were asked to be here,
4 how would that affect your school schedule? Could you do
5 both?
6 PROSPECTIVE JUROR NO. 468: Yes, but I have an exam
7 tomorrow, so.
8 THE COURT: Okay. What time?
9 PROSPECTIVE JUROR NO. 468: 11:30 to 12:45.
10 THE COURT: Okay. We will be in session.
11 PROSPECTIVE JUROR NO. 468: Okay.
12 THE COURT: How will that affect you if you're not
13 able to take that exam tomorrow?
14 PROSPECTIVE JUROR NO. 468: I don't -- can I get it
15 excused if I have proof?
16 THE COURT: I could, yes.
17 PROSPECTIVE JUROR NO. 468: Okay, that would be fine
18 then.
19 THE COURT: Okay, and so you don't think that it
20 will affect your classes?
21 PROSPECTIVE JUROR NO. 468: No.
22 THE COURT: Okay. And are you employed?
23 PROSPECTIVE JUROR NO. 468: Yes.
24 THE COURT: What do you do?
25 PROSPECTIVE JUROR NO. 468: I'm cashier at Polo

1 Ralph Lauren.

2 THE COURT: Your marital status?

3 PROSPECTIVE JUROR NO. 468: Single.

4 THE COURT: Do you have any kids?

5 PROSPECTIVE JUROR NO. 468: No.

6 THE COURT: Do you know of any reason why you could
7 not be a fair and impartial juror if you were selected to
8 serve on this panel?

9 PROSPECTIVE JUROR NO. 468: No.

10 THE COURT: Thank you. Thank you very much for
11 being here.

12 Mr. Rodriguez?

13 PROSPECTIVE JUROR NO. 475: Yes, ma'am.

14 THE COURT: Good afternoon. How long have you lived
15 in Clark County?

16 PROSPECTIVE JUROR NO. 475: Since 2009.

17 THE COURT: And what do you do for a living?

18 PROSPECTIVE JUROR NO. 475: I'm retired.

19 THE COURT: What did you do before you retired?

20 PROSPECTIVE JUROR NO. 475: I retired from the Navy,
21 and then retired from Cox Communications.

22 THE COURT: Okay. Your education background?

23 PROSPECTIVE JUROR NO. 475: High school.

24 THE COURT: And your marital status?

25 PROSPECTIVE JUROR NO. 475: Married.

1 THE COURT: Is your spouse employed?

2 PROSPECTIVE JUROR NO. 475: She's on disability.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 475: She has lupus and
5 cancer.

6 THE COURT: Do yo have any children?

7 PROSPECTIVE JUROR NO. 475: Grown-ups.

8 THE COURT: How many?

9 PROSPECTIVE JUROR NO. 475: Four.

10 THE COURT: Okay, and can you tell me what each
11 child does for a living?

12 PROSPECTIVE JUROR NO. 475: One is -- the oldest one
13 is a school counselor in Yakima, Washington. The second one
14 is customer care center in Wesley Financials. The third one
15 is a manager at a tech business office. And the last one is a
16 software engineer.

17 THE COURT: Okay. Do you know of any reason why you
18 could not be a fair and impartial juror if you were selected
19 to serve on this panel?

20 PROSPECTIVE JUROR NO. 475: I can be fair and
21 impartial, but my problem is I have a tendency to lose focus
22 and/or concentration on subject matters.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 475: And so I might not be
25 able to connect the dots.

1 THE COURT: Okay. Well, if you were selected to
2 serve on the panel, I would need your commitment that
3 obviously you would be here and that you would listen to the
4 evidence.

5 PROSPECTIVE JUROR NO. 475: I will try.

6 THE COURT: Okay, and you could follow the -- what
7 do you mean, you could try? If you're not listening to the
8 evidence, what would you be doing?

9 PROSPECTIVE JUROR NO. 475: Well, I'll be -- I'll be
10 listening; I'll be trying to concentrate.

11 THE COURT: Okay. All right, that's all I could ask
12 for.

13 PROSPECTIVE JUROR NO. 475: Okay.

14 THE COURT: Okay? Thank you, sir. Thank you very
15 much for your willingness to be here.

16 Cavan Bandics? Good afternoon, sir.

17 PROSPECTIVE JUROR NO. 477: Yeah, that's right.

18 THE COURT: How long have you lived in Clark County?

19 PROSPECTIVE JUROR NO. 477: All my life.

20 THE COURT: Okay. And your education background?

21 PROSPECTIVE JUROR NO. 477: High school diploma.

22 THE COURT: And are you employed?

23 PROSPECTIVE JUROR NO. 477: Yes.

24 THE COURT: What do you do?

25 PROSPECTIVE JUROR NO. 477: Service technician for

1 Automatic Door and Glass.

2 THE COURT: Your marital status?

3 PROSPECTIVE JUROR NO. 477: Single.

4 THE COURT: Do you have any kids?

5 PROSPECTIVE JUROR NO. 477: No.

6 THE COURT: Any reason why you could not be a fair
7 and impartial juror if we selected you to serve, Mr. Bandics?

8 PROSPECTIVE JUROR NO. 477: I'm not sure, but --

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 477: -- I feel like I may
11 have seen the accused before, maybe from school or from other
12 -- some other place; I'm just not exactly sure where.

13 THE COURT: Okay. You believe that you have seen
14 Mr. Robertson or Mr. Wheeler before?

15 PROSPECTIVE JUROR NO. 477: Yes, I believe so.

16 THE COURT: Okay. Anything about that that would
17 affect your ability to be fair and impartial?

18 PROSPECTIVE JUROR NO. 477: No, I don't believe so.

19 THE COURT: Okay, thank you. Thank you very much
20 for being here.

21 Jonathan Salazar?

22 PROSPECTIVE JUROR NO. 482: Correct.

23 THE COURT: How long have you lived in Clark County?

24 PROSPECTIVE JUROR NO. 482: 16 years.

25 THE COURT: Your education background?

1 PROSPECTIVE JUROR NO. 482: High school.
2 THE COURT: And what do you do for a living?
3 PROSPECTIVE JUROR NO. 482: I'm an armed guard and
4 driver for Loomis.
5 THE COURT: Your marital status?
6 PROSPECTIVE JUROR NO. 482: Single.
7 THE COURT: Do you have any children?
8 PROSPECTIVE JUROR NO. 482: No.
9 THE COURT: Any reason why you could not be a fair
10 and impartial juror if we selected you to serve?
11 PROSPECTIVE JUROR NO. 482: No, ma'am.
12 THE COURT: Thank you. Thank you for being here.
13 Ms. Cook?
14 PROSPECTIVE JUROR NO. 483: Yes. Yes.
15 THE COURT: How long have you lived in Clark County?
16 PROSPECTIVE JUROR NO. 483: I was born and raised.
17 THE COURT: Okay. Are you employed?
18 PROSPECTIVE JUROR NO. 483: Yes.
19 THE COURT: What do you do?
20 PROSPECTIVE JUROR NO. 483: A teacher.
21 THE COURT: A school teacher?
22 PROSPECTIVE JUROR NO. 483: Yes.
23 THE COURT: Okay. What do you teach?
24 PROSPECTIVE JUROR NO. 483: Fifth grade.
25 THE COURT: And your education background?

1 PROSPECTIVE JUROR NO. 483: A bachelor's degree in
2 education.

3 THE COURT: Okay. Your marital status?

4 PROSPECTIVE JUROR NO. 483: Married.

5 THE COURT: Is your spouse employed?

6 PROSPECTIVE JUROR NO. 483: Yes.

7 THE COURT: What does your spouse do?

8 PROSPECTIVE JUROR NO. 483: He's a foreman for --
9 they build shooting ranges, modular shooting ranges.

10 THE COURT: Okay. Do you have any children?

11 PROSPECTIVE JUROR NO. 483: Yes.

12 THE COURT: How many?

13 PROSPECTIVE JUROR NO. 483: I have one son, and
14 three stepsons.

15 THE COURT: Are any of them old enough to be
16 employed?

17 PROSPECTIVE JUROR NO. 483: Yes.

18 THE COURT: Okay, all of them?

19 PROSPECTIVE JUROR NO. 483: Three. Three of them
20 are.

21 THE COURT: Three of them?

22 PROSPECTIVE JUROR NO. 483: Yeah.

23 THE COURT: Well, tell me what those three children
24 do.

25 PROSPECTIVE JUROR NO. 483: So one of them works at

1 the shooting range company with his dad.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR NO. 483: The other one works at
4 Ritchie Brothers Auction, and the last one is a welder.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 483: And then, my son is in
7 school.

8 THE COURT: Okay. Do you know of any reason why you
9 could not be a fair and impartial juror if you were selected
10 to serve?

11 PROSPECTIVE JUROR NO. 483: No.

12 THE COURT: Okay, thank you, Ms. Cook. Thank you
13 for being here.

14 PROSPECTIVE JUROR NO. 483: Thank you.

15 THE COURT: Ms. Young? Good afternoon.

16 PROSPECTIVE JUROR NO. 485: Good afternoon.

17 THE COURT: Can you tell me how long you've lived in
18 Clark County?

19 PROSPECTIVE JUROR NO. 485: Four years.

20 THE COURT: And what do you do for a living?

21 PROSPECTIVE JUROR NO. 485: I am a -- I'm in
22 training right now to be an assistant store manager.

23 THE COURT: Okay. What kind of store is it?

24 PROSPECTIVE JUROR NO. 485: It's Walmart.

25 THE COURT: Okay. Your education background?

1 PROSPECTIVE JUROR NO. 485: High school.
2 THE COURT: Okay. Are you married?
3 PROSPECTIVE JUROR NO. 485: Yes.
4 THE COURT: Is your spouse employed?
5 PROSPECTIVE JUROR NO. 485: Yes.
6 THE COURT: What does your spouse do?
7 PROSPECTIVE JUROR NO. 485: He's a driver and
8 installer for a graphic company.
9 THE COURT: Do you have kids?
10 PROSPECTIVE JUROR NO. 485: Yes, three.
11 THE COURT: Okay. Are any of your kids old enough
12 to be employed?
13 PROSPECTIVE JUROR NO. 485: Two.
14 THE COURT: Okay. Can you tell me what each does?
15 PROSPECTIVE JUROR NO. 485: My daughter, she is an
16 office manager back home on the island of Hawaii. And my son,
17 he's -- he can work, but he's not. He's 17, he's a senior.
18 THE COURT: Okay. Still in school?
19 PROSPECTIVE JUROR NO. 485: Yes, ma'am.
20 THE COURT: Okay. Do you know of any reason why you
21 could not be a fair and impartial juror if you were selected
22 to serve on this panel?
23 PROSPECTIVE JUROR NO. 485: I can be fair.
24 THE COURT: Okay.
25 PROSPECTIVE JUROR NO. 485: Like I previously

1 mentioned, I'm in training. I was picked out of five people
2 for this position. You know, I'm trying to show them that I
3 can do it. Just being here right now hurt me today, but.

4 THE COURT: Okay, but you understand your employer
5 can't make any adverse employment decisions against you --

6 PROSPECTIVE JUROR NO. 485: Right.

7 THE COURT: -- because you've responded to a lawful
8 summons, correct?

9 PROSPECTIVE JUROR NO. 485: No, I understand.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NO. 485: It -- yeah.

12 THE COURT: All right, thank you.

13 PROSPECTIVE JUROR NO. 485: Thank you.

14 THE COURT: Mr. Deperio?

15 PROSPECTIVE JUROR NO. 488: Yes.

16 THE COURT: Okay. How long have you lived in Clark
17 County?

18 PROSPECTIVE JUROR NO. 488: 23 years.

19 THE COURT: Your education background?

20 PROSPECTIVE JUROR NO. 488: High school.

21 THE COURT: And what do you do for a living?

22 PROSPECTIVE JUROR NO. 488: I'm a machine operator.

23 THE COURT: What kind of machine do you operate?

24 PROSPECTIVE JUROR NO. 488: Binder equipment.

25 THE COURT: Okay. Your marital status?

1 PROSPECTIVE JUROR NO. 488: Married.
2 THE COURT: And is your spouse employed?
3 PROSPECTIVE JUROR NO. 488: Yes.
4 THE COURT: What does your spouse do?
5 PROSPECTIVE JUROR NO. 488: Light equipment
6 operator.
7 THE COURT: And do you have children?
8 PROSPECTIVE JUROR NO. 488: Yes, two.
9 THE COURT: Okay. Are either of your kids old
10 enough to be employed?
11 PROSPECTIVE JUROR NO. 488: No, they're both high
12 school.
13 THE COURT: Okay. Do you know of any reason why you
14 could not be a fair and impartial juror if you were selected
15 to serve?
16 PROSPECTIVE JUROR NO. 488: No, I don't.
17 THE COURT: Okay, thank you, sir. Thank you for
18 being here.
19 Mr. Castro?
20 PROSPECTIVE JUROR NO. 490: Yes.
21 THE COURT: How long have you lived --
22 PROSPECTIVE JUROR NO. 490: 23 years.
23 THE COURT: 23 years? And your education
24 background?
25 PROSPECTIVE JUROR NO. 490: Associate's in software

1 development.

2 THE COURT: And what do you do for a living?

3 PROSPECTIVE JUROR NO. 490: I'm a software engineer.

4 THE COURT: Software engineer? And are you married?

5 PROSPECTIVE JUROR NO. 490: Married, yes.

6 THE COURT: Okay. Is your spouse employed?

7 PROSPECTIVE JUROR NO. 490: Yes, she's a regional

8 manager.

9 THE COURT: Do you have children?

10 PROSPECTIVE JUROR NO. 490: Four kids.

11 THE COURT: Four?

12 PROSPECTIVE JUROR NO. 490: Yeah.

13 THE COURT: Okay. Are any of your kids old enough

14 to be employed?

15 PROSPECTIVE JUROR NO. 490: Yes, they are. One's a

16 nurse.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 490: One's a supervisor, one

19 is in the Army, and one is in high school.

20 THE COURT: Okay. Any reason why you could not be a

21 fair and impartial juror if selected to serve on this panel?

22 PROSPECTIVE JUROR NO. 490: There's no reason.

23 THE COURT: Okay, thank you, sir. Thank you very

24 much for being here.

25 Ms. Segura? Okay.

1 PROSPECTIVE JUROR NO. 496: Yes, ma'am.
2 THE COURT: Good afternoon. How long have you lived
3 in Clark County?
4 PROSPECTIVE JUROR NO. 496: 13 years.
5 THE COURT: And your education background?
6 PROSPECTIVE JUROR NO. 496: Bachelor's of Science in
7 Nursing.
8 THE COURT: And you told us you're a nurse?
9 PROSPECTIVE JUROR NO. 496: Yes, ma'am.
10 THE COURT: Right, and you're working in a hospital?
11 PROSPECTIVE JUROR NO. 496: Yes, ma'am.
12 THE COURT: And what kind -- what kind of -- I mean,
13 what level? Pediatrics, surgery?
14 PROSPECTIVE JUROR NO. 496: Oh, basic level.
15 Med-surg, RN1. It's my first year.
16 THE COURT: Your first year as a nurse?
17 PROSPECTIVE JUROR NO. 496: Yes.
18 THE COURT: Okay. And your marital status?
19 PROSPECTIVE JUROR NO. 496: Married.
20 THE COURT: Is your spouse employed?
21 PROSPECTIVE JUROR NO. 496: No.
22 THE COURT: Do you have kids?
23 PROSPECTIVE JUROR NO. 496: No.
24 THE COURT: Okay. And I know we talked earlier
25 about you contacting your Human Resources, correct?

1 PROSPECTIVE JUROR NO. 496: I did on the break.
2 THE COURT: Okay.
3 PROSPECTIVE JUROR NO. 496: They said that they
4 would -- I would be able to be paid, so --
5 THE COURT: Okay.
6 PROSPECTIVE JUROR NO. 496: -- it's all good.
7 THE COURT: So no issues with your employment?
8 PROSPECTIVE JUROR NO. 496: No issues.
9 THE COURT: Okay. Any reason why you could not be a
10 fair and impartial juror if selected to serve?
11 PROSPECTIVE JUROR NO. 496: No reason.
12 THE COURT: Thank you.
13 PROSPECTIVE JUROR NO. 496: Thank you.
14 THE COURT: Thank you very much for being here.
15 Michael Laurie?
16 PROSPECTIVE JUROR NO. 513: Correct.
17 THE COURT: Good afternoon.
18 PROSPECTIVE JUROR NO. 513: Good afternoon.
19 THE COURT: How long have you lived in Clark County?
20 PROSPECTIVE JUROR NO. 513: A little over five
21 years.
22 THE COURT: Okay, and what do you do for a living?
23 PROSPECTIVE JUROR NO. 513: I'm a retail cashier at
24 a dollar store.
25 THE COURT: Okay. And your education background?

1 PROSPECTIVE JUROR NO. 513: High school.
2 THE COURT: Okay. And your marital status?
3 PROSPECTIVE JUROR NO. 513: Single.
4 THE COURT: Okay. Do you have any kids?
5 PROSPECTIVE JUROR NO. 513: No.
6 THE COURT: Do you know of any reason why you could
7 not be a fair and impartial juror if selected to serve --
8 PROSPECTIVE JUROR NO. 513: No.
9 THE COURT: -- Mr. Laurie?
10 PROSPECTIVE JUROR NO. 513: No.
11 THE COURT: Okay, thank you.
12 PROSPECTIVE JUROR NO. 513: Um-hum.
13 THE COURT: Thank you very much for being here.
14 Maria Moreno, correct?
15 PROSPECTIVE JUROR NO. 520: Yes.
16 THE COURT: How long have you lived in Clark County?
17 PROSPECTIVE JUROR NO. 520: 15 years.
18 THE COURT: And your education background?
19 PROSPECTIVE JUROR NO. 520: High school.
20 THE COURT: What do you do for a living?
21 PROSPECTIVE JUROR NO. 520: I'm a payroll Clerk at
22 Broadacres Marketplace.
23 THE COURT: And are you married?
24 PROSPECTIVE JUROR NO. 520: Yes.
25 THE COURT: Okay. Is your spouse employed?

1 PROSPECTIVE JUROR NO. 520: Yes.
2 THE COURT: Okay, can you tell me what your spouse
3 does for a living?
4 PROSPECTIVE JUROR NO. 520: He's an electrician.
5 THE COURT: Do you have children?
6 PROSPECTIVE JUROR NO. 520: Yes, I have two.
7 THE COURT: Okay.
8 PROSPECTIVE JUROR NO. 520: They're in -- one is in
9 high school, and one is in junior high.
10 THE COURT: Okay. Any reason why you could not be a
11 fair and impartial juror if selected to serve?
12 PROSPECTIVE JUROR NO. 520: No.
13 THE COURT: Thank you. Thank you for being here.
14 Ms. Perez-Haywood?
15 PROSPECTIVE JUROR NO. 521: Yes.
16 THE COURT: Good afternoon.
17 PROSPECTIVE JUROR NO. 521: Good afternoon.
18 THE COURT: How long have you lived in Clark County?
19 PROSPECTIVE JUROR NO. 521: 16 years.
20 THE COURT: And what do you do for a living?
21 PROSPECTIVE JUROR NO. 521: Middle school teacher.
22 THE COURT: Okay. What subjects do you teach?
23 PROSPECTIVE JUROR NO. 521: Eighth grade math.
24 THE COURT: Okay. And your education background?
25 PROSPECTIVE JUROR NO. 521: Master's in education.

1 THE COURT: Okay. And your marital status?
2 PROSPECTIVE JUROR NO. 521: Married.
3 THE COURT: Is your spouse employed?
4 PROSPECTIVE JUROR NO. 521: Yes.
5 THE COURT: What does your spouse do?
6 PROSPECTIVE JUROR NO. 521: He teaches middle school
7 too, sixth grade.
8 THE COURT: Do you have any children?
9 PROSPECTIVE JUROR NO. 521: Two, a four-year-old and
10 a eight-year-old.
11 THE COURT: Okay. Any reason why you could not be a
12 fair and impartial juror if you were selected to serve?
13 PROSPECTIVE JUROR NO. 521: No, ma'am.
14 THE COURT: Okay, thank you. Thank you very much
15 for being here.
16 Ms. Mendoza?
17 PROSPECTIVE JUROR NO. 524: Yes.
18 THE COURT: Good afternoon.
19 PROSPECTIVE JUROR NO. 524: Good afternoon.
20 THE COURT: How long have you lived in Clark County?
21 PROSPECTIVE JUROR NO. 524: Ten years.
22 THE COURT: Okay. And your education background?
23 PROSPECTIVE JUROR NO. 524: I was going to Nevada
24 State, but I took the semester off.
25 THE COURT: Okay, but you were in school last

1 semester?
2 PROSPECTIVE JUROR NO. 524: Yes.
3 THE COURT: All right, and you're just taking a
4 semester off?
5 PROSPECTIVE JUROR NO. 524: Um-hum.
6 THE COURT: Is that a yes?
7 PROSPECTIVE JUROR NO. 524: Yes.
8 THE COURT: Have you finished a year?
9 PROSPECTIVE JUROR NO. 524: Yeah, I'm in my second
10 year.
11 THE COURT: Okay. And are you employed?
12 PROSPECTIVE JUROR NO. 524: Yes.
13 THE COURT: What do you do?
14 PROSPECTIVE JUROR NO. 524: I'm a sales associate at
15 Tory Burch.
16 THE COURT: Your marital status?
17 PROSPECTIVE JUROR NO. 524: Single.
18 THE COURT: Do you have kids?
19 PROSPECTIVE JUROR NO. 524: No.
20 THE COURT: Okay. Any reason why you could not be a
21 fair and impartial juror if you were selected to serve, Ms.
22 Mendoza?
23 PROSPECTIVE JUROR NO. 524: No.
24 THE COURT: Okay, thank you.
25 Dawn Nerdin?

1 PROSPECTIVE JUROR NO. 538: Yes, ma'am.
2 THE COURT: Good afternoon. Ms. Nerdin, how long
3 have you lived in Clark County?
4 PROSPECTIVE JUROR NO. 538: Probably about 43 years.
5 THE COURT: Okay. Your education background?
6 PROSPECTIVE JUROR NO. 538: High school diploma.
7 THE COURT: And your -- your employment background?
8 PROSPECTIVE JUROR NO. 538: Unemployed.
9 THE COURT: Okay, and what was your last job? What
10 did you do?
11 PROSPECTIVE JUROR NO. 538: Customer service for
12 convenience stores.
13 THE COURT: Okay. Your marital status?
14 PROSPECTIVE JUROR NO. 538: Single.
15 THE COURT: Do you --
16 PROSPECTIVE JUROR NO. 538: I'm a caregiver at this
17 point. My dad and --
18 THE COURT: Okay.
19 PROSPECTIVE JUROR NO. 538: -- sister have COPD, so
20 I help take care of them.
21 THE COURT: Okay. How will that -- do you take care
22 of them full-time, I assume?
23 PROSPECTIVE JUROR NO. 538: Yeah.
24 THE COURT: Okay. How will that affect the care if
25 you're required to be here?

1 PROSPECTIVE JUROR NO. 538: It would -- it would
2 affect it quite a bit. We have three dogs, then my sister's
3 on oxygen. My dad has to do his medicine four times a day,
4 and, you know, I'm there to help out around the house --

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 538: -- because they can't
7 get around too good.

8 THE COURT: All right. Would you be able to do
9 both?

10 PROSPECTIVE JUROR NO. 538: Not really, no.

11 THE COURT: Okay. Who is there now?

12 PROSPECTIVE JUROR NO. 538: Just them by themselves.

13 THE COURT: Okay. Do you live there?

14 PROSPECTIVE JUROR NO. 538: Yes, I do.

15 THE COURT: Okay. And I just want to ask, will
16 their health be compromised if you're required to be here?

17 PROSPECTIVE JUROR NO. 538: It could be. You know,
18 they have lapses to where they can't breathe and stuff, and
19 they need help. You know, they need help, you know, me to do
20 the running around, and you know, back and forth in the house,
21 you know, cooking, and you know, help them maintain their
22 level of life.

23 THE COURT: Okay, but there's no one with them right
24 now?

25 PROSPECTIVE JUROR NO. 538: No.

1 THE COURT: And not all day?
2 PROSPECTIVE JUROR NO. 538: Not -- no. I'm gone,
3 I'm here.
4 THE COURT: Okay. All right, Ms. Nerdin, I'm just
5 going to ask you to step out of the box.
6 PROSPECTIVE JUROR NO. 538: All right, thank you.
7 THE COURT: And I'm going to ask Alexander Keang, if
8 you can take a seat in the gallery. Alexander --
9 THE MARSHAL: Come up and fill the empty chair, sir.
10 THE COURT: -- Keang, I'm just going to --
11 PROSPECTIVE JUROR NO. 561: (Indiscernible)?
12 THE COURT: Uh-huh.
13 PROSPECTIVE JUROR NO. 561: Thank you.
14 THE COURT: Mr. Keang, how long have you lived in
15 Clark County?
16 PROSPECTIVE JUROR NO. 561: I live here since 1991.
17 THE COURT: Okay. And what do you do for a living?
18 PROSPECTIVE JUROR NO. 561: I'm a casino dealer.
19 THE COURT: Okay. And your education background?
20 PROSPECTIVE JUROR NO. 561: High school.
21 THE COURT: Okay. And are you married?
22 PROSPECTIVE JUROR NO. 561: Yes.
23 THE COURT: Okay. Is your spouse employed?
24 PROSPECTIVE JUROR NO. 561: Yes.
25 THE COURT: What does she do?

1 PROSPECTIVE JUROR NO. 561: She's a dealer, too.
2 THE COURT: Okay. Do you have any children?
3 PROSPECTIVE JUROR NO. 561: Two children.
4 THE COURT: Okay. Are they old enough to be
5 employed?
6 PROSPECTIVE JUROR NO. 561: No, they are just kid,
7 11-years-old and --
8 THE COURT: Okay, they're minors?
9 PROSPECTIVE JUROR NO. 561: -- eight-years-old.
10 Minors, yes.
11 THE COURT: Any reason why you could not be a fair
12 and impartial juror if you were selected to serve?
13 PROSPECTIVE JUROR NO. 561: No, no reason.
14 THE COURT: Okay, thank you, sir. Thank you very
15 much for being here.
16 Ms. McCarthy?
17 PROSPECTIVE JUROR NO. 540: Yes.
18 THE COURT: How long have you lived in Clark County?
19 PROSPECTIVE JUROR NO. 540: 28 years.
20 THE COURT: Your education background?
21 PROSPECTIVE JUROR NO. 540: Master's in education.
22 THE COURT: And what do you do?
23 PROSPECTIVE JUROR NO. 540: I'm a retired teacher.
24 THE COURT: What did you teach?
25 PROSPECTIVE JUROR NO. 540: I taught everything from

1 kindergarten up to middle school.

2 THE COURT: Okay. And your marital status?

3 PROSPECTIVE JUROR NO. 540: Married.

4 THE COURT: Okay. Is your spouse employed?

5 PROSPECTIVE JUROR NO. 540: Yes, he's a teacher.

6 THE COURT: Do you have kids?

7 PROSPECTIVE JUROR NO. 540: Yes, I have two, one of
8 which is here today.

9 THE COURT: One of your kids is here?

10 PROSPECTIVE JUROR NO. 540: Yes.

11 THE COURT: Okay. Oh, that's your son?

12 PROSPECTIVE JUROR NO. 540: That's my son, yes.

13 THE COURT: Okay. You both got a jury summons, and
14 you both got assigned up here?

15 PROSPECTIVE JUROR NO. 540: Well, we both were
16 summoned in November, and we couldn't do it then, and so we
17 both picked this day so that we can carpool together.

18 THE COURT: Okay, and you got put together on the --

19 PROSPECTIVE JUROR NO. 540: Have some quality mother
20 and son bonding time, yeah.

21 THE COURT: Yeah. Okay, so how many kids do you
22 have?

23 PROSPECTIVE JUROR NO. 540: I have two.

24 THE COURT: And are they old enough to be employed?

25 PROSPECTIVE JUROR NO. 540: Yes. Drew, he's 21, he

1 is a car detailer.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR NO. 540: And then my daughter's
4 24, but she has special needs, so she's not employed.

5 THE COURT: Okay. Do you know of any reason why you
6 could not be a fair and impartial juror if you were selected
7 to serve?

8 PROSPECTIVE JUROR NO. 540: No.

9 THE COURT: Thank you. Thank you very much for
10 being here.

11 And Mr. Widdison?

12 PROSPECTIVE JUROR NO. 541: Yes, ma'am.

13 THE COURT: Good afternoon. How long have you lived
14 in Clark County?

15 PROSPECTIVE JUROR NO. 541: 18 years.

16 THE COURT: Your education background?

17 PROSPECTIVE JUROR NO. 541: I have a bachelor degree
18 in accounting.

19 THE COURT: And what do you do for a living?

20 PROSPECTIVE JUROR NO. 541: I'm a certified manager
21 accountant.

22 THE COURT: Certified manager accountant?

23 PROSPECTIVE JUROR NO. 541: Yeah, CMA. Um-hum.

24 THE COURT: Okay. And your marital status?

25 PROSPECTIVE JUROR NO. 541: Married.

1 THE COURT: Is your spouse employed?
2 PROSPECTIVE JUROR NO. 541: No, she's not.
3 THE COURT: Do you have children?
4 PROSPECTIVE JUROR NO. 541: One minor girl at home.
5 THE COURT: Any reason why you could not be a fair
6 and impartial juror, Mr. Widdison?
7 PROSPECTIVE JUROR NO. 541: I can be fair,
8 impartial. No problem.
9 THE COURT: Okay. Thank you, sir. Thank you for
10 being here.
11 John Kubota?
12 PROSPECTIVE JUROR NO. 546: Hi.
13 THE COURT: Good afternoon. How long have you lived
14 in Clark County?
15 PROSPECTIVE JUROR NO. 546: 31 years.
16 THE COURT: And your education background?
17 PROSPECTIVE JUROR NO. 546: Bachelor's from Cornell
18 and master's from Berkeley. I'm --
19 THE COURT: Okay, so your bachelor's is in what?
20 PROSPECTIVE JUROR NO. 546: Structural engineering.
21 THE COURT: Okay, and your master's?
22 PROSPECTIVE JUROR NO. 546: Structural engineering.
23 THE COURT: Okay, and what do you do for a living?
24 PROSPECTIVE JUROR NO. 546: I run my own engineering
25 company, Kubota and Associates Engineers.

1 THE COURT: Okay. Your marital status?
2 PROSPECTIVE JUROR NO. 546: I'm married.
3 THE COURT: Is your spouse employed?
4 PROSPECTIVE JUROR NO. 546: Yes.
5 THE COURT: What does your spouse do?
6 PROSPECTIVE JUROR NO. 546: She's a RE for NDOT.
7 THE COURT: Do you have kids?
8 PROSPECTIVE JUROR NO. 546: Three.
9 THE COURT: Okay. Are they old enough to be
10 employed?
11 PROSPECTIVE JUROR NO. 546: Two in high school, one
12 in University of Washington.
13 THE COURT: Okay. Any reason why you could not be a
14 fair and impartial juror if you were selected to serve, Mr.
15 Kubota?
16 PROSPECTIVE JUROR NO. 546: I'm struggling with that
17 one because I've been sued 29 times.
18 THE COURT: Oh.
19 PROSPECTIVE JUROR NO. 546: And we got to know the
20 judges real well, and one -- they'd come up and say, okay,
21 John, yep, nobody said you did anything wrong, but you lose,
22 you got to pay. So the law and I have problems with each
23 other.
24 THE COURT: Okay, so it sounds like civil stuff?
25 PROSPECTIVE JUROR NO. 546: Civil.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 546: Construction defect.

3 THE COURT: I was just going to say. So you spent
4 most of your time in construction defect courtrooms?

5 PROSPECTIVE JUROR NO. 546: Well, yeah, up until --
6 we gave testimony in 2000 in the -- when they were going
7 through the construction defect litigation changes.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 546: But then we lost -- we
10 -- we lost -- we stopped carrying insurance, and all the
11 lawyers disappeared, so we haven't been sued since we dropped
12 our insurance. I haven't figured that one out yet, but.

13 THE COURT: Okay, all right. Well, I don't blame
14 you for not being happy about being sued, but --

15 PROSPECTIVE JUROR NO. 546: And not doing anything
16 wrong, but I still had to pay.

17 THE COURT: Yeah. I -- I probably wouldn't be happy
18 either, okay, but you understand this is a criminal case?

19 PROSPECTIVE JUROR NO. 546: Right.

20 THE COURT: And that it really has nothing to do
21 with what has happened to you; you understand that?

22 PROSPECTIVE JUROR NO. 546: Yeah.

23 THE COURT: Okay. Would you be able to set aside
24 your experiences with being part of the civil litigation
25 system, and judge this case based solely on the evidence as

1 you hear in the courtroom and the instructions on the law?

2 PROSPECTIVE JUROR NO. 546: Yeah.

3 THE COURT: Okay, because you agree with me that it
4 would be unfair to judge this case based on your experience,
5 correct?

6 PROSPECTIVE JUROR NO. 546: Right. As you say, mine
7 was all civil, and it was just lawsuits as opposed to breaking
8 the law.

9 THE COURT: Yeah, not to minimize it, not to
10 minimize it, but you would be able to set those experiences
11 aside?

12 PROSPECTIVE JUROR NO. 546: Yeah.

13 THE COURT: Okay, sir. Thank you very much, and
14 thank you for being here.

15 Roberta Bell?

16 PROSPECTIVE JUROR NO. 554: Yes.

17 THE COURT: How long have you lived in Clark County?

18 PROSPECTIVE JUROR NO. 554: 40 years.

19 THE COURT: And your education background?

20 PROSPECTIVE JUROR NO. 554: High school.

21 THE COURT: What do you do for a living?

22 PROSPECTIVE JUROR NO. 554: I work part-time in a
23 warehouse packaging -- like for Kroger's or Smith's, packaging
24 up food.

25 THE COURT: Your marital status?

1 PROSPECTIVE JUROR NO. 554: Yes.
2 THE COURT: You're married?
3 PROSPECTIVE JUROR NO. 554: Married, married.
4 THE COURT: Okay. Is your spouse employed?
5 PROSPECTIVE JUROR NO. 554: Yes. He is a service
6 air manager for Air Canada for Vegas and Phoenix.
7 THE COURT: Do you have children?
8 PROSPECTIVE JUROR NO. 554: I have two.
9 THE COURT: Okay, are they old enough to be
10 employed?
11 PROSPECTIVE JUROR NO. 554: Yes. One is a dental
12 assistant, and one works for Wells Fargo.
13 THE COURT: Any reason why you could not be a fair
14 and impartial juror if you were selected to serve on this
15 panel?
16 PROSPECTIVE JUROR NO. 554: Yeah, no reason.
17 THE COURT: Okay, thank you.
18 PROSPECTIVE JUROR NO. 554: Um-hum.
19 THE COURT: Thank you very much. And then, Officer
20 Hawkes, if you don't mind --
21 THE MARSHAL: Yes, ma'am.
22 THE COURT: We're on number 31, Andrew Delgadillo.
23 Okay. And when the microphone gets to you, if you don't mind
24 standing up, and then it makes it easier for me to hear you
25 over there. Good afternoon, sir.

1 PROSPECTIVE JUROR NO. 556: Good afternoon.
2 THE COURT: How long have you lived in Clark County?
3 PROSPECTIVE JUROR NO. 556: 16 years.
4 THE COURT: Your education background?
5 PROSPECTIVE JUROR NO. 556: No high school.
6 THE COURT: And what do you do for a living?
7 PROSPECTIVE JUROR NO. 556: Roadside assistance.
8 THE COURT: Okay. And are you married?
9 PROSPECTIVE JUROR NO. 556: Yes.
10 THE COURT: Okay. Is your spouse employed?
11 PROSPECTIVE JUROR NO. 556: Yes.
12 THE COURT: What does your spouse do?
13 PROSPECTIVE JUROR NO. 556: Workforce for the
14 Mirage.
15 THE COURT: I'm sorry?
16 PROSPECTIVE JUROR NO. 556: Workforce.
17 THE COURT: Work horse?
18 PROSPECTIVE JUROR NO. 556: Force.
19 THE COURT: Okay.
20 PROSPECTIVE JUROR NO. 556: Workforce.
21 THE COURT: Okay. And do you have children?
22 PROSPECTIVE JUROR NO. 556: Yes, just one. He's
23 five.
24 THE COURT: Any reason why you could not be a fair
25 and impartial juror if selected to serve?

1 PROSPECTIVE JUROR NO. 556: No, ma'am.
2 THE COURT: Okay, thank you, sir.
3 PROSPECTIVE JUROR NO. 556: Thank you.
4 THE COURT: Thank you for being here.
5 Mr. Randall?
6 PROSPECTIVE JUROR NO. 557: Yes.
7 THE COURT: Good afternoon. How long have you lived
8 in Clark County?
9 PROSPECTIVE JUROR NO. 557: Lived here about
10 two-and-a-half years now.
11 THE COURT: Okay. And your education background?
12 PROSPECTIVE JUROR NO. 557: High school equivalent.
13 THE COURT: Okay. And what do you do for a living?
14 PROSPECTIVE JUROR NO. 557: I run a small company
15 that sells financial software.
16 THE COURT: Okay. And your marital status?
17 PROSPECTIVE JUROR NO. 557: Married.
18 THE COURT: Is your spouse employed?
19 PROSPECTIVE JUROR NO. 557: Currently unemployed.
20 THE COURT: Do you have kids?
21 PROSPECTIVE JUROR NO. 557: No, no kids.
22 THE COURT: Do you know of any reason why you could
23 not be a fair and impartial juror if you were selected to
24 serve on this panel?
25 PROSPECTIVE JUROR NO. 557: No.

1 THE COURT: Okay, thank you, sir. Thank you very
2 much for being here.

3 I do have a few more questions for the panel of 32
4 as a whole. So if you'd like to respond, just raise your
5 hand. We'll make sure the microphone gets to you, and if you
6 won't mind stating your name and badge number so we have a
7 record of who is speaking.

8 Is there anyone on the panel who has ever served as
9 a juror before? Go ahead. Your name and badge number?

10 PROSPECTIVE JUROR NO. 417: Joyce (phonetic)
11 Newcome, 417.

12 THE COURT: Okay, and you've served as a juror
13 before?

14 PROSPECTIVE JUROR NO. 417: Yes.

15 THE COURT: How many times?

16 PROSPECTIVE JUROR NO. 417: One -- one that I can
17 remember (indiscernible).

18 THE COURT: Okay, one time?

19 PROSPECTIVE JUROR NO. 417: Um-hum.

20 THE COURT: Was it civil or criminal?

21 PROSPECTIVE JUROR NO. 417: Criminal.

22 THE COURT: Okay. Were you selected to be the
23 foreperson?

24 PROSPECTIVE JUROR NO. 417: No.

25 THE COURT: Okay. Without telling me what your

1 verdict was, were you able to reach a verdict in that case?

2 PROSPECTIVE JUROR NO. 417: Yes.

3 THE COURT: Anything about that experience that
4 would affect your ability to be fair and impartial in this
5 case?

6 PROSPECTIVE JUROR NO. 417: There's -- there's no --

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 417: -- no reason.

9 THE COURT: Thank you. Anyone else in that row? If
10 you just don't mind passing it down.

11 PROSPECTIVE JUROR NO. 451: Shannon Graham, 451.

12 THE COURT: Okay. How many times have you served,
13 Ms. Graham?

14 PROSPECTIVE JUROR NO. 451: One time.

15 THE COURT: And was that civil or criminal?

16 PROSPECTIVE JUROR NO. 451: Civil.

17 THE COURT: Civil? Was that here in this
18 courthouse?

19 PROSPECTIVE JUROR NO. 451: Yes.

20 THE COURT: Okay. Were you selected to be the
21 foreperson?

22 PROSPECTIVE JUROR NO. 451: I was.

23 THE COURT: Without telling us what your verdict
24 was, were you able to reach a verdict?

25 PROSPECTIVE JUROR NO. 451: Yes.

1 THE COURT: Anything about that experience that
2 would affect your ability to be fair and impartial if selected
3 to serve on this panel?

4 PROSPECTIVE JUROR NO. 451: No, ma'am.

5 THE COURT: Okay, thank you, and thank you for your
6 willingness to serve.

7 Anyone else on the back row? Front row? You can
8 pass it to the juror in front.

9 PROSPECTIVE JUROR NO. 488: Badge number 488,
10 Markdelan Deperio.

11 THE COURT: Okay. How many times have you served?

12 PROSPECTIVE JUROR NO. 488: Once.

13 THE COURT: Civil or criminal?

14 PROSPECTIVE JUROR NO. 488: Criminal.

15 THE COURT: And were you selected to be the
16 foreperson?

17 PROSPECTIVE JUROR NO. 488: No.

18 THE COURT: Without telling me your verdict, were
19 you able to reach a verdict?

20 PROSPECTIVE JUROR NO. 488: Yes.

21 THE COURT: Anything about that experience that
22 would affect your ability to be fair and impartial in this
23 case?

24 PROSPECTIVE JUROR NO. 488: No.

25 THE COURT: Okay, thank you. Anyone else in the

1 second row? Go ahead.

2 PROSPECTIVE JUROR NO. 483: 483, Lisa Cook.

3 THE COURT: And you've served before?

4 PROSPECTIVE JUROR NO. 483: Yes.

5 THE COURT: How many times?

6 PROSPECTIVE JUROR NO. 483: Once.

7 THE COURT: Was that civil or criminal?

8 PROSPECTIVE JUROR NO. 483: Civil.

9 THE COURT: Were you selected to be the foreperson?

10 PROSPECTIVE JUROR NO. 483: No.

11 THE COURT: Without telling me your verdict, were

12 you able to reach a verdict?

13 PROSPECTIVE JUROR NO. 483: Well, it was settled

14 before. It -- it --

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 483: No.

17 THE COURT: So you weren't sent out to deliberate?

18 PROSPECTIVE JUROR NO. 483: No.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 483: Hmm-mm.

21 THE COURT: Anything about that experience that

22 would affect your ability to be fair and impartial in this

23 case?

24 PROSPECTIVE JUROR NO. 483: No.

25 THE COURT: Okay, thank you. Anyone else in the

1 second row? If you don't mind passing it forward.

2 PROSPECTIVE JUROR NO. 540: Staci McCarthy, 540.

3 THE COURT: Okay, and you've served before?

4 PROSPECTIVE JUROR NO. 540: I served for a year on
5 the federal grand jury.

6 THE COURT: Okay. When did you do that?

7 PROSPECTIVE JUROR NO. 540: About 15 years ago.

8 THE COURT: All right, and so you understand that's
9 a little bit different?

10 PROSPECTIVE JUROR NO. 540: Yeah.

11 THE COURT: So you went probably once a week for --

12 PROSPECTIVE JUROR NO. 540: Every Tuesday for a
13 year, yes.

14 THE COURT: For a year?

15 PROSPECTIVE JUROR NO. 540: Um-hum.

16 THE COURT: Okay. Was there anything about that
17 experience that would affect your ability to be fair and
18 impartial in this case?

19 PROSPECTIVE JUROR NO. 540: No.

20 THE COURT: Okay, thank you. Anyone else on the
21 panel of 32 that has ever served as a juror before? Okay, the
22 record will reflect no further response from the panel.

23 Have you or anyone close to you, such as a family
24 member or friend, ever been the victim of a crime, other than
25 what's already been disclosed? Go ahead, Ms. McCarthy. Your

1 name and badge number?

2 PROSPECTIVE JUROR NO. 540: Yes. Staci McCarthy,
3 540.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 540: My father was a victim
6 of violent crime.

7 THE COURT: Okay. What was it?

8 PROSPECTIVE JUROR NO. 540: He was shot in the head
9 at a traffic stop.

10 THE COURT: When was that?

11 PROSPECTIVE JUROR NO. 540: In 1989.

12 THE COURT: Okay. And I'm assuming the police were
13 called and got involved?

14 PROSPECTIVE JUROR NO. 540: Yes, but they never
15 caught the person.

16 THE COURT: They never --

17 PROSPECTIVE JUROR NO. 540: No.

18 THE COURT: -- were able to apprehend anybody?

19 PROSPECTIVE JUROR NO. 540: No.

20 THE COURT: Okay, and is your father okay?

21 PROSPECTIVE JUROR NO. 540: Yeah, he was okay. He's
22 passed now, but he survived that.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 540: Yeah.

25 THE COURT: Is there anything about that experience

1 that would affect your ability to be fair and impartial?

2 PROSPECTIVE JUROR NO. 540: No.

3 THE COURT: Okay, thank you. Anyone else? Go
4 ahead, sir.

5 PROSPECTIVE JUROR NO. 541: Kevin Widdison, 541. In
6 1990, I was held at gunpoint in Switzerland in our apartment,
7 and we got robbed. And then, about ten years ago here, our
8 house was broken into and burglarized while we were not home.

9 THE COURT: Okay, so you were in Switzerland in the
10 90s?

11 PROSPECTIVE JUROR NO. 541: Um-hum, yeah.

12 THE COURT: Is that a yes?

13 PROSPECTIVE JUROR NO. 541: Yes, ma'am.

14 THE COURT: What were you doing in Switzerland?

15 PROSPECTIVE JUROR NO. 541: LDS mission.

16 THE COURT: Okay, and you were the victim of a
17 crime?

18 PROSPECTIVE JUROR NO. 541: They broke in and --

19 THE COURT: Yes.

20 PROSPECTIVE JUROR NO. 541: -- held us down and
21 robbed us.

22 THE COURT: Okay, and did the police get involved?

23 PROSPECTIVE JUROR NO. 541: Police came, nobody was
24 caught. It was pretty perfunctory, to be honest with you.

25 THE COURT: Okay. And then you indicated there was

1 another issue?

2 PROSPECTIVE JUROR NO. 541: And then, here in Las
3 Vegas, our home was burglarized about ten years ago.

4 THE COURT: Okay, and you called the police?

5 PROSPECTIVE JUROR NO. 541: Yes, ma'am.

6 THE COURT: And they responded?

7 PROSPECTIVE JUROR NO. 541: They responded and came
8 out. No arrests, but they did come out.

9 THE COURT: Okay, and they took a report?

10 PROSPECTIVE JUROR NO. 541: Yes, ma'am.

11 THE COURT: Do you think you were treated fairly?

12 PROSPECTIVE JUROR NO. 541: Absolutely, yes.

13 THE COURT: Anything about those two experiences
14 that would affect your ability to be fair and impartial in
15 this case?

16 PROSPECTIVE JUROR NO. 541: No, ma'am.

17 THE COURT: Okay, thank you.

18 Anyone else that's ever been the victim of a crime?
19 Okay, the record will reflect no further response from the
20 panel.

21 Have you or anyone close to you, such as a family
22 member or friend, ever been accused of a crime? If you don't
23 mind passing the microphone back.

24 PROSPECTIVE JUROR NO. 485: Shannon Young, 485. My
25 brother-in-law is serving time.

1 THE COURT: Okay, where?
2 PROSPECTIVE JUROR NO. 485: In Colorado.
3 THE COURT: All right. Do you know what for?
4 PROSPECTIVE JUROR NO. 485: Yeah, he -- it was
5 robbery on three banks here in Las Vegas.
6 THE COURT: Okay, so what's he doing in Colorado?
7 Is that just where he's serving his time?
8 PROSPECTIVE JUROR NO. 485: Yes.
9 THE COURT: Okay, and how long ago was that?
10 PROSPECTIVE JUROR NO. 485: It was just last year.
11 THE COURT: Okay. It was just last year that he was
12 apprehended, or he was tried? What --
13 PROSPECTIVE JUROR NO. 485: Last year that he was
14 tried.
15 THE COURT: Okay, he was sentenced?
16 PROSPECTIVE JUROR NO. 485: Yes, sentence.
17 THE COURT: And did you follow his case?
18 PROSPECTIVE JUROR NO. 485: Yes, ma'am. I was with
19 my husband the whole time.
20 THE COURT: I'm sorry?
21 PROSPECTIVE JUROR NO. 485: I was with my husband
22 the whole time when we attended court.
23 THE COURT: Okay, so you actually went and viewed
24 the court proceedings?
25 PROSPECTIVE JUROR NO. 485: Yes, ma'am.

1 THE COURT: Okay. Were you over in federal court?
2 PROSPECTIVE JUROR NO. 485: Yes, ma'am.
3 THE COURT: Okay. Do you think he was treated
4 fairly? Your brother-in-law.
5 PROSPECTIVE JUROR NO. 485: Yeah.
6 THE COURT: Okay.
7 PROSPECTIVE JUROR NO. 485: Yes.
8 THE COURT: Well, it's your response.
9 PROSPECTIVE JUROR NO. 485: Yeah.
10 THE COURT: I mean, I just want to hear how you feel
11 because you hesitated.
12 PROSPECTIVE JUROR NO. 485: Well, sorry.
13 THE COURT: That's okay.
14 PROSPECTIVE JUROR NO. 485: I mean, it's -- he did
15 do it.
16 THE COURT: Okay, and it's --
17 PROSPECTIVE JUROR NO. 485: Yeah.
18 THE COURT: I'm sorry, because it looks like it's
19 making you emotional, so I apologize.
20 PROSPECTIVE JUROR NO. 485: It's fine.
21 THE COURT: Is there anything about what happened to
22 your brother-in-law that would affect your ability to be fair
23 and impartial in this case?
24 PROSPECTIVE JUROR NO. 485: I mean, to be honest
25 with you, I --

1 THE COURT: Well, you are under oath.

2 PROSPECTIVE JUROR NO. 485: I -- like, I understand
3 the whole process of this, I just -- like I explained, I don't
4 -- I honestly don't want to be here, only because of the fact
5 of, you know, my promotion. And I keep going back to that,
6 but I've worked really hard for it. And I know my job cannot
7 hold me on it, but -- but, you know, they put me in charge of
8 something, and I had big bosses come today to my job, and I
9 wasn't there, you know, to kind of shine. It's like an
10 interview, on-the-job training. So I just -- I don't want
11 that to affect me. You know, some jobs don't really
12 understand, but.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 485: Yeah.

15 THE COURT: Going back to the issue with your
16 brother-in-law, is there anything about his case that would
17 affect your ability to be fair and impartial in this case?

18 PROSPECTIVE JUROR NO. 485: I don't know. I mean --

19 THE COURT: Okay, well, let me ask you this. You
20 understand that you could not judge this case based on
21 anything you saw over in your brother-in-law's case? You
22 understand that, correct?

23 PROSPECTIVE JUROR NO. 485: Yes.

24 THE COURT: Do we have to worry about you doing
25 that?

1 PROSPECTIVE JUROR NO. 485: I just think sometimes
2 the law is unfair in certain ways, you know.

3 THE COURT: Okay, but will you follow the law, even
4 if you --

5 PROSPECTIVE JUROR NO. 485: Of course.

6 THE COURT: -- think it's not fair?

7 PROSPECTIVE JUROR NO. 485: Of course.

8 THE COURT: Okay, and you'll follow the law as given
9 to you by the Court?

10 PROSPECTIVE JUROR NO. 485: Yes.

11 THE COURT: Okay, thank you.

12 PROSPECTIVE JUROR NO. 485: Thank you.

13 THE COURT: Thank you very much.

14 Anyone else? Okay, the record will reflect no
15 further response from the panel.

16 Is there anyone on the panel who would have a
17 tendency to give more weight or credence or less weight or
18 credence to the testimony of a police officer simply because
19 that witness was a police officer?

20 THE MARSHAL: Can you pass the microphone down this
21 way, please?

22 PROSPECTIVE JUROR NO. 485: Sure.

23 PROSPECTIVE JUROR NO. 464: Jeff O'Brien, 464.

24 THE COURT: Okay, and you understand the question?

25 PROSPECTIVE JUROR NO. 464: Yes, ma'am.

1 THE COURT: Okay. So you would have a tendency to
2 give a witness more weight or credence or less weight or
3 credence simply because you knew the witness was a police
4 officer?

5 PROSPECTIVE JUROR NO. 464: I have a lot of police
6 officer friends and I trust their opinions.

7 THE COURT: Okay. Would it be more or less
8 credence?

9 PROSPECTIVE JUROR NO. 464: I would give them -- I
10 hate to say, but I would probably give them -- I would take
11 their word for it. I would give them more credence.

12 THE COURT: Okay. Would you judge a police
13 officer's testimony the way you would judge any other witness?

14 PROSPECTIVE JUROR NO. 464: Absolutely, I'd try to
15 be fair.

16 THE COURT: Okay, because you understand I'm not
17 going to tell you to -- I mean, you can consider the fact that
18 a witness is a police officer, but I'm never going to instruct
19 you, take a police officer's word for it. I would want you,
20 if you were a juror, to test that person's testimony and
21 credibility the same way you would any other witness.

22 PROSPECTIVE JUROR NO. 464: I would --

23 THE COURT: Do you understand that?

24 PROSPECTIVE JUROR NO. 464: Yes, I will do my best
25 to do that.

1 THE COURT: Okay. Well, can you give me a
2 commitment that you'll do that?

3 PROSPECTIVE JUROR NO. 464: 100 percent.

4 THE COURT: Okay, thank you, sir. Anyone else?
5 Okay, the record will reflect no further response from the
6 panel.

7 At this time, the State of Nevada may voir dire the
8 panel.

9 MR. PESCI: Thank you. Your Honor, would it be all
10 right if I move the --

11 THE MARSHAL: Hang on.

12 MR. PESCI: Okay.

13 THE COURT: Of course.

14 MR. PESCI: Okay. Ladies and gentlemen, you can see
15 from the fact that I have to put this on that getting a clear
16 record is extremely important for this whole process. So we
17 apologize. A couple of times, for some of you, we've kind of
18 gone back and said, what is your answer, or something of that
19 nature. That's because this woman over here on your far left
20 is recording everything, and then, later on, someone has to
21 listen and transcribe everything.

22 So we might in a kind of awkward fashion say to you,
23 what was that answer, or just kind of ask you to repeat again
24 so it's really clear for the record. It's kind of different
25 from normal conversation, but that's why we have to do that.

1 Going to ask questions to the entire panel, and then
2 we'll ask some individual questions. I want to start off just
3 by saying, this is nothing civil, right? This is all
4 criminal, okay? 27 or 29 times sued?

5 PROSPECTIVE JUROR NO. 546: 29.

6 MR. PESCI: 29? Okay. This is all criminal, and
7 nothing to do with civil, so hopefully that puts you a little
8 bit at ease.

9 There are some concepts that the Court went over at
10 the beginning or in the questioning. And one of the ones that
11 I wanted to ask all of you, and then hopefully you'll
12 individually answer if someone has an opinion, does anybody
13 have a reason why they could not sit in judgment of another
14 human being?

15 The Court has explained that you're going to be the
16 judges of the fact. The Judge is the judge of the law here,
17 but at the end of the day, 12, 14 of you are selected as
18 jurors, and you're going to be the judge of the facts, and
19 that is judging whether the State of Nevada proved the case,
20 which will affect the defendants based on your decision.

21 Does anybody have any religious, philosophical, or
22 reason why they cannot sit in judgment of another human being?
23 There was a hand --

24 THE COURT: You're not on the panel of 32. These
25 questions are just for the panel of 32.

1 MR. PESCI: So I apologize, ma'am. We're going with
2 this group. You could get in there eventually, so if you do,
3 we'll follow up, okay? Thank you.

4 Anybody else have a response to any of that? Okay.
5 So no one -- as you sit here today, no one has a reason that
6 they could not sit in judgment of another human being; is that
7 correct? Okay, all right.

8 In this case, the allegation is that there is a
9 deadly weapon used during the process of the crimes. The
10 attempt robbery is with the use of a deadly weapon, the murder
11 is with use of a deadly weapon, the victim was shot and
12 killed.

13 Some people have beliefs about weapons such that it
14 could affect their ability to be fair or impartial. One thing
15 to understand, and I think the Court's made it very clear,
16 whatever your opinion is is your opinion. So there's not a
17 right or a wrong one; there's just a problem if we're not
18 honest with each other, because then we don't know what's
19 really going on.

20 So does anybody have any strong feelings about
21 firearms such that it would affect your ability to be fair and
22 impartial?

23 Okay. I'm going to pick on you, sir, because you
24 have the microphone. Plus, you're a gunsmith, if I
25 understood, by trade.

1 PROSPECTIVE JUROR NO. 464: Correct.

2 MR. PESCI: All right. Now, this is the kind of
3 awkward portion. Your badge number?

4 PROSPECTIVE JUROR NO. 464: 464, Jeff O'Brien.

5 MR. PESCI: Thank you very much, Mr. O'Brien. So if
6 I'm understanding you correctly, you don't currently work as a
7 gunsmith?

8 PROSPECTIVE JUROR NO. 464: I am doing some
9 part-time, but right now, I'm running a contract, so it takes
10 me away from that work.

11 MR. PESCI: Okay. And then, the contract, what is
12 that contract?

13 PROSPECTIVE JUROR NO. 464: I can't discuss that.

14 MR. PESCI: Okay. Is it -- well, I'm going to ask a
15 question. If you can't discuss it, don't. Is it something
16 with the military?

17 PROSPECTIVE JUROR NO. 464: Affirmative.

18 MR. PESCI: Okay, all right. In your capacity as a
19 gunsmith, do you deal with individuals when they come into the
20 store to purchase a firearm, or are you just involved with
21 maybe repairs of firearms?

22 PROSPECTIVE JUROR NO. 464: Basically, doing
23 upgrades, repairs, that sort of thing.

24 MR. PESCI: Okay. So, as far as if someone comes in
25 to purchase a firearm, and their background is checked, are

1 you involved with running that person to --

2 PROSPECTIVE JUROR NO. 464: I know how to do that
3 process, but I try to stay away -- far away from that. I
4 don't --

5 MR. PESCI: Okay.

6 PROSPECTIVE JUROR NO. 464: -- go anywhere near
7 customers, if possible.

8 MR. PESCI: All right. So other individuals usually
9 handle that portion of it?

10 PROSPECTIVE JUROR NO. 464: Yes.

11 MR. PESCI: Okay, thank you very much. Anybody else
12 as far as questions or concerns about firearms? And this
13 includes you two gentlemen over there, too. You're still in
14 the 32, okay? All right.

15 Now, there was also a question and some comments
16 about following the law. And I'm going to ask if you could
17 pass the microphone to your right. And then, if we could move
18 it down just further, all the way down to Ms. Young. We'll go
19 individually with you, and then kind of collectively to the
20 group.

21 I apologize for asking specific questions, but you
22 have a personal experience with the criminal justice system,
23 so I got to follow up. If I understood correctly, you said
24 sometimes the law is unfair in certain ways. What do you feel
25 is unfair about the law?

1 PROSPECTIVE JUROR NO. 485: I guess -- I mean,
2 though, any experience I had was with my brother-in-law.

3 MR. PESCI: Okay. Maybe I'll ask some questions
4 about that, then we'll kind of get back to those specifics.
5 If I've understood correctly, it was in federal court?

6 PROSPECTIVE JUROR NO. 485: Yes.

7 MR. PESCI: Here in Las Vegas?

8 PROSPECTIVE JUROR NO. 485: Yes.

9 MR. PESCI: Okay. And then, do you know, was there
10 a trial like this, or was there a plea agreement?

11 PROSPECTIVE JUROR NO. 485: No. No, he didn't want
12 to do a trial.

13 MR. PESCI: Okay, so there was a plea entered?

14 PROSPECTIVE JUROR NO. 485: Yes.

15 MR. PESCI: Okay. And then, you're saying that he's
16 serving his time in Colorado?

17 PROSPECTIVE JUROR NO. 485: Yes.

18 MR. PESCI: Okay. Did you feel as if that plea was
19 unfair, or maybe him serving in Colorado was unfair? I'm just
20 trying to kind of follow up and figure out -- it's okay. All
21 right, I apologize.

22 PROSPECTIVE JUROR NO. 485: I -- like I said, he --
23 what drove him to do it, like, I don't -- he is a good person
24 and he just went down a bad road.

25 MR. PESCI: Okay.

1 PROSPECTIVE JUROR NO. 485: So I think they could
2 have -- I think they could have, you know, like, maybe let him
3 come out and put a device on him or something.

4 MR. PESCI: So is it --

5 PROSPECTIVE JUROR NO. 485: I just didn't agree with
6 the whole serving time.

7 MR. PESCI: Okay. So was it maybe the sentence that
8 he got that you are unhappy with?

9 PROSPECTIVE JUROR NO. 485: Yeah, because he was --
10 like I said, he was -- you know, it was -- he had a gambling
11 problem.

12 MR. PESCI: Okay.

13 PROSPECTIVE JUROR NO. 485: So that's what got him
14 --

15 MR. PESCI: All right, we'll shift away from that.
16 Sorry.

17 PROSPECTIVE JUROR NO. 485: Yes.

18 MR. PESCI: You talked about your work, right? And
19 I apologize, because I don't want to make this emotional, too.
20 But you're missing out on the opportunity as far as, as you
21 described it, being able to shine with a boss coming into
22 town?

23 PROSPECTIVE JUROR NO. 485: Yeah, we had -- we had a
24 big visit today.

25 MR. PESCI: Okay.

1 PROSPECTIVE JUROR NO. 485: And out of five people
2 -- out of five people, I was picked to run two areas, and that
3 is like my on-job training. I've worked hard for it. While I
4 know -- I understand I have to be here, I just -- you know, it
5 was a date, and I wanted to show them that I could do it.

6 MR. PESCI: Was that date -- and this is what I'm
7 trying to get to, I apologize.

8 PROSPECTIVE JUROR NO. 485: Um-hum.

9 MR. PESCI: Was that date today, or was it a date --

10 PROSPECTIVE JUROR NO. 485: It's today. It was
11 today.

12 MR. PESCI: Okay. Is it just today, or are there
13 more days where this is going to occur?

14 PROSPECTIVE JUROR NO. 485: No, it was just for
15 today, so I went in early this morning so I could get
16 everything done.

17 MR. PESCI: Okay. And only you can answer this,
18 ma'am. The fact that you missed out on this opportunity
19 today, will that remain in your mind throughout the trial,
20 assuming you're selected, such that it might make it difficult
21 for you to serve as a juror?

22 PROSPECTIVE JUROR NO. 485: Yes.

23 MR. PESCI: Okay. Would it be something that would
24 distract your attention, or how would it affect you?

25 PROSPECTIVE JUROR NO. 485: Because I'm going to be

1 worrying about my areas the whole time. You know, I really
2 don't have anybody to cover it, because, you know, like I
3 said, it was given to me. You know, I'm -- I have all these
4 people in line that I'm supposed to, you know, give direction
5 to.

6 MR. PESCI: Okay.

7 PROSPECTIVE JUROR NO. 485: I just would be worried
8 about it because, you know, like I said, I've worked hard for
9 it. I -- I wanted to be there today so that I could -- you
10 know.

11 MR. PESCI: I'm sorry, ma'am. I apologize.

12 PROSPECTIVE JUROR NO. 485: No.

13 MR. PESCI: Let me shift gears a little bit, and
14 then maybe we'll take the microphone out of your hand.

15 PROSPECTIVE JUROR NO. 485: Yeah. Sorry.

16 MR. PESCI: Okay, it's okay. So last thing, and
17 then we'll kind of segue to everybody else. I think you said
18 -- just kind of goes in and out sometimes -- that you could
19 follow the law, even if you didn't agree with it?

20 PROSPECTIVE JUROR NO. 485: Yeah, because you know,
21 I don't want to -- I don't want to be in jail. Like, I --

22 MR. PESCI: No one's going to jail, don't worry.

23 PROSPECTIVE JUROR NO. 485: No, I'm just saying,
24 that's why, you know, I follow the law. I don't want to --

25 MR. PESCI: Okay.

1 PROSPECTIVE JUROR NO. 485: You know, I've never
2 been in trouble, so.

3 MR. PESCI: Okay. So stepping back to kind of
4 everyone, this concept of following the law, right? The Court
5 asked, can you follow the law, even if you don't necessarily
6 agree with it? And I'll kind of try to put this in context,
7 and this will somewhat date me.

8 When I first started doing this for a living,
9 marijuana was illegal. Now, it is legal. And so people's
10 feelings about marijuana have changed, evolved, but there are
11 many people years ago who thought it should be legal. And if
12 it was a case about marijuana, the law was, you can't have it,
13 it's illegal. So the issue was, you know, can you follow the
14 law, even if you personally think, hey, marijuana should be
15 legalized, right? That's kind of the backdrop, an example.

16 So do any of you have feelings such that you feel
17 the law might be X, but I think it should be Y, and because I
18 think it should be Y, I'm not going to follow X? Does anybody
19 have trouble following the law, even if you don't agree with
20 it? Nobody's shaking their head yes. We'll take that as a
21 no. Anybody want to add anything to that? Okay.

22 PROSPECTIVE JUROR NO. 410: I do.

23 MR. PESCI: All right, thank you. So if we could
24 pass it back. This is Mr. McGinty, and then your badge
25 number?

1 PROSPECTIVE JUROR NO. 410: 410.

2 MR. PESCI: Did I say that right?

3 PROSPECTIVE JUROR NO. 410: Yes.

4 MR. PESCI: Okay, thank you. Sir?

5 PROSPECTIVE JUROR NO. 410: Yeah, Sean McGinty, 410.

6 Are you specifically referring to the crime and the laws that
7 were potentially broken in this specific case, or in general?

8 MR. PESCI: Well, you know, specifically in this
9 case. So the charges are conspiracy to commit robbery,
10 attempted robbery with use of a deadly weapon, and murder with
11 use of a deadly weapon. Now, I actually can't get into that
12 now. The Judge will give the law later on, right?

13 PROSPECTIVE JUROR NO. 410: I'm not asking you to.
14 I'm -- when -- you're generalizing, do we believe in the law
15 and recitation of such. So are you specifically asking us as
16 the panel related to these charges, or in general?

17 MR. PESCI: I would say specific to these charges,
18 but there are some generalities that kind of overarch all
19 cases, no matter what the charges are.

20 Here's kind of an example, and maybe this will help
21 you with your answer. There is a presumption of innocence
22 that, in our system, everyone is presumed innocent until and
23 unless we, the State of Nevada, can prove someone guilty. And
24 that kind of overarches all cases, even if it's not these
25 charges. Some people agree with that, some people don't.

1 So with that backdrop, is there something more that
2 you wanted to add as far as these specific charges and/or kind
3 of overall?

4 PROSPECTIVE JUROR NO. 410: No, as long as we're
5 talking specific charges, then that's fine.

6 MR. PESCI: Anything about these charges that you
7 think you'd have difficulty following the law?

8 PROSPECTIVE JUROR NO. 410: Not with these charges.

9 MR. PESCI: Okay. Are there other charges that you
10 would?

11 PROSPECTIVE JUROR NO. 410: Not that I would like to
12 discuss.

13 THE COURT: I'm sorry, what did you say?

14 PROSPECTIVE JUROR NO. 410: Not that I'd like to
15 discuss.

16 THE COURT: Okay, but --

17 PROSPECTIVE JUROR NO. 410: I mean, we're talking
18 Pandora's Box, right? I mean, we're talking generalities.
19 You're talking a million-and-something laws. So we all have
20 opinions on laws, and what is, and what we believe in, and
21 what should be, and where's gray, and where's right and left,
22 right?

23 THE COURT: Okay, that --

24 PROSPECTIVE JUROR NO. 410: Right?

25 THE COURT: That's right, and I --