

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

APPELLANT'S APPENDIX

(VOL. 14 OF 14)

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

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AGREEMENT TO TESTIFY (ROBINSON)	10-21-2018	2592	011
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ARRAIGNMENT-RT	12-19-2017	0393	002
ARRAIGNMENT-SUPERSEDING INDICTMENT-RT	05-03-2018	0567	003
BAIL-RT	03-20-2018	0502	003
BAIL-RT	03-22-2018	0506	003
BAIL-RT	09-05-2018	0741	003
BAIL-STATE OPPOSITION	03-19-2018	0449	002
BAIL-WHEELER MOTION	03-13-2018	0440	002
BRADY-RT	12-31-2019	1068	005
BRADY-RT	01-15-2020	1085	005
BRADY-STATE OPPOSITION	12-26-2019	1002	005
BRADY-STATE OPPOSITION	12-27-2019	1015	005
BRADY-WHEELER MOTION	12-20-2019	0929	004
BRADY-WHEELER MOTION	12-20-2019	0956	004
CONTINUE TRIAL-RT	11-05-2019	0904	004
CONTINUE TRIAL-WHEELER MOTION	12-14-2018	0814	004
DISCLOSE INFORMANTS-RT	12-31-2019	1068	005
DISCLOSE INFORMANTS-RT	01-15-2020	1085	005
DISCLOSE INFORMANTS-STATE OPPOSITION	12-26-2019	1008	005
DISCLOSE INFORMANTS-WHEELER MOTION	12-20-2019	0942	004
EXHIBIT LIST	02-19-2020	3103	013
EXHIBITS	02-13-2020	1991	009
EXHIBITS	02-14-2020	2385	010
EXHIBITS	02-18-2020	2814	012
EXHIBITS	02-19-2020	3096	013
EXHIBITS	02-20-2020	3124	014
EXPERTS-STATE 2ND SUPP	01-13-2020	1073	005
EXPERTS-STATE 3RD SUPP	02-06-2020	1107	005
EXPERTS-STATE NOTICE	12-13-2018	0752	004
EXPERTS-STATE SUPP. NOTICE	10-11-2019	0891	004
GRAND JURY-EXHIBITS	11-29-2017	0340	002
GRAND JURY-INSTRUCTIONS	11-29-2017	0326	002
GRAND JURY-RT	11-29-2017	0167	001
GRAND JURY-RT	12-13-2017	0378	002
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HABEAS PETITION-RT	02-27-2018	0422	002
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HABEAS PETITION-RT	06-06-2018	0632	003
HABEAS PETITION-RT	06-14-2018	0661	003
HABEAS PETITION-RT	06-14-2018	0672	003
HABEAS PETITION-RT	08-02-2018	0721	003
HABEAS PETITION-STATE RETURN	03-08-2018	0427	002
HABEAS PETITION-STATE RETURN	03-02-2018	0464	002
HABEAS PETITION-STATE RETURN	05-29-2018	0598	003
HABEAS PETITION-STATE SUPP TO RETURN	06-28-2018	0688	003
HABEAS PETITION-WHEELER PETITION	02-08-2018	0409	002
HABEAS PETITION-WHEELER PETITION	05-17-2018	0587	003
HABEAS PETITION-WHEELER REPLY	06-08-2018	0639	003
HABEAS PETITION-WHEELER REPLY TO SUPP	07-05-2018	0713	003
INDICTMENT	12-14-2017	0385	002
INFORMATION (ROBINSON)	10-04-2018	2590	011
JUDGMENT OF CONVICTION	06-17-2020	3318	014
JURY INSTRUCTIONS	02-19-2020	1358	006
JURY INSTRUCTIONS-WHEELER PROPOSED	02-19-2020	3099	013
JURY LIST	02-12-2020	1354	006
JURY LIST	02-12-2020	1724	007
JURY LIST (2ND AMENDED)	02-19-2020	1357	006
JURY LIST (AMENDED)	02-14-2020	1356	006
JURY TRIAL (DAY 1)-RT	02-11-2020	1114	005
JURY TRIAL (DAY 2)-RT	02-12-2020	1400	006
JURY TRIAL (DAY 3)-RT	02-13-2020	1727	007
JURY TRIAL (DAY 4)-RT	02-14-2020	2121	009
JURY TRIAL (DAY 5)-RT	02-18-2020	2611	011
JURY TRIAL (DAY 6)-RT	02-19-2020	2881	012
JURY TRIAL (DAY 7)-RT	02-20-2020	3119	014
JURY TRIAL (DAY 8)-RT	02-24-2020	3266	014
METRO-ARREST REPORT	08-09-2017	0817-19	004
METRO-FIREARMS REPORT	01-22-2018	0438	002
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METRO-TEMPORARY CUSTODY RECORD	12-14-2017	0391	002
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SENTENCING-STIPULATION	02-11-2020	1352	006
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SEVER COUNTS-RT	01-15-2020	1085	005
SEVER COUNTS-STATE RESPONSE	12-26-2019	0991	004
SEVER COUNTS-WHEELER MOTION	12-20-2019	0918	004
SEVER DEFENDANTS-ORDER	03-15-2019	0877	004
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SEVER DEFENDANTS-WHEELER SUPPLEMENT	01-04-2019	0825	004
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STAY PROCEEDINGS-RT	03-05-2019	0873	004
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SUPPRESS JAIL CALLS-RT	12-31-2019	1068	005
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SUPPRESS JAIL CALLS-WHEELER MOTION	12-20-2019	0985	004
SUPPRESS STMT-RT	12-31-2019	1068	005
SUPPRESS STMT-RT	01-15-2020	1085	005
SUPPRESS STMT-STATE OPPOSITION	12-30-2019	1048	005
SUPPRESS STMT-WHEELER MOTION	12-20-2019	0948	004
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TRIAL SETTING-RT	01-09-2018	0400	002
VERDICT	02-24-2020	1398	006
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VOLUNTARY STMT-WHEELER	08-15-2017	0001	001
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WITNESSES-STATE 3RD SUPP	02-06-2020	1107	005
WITNESSES-STATE NOTICE	12-13-2018	0752	004
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VOLUNTARY STMT-SOLOMON	09-07-2017	0149	001
GRAND JURY-RT	11-29-2017	0167	001
GRAND JURY-INSTRUCTIONS	11-29-2017	0326	002
GRAND JURY-EXHIBITS	11-29-2017	0340	002
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BAIL-STATE OPPOSITION	03-19-2018	0449	002
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BAIL-RT	03-20-2018	0502	003
HABEAS PETITION-RT	03-22-2018	0506	003
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METRO-FIREARMS REPORT-RT	04-05-2018	0520	003
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HABEAS PETITION-RT	06-14-2018	0672	003
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WITNESSES-STATE NOTICE	12-13-2018	0752	004
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SEVER DEFENDANTS-WHEELER MOTION	12-14-2018	0817-01	004
SEVER DEFENDANTS-RT	01-02-2019	0818	004
SEVER DEFENDANTS-WHEELER SUPPLEMENT	01-04-2019	0825	004
SEVER DEFENDANTS-STATE OPPOSITION	01-15-2019	0829	004
SEVER DEFENDANTS-RT	01-16-2019	0856	004
STAY PROCEEDINGS-WHEELER MOTION	01-19-2019	0865	004
STAY PROCEEDINGS-RT	03-05-2019	0873	004
SEVER DEFENDANTS-ORDER	03-15-2019	0877	004
STATUS CHECK-RT	04-17-2019	0880	004
STATUS CHECK-RT	05-15-2019	0885	004
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SUPPRESS JAIL CALLS-STATE OPPOSITION	12-26-2019	0996	005
BRADY-STATE OPPOSITION	12-26-2019	1002	005
DISCLOSE INFORMANTS-STATE OPPOSITION	12-26-2019	1008	005
BRADY-STATE OPPOSITION	12-27-2019	1015	005
SUPPRESS STMT-STATE OPPOSITION	12-30-2019	1048	005
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SUPPRESS STMT-RT	12-31-2019	1068	005
WITNESSES-STATE 2ND SUPP	01-13-2020	1073	005
EXPERTS-STATE 2ND SUPP	01-13-2020	1073	005
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SUPPRESS JAIL CALLS-RT	01-15-2020	1085	005
DISCLOSE INFORMANTS-RT	01-15-2020	1085	005
SEVER COUNTS-RT	01-15-2020	1085	005
SUPPRESS STMT-RT	01-15-2020	1085	005
VIDEO WITNESS (CHARLTON)-STATE MOTION	01-28-2020	1092	005
WITNESSES-STATE 3RD SUPP	02-06-2020	1107	005
EXPERTS-STATE 3RD SUPP	02-06-2020	1107	005
JURY TRIAL (DAY 1)-RT	02-11-2020	1114	005
SUPPRESS STMT.-RT	02-11-2020	1290	006
SUPERSEDING INDICTMENT (AMENDED)	02-11-2020	1348	006
SENTENCING-STIPULATION	02-11-2020	1352	006
JURY LIST	02-12-2020	1354	006
JURY TRIAL (DAY 2)-RT	02-12-2020	1400	006
JURY LIST	02-12-2020	1724	007
JURY TRIAL (DAY 3)-RT	02-13-2020	1727	007
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JURY LIST (AMENDED)	02-14-2020	1356	006
JURY TRIAL (DAY 4)-RT	02-14-2020	2121	009
EXHIBITS	02-14-2020	2385	010
JURY TRIAL (DAY 5)-RT	02-18-2020	2611	011
EXHIBITS	02-18-2020	2814	012
JURY LIST (2ND AMENDED)	02-19-2020	1357	006
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EXHIBITS	02-19-2020	3096	013
JURY INSTRUCTIONS-WHEELER PROPOSED	02-19-2020	3099	013
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EXHIBITS	02-20-2020	3124	014
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JUDGMENT OF CONVICTION	06-17-2020	3318	014
NOTICE OF APPEAL	06-18-2020	3321	014

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 20, 2020

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

February 20, 2020 09:00 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. Ruggeroli

Attorney for Defendant

Parker Brooks

Attorney for Plaintiff

State of Nevada

Plaintiff

JOURNAL ENTRIES

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

Jury returned to deliberate at the hour of 9:00 AM.

COURT ORDERED, trial CONTINUED.

CUSTODY



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. C-17-328587-2

C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 20, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 7

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney
PARKER BROOKS
Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

LIST OF EXHIBITS

1
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Court's Exhibit 9

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1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 20, 2020, 2:07 P.M.

2 * * * * *

3 [Outside the Presence of the Jury]

4 THE COURT: Okay. The record will reflect that the hearing is taking place
5 outside the presence of the jury panel. Both defendants are present. Will the
6 attorneys state their appearances?

7 MR. PESCI: Giancarlo Pesci.

8 MR. BROOKS: Parker Brooks.

9 MR. SANFT: Michael Sanft on behalf of Mr. Robertson.

10 MR. RUGGEROLI: James Ruggeroli on behalf of Mr. Wheeler.

11 THE COURT: Okay. I did receive a communication from the jury foreperson.
12 It's been marked as Court's Exhibit Number 9.

13 **[COURT'S EXHIBIT 9 ADMITTED]**

14 THE COURT: It says, "If a person is aware of a crime being planned, but
15 does nothing and wasn't there, is he guilty of conspiracy?"

16 I've marked it and made it part of the record. I don't plan on answering
17 that question and the jury has been instructed to continue to deliberate. Any
18 objection to that?

19 MR. PESCI: Not from the State.

20 MR. SANFT: No, Your Honor.

21 MR. RUGGEROLI: No, Your Honor.

22 THE COURT: Okay. And the Clerk has the note if anyone wants to approach
23 and look at it, you're welcome to.

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MR. SANFT: Yes, Your Honor, thank you.

THE COURT: Okay? And we'll keep you posted.

PROCEEDING CONCLUDED AT 2:08 P.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.



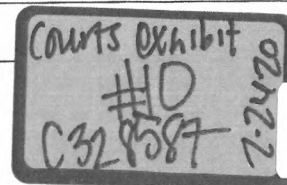
SARA RICHARDSON
Court Recorder/Transcriber

Juror 5

Denise Signorelli

Camille ESTRELLA

651-5556



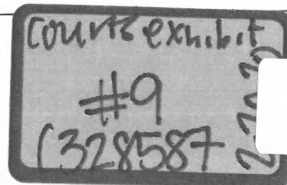
3124

2-20-20

If a person is aware of a crime being planned, but does nothing and wasn't there, is he guilty of conspiracy?

g/h Sw

02/20/2020

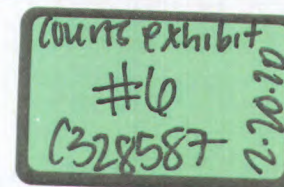


3125

2-20-20

STATE OF NEVADA
VS.
RAEKWON ROBERTSON
&
DAVONTAE WHEELER

3126



2-20-20

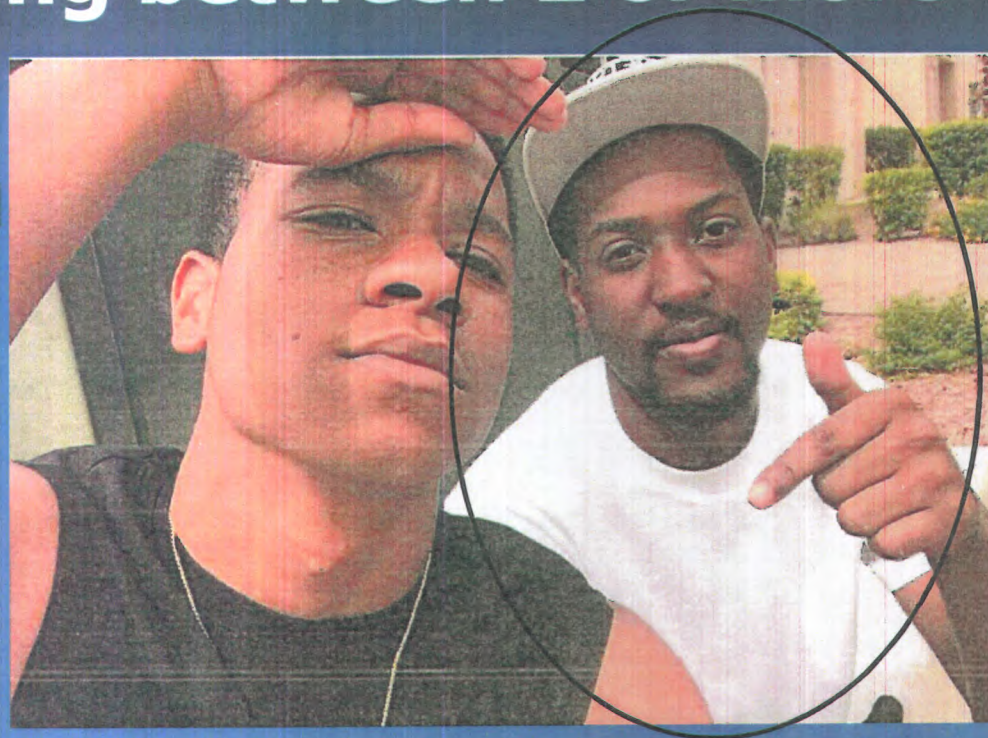
Count 1 - Conspiracy to Commit Robbery

- On Tuesday, August 8, 2017, Gabriel Valenzuela was 24 years old. He was a nursing student at CSN and he was returning home.
- Just after midnight on Wednesday, August 9, 2017, Gabriel would become the victim of a well-constructed but poorly executed plan

CONSPIRACY

- Agreement or Mutual Understanding between two or more people
- A defendant must intend to commit, or to aid in the commission of the specific crime agreed to

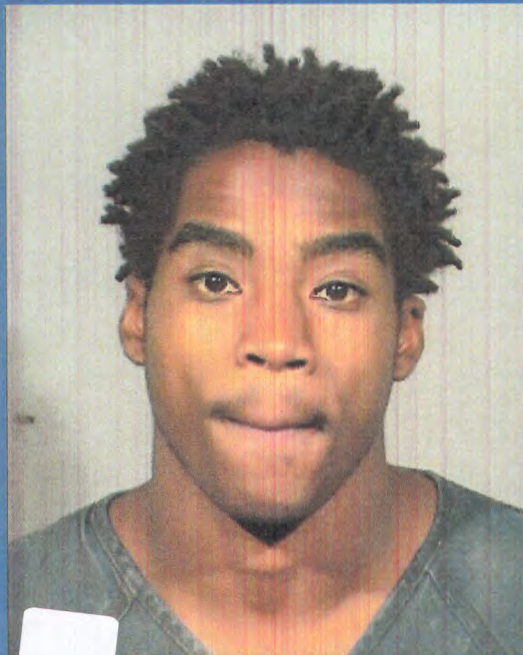
Mutual Understanding between 2 or more



"Ray Logan"
Raekwon Robertson

Mutual Understanding between 2 or more

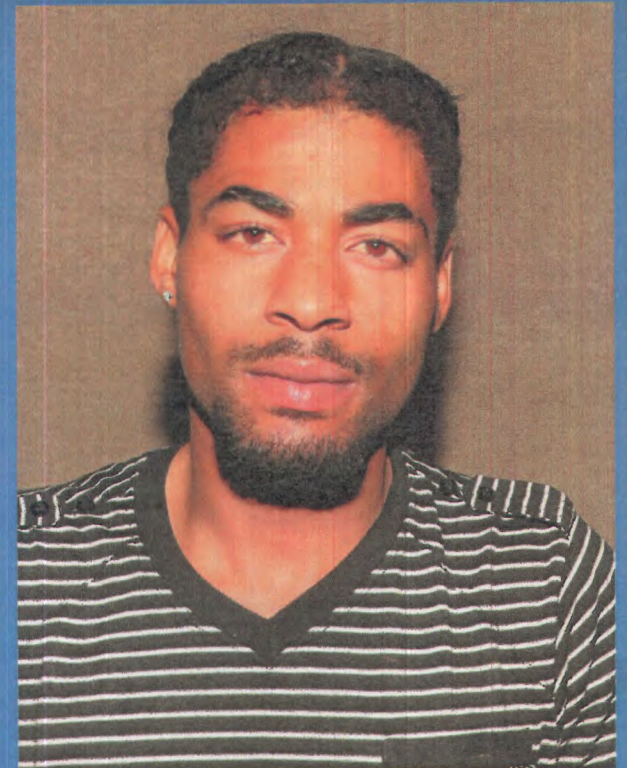
- Ask DJ



ask dj if he trying hit ahouse
tonight

me u sace and him sace already
said yeah

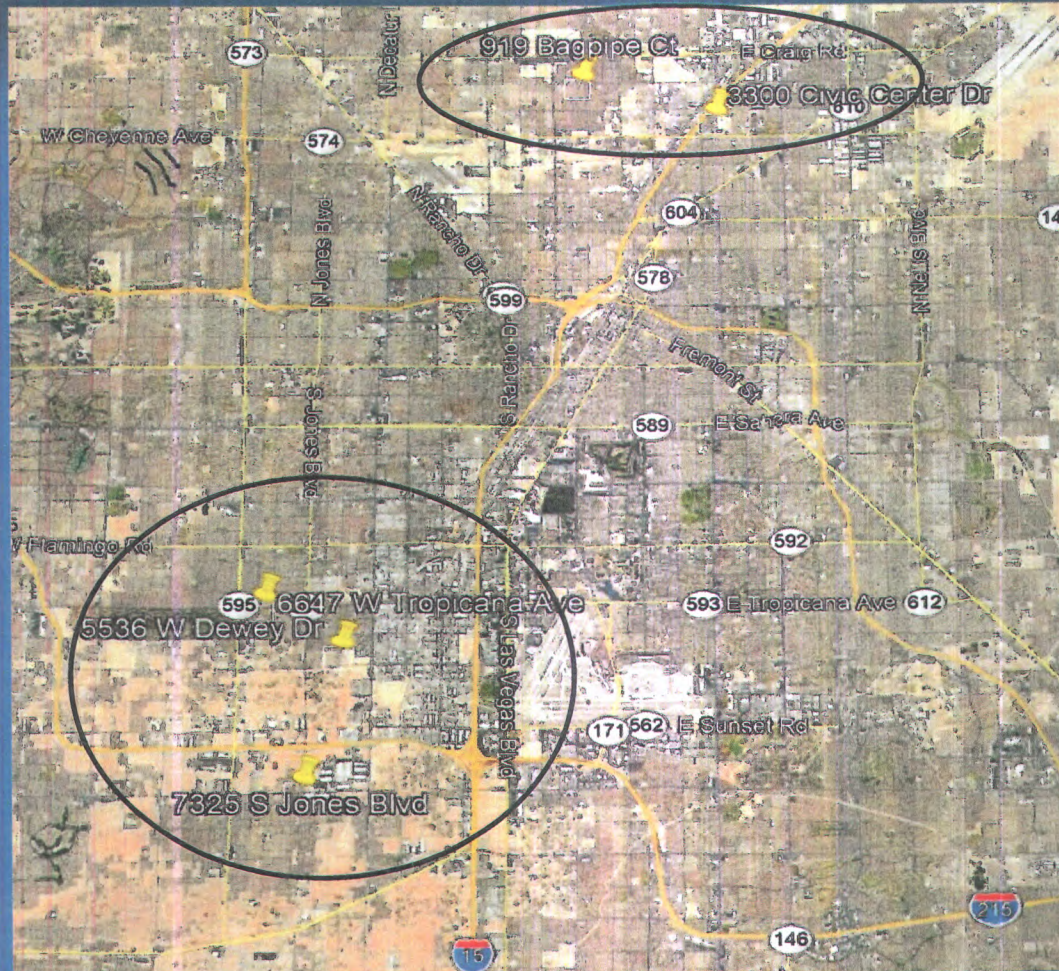
- Sace already said yeah



CONSPIRACY

- The crime is the agreement to do something unlawful
(policy)
- It does not matter whether it was successful or not

Why is the "agreement" the crime



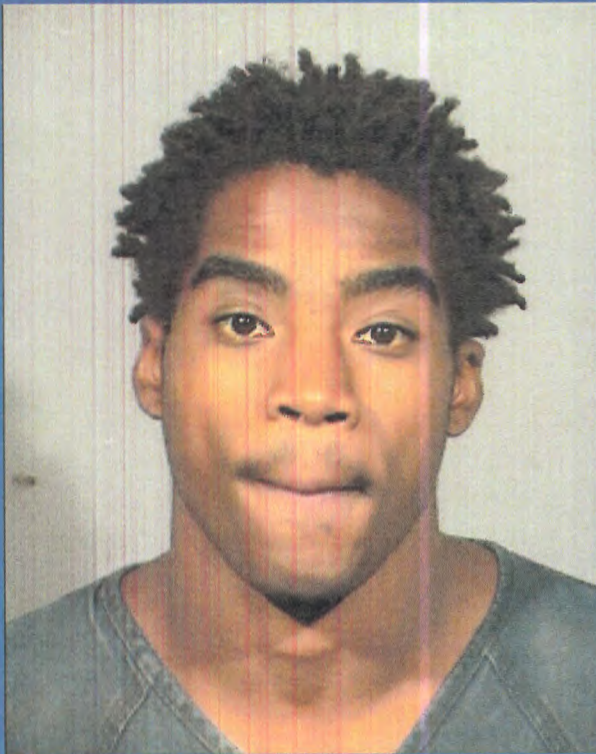


3133

Common Intent to "hit a house" while armed with handguns

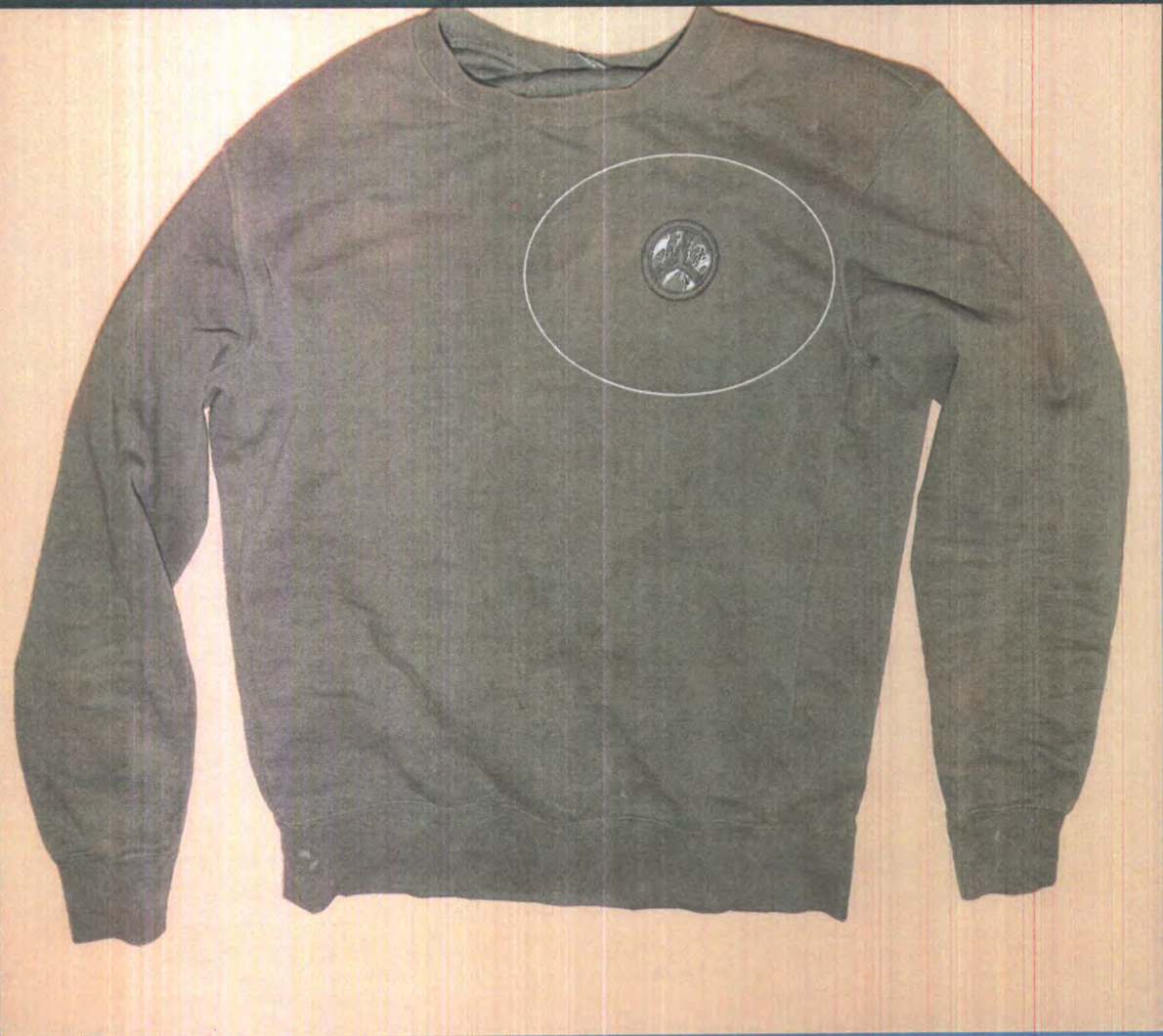


Demario Lofton-Robinson



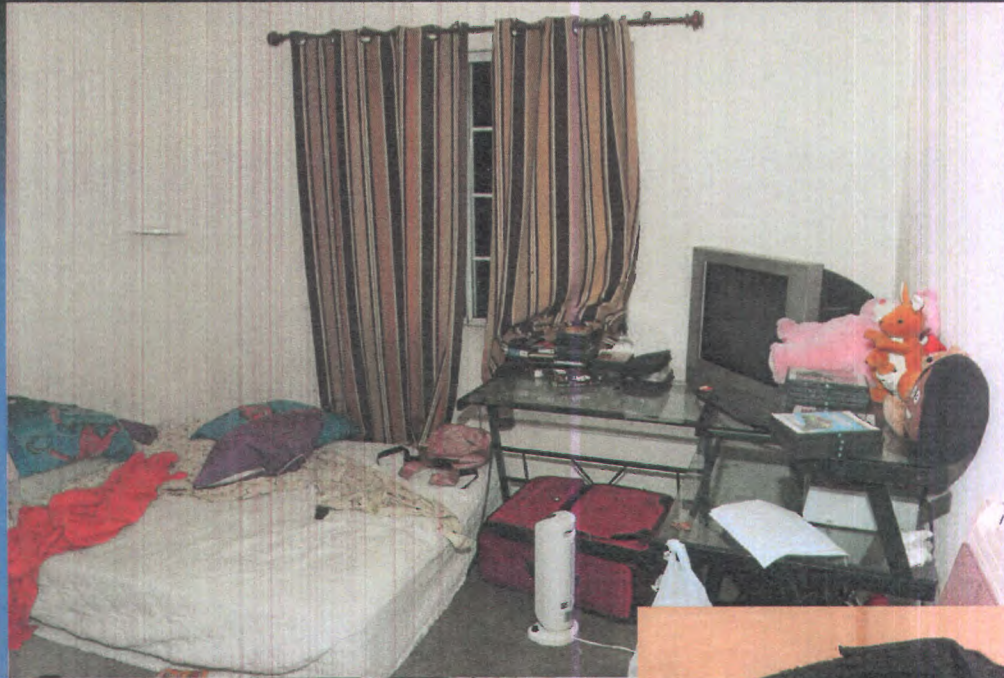


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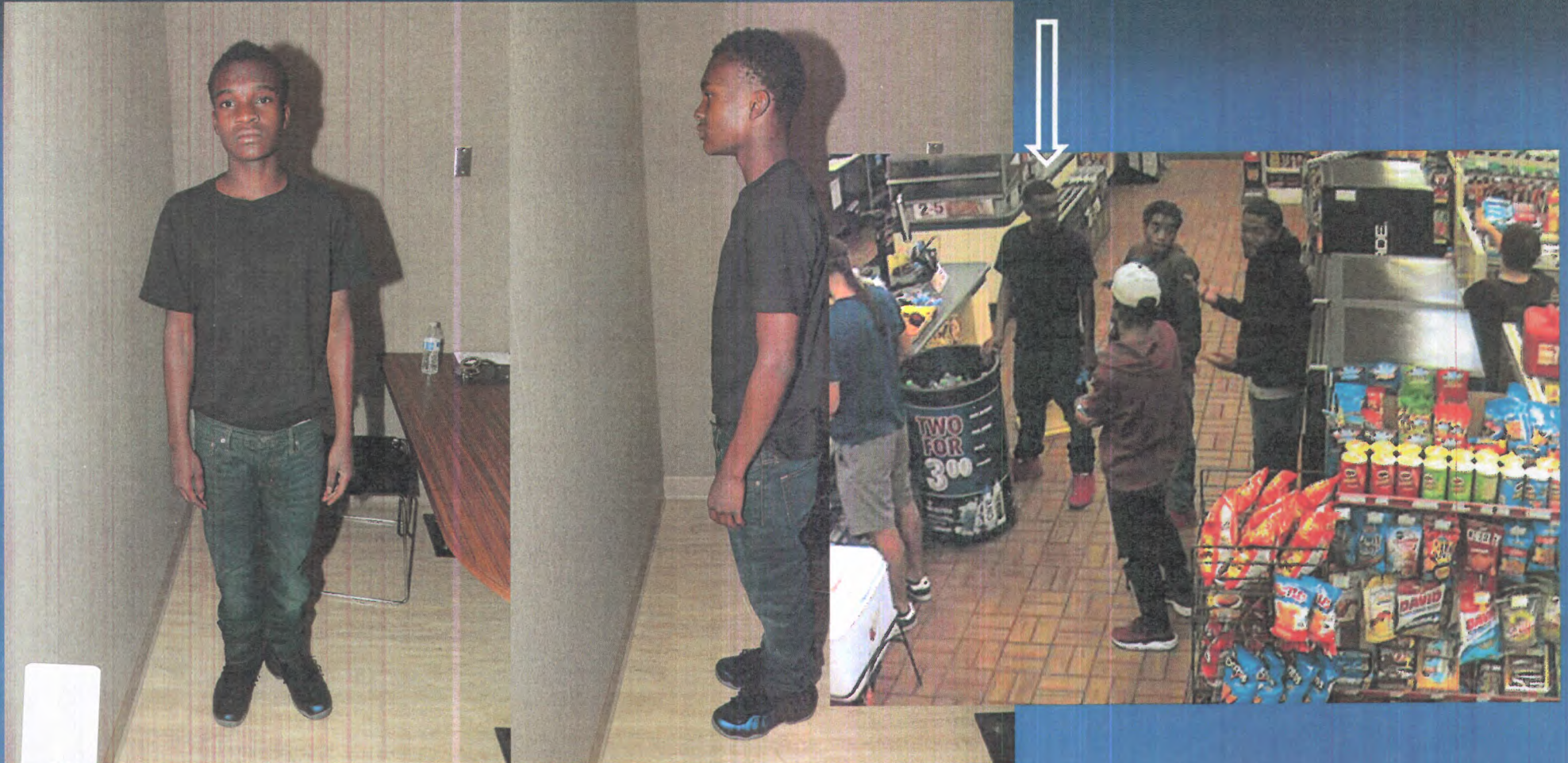


3137

919 Bagpipe on 8/9/17

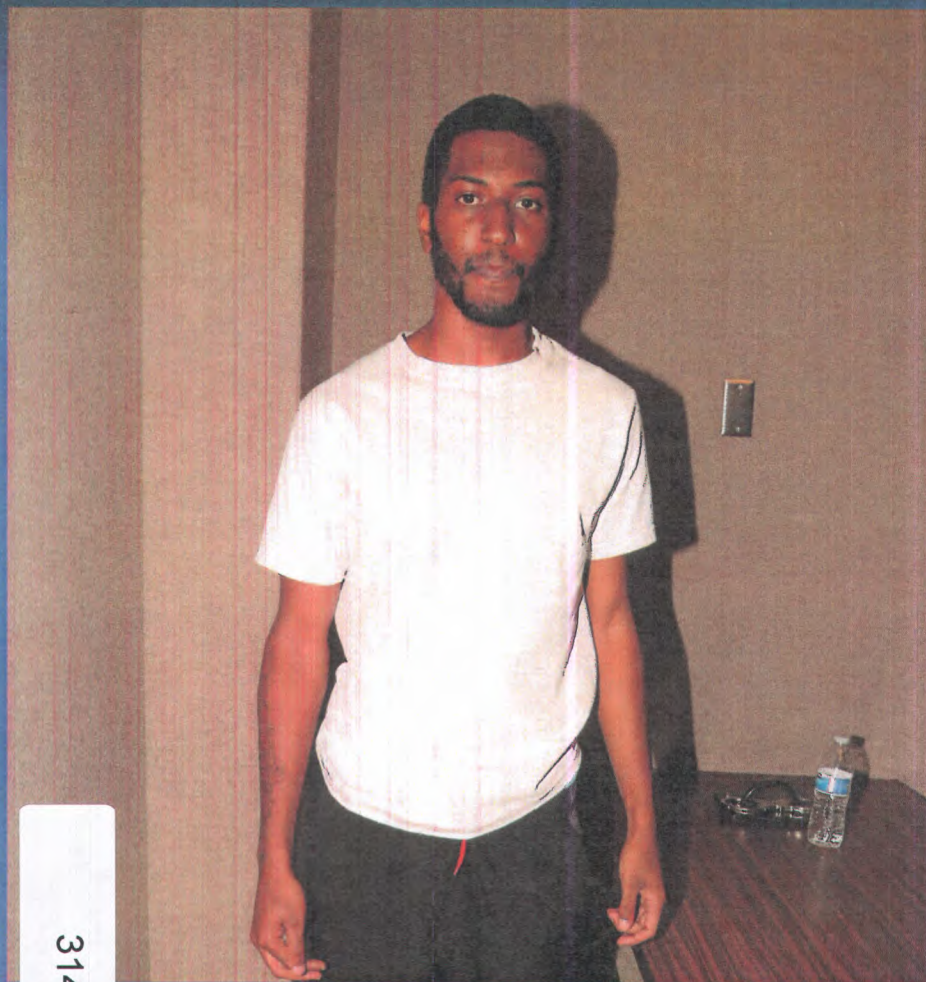


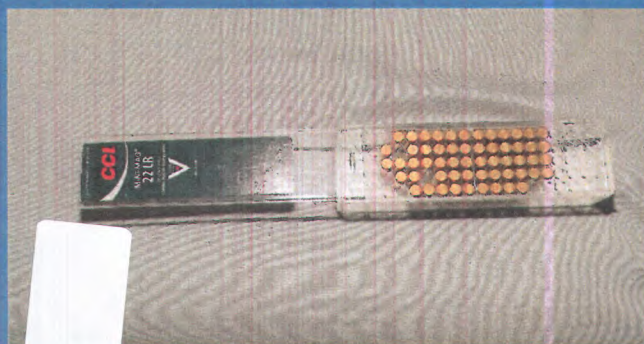
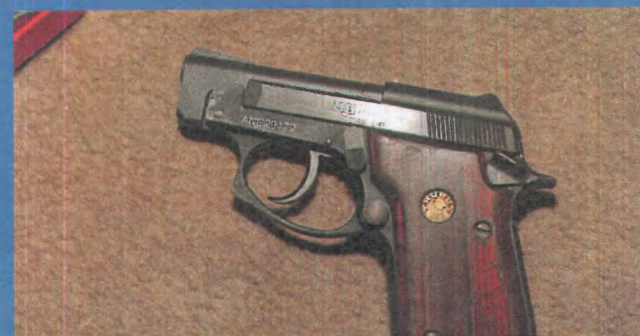
Deshawn Robinson



3139

Raekwon Robertson





**6647 West Tropicana on
8/15/17**

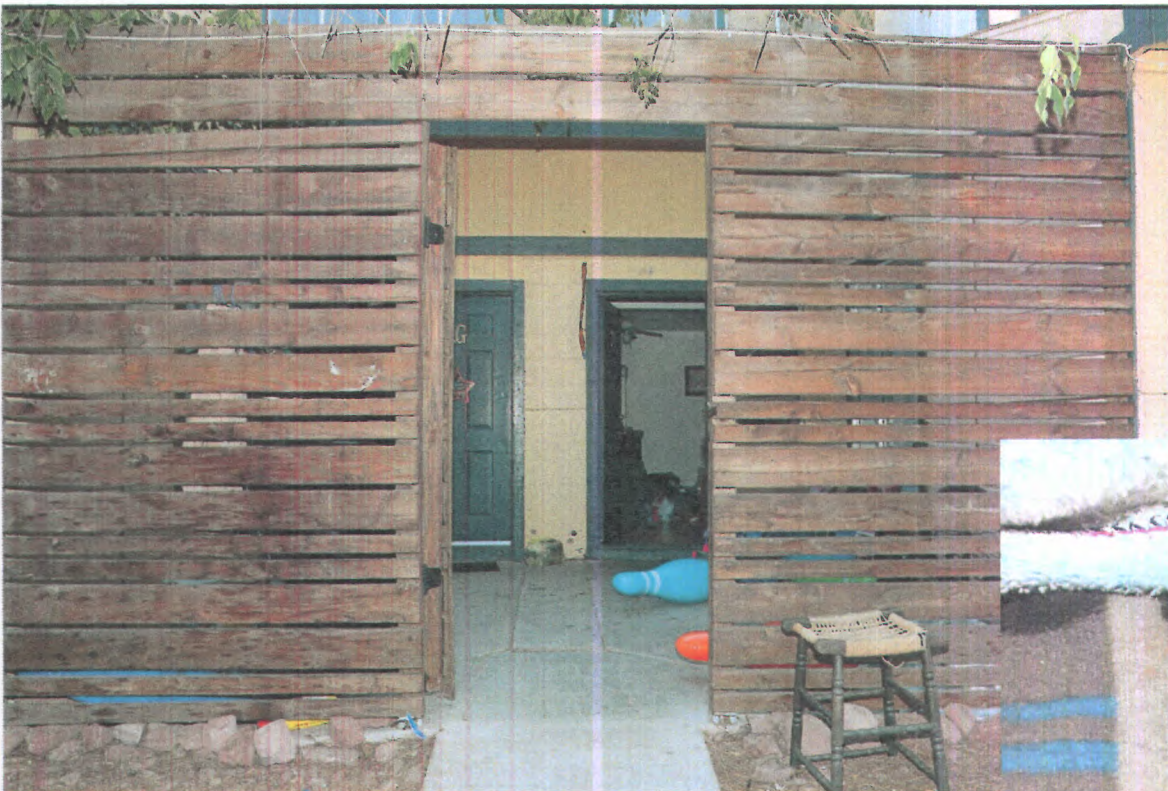
3141



3142

Davontae Wheeler



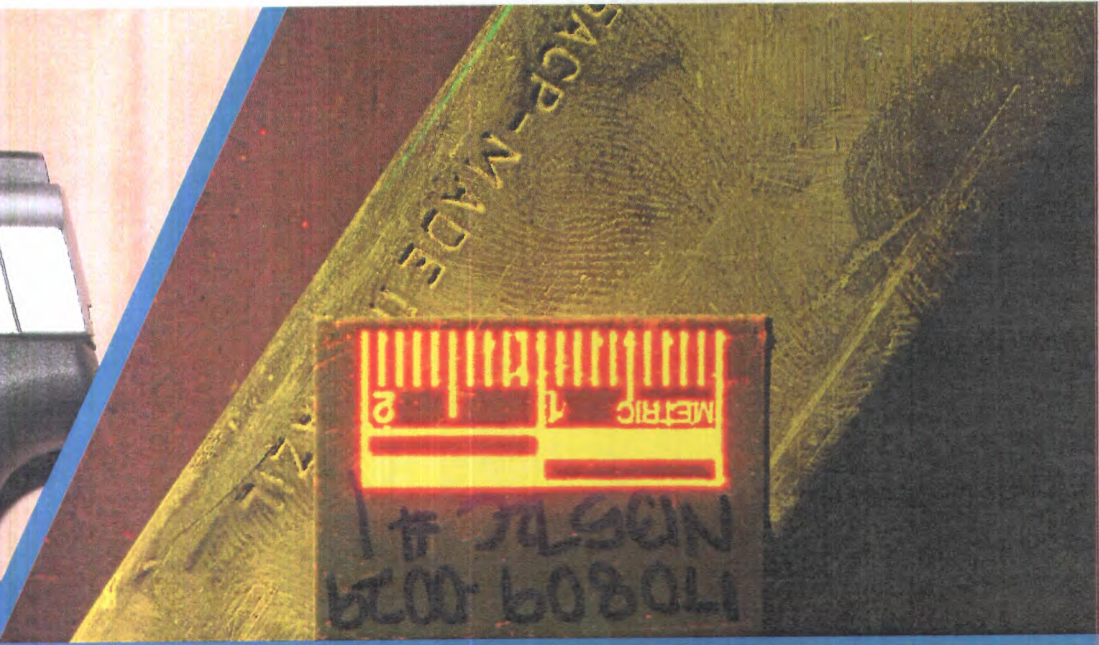


3300 Civic Center
on 8/15/17

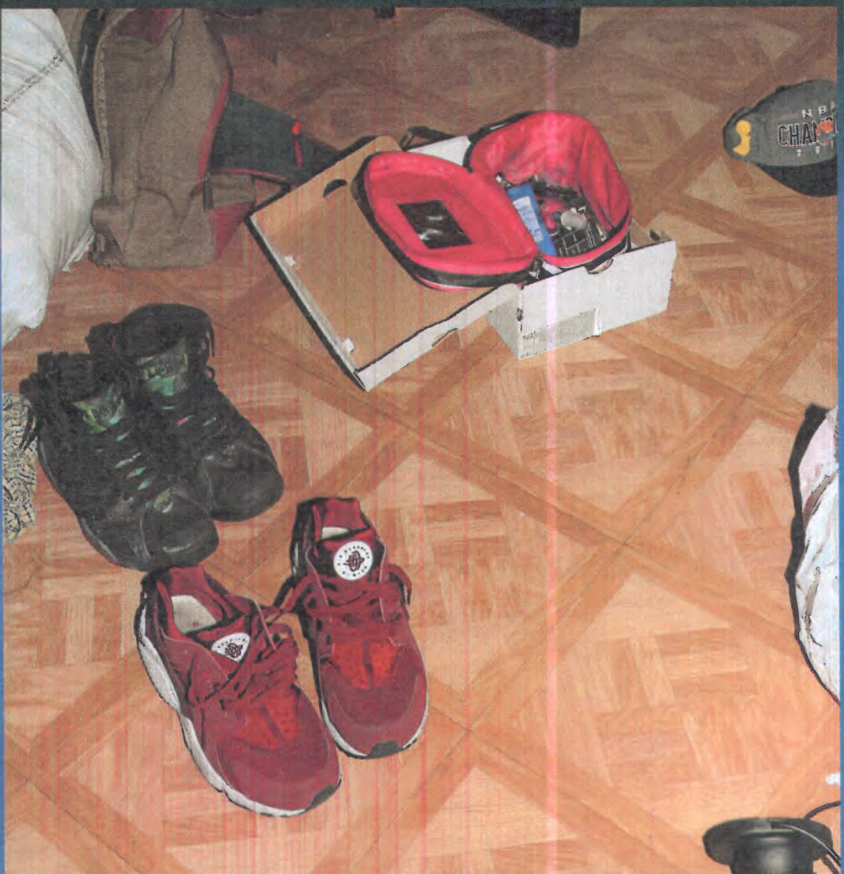
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3145

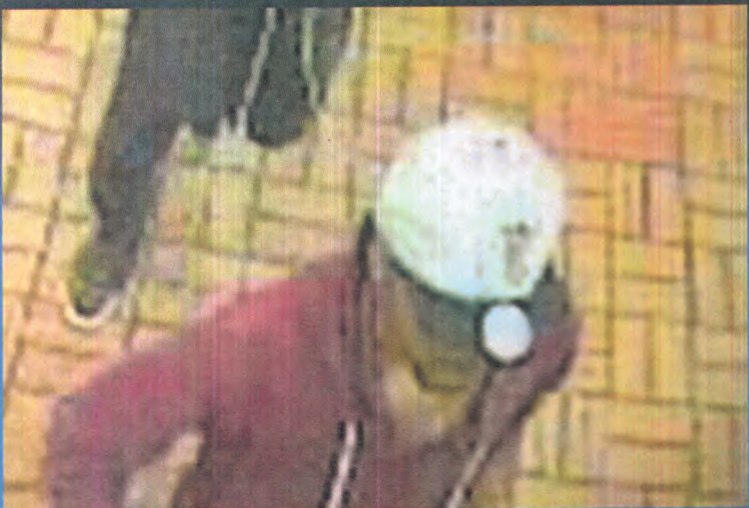
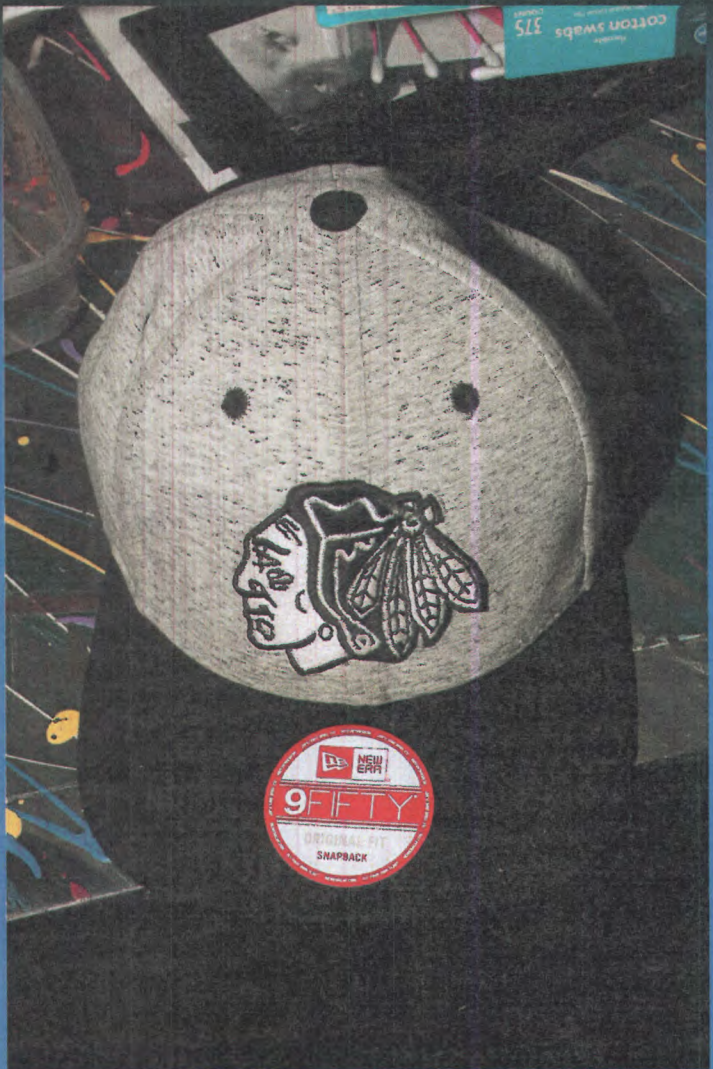




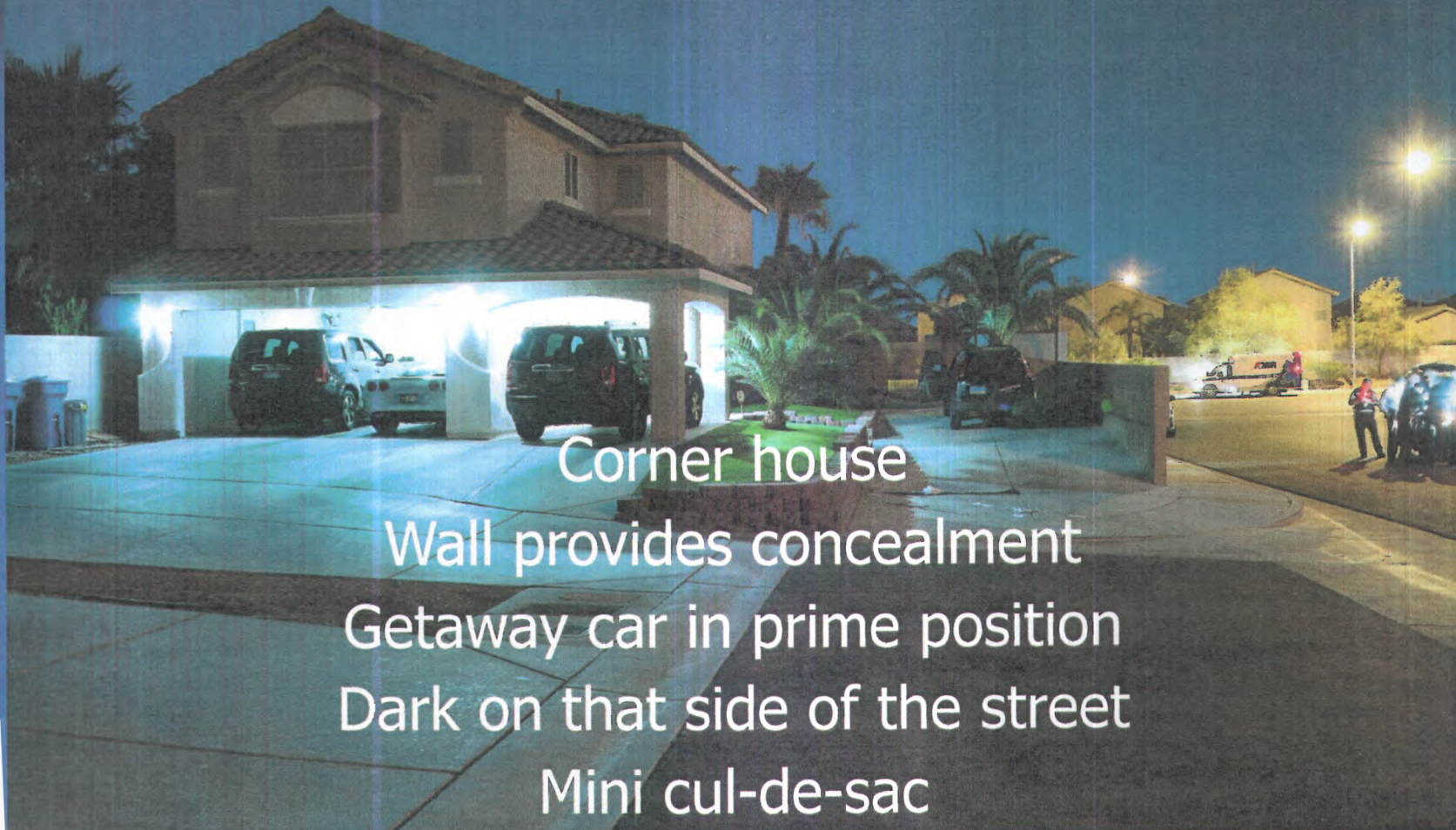
3146



3147



Why this house?



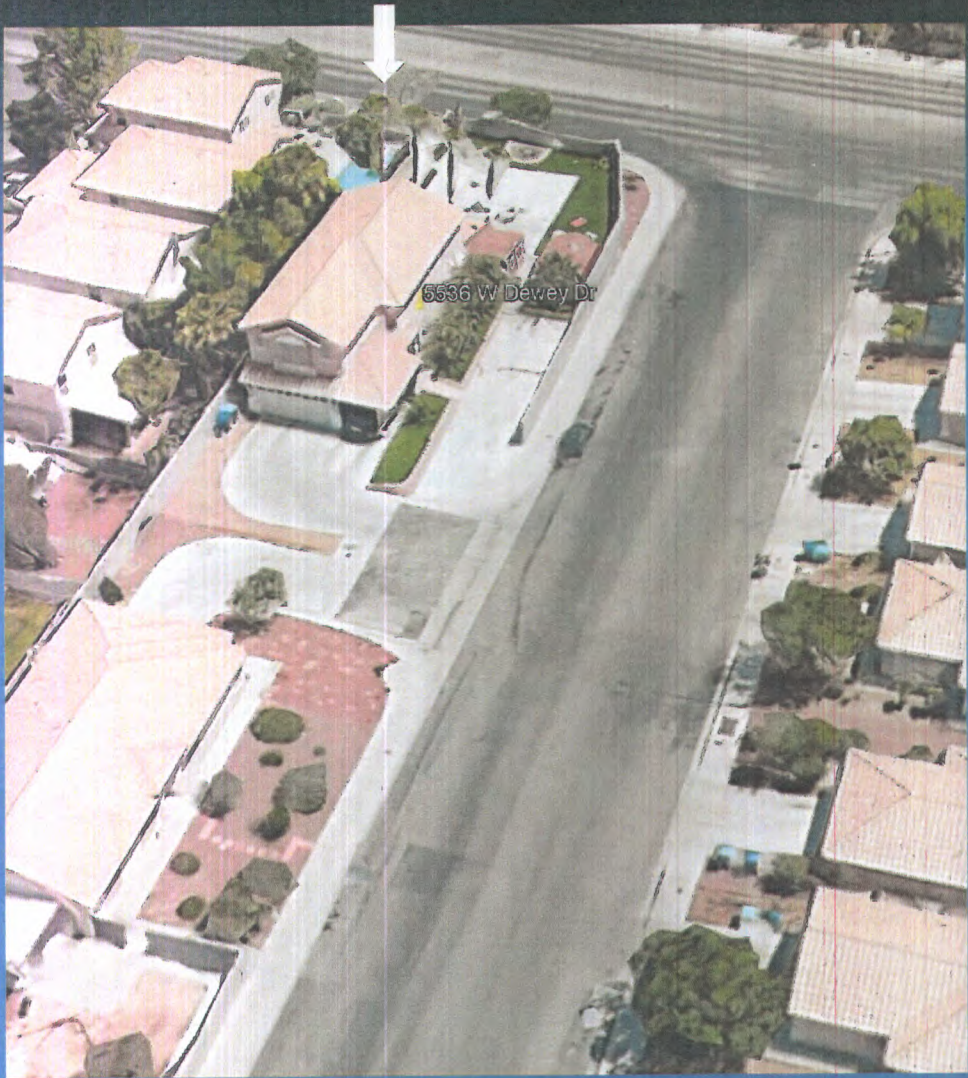
Corner house

Wall provides concealment

Getaway car in prime position

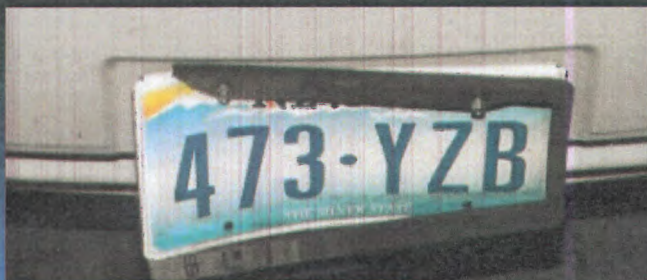
Dark on that side of the street

Mini cul-de-sac

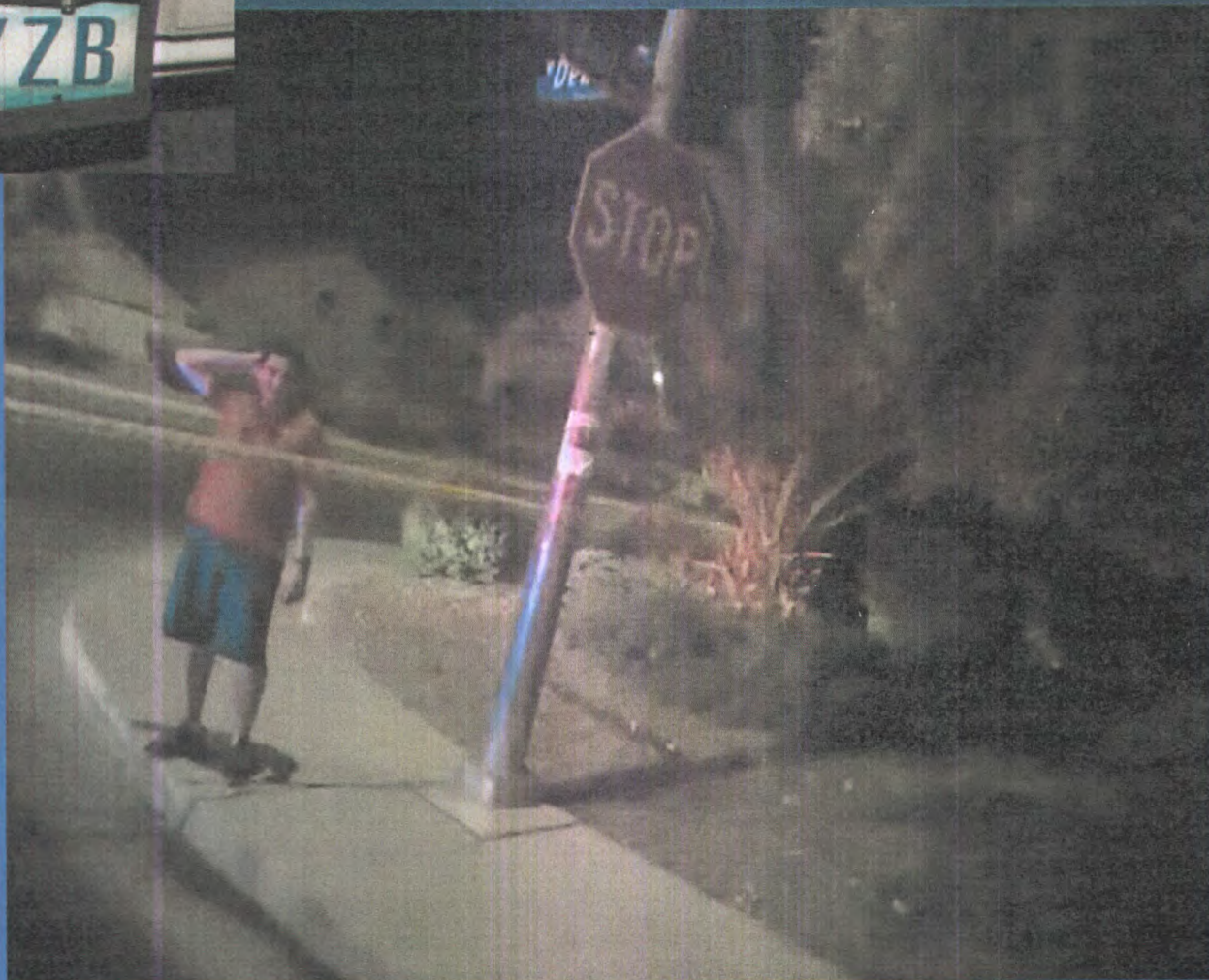


Well-constructed conspiracy meets unexpected jogger

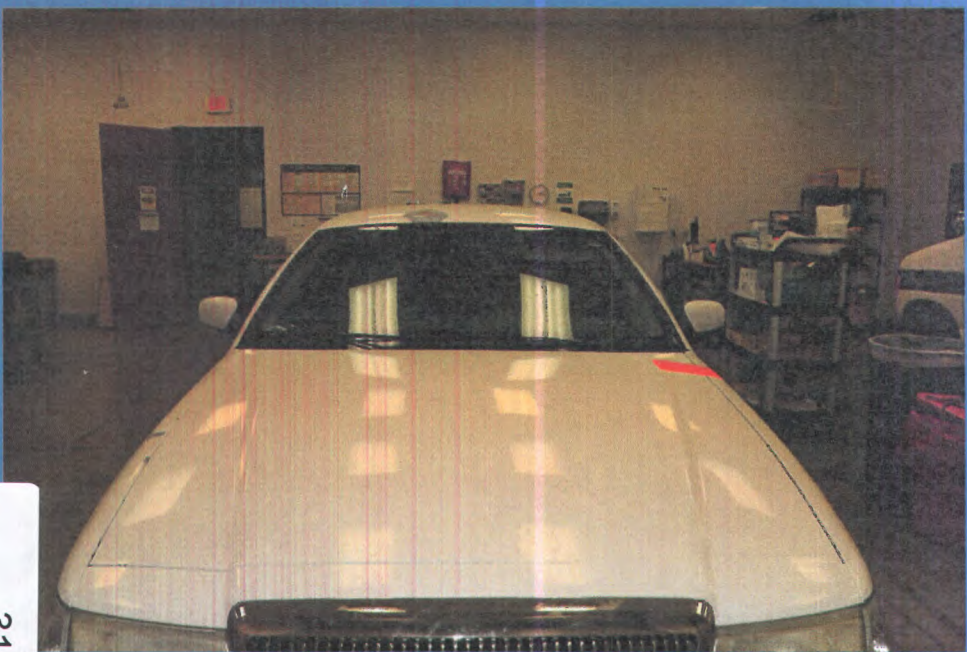




NV 473-YZB

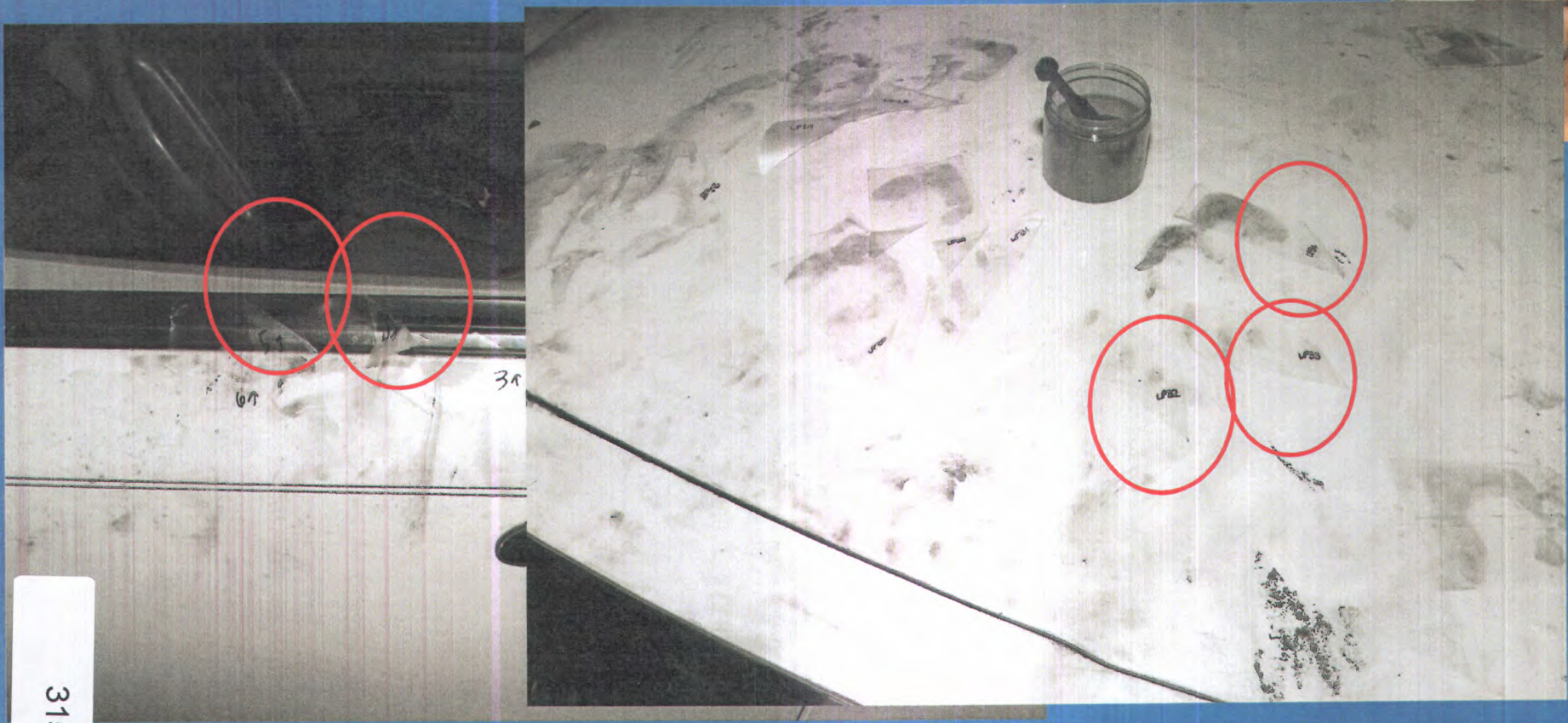


3152

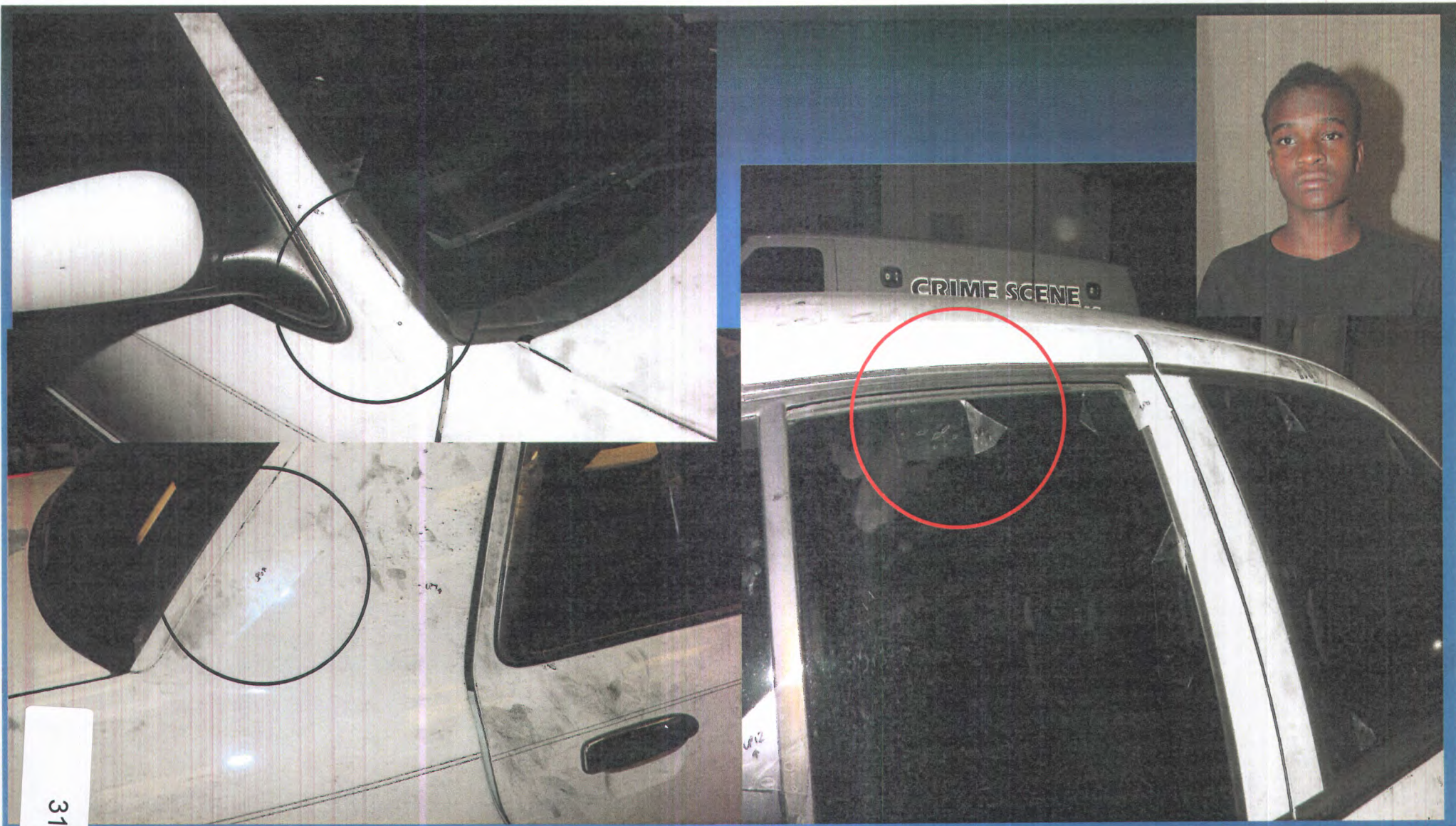




Vehicle is located – 8/9/17 @6:49pm



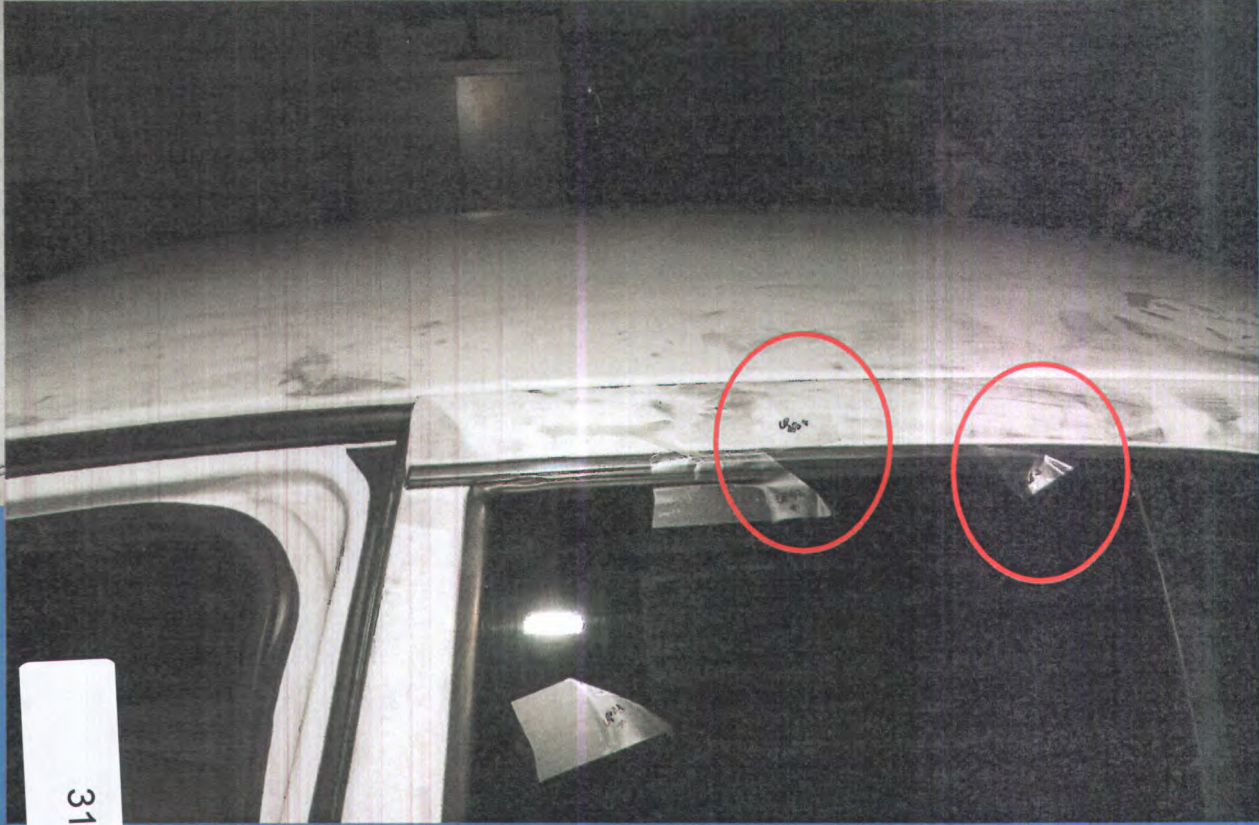
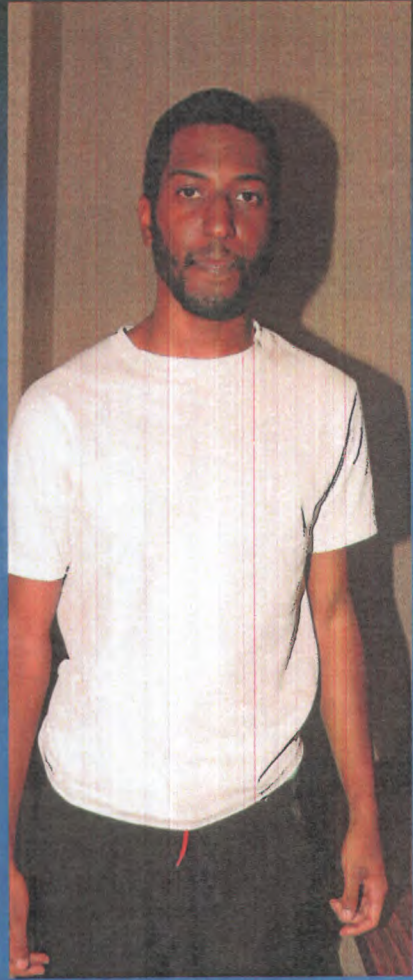
3155



3156



3157



3158



CONSPIRACY

It does not matter whether it was
successful or not

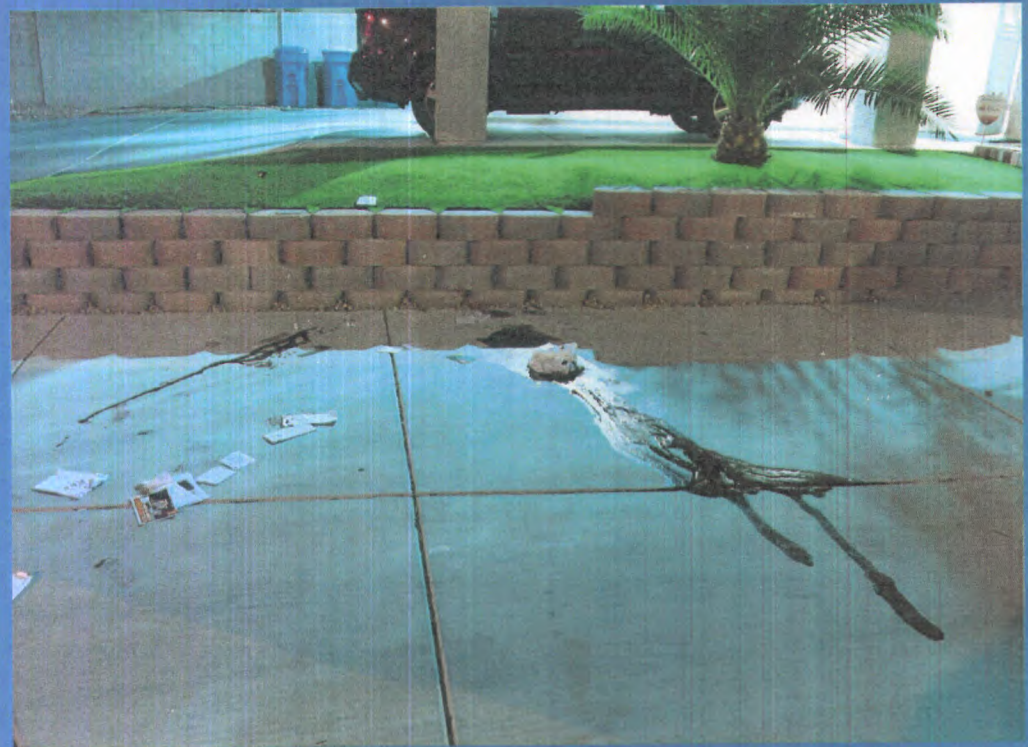
**They went to hit
a house that
night, but
instead...**

**An easier target
walked (not jogged)
into their plan**



GIVE ME EVERYTHING YOU GOT

They saw an opportunity to hit Gabriel Valenzuela



ROBBERY

- UNLAWFUL TAKING OF PERSONAL PROPERTY
 - WHETHER THE TAKING WAS FULLY COMPLETED WITH OR WITHOUT THE VICTIM'S KNOWLEDGE
- AGAINST THE VICTIM'S WILL

ROBBERY

- TAKING WAS BY MEANS OF FORCE OR VIOLENCE OR FEAR OF INJURY TO HIS PERSON TO:
 - OBTAIN OR RETAIN POSSESSION OF PROPERTY OR
 - TO PREVENT OR OVERCOME RESISTANCE TO THE TAKING OF PROPERTY

ATTEMPT

- An act done with intent to commit a crime, and tending but failing to accomplish it
 - Intent
 - Perform some act towards its commission
 - Fail to consummate

Deadly Weapon

You are instructed that a firearm
is a deadly weapon

THEORIES OF LIABILITY

1. DIRECTLY OR INDIRECTLY COMMITTING THE ACTS
2. BY CONSPIRING TO COMMIT THE CRIME
3. AIDING OR ABETTING IN THE COMMISSION OF THE CRIME

THEORIES OF LIABILITY

1. You can do it
2. You can agree to do it
3. You can help someone do it

THEORIES OF LIABILITY

- MUST BE UNANIMOUS THAT DEFENDANT IS LIABLE UNDER 1 OF THE 3 THEORIES
- YOU DO NOT HAVE TO AGREE ON THE THEORY OF LIABILITY

THEORIES OF LIABILITY

- IF YOU FIND THERE IS A CONSPIRACY OR THE DEFENDANTS AIDED AND ABETTED WITH INTENT FOR THE CRIME TO BE COMMITTED THEN:
 - THE ACTS OF ONE ARE THE ACTS OF ALL
 - THE STATE IS **NOT** REQUIRED TO PROVE WHAT EACH DEFENDANT PRECISELY DID

MURDER

3171

MURDER

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied.

Malice Aforethought

Intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation.

**Malice aforethought is NOT
an accident**

**Malice aforethought is NOT
mischance**

FIRST DEGREE MURDER

3175

First Degree Murder

Murder of the First Degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing

Willfulness

Willfulness is the intent to kill.

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

Center Mass -- Intent to Kill



3178

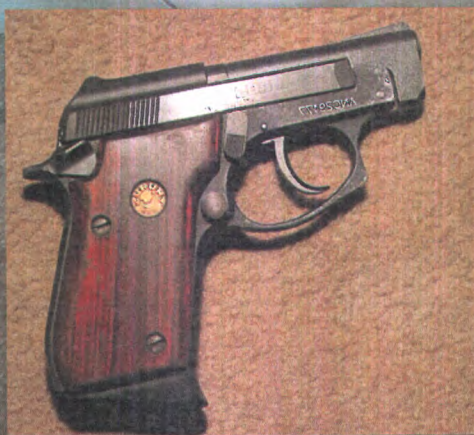
Head Shot -- Intent to Kill



Deliberation

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

Deliberate



Premeditation

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

Premeditation

- Premeditation need not be for a day, an hour, or even a minute.
- It may be as instantaneous as successive thoughts of the mind.

S8196

007D-JQSJ8Y1
EX-1

Se: 19/20
Im: 1/1
Mag: 0.7x
Lat: R

(7.5:1)

R

VALENZUELA, GABRIEL
M 17-08259
Acc:
2017 Aug 09
Acq Tm: 09:31:44.907

M / Lin DCM / Id: ID
9 L 2048

SIZES ARE APPROXIMATE

007D-JQSJ8Y1
EX-1

Se: 20/20
Im: 1/1
Mag: 0.7x
Lat: L

(48.6:1)

VALENZUELA, GABRIEL
M 17-08259
Acc:
2017 Aug 09
Acq Tm: 09:32:53.827

Lin DCM / Lin DCM / Id: ID
W: 4096 L: 2048

SIZES ARE APPROXIMATE

Lin
W: 4

3184

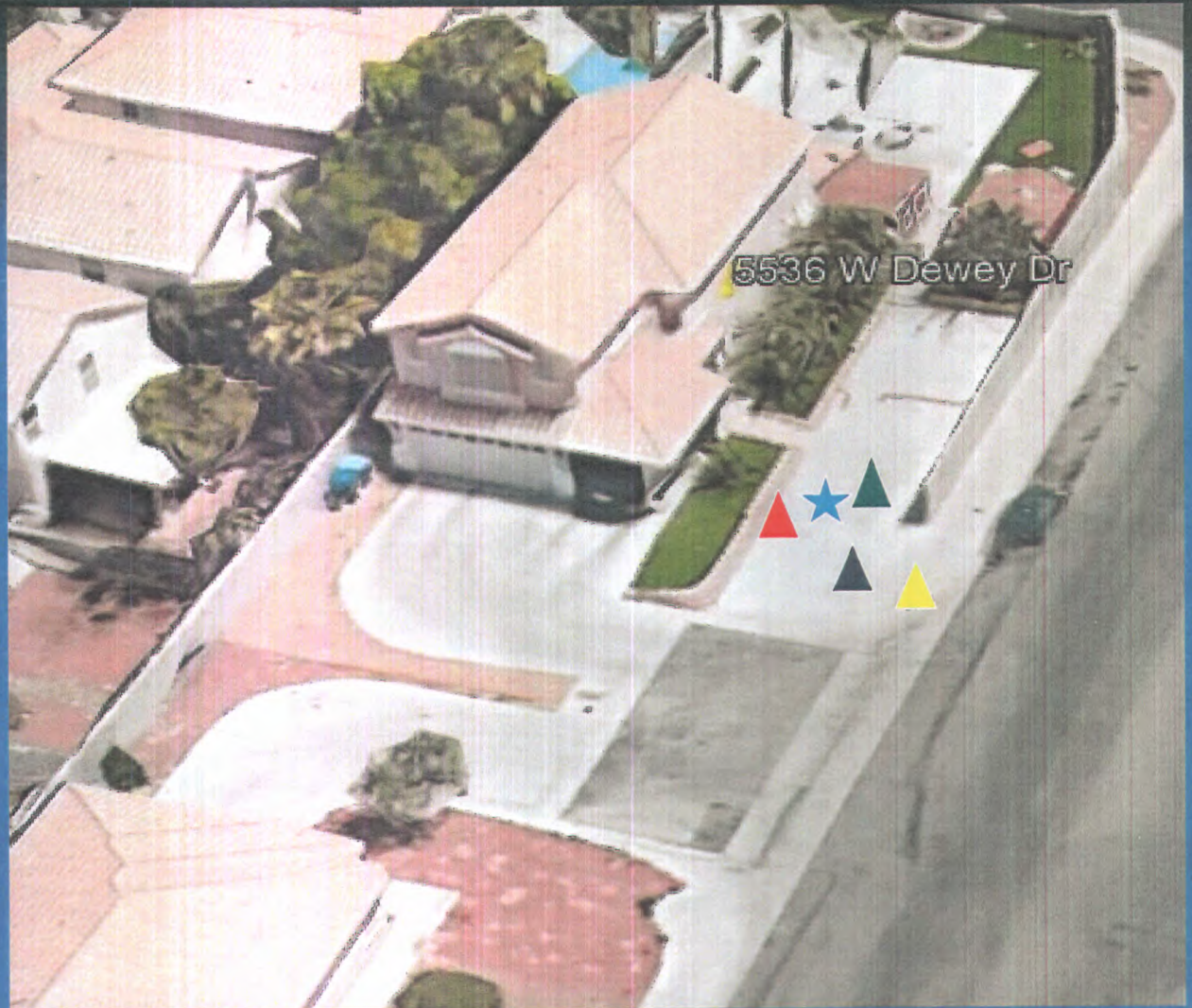
**ANOTHER WAY OF BEING
LIABLE FOR
FIRST DEGREE MURDER**

FIRST DEGREE FELONY MURDER

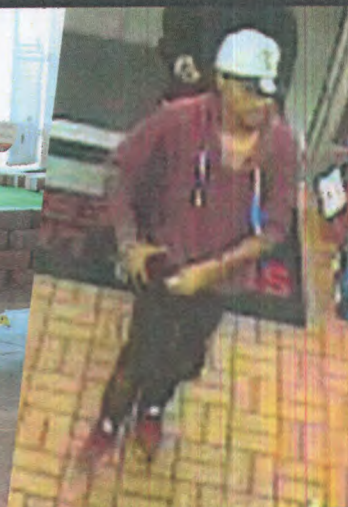
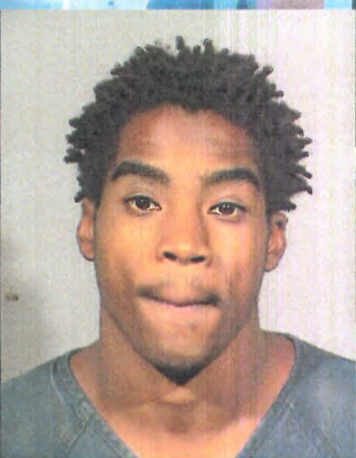
There is a kind of murder which carries with it conclusive evidence of premeditation and malice aforethought.

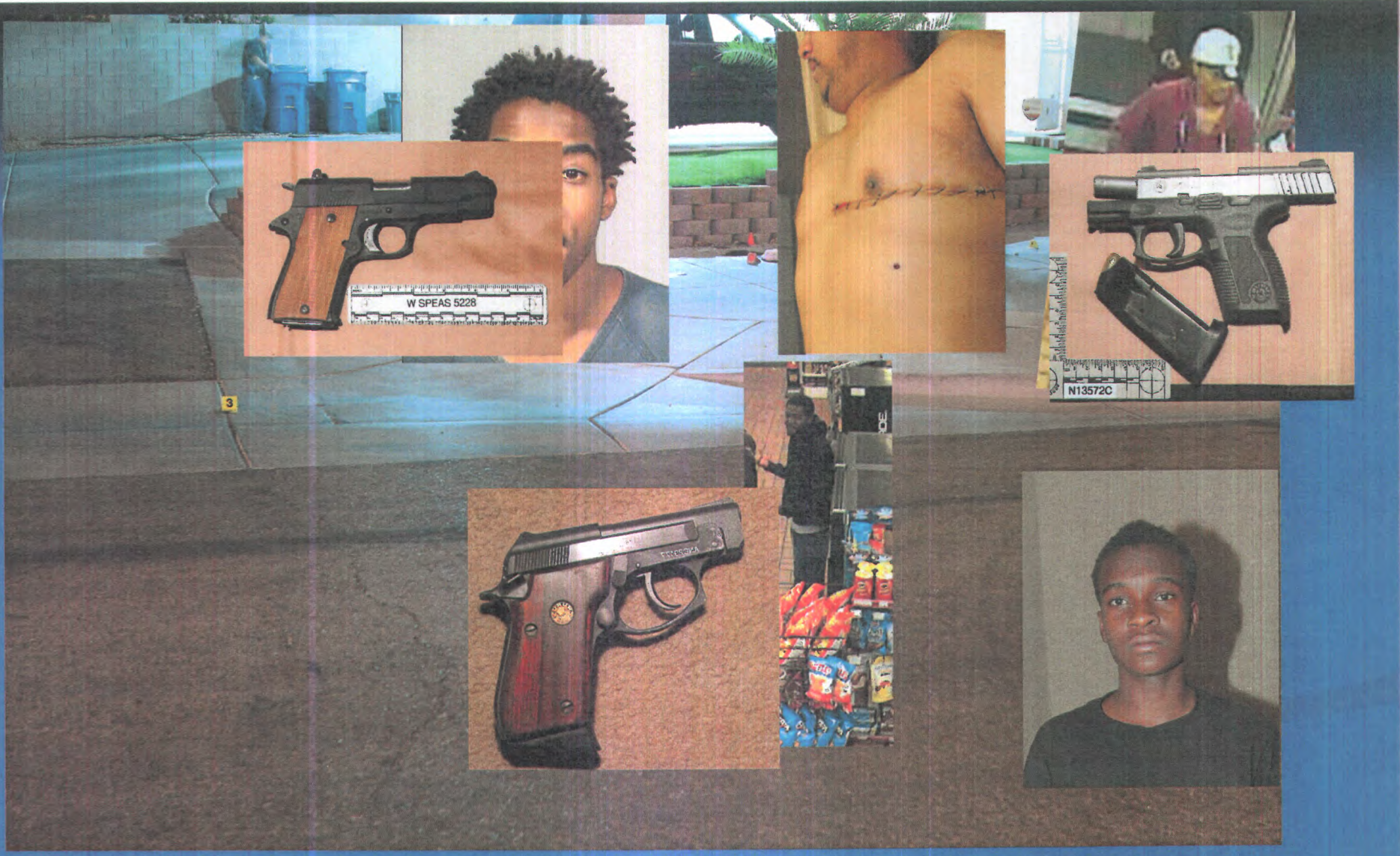
Murder committed in the perpetration or attempted perpetration of a robbery

- Gabriel = ★
- Raekwon = △
- Demario = ▲
- Davontae = ▲
- Deshawn = ▲

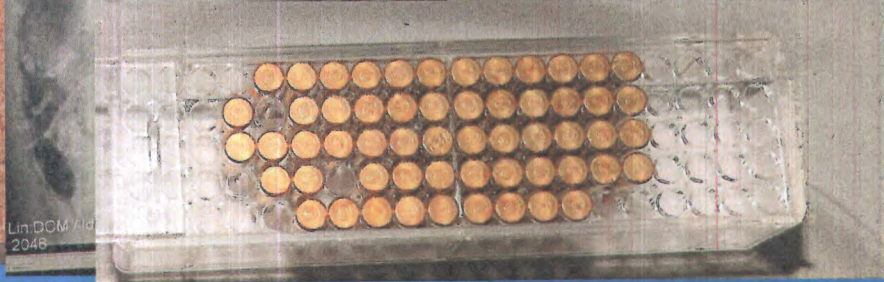
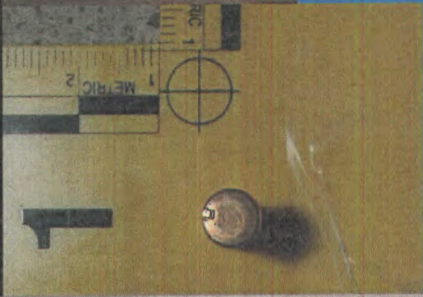
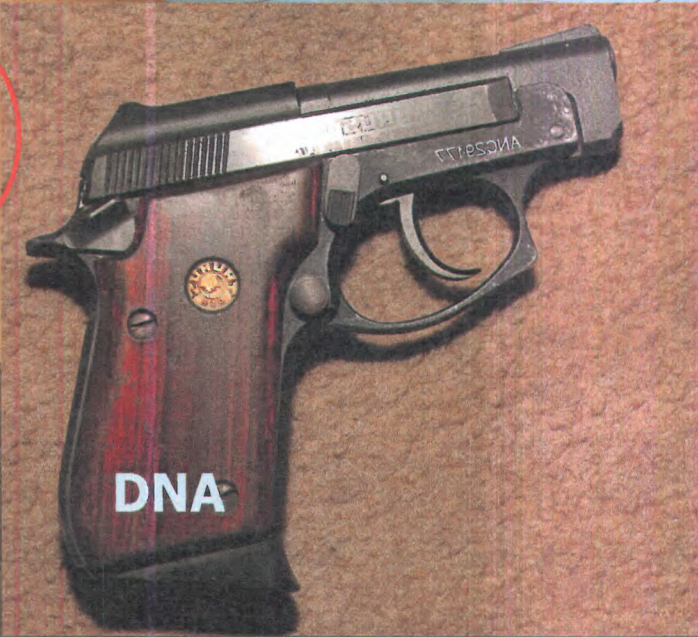
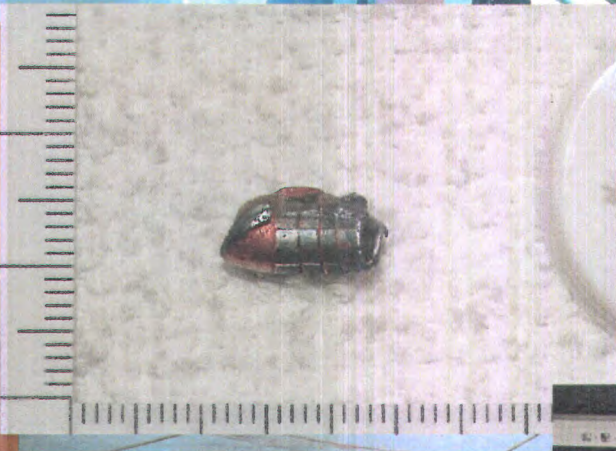
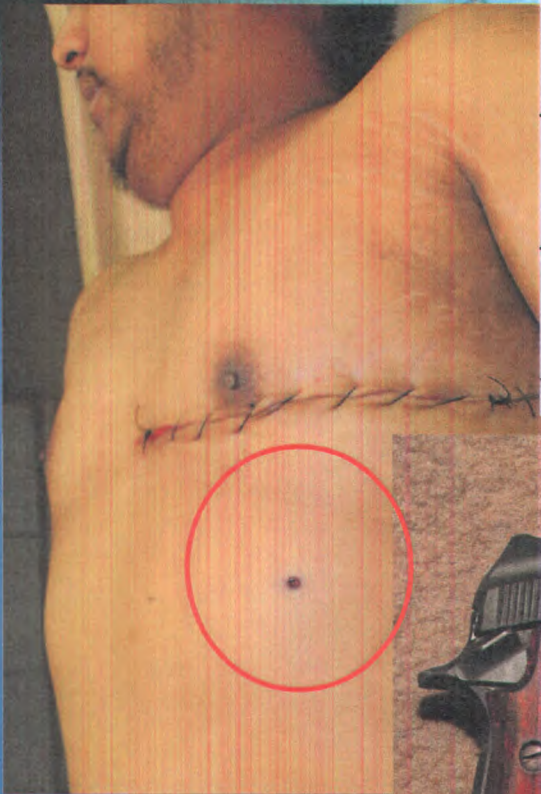


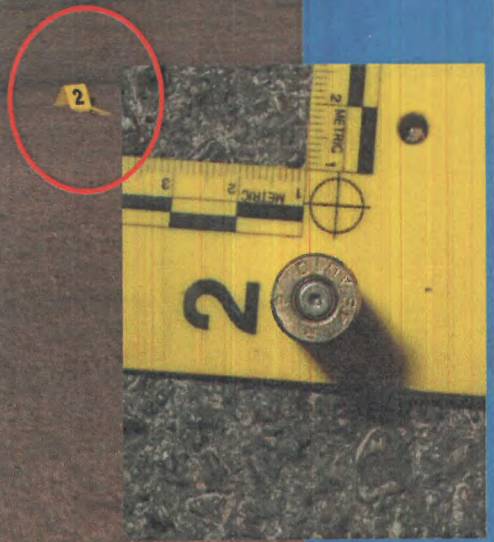
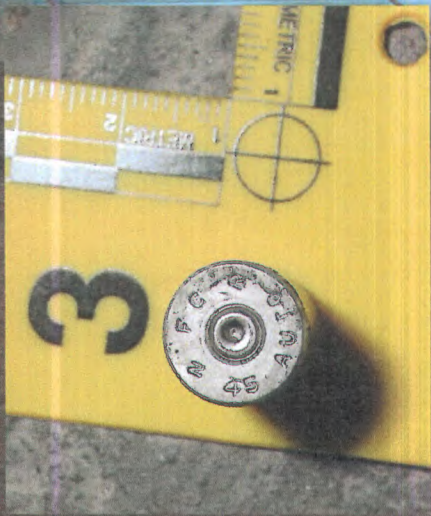
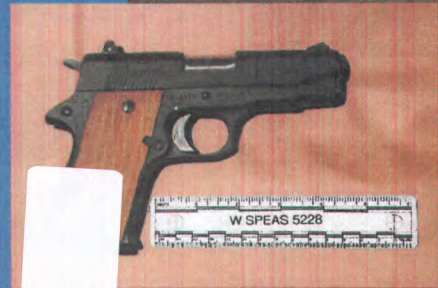
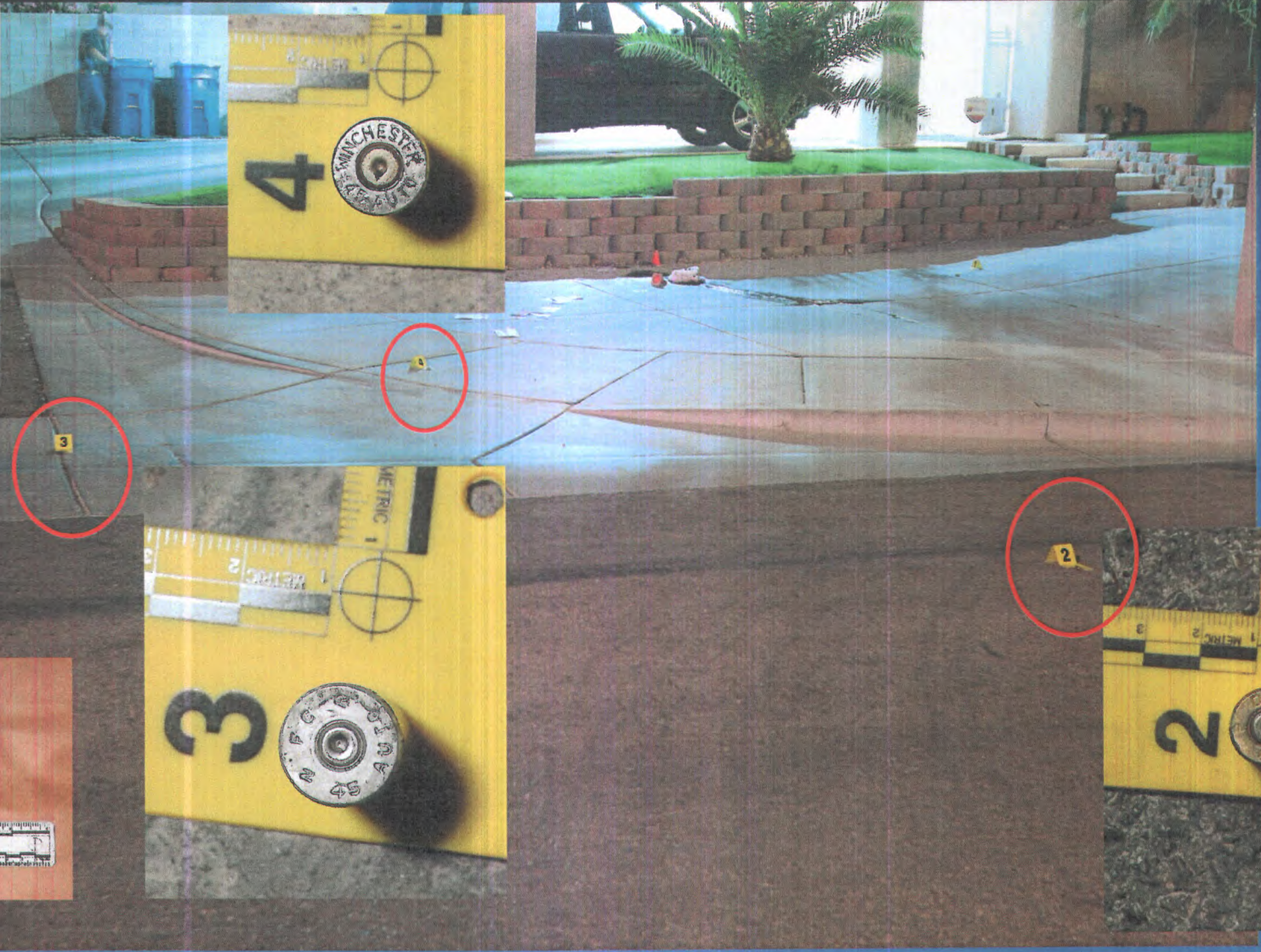
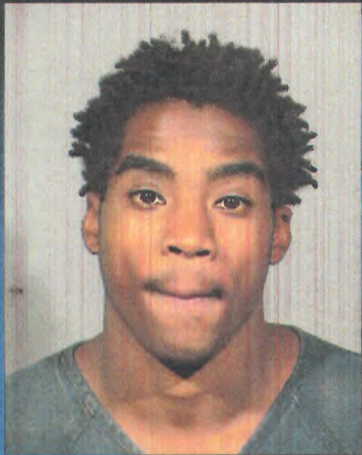
3188





3189





3191



NEVADA
335-B22

3192

FIRST DEGREE FELONY MURDER



They wanted his stuff.

They tried to rob him.

They killed him while trying

FIRST DEGREE FELONY MURDER

In order to "use" a deadly weapon, be conduct which actually produce conduct which produces a fear of h means or display of the deadly wea the commission of the crime.



ot
ly
by

MERE PRESENCE

- Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient
- Merely a knowing spectator
- He was not a participant

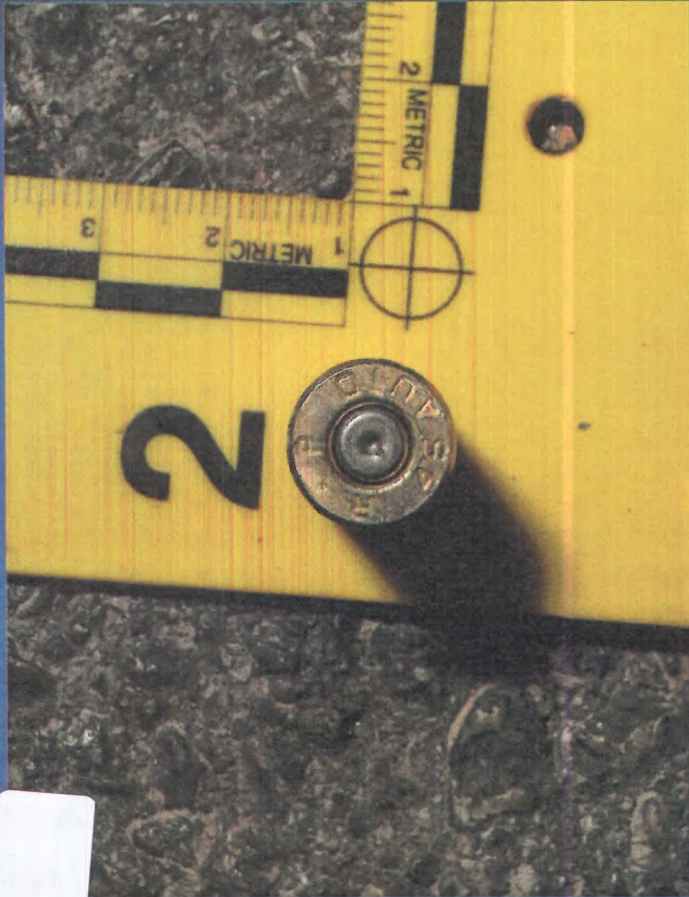
MERE PRESENCE

- Merely a knowing spectator?
 - They didn't bring crow bars, they brought loaded firearms
- Merely a knowing spectator?
 - Why are they wearing hoodies huddled against a wall
- Merely a knowing spectator?
 - Demario and Davontae hold Gabriel Valenzuela by the collar while Raekwon fires the first shot

HERE PRESENCE

- 29 phone calls between Sace and Lilhommie Demario between 8/2/2017 and 8/9/2017
- Deshawn and Raekwon calling each other on the day of the plan to "hit the house"

MERE PRESENCE



3198

UNANIMITY

- If the jury returns a verdict of guilty on the charge of First Degree Murder, it must be unanimous. However, you need not be unanimous on the means or the theory of First Degree murder in arriving at your verdict.

THEORIES OF LIABILITY

IF THE EVIDENCE IN THE CASE CONVINCES YOU BEYOND
A REASONABLE DOUBT OF THE GUILT OF THE
DEFENDANT, YOU SHOULD SO FIND, EVEN THOUGH YOU
MAY BELIEVE ONE OR MORE PERSONS ARE ALSO GUILTY

SECOND DEGREE MURDER

- All murder which is not Murder of the First Degree is Murder of the Second Degree.
- This is not Second Degree Murder.

COUNT 1 – CONSPIRACY TO COMMIT ROBBERY, (please check the appropriate box, select only one)



Guilty of Conspiracy to Commit Robbery



Not Guilty

COUNT 2 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON, (please check the appropriate box, select only one)



Guilty of Attempt Robbery with Use of a Deadly Weapon



Guilty of Attempt Robbery



Not Guilty

COUNT 3 – MURDER WITH USE OF A DEADLY WEAPON, (please check the appropriate box, select only one)



Guilty of First Degree Murder with Use of a Deadly Weapon



Guilty of First Degree Murder



Guilty of Second Degree Murder with Use of a Deadly Weapon



Guilty of Second Degree Murder



Not Guilty

Reserving Judgment Until the End*

3203

2-20-20

**Your notes and your
recollection will govern.
You will take back the
exhibits and the jury
instructions.***

Reasonable Doubt 5

3205

INSTRUCTION NO. _____

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

3206

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If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

**“mere possibility or
speculation.”**

Core of the State's case

Deshawn Robinson

3210

INSTRUCTION NO. _____

A conviction shall not be had on the testimony of an accomplice unless the accomplice is corroborated by other evidence which in itself and without the aid of the testimony of the accomplice tends to connect the defendant with the commission of the offense and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof. An accomplice is hereby defined as one who is liable for prosecution for the identical offenses charged against the defendants on trial in the cause in which the testimony of the accomplice is given.

You are instructed that DeShawn Robinson is an accomplice. However, it is not necessary that the corroborating evidence be sufficient in itself to establish every element of the offense charged or that it corroborate every fact to which the accomplice testifies. Evidence to corroborate accomplice testimony does not suffice if it merely casts grave suspicion on the defendant. Further, where the connecting evidence shows no more than an opportunity to commit a crime, simply proves suspicion, or it equally supports a reasonable explanation pointing toward innocent conduct on the part of the defendant, the evidence is to be deemed insufficient.

In determining whether an accomplice has been corroborated, you must first assume the testimony of the accomplice has been removed from the case. You must then determine whether there is sufficient evidence which tends to connect the defendant with the commission of the offense. If there is not sufficient independent evidence which tends to connect the defendant with the commission of the offense the testimony of the accomplice is not corroborated. If there is such sufficient independent evidence, which you believe, then the testimony of the accomplice is corroborated.

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**Evidence that “tends to
connect Defendant” to a
murder?**

Evidence that tends to connect Robertson to this murder?

- A Gun
- A Text Message
- A Convenience Store Video

The Gun

- Same caliber as bullet found in victim
- Gun is found in apartment
- DNA of Robertson found on gun

How do we know that gun was used in a murder?

- Bullet is not dispositive
- Shows similar general rifling characteristics that are NOT unique
- Cannot be determined to come from that specific gun*

DNA

- Makes sense that if it was his gun, his DNA would be on it.
- Whose other DNA is on it?
- Two different profiles on gun, one profile on magazine

The Text

- “well-constructed but poorly executed plan”
- Are we sure that Robertson went through with any plan that night to commit any crime?

The Convenience Store Video

- At least 30 minutes before shooting
- What's disturbing about their behavior?
- Demeanor?
- Is Robertson murdering someone sometime after the store?

Important Details Not Established

- Distance between store and residence and crime scene
- Time

**There is too much time
between the convenience
store and the murder.**

**Evidence that tends to connect
defendant to a murder**

VS:

**“merely casts grave
suspicion on the
defendant.”**

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3224 connect the defendant with the commission of the offense the testimony of the accomplice is
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**An abiding conviction of
the truth of the charge?**

Or
“grave suspicion”?

Is this evidence enough to show
that Robertson is guilty of
murder?

- Wearing a hoodie in August?
- Calls between people
without knowing what those
calls are about?

What evidence could have helped us?

- Gunshot Residue testing- people in custody v items found
- Third party witness ID

What evidence could have helped us?

- Cell phone triangulation*

**Let's now look at
DeShawn Robinson**

“I lied”

“I lied”

- When first arrested?
- When meeting with detectives in a proffer?
- When entering a Alford plea with the court?

Robinson has been
waiting for over a
year for his benefit 9

3234

**Benefit: dropping the
murder charge
against him**

3235

**Benefit: staying in
juvenile detention
versus adult jail**

**Robinson's future depends
on what happens to two
people who isn't his brother.**

Robinson told you a
story different from the
first time he was caught

**“not mere possibility
or speculation.” 5**

**This is what the State
wants you to rely on**

3240

“grave suspicion”

**An abiding conviction of
the truth of the charge?**

Where's there's
smoke, there's fire



3244

Courage to hold the
State to its burden

NOT GUILTY

3246

CONVERSE
#8
C328587
2-10-70

**STATE OF NEVADA
VS.
RAEKWON ROBERTSON
&
DAVONTAE WHEELER**

1

Use of a Firearm

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

2

Where there is smoke there is fire

- Be careful of the concept, "Where there is smoke there is fire."
- That should be applied to these Defendants . . BUT

3

Adrian Robinson

- "They did not get DNA from Adrian."
- "You do not have sufficient evidence to exclude Adrian Robinson."
- There is NO evidence to INCLUDE Adrian Robinson!

4

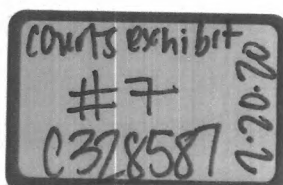
Detective Dosch

- Adrian Robinson was excluded after speaking with him.

5



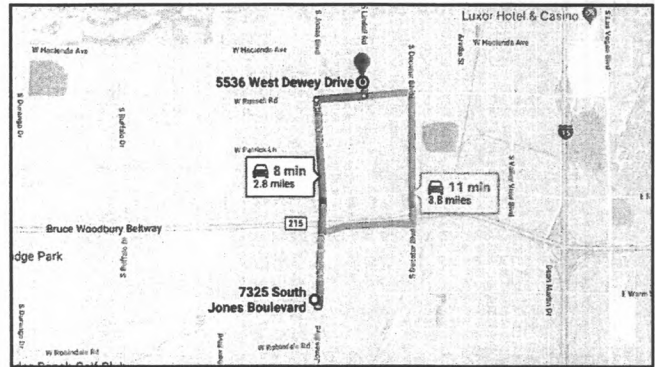
6



3247

Cell Phone Triangulation

7

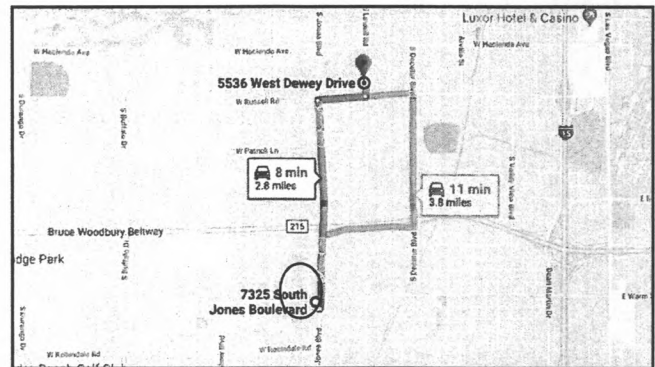


8

Detective Dosch

- On August 8th, at approximately 11:36 PM Robertson called a number. The phone call lasted one second in duration. The time of this phone activity was at the time the four suspects were congregated at the convenience store located at 7325 S. Jones Boulevard. Robertson's phone hit off a cell phone tower located approximately 1600 feet north of the convenience store.

9



10

Gun Shot Residue

August 15, 2017 was the search of Raekwon's residence

11

FELONY MURDER RULE

- Therefore, a killing which is committed in the perpetration or attempted perpetration of a robbery is deemed to be Murder of the First Degree, whether the killing was intentional or unintentional or accidental. This is called the Felony-Murder Rule.

12

**Unreliable &
Untrustworthy Witness**

13

Highly Suspect

14

Insufficient Corroboration

15

**"There is no corroboration
of DeShawn Robinson."**

16

DeShawn Robinson Testimony

- The jogger that ran by was wearing a red shirt and black shorts.
- He placed himself with Davontae Wheeler, Raekwon Robertson, and his brother Demario Lofton-Robinson in the same spot near the wall by the victim's house that jogger, Robert Mason, said.
- He placed the car in the same place that jogger, Robert Mason, said.

17

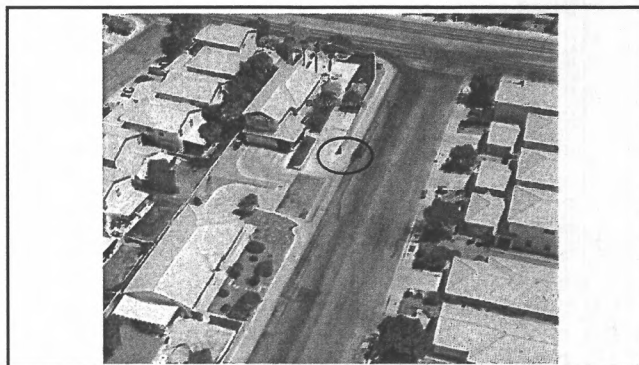


18

DeShawn Robinson Testimony

- The jogger that ran by was wearing a red shirt and black shorts.
- He placed himself with Davontae Wheeler, Raekwon Robertson, and his brother Demario Lofton-Robinson in the same spot near the wall by the victim's house that jogger, Robert Mason, said.
- He placed the car in the same place that jogger, Robert Mason, said.

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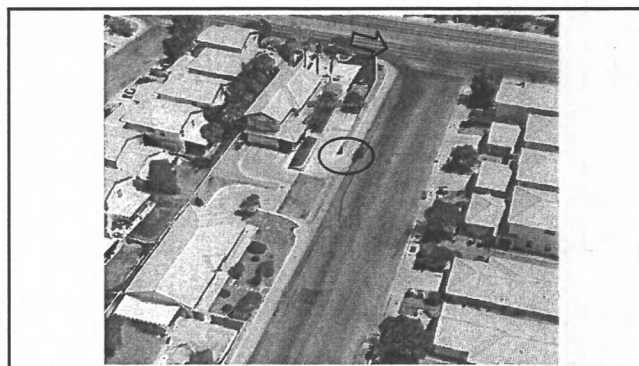


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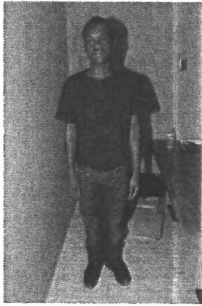
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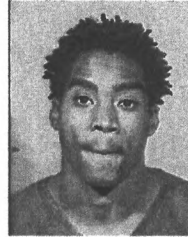
3250

Deshawn Robinson

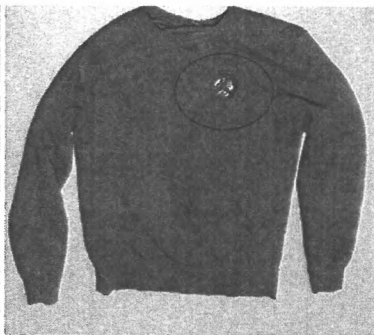


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Demario Lofton-Robinson



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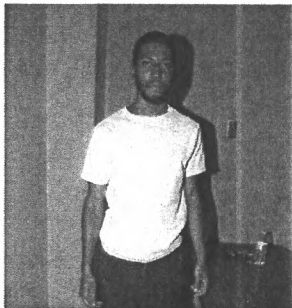


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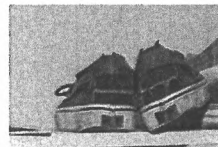
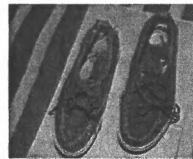


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Raekwon Robertson



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Davontae Wheeler



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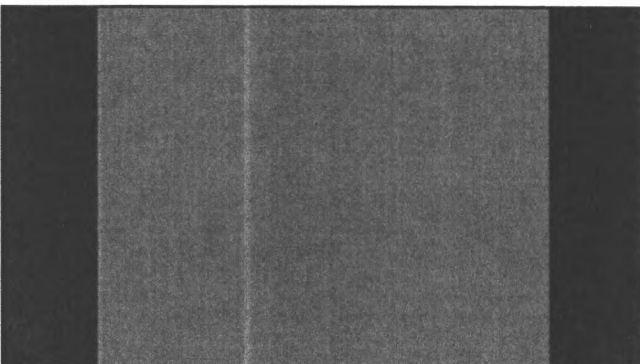


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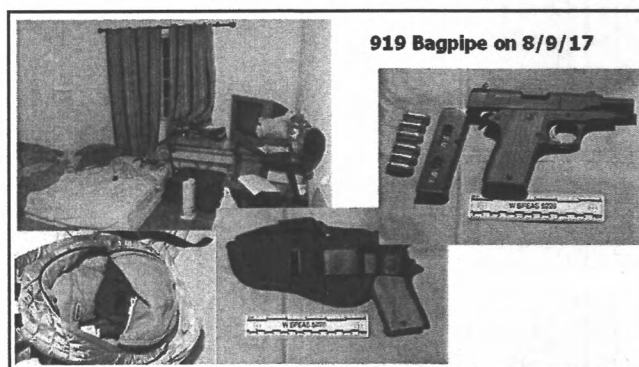


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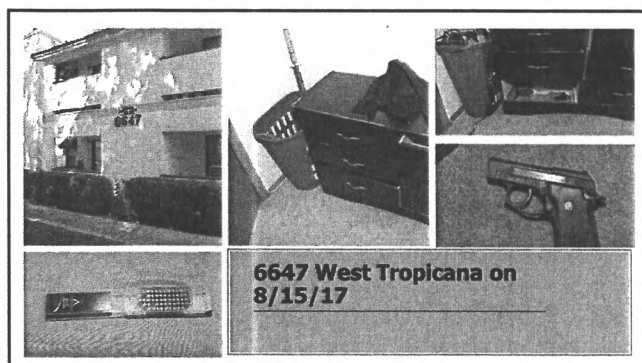
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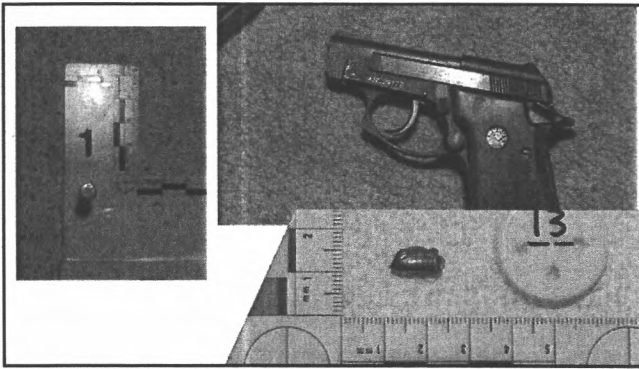
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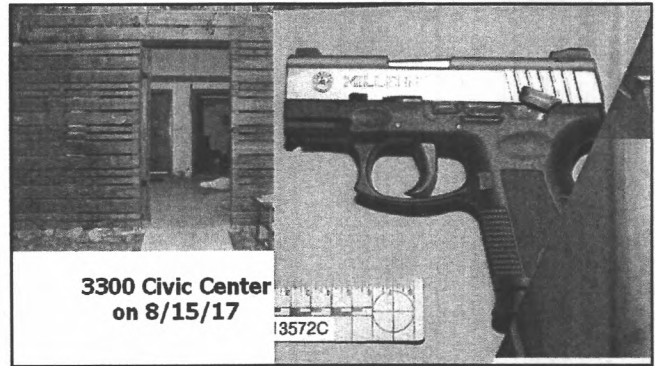
41

**That gun shot that
cartridge case per Anya
Lester**

42



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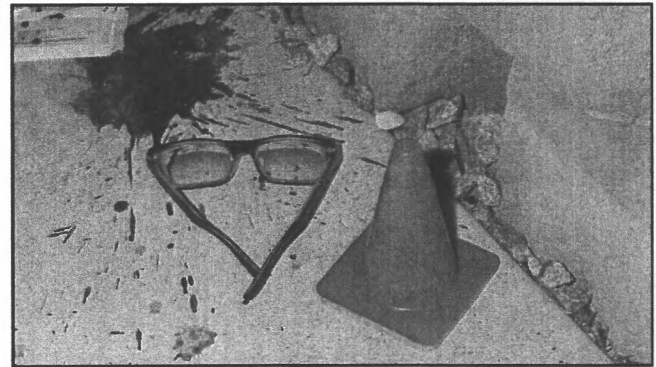


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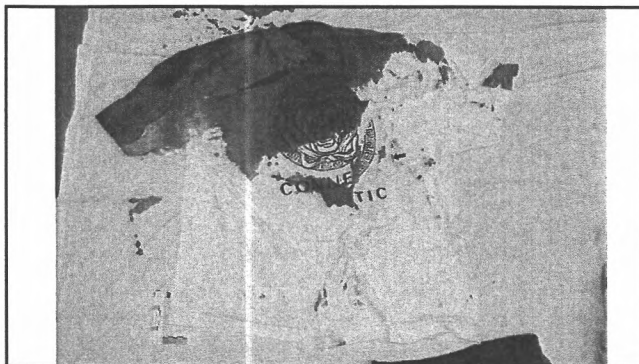
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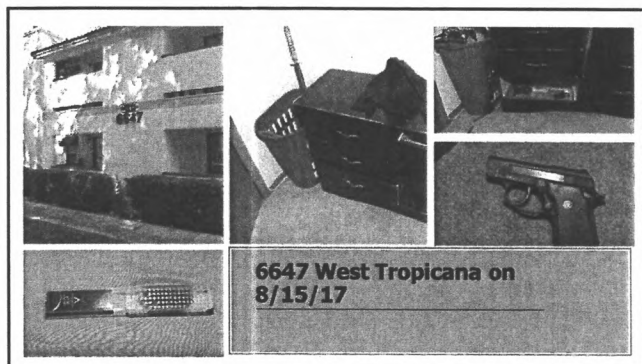


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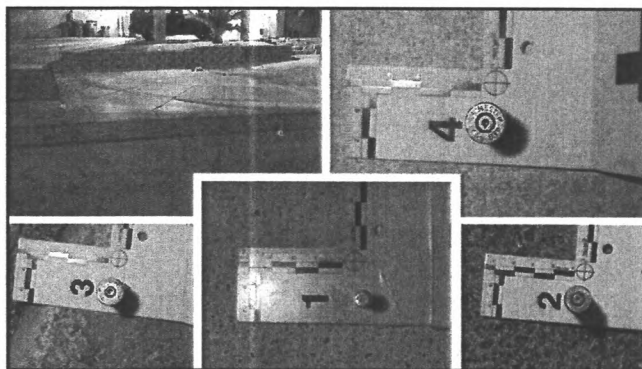


49

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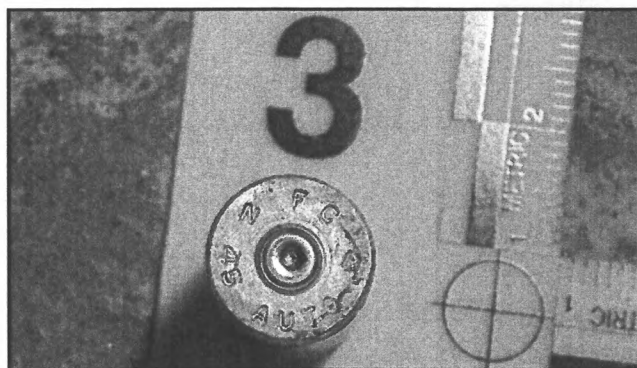
Bullets at the Murder Scene

- (1) .22 caliber cartridge case
- (3) .45 caliber cartridge cases:
- Different head stamps on the .45s
- R-P 45 Auto
- NFCR 45 Auto
- Winchester 45 Auto

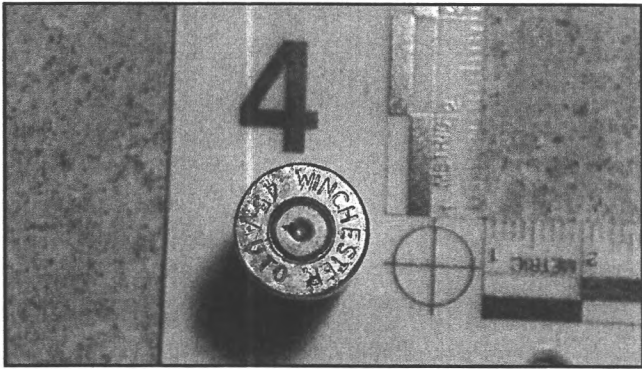
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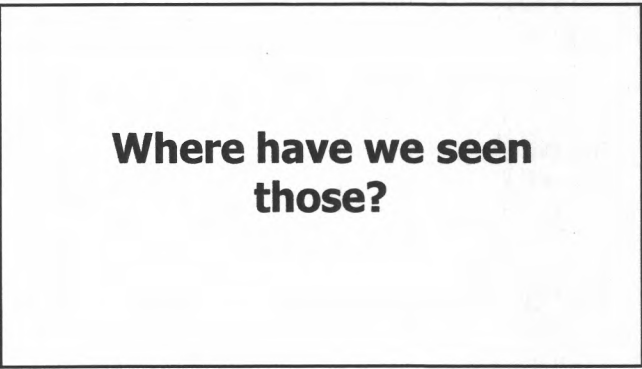
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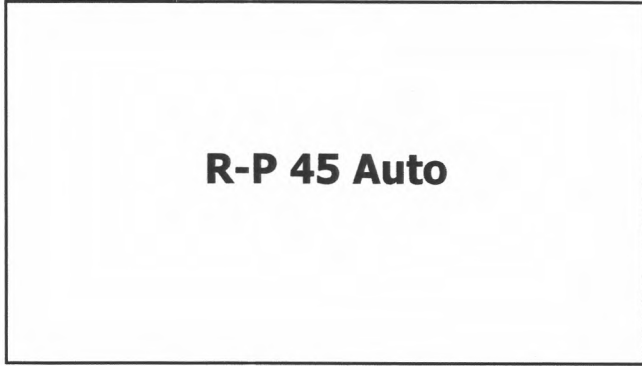
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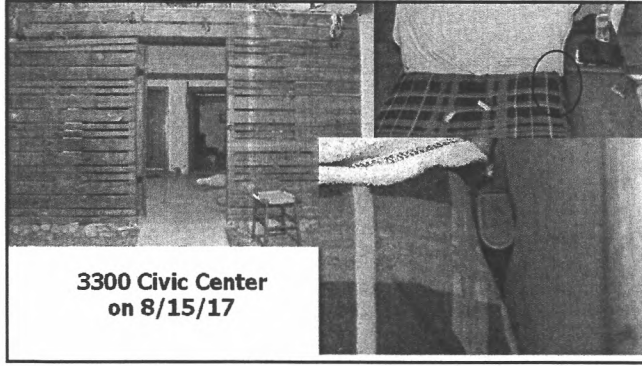
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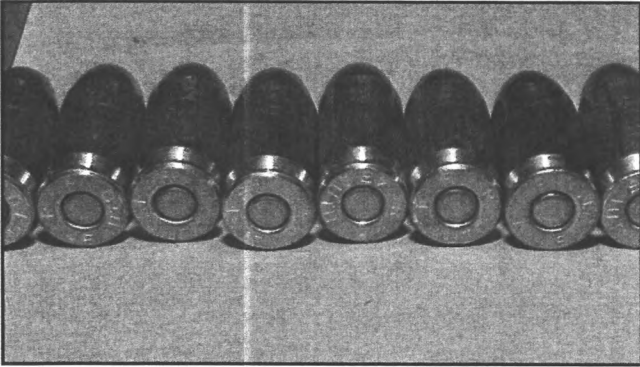
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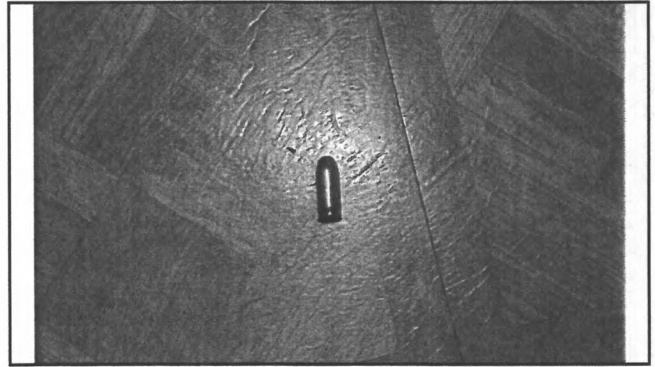
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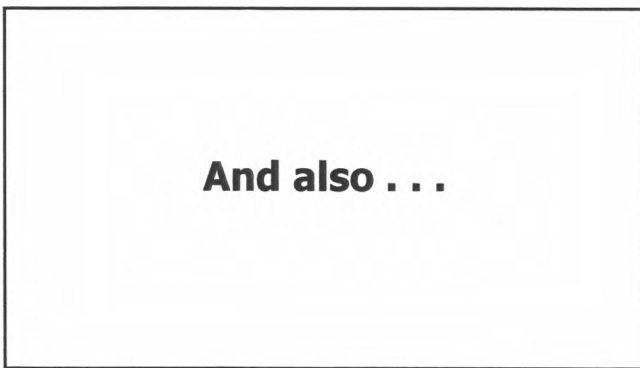
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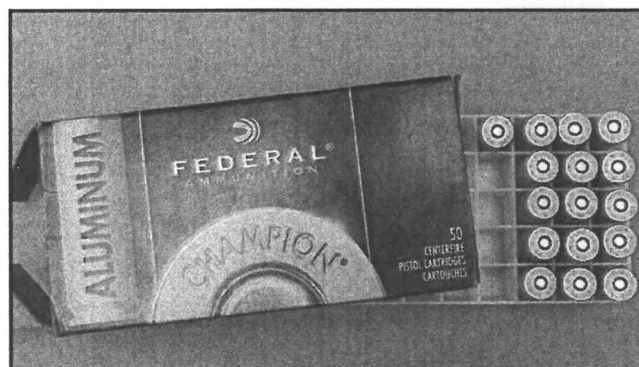
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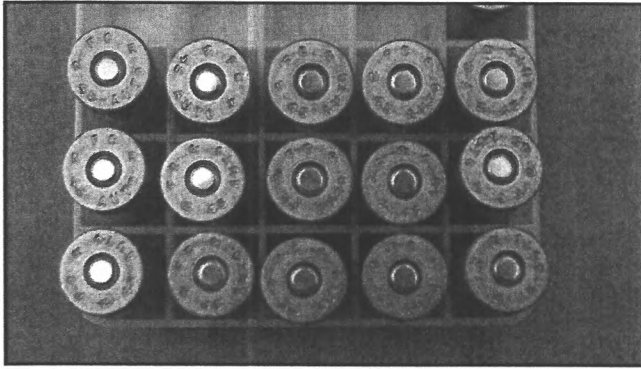
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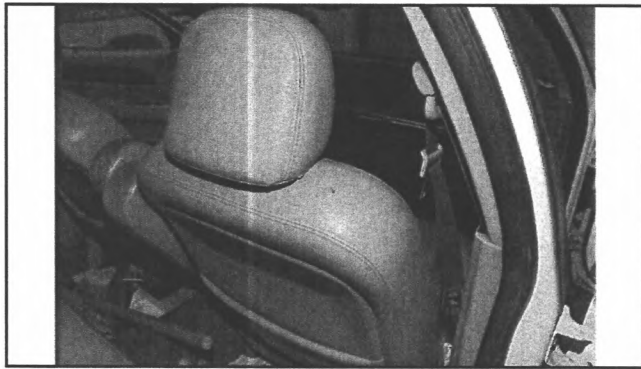


73

Forensic Corroboration of DeShawn

- DNA puts DeShawn in the back seat on the right side
- Fingerprints put each Defendant where DeShawn said
- DNA connects Raekwon Robertson to the .22 Taurus
- Fingerprints connect Davontae Wheeler to the Taurus .45

74



75

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76



77



78



79

Fingerprints

- DeShawn Robertson—On right rear window
- Demario Lofton-Robinson—On driver's door and hood
- Raekwon Robertson—On left rear door and hood
- Davontae Wheeler—On right front window and hood

80



81

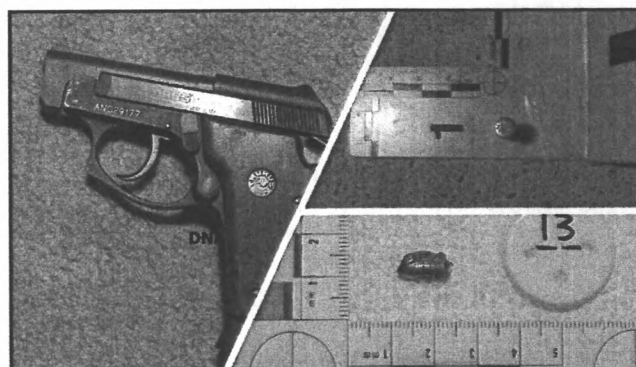


82

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85



86

The DNA numbers matter

87

DNA Evidence

- DeShawn's DNA on seat back and arm rest
- Individually included
- LR = at least 1.76 octillion (27 zeros)
- LR = at least 2.56 octillion (27 zeros)

88

DNA Evidence

- Raekwon's DNA on Taurus .22 caliber handgun
- Individually included
- LR = at least 33.3 million
- Is there any doubt?
- It was found at his house
- Excluded: Davontae Wheeler

89

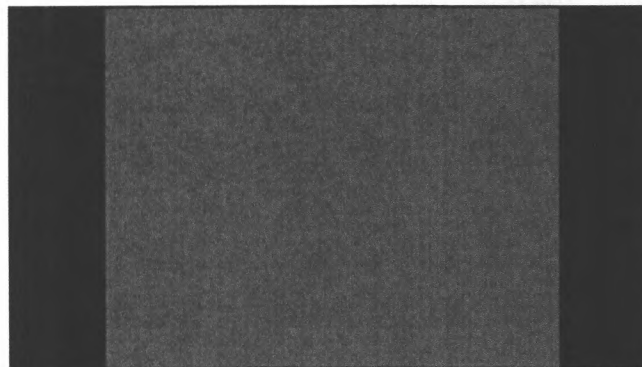
Remember DeShawn's Testimony

- Raekwon demanded the Victim's property
- "Give me everything you got."
- Then Sace (Davontae Wheeler) and his brother Demario tugged on the Victim's clothes
- Raekwon shot the Victim
- Demario then shot the victim

90

**Look at the dynamics of
this group**

91



92



93

Reasonable Doubt

- A reasonable doubt is one based on reason.
- Doubt to be reasonable must be actual, not mere possibility or speculation.

94

Where is the 5th person?

95



96

There was no 5th person

97

Reasonable Doubt

- A reasonable doubt is one based on reason.
- Doubt to be reasonable must be actual, not mere possibility or speculation.

98

August 8, 2017

11:40 AM

99

August 8, 2017 at 11:40 AM

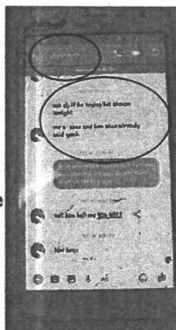
- Nobody had been charged
- Nobody had given a proffer
- Nobody had cut a deal

100

**Defendant
Raekwon
Robertson's
Phone**

to

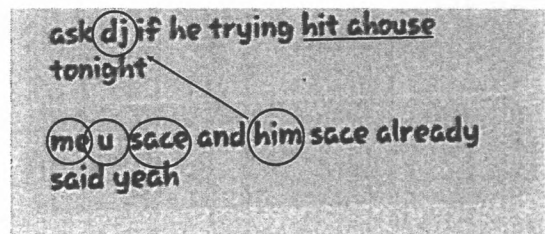
**Deshawn
Robinson's Phone**



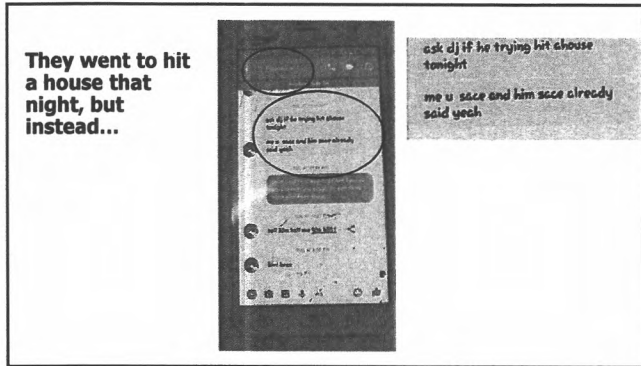
ask dj if he trying hit ahouse
tonight
me u sace and him sace already
said yeah

101

Roll Call



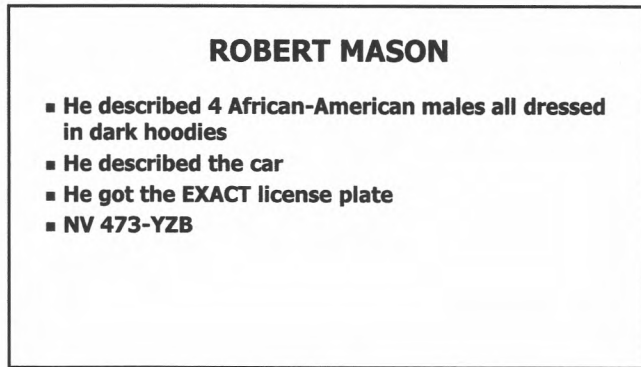
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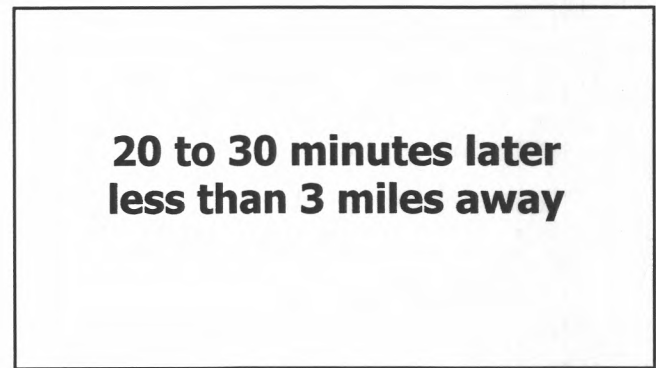
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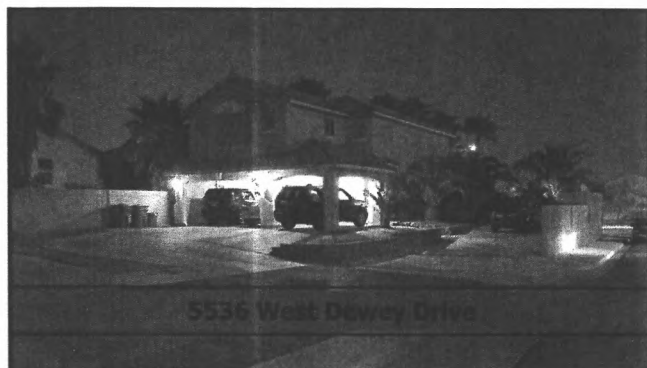
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108



109

**What? 4 other guys got n
that exact car and
committed this crime just
20 to 30 minutes later and
less than 3 miles away?**

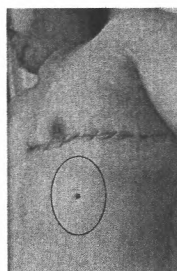
110

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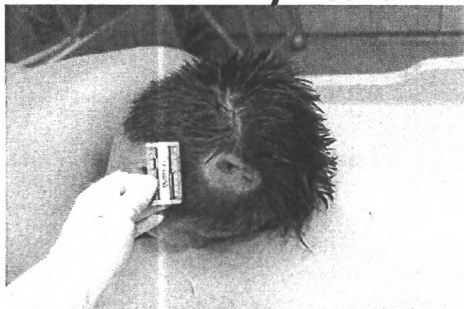
111

Smaller Caliber to the Abdomen



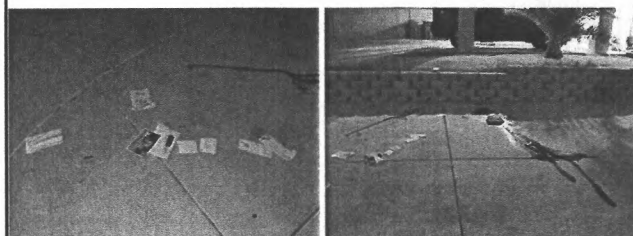
112

Gunshot Entry Wound



113

They saw an opportunity to hit Gabriel Valenzuela



114

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 24, 2020

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

February 24, 2020 09:00 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. Ruggeroli	Attorney for Defendant
Parker Brooks	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Jury returned to deliberate at the hour of 9:00 AM.

JURY PRESENT:

At the hour of 2:11 PM, the jury returned with a verdict of GUILTY of COUNT I - CONSPIRACY TO COMMIT ROBBERY, COUNT III - SECOND DEGREE MURDER and NOT GUILTY of COUNT II.

Jury polled.

Court thanked and excused the jury .

OUTSIDE THE PRESENCE OF THE JURY:

State requested the Defendants be remanded without bail. Mr. Ruggeroli and Mr. Sanft submitted. COURT ORDERED, Defendants REMANDED WITHOUT BAIL pending Sentencing. Further, Mr. Ruggeroli requested bail be set pending Sentencing. State opposed Mr. Ruggeroli's request and argued. COURT FURTHER ORDERED, Defendants REMANDED WITHOUT BAIL; matter referred to the Division of Parole and Probation (P & P) and SET for sentencing.

CUSTODY

04/15/20 8:30 AM SENTENCING



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. C-17-328587-2

C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

MONDAY, FEBRUARY 24, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 8

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney
PARKER BROOKS
Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

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LIST OF EXHIBITS

Court's Exhibit 10

Page 3

1 LAS VEGAS, NEVADA, MONDAY, FEBRUARY 24, 2020, 2:05 P.M.

2 * * * * *

3 [Outside the Presence of the Jury]

4 THE COURT: Mr. Sanft, can you approach?

5 MR. SANFT: Yeah.

6 THE COURT: I showed the other attorneys. I got that from the foreperson.,
7 so I've marked it and made it part of the record. Juror Number 5 wants me to call
8 her teacher, so it's just marked as Court's Exhibit Number 10.

9 **[COURT'S EXHIBIT NUMBER 10 MARKED]**

10 THE COURT: Okay. State of Nevada versus Robertson and Wheeler,
11 they're both present with their attorneys. Will the State -- well, why don't you all
12 make your appearances.

13 MR. SANFT: Good morning -- or good afternoon, Your Honor, Michael Sanft
14 on behalf of Mr. Raekwon Robertson who's present in custody.

15 MR. RUGGEROLI: Good afternoon, Your Honor, James Ruggeroli on behalf
16 of Mr. Wheeler who's present in custody.

17 MR. PESCI: Parker Brooks and Giancarlo Pesci on behalf of the State.

18 THE COURT: Okay. We can bring them in. The jury has reached a verdict.

19 [In the presence of the jury panel]

20 THE COURT: You can have a seat when you come in. Does the State
21 stipulate to the presence of the jury 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 Ms. Segura, have you been selected to be the foreperson?

4 JUROR NO. 11: Yes, ma'am.

5 THE COURT: Thank you. Has the jury reached a verdict?

6 JUROR NO. 11: Yes, ma'am.

7 THE COURT: Okay. You can hand the verdict forms to Officer Hawkes.

8 The Clerk will now read the verdict forms out loud.

9 Will the defendants and their attorney please stand for the reading of
10 the verdict. Sorry.

11 THE CLERK: District Court, Clark County, Nevada; the State of Nevada,
12 plaintiff, versus Raekwon Setrey Robertson, defendant; Case Number C328587;
13 Department Number 12; Verdict: We the jury in the above entitled case find the
14 Defendant, Raekwon Setrey Robertson, as follows:

15 Count 1, conspiracy to commit robbery, guilty of conspiracy to commit
16 robbery;

17 Count 2, attempt robbery with use of a deadly weapon, guilty of attempt
18 robbery with use of a deadly weapon;

19 Count 3, murder with use of a deadly weapon, guilty of first degree
20 murder with use of a deadly weapon; dated this 24th day of February, 2020; signed
21 by Foreperson Angela Segura.

22 District Court, Clark County, Nevada; the State of Nevada, plaintiff,
23 versus Davontae Wheeler, defendant; Case Number C328587; Department Number
24 12; Verdict: We the jury in the above entitled case find the Defendant, Davontae
25 Wheeler, as follows:

1 Count 1, conspiracy to commit robbery, guilty of conspiracy to commit
2 robbery;
3 Count 2, attempt robbery with use of a deadly weapon, not guilty;
4 Count 3, murder with use of a deadly weapon, guilty of second degree
5 murder; dated this 24th day of February, 2020; signed by Foreperson Angela
6 Segura.
7 Ladies and gentlemen of the jury, are these your verdicts as read so
8 say you one so say you all?
9 THE JURY PANEL IN UNISON: Yes.
10 THE COURT: Does either side wish to have the jury panel polled?
11 Mr. Pesci?
12 MR. PESCI: Not from the State, no, thank you, Your Honor.
13 THE COURT: Mr. Sanft?
14 MR. SANFT: No, Your Honor.
15 THE COURT: Mr. Ruggeroli?
16 MR. RUGGEROLI: Yes, Your Honor.
17 THE COURT: Okay, at this time, ladies and gentlemen, the Clerk is going to
18 ask a question. I just ask that you respond "yes" or "no."
19 THE CLERK: Juror Number 1, Vito Casucci, are these your verdicts as read?
20 JUROR NO. 1: Yes.
21 THE CLERK: Juror Number 2, Sharon Morrison, are these your verdicts as
22 read?
23 JUROR NO. 2: Yes.
24 THE CLERK: Juror Number 3, Aria Flores-Virgen, are these your verdicts as
25 read?

1 JUROR NO. 3: Yes.
2 THE CLERK: Juror Number 4, Suzanne Quinn, are these your verdicts as
3 read?
4 JUROR NO. 4: Yes.
5 THE CLERK: Juror Number 5, Camille Estrella, are these your verdicts as
6 read?
7 JUROR NO. 5: Yes.
8 THE CLERK: Juror Number 6, Danilo Rodriguez, are these your verdicts as
9 read?
10 JUROR NO. 6: Yes.
11 THE CLERK: Juror Number 7, Jonathan Salazar, are these your verdicts as
12 read?
13 JUROR NO. 7: Yes.
14 THE CLERK: Juror Number 8, Lisa Cook, are these your verdicts as read?
15 JUROR NO. 8: Yes.
16 THE CLERK: Juror Number 9, Markdelan Deperio, are these your verdicts as
17 read?
18 JUROR NO. 9: Yes.
19 THE CLERK: Juror Number 10, Roberta Bell, are these your verdicts as
20 read?
21 JUROR NO. 10: Yes.
22 THE CLERK: Juror Number 11, Angela Segura, are these your verdicts as
23 read?
24 JUROR NO. 11: Yes.
25 THE CLERK: Juror Number 12, Maria Moreno, are these your verdicts as

1 read?

2 JUROR NO. 12: Yes.

3 THE COURT: Okay. At this time the Clerk will record the verdicts in the
4 official record of the court. At this time, ladies and gentlemen, I am going to
5 discharge you from your service. You are no longer under the admonition not to
6 discuss the case with anyone. But you're under no obligation to discuss the case
7 with anyone.

8 You are going to go back to the jury deliberation room at which time
9 you'll be given further instructions but you are going to be discharged. I do allow
10 both sides, the attorneys, an opportunity to speak to the jury panel. But again, I just
11 want to make sure you understand, it's up to you whether you discuss this case with
12 anyone. I do want to thank you very much for your willingness to be here and your
13 service to this court. Thank you very much and you are discharged as jurors.

14 THE MARSHAL: Thank you. All rise for the exiting jury please.

15 Jurors, please go with Ms. Rocha.

16 [Outside the presence of the jury]

17 THE MARSHAL: Thank you, everyone, please be seated.

18 THE COURT: Okay. The record will reflect that the hearing is taking place
19 outside the presence of the panel. Does the State wish to be heard on their
20 custodial status?

21 MR. PESCI: Judge, we would ask that they be remanded without bail.

22 THE COURT: Mr. Sanft? Mr. Ruggeroli?

23 MR. SANFT: We'll submit, Your Honor.

24 MR. RUGGEROLI: Submit it.

25 THE COURT: Okay. They'll both be remanded without bail pending

1 sentencing and the matter is referred to Parole and Probation and it's set for
2 sentencing.

3 THE CLERK: April 15th, 8:30.

4 MR. RUGGEROLI: Could I have that date again please?

5 THE CLERK: April 15th, 8:30 a.m.

6 THE COURT: And I'm assuming the attorneys for both sides do want that
7 opportunity if the jury wants to speak to you? Yes?

8 MR. SANFT: Sure.

9 THE COURT: Okay. We'll let you know.

10 MR. PESCI: Yeah, we'll see.

11 MR. RUGGEROLI: Judge -- Judge, I apologize.

12 THE COURT: I'm sorry.

13 MR. RUGGEROLI: No, Mr. Wheeler is asking to request that he have some
14 form of bail.

15 THE COURT: Have some what?

16 MR. RUGGEROLI: Form of bail. I submitted it and I would just like to point
17 out the jury did come back with a lesser verdict. He's asking that you just have a
18 bail set for him pending sentencing.

19 THE COURT: Okay.

20 MR. PESCI: Judge, the State opposes it. The defendant's been convicted of
21 a non-probationable offense where he must go to prison for at least 10 years and a
22 potential life sentence. So there is a flight risk and concern from the State, and we
23 ask that it remain no bail.

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THE COURT: Okay. He'll be remanded without bail pending sentencing.
Thank you.

PROCEEDING CONCLUDED AT 2:13 P.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



Nevada Department of
Public Safety
Parole and Probation

PRESENTENCE INVESTIGATION REPORT

The Honorable Michelle Leavitt
Department XII, Clark County
Eighth Judicial District Court

Date Report Prepared: March 27, 2020

Prosecutor: Giancarlo Pesci, Chief DDA
Defense Attorney: James J. Ruggeroli, Appointed

PSI: 593206

I. CASE INFORMATION

Defendant: Davontae Amarri Wheeler
Case: C-17-328587-3
ID: 5909081
P&P Bin: 1005173921

PCN: 30302526
Offense Date: 08-09-17
Arrest Date: 08-15-17
Plea Date: 02-24-20, Jury Trial
Sentencing Date: 06-03-20

II. CHARGE INFORMATION

Offense: Count 1 – Conspiracy to Commit Robbery (F)
NRS: 200.380, 199.480 Category: B
NOC: 50147
Penalty: By imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years and may be further punished by a fine of not more than \$5,000.

Offense: Count 3 – Murder (Second Degree) (F)
NRS: 200.010, 200.030.2 Category: A
NOC: 50010
Penalty: By imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or for a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

THIS REPORT WAS PREPARED BY THE
PAROLE AND PROBATION DEPARTMENT
ON 03/27/2020 AT 09:47 AM

PREPARED TO _____

**PRESENTENCE INVESTIGATION REPORT
DAVONTAE AMARRI WHEELER
CC#: C-17-328587-3**

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III. DEFENDANT INFORMATION

Address: None reported	FBI: 112749WD6
City/State/Zip: Las Vegas, Nevada	SID: NV04467748
NV Resident: Yes	Aliases: Davontae Wheeler; Davontae Sayvon Wheeler; Davontae Amarri Sayvon Wheeler; Devonare Alexander; Devonte A. Wheeler; Davontae Wheeler; Davonte Wheeler; Davontae Amarrz Wheeler
SSN: None reported	Additional SSNs: 275-89-8303; 576-35-8631
POB: Dayton, Ohio	Additional DOBs: None
Date of Birth: 04-27-95	Additional POB: None
Age: 24	Alien Registration: N/A
Phone: (702) 717-6904 (message)	US Citizen: Yes
Driver's License: 1705059442 (Identification Card)	Notification Required per NRS 630.307: No
State: Nevada	
Status: Valid	

Identifiers:

Sex: M **Race:** B **Height:** 5'10" (SCOPE reflects: 5'8") **Weight:** 148 (SCOPE reflects: 136)
Hair: Brown (SCOPE reflects: Black) **Eyes:** Brown
Scars: Both ears, nose and tongue pierced (all unverified)
Tattoos (type and location): Versace logo, cross, Chinese writing, and designer logos on left arm sleeve; star on right shoulder; Superman symbol on chest; Michael Jordan logo on left leg; pyramid with Egyptian eye and "trust issues" on left hand; music notes on left thumb; "S" on left ring finger (all unverified)

Social History: The following social history is as related by the defendant on March 18, 2020, and is unverified unless otherwise noted:

Childhood/Family: Mr. Wheeler was raised by both parents in Dayton, Ohio; however, he lived in Chicago, Illinois, for three months when he was eight years old. The defendant's parents separated when he was 14 years old. He lived with his mother after their separation although he maintained contact with his father. No drug or alcohol abuse and no abuse or neglect was present during Mr. Wheeler's childhood. His father served a period of incarceration for drug possession.

Marital Status: Single

Children: (2) one son, age 4, and one daughter, age 2

Custody Status of Children: The defendant's children live with their respective mothers; his son in Las Vegas, Nevada, and his daughter in Chicago, Illinois.

Monthly Child Support Obligation: No child support obligation was reported.

Employment Status: Mr. Wheeler is unemployed. He worked as a full-time telemarketer for NV Energy through the AGR Group from February 2017 to August 15, 2017; his employment ended due to his arrest for the instant offense. Prior to that, the defendant worked as a full-time personal care assistant for Addus Home Health Care from February 2016 to February 2017.

**PRESENTENCE INVESTIGATION REPORT
DAVONTAE AMARRI WHEELER
CC#: C-17-328587-3**

Page 3

Number of Months Employed Full Time in 12 months Prior to Commission of Instant Offense: 12**Age at first arrest:** 19 or younger ☒ 20 - 23 ☐ 24 or older ☐**Income:** None reported**Other Sources:** None reported**Assets:** None reported**Debts:** None reported

Education: Mr. Wheeler completed the 12th grade; however, he did not have enough credits to graduate and he did not receive a high school diploma or GED. No further education or training was reported beyond this level. During school, the defendant was suspended for violating his school's dress code and he was expelled for marijuana use.

Military Service: None reported

Health and Medical History: The defendant stated he is in fair health. He was born prematurely and has a small bladder as a result of that which causes frequent urination. He does not take any medication for this condition.

Mental Health History: No mental health conditions were reported; however, the defendant suffers from nightmares and takes medication as a form of treatment.

Gambling History: None reported

Substance Abuse History: Mr. Wheeler first consumed alcohol at the age of 16. He continues to use the substance on rare occasions only with his last use 15 days prior to his arrest for the instant offense. The defendant first used marijuana at the age of 14. He continued to use the substance several times per week with his last use on the date of the instant offense. He had a Medical Marijuana Card in the State of California; however, that card has since expired; he spent approximately \$100.00 per week on marijuana. Mr. Wheeler first used cocaine at the age of 21. He continued to use the substance socially and on an occasional basis with his last use 15 days prior to his arrest for the instant offense. He used ecstasy twice at the age of 22. The defendant never used or abused any other illegal narcotic substances during his lifetime. He was under the influence of marijuana and ecstasy when he committed the instant offense. Mr. Wheeler stated he successfully completed a substance abuse program in 2017 while in custody at the Clark County Detention Center.

Gang Activity/Affiliation: None reported

**PRESENTENCE INVESTIGATION REPORT
DAVONTAE AMARRI WHEELER
CC#: C-17-328587-3**

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IV. CRIMINAL RECORD

As of March 27, 2020, records of the Las Vegas Metropolitan Police Department, the National Crime Information Center and the Federal Bureau of Investigation reflect the following information:

CONVICTIONS- FEL: 0 GM: 0 MISD: 6

INCARCERATIONS- PRISON: 0 JAIL: 3

SUPERVISION HISTORY:

CURRENT- Probation Terms: 0 Parole Terms: 0

PRIOR TERMS:

Probation- Revoked: 0 Discharged: Honorable: 0 Other: 0

Parole- Revoked: 0 Discharged: Honorable: 0 Other: 0

Adult:**Arrest Date:**

08-15-17
Las Vegas, NV
LVMPD

Offense:

1. Attempt Robbery, Enhancement/
Use of a Deadly Weapon (F)
 2. Conspiracy to Commit Robbery (F)
 3. Open Murder, Enhancement/Use of
a Deadly Weapon (F)
- RMD: 09-21-17
GJI: 12-14-17

Disposition:

Instant Offense, C-17-328587-3

The defendant has also been convicted in Nevada of the following misdemeanor offenses: Trespassing, Not Amounting to Burglary (2014), jail; Possession of Less Than One Ounce of Marijuana (2014), fine; Possession of Drug Not to be Introduced Into Interstate Commerce (2014), community service; Possession of Drug Not to be Introduced Into Interstate Commerce (2015), CTS; False Statement to or Obstructing Public Officer (2015), CTS; Possession of Drug Not to be Introduced Into Interstate Commerce (2016), probation.

Supplemental Information: N/A

Institutional/Supervision Adjustment: N/A

**PRESENTENCE INVESTIGATION REPORT
DAVONTAE AMARRI WHEELER
CC#: C-17-328587-3****Page 5****V. OFFENSE SYNOPSIS**

Records provided by the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office reflect that the instant offense occurred substantially as follows:

On August 9, 2017, officers were dispatched to a 911 call regarding the victim being shot in the driveway of his residence. Officers arrived to find the victim lying on the ground suffering from gunshot wounds. The victim was transported to a local hospital where he later succumbed to his injuries. Evidence at the scene consisted of three .45 caliber cartridge cases and nine .22 caliber cases. Officers located a witness who reported seeing four males standing in front of the residence prior to the shooting.

Detectives were brought in to start an investigation. The ensuing investigation identified two of the males as Deshawn Robinson, the co-offender, and his older brother, Demario Lofton-Robinson, a co-defendant. Mr. Lofton-Robinson admitted the original plan was to rob the victim; however, the victim fought back and was shot multiple times. Mr. Lofton-Robinson admitted to aiming a handgun at the victim's chest and firing one round. He confirmed his younger brother, Mr. Robinson, a juvenile, was there; however, he had limited information regarding the other two subjects. Both were interviewed, and Mr. Robinson confessed involvement in the murder and stated everyone was armed except for himself. He admitted as they moved towards the victim, the victim became afraid and turned around; that's when Mr. Robinson heard multiple gunshots.

The detectives were able to identify the third male subject as Raekwon Setrey Robertson, aka, Raekwon Robertson, a co-defendant. The investigation revealed that on August 8, 2017, Mr. Robertson contacted Mr. Robinson to plan a burglary, via Facebook messenger, indicating the four subjects would be involved. Detectives discovered Mr. Robertson had shared a link for a local news story regarding a robbery in which the suspects' photos were shown; the detectives identified one of the suspects in the photo as Mr. Robertson.

Detectives were able to identify the fourth male as the defendant, Davontae Amarri Wheeler, by looking through Mr. Robertson's Facebook account. On August 15, 2017, Mr. Robertson and Mr. Wheeler were arrested and taken into custody. As Mr. Wheeler was arrested detectives saw a handgun in plain view; a search warrant was obtained for Mr. Wheeler's residence where a semi-automatic .45 caliber handgun loaded with ammunition matching the cartridge recovered from the crime scene on August 9, 2017, was recovered. Mr. Wheeler was interviewed and admitted to being in the vehicle with Mr. Lofton-Robinson, stating he was going to purchase a handgun from Mr. Lofton-Robinson. Mr. Wheeler admitted to being in the convenience store to get change. He claims he then got into an argument with Mr. Lofton-Robinson regarding the price. Following the argument, he left the vehicle and took the bus home. He denied being present when anyone was shot and denied shooting anyone. He admitted to owning the .45 caliber handgun which he open carried whenever he felt unsafe.

On August 9, 2017, Mr. Robinson was arrested and transported to the Clark County Juvenile Hall where he was booked accordingly.

On August 9, 2017, Mr. Lofton-Robinson was arrested and transported to the Clark County Detention Center where he was booked accordingly.

On August 15, 2017, Mr. Robertson and Mr. Wheeler were arrested and transported to the Clark County Detention Center where they were booked accordingly.

**PRESENTENCE INVESTIGATION REPORT
DAVONTAE AMARRI WHEELER
CC#: C-17-328587-3**

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Co-Defendant/Offender Information: Demario Lofton-Robinson aka Demario Loftonrobinson is being charged with Conspiracy to Commit Robbery (F), Attempt Robbery with Use of a Deadly Weapon (F), and Murder with Use of a Deadly Weapon (F), in Case No. C-17-328587-1. On December 6, 2019, he was remanded to the custody of the Administrator of the Division of Mental Health Development Services.

Raekwon Setrey Robertson, aka, Raekwon Robertson was found guilty by a jury of First Degree Murder with Use of a Deadly Weapon (F), Conspiracy to Commit Robbery (F) and Robbery with Use of a Deadly Weapon (F), in Case No. C-17-328587-2. He is scheduled for sentencing in the Eighth Judicial District Court, Department XII on June 3, 2020.

Deshawn Robinson pled guilty to Conspiracy to Commit Robbery (F) and Attempt Robbery with Use of a Deadly Weapon (F), in Case No. C-18-335287-1. He is scheduled for a status check in the Eighth Judicial District Court, Department XII on June 11, 2020.

VI. DEFENDANT'S STATEMENT

☐ See Attached ☒ Defendant interviewed, no statement submitted ☐ Defendant not interviewed

VII. VICTIM INFORMATION/STATEMENT

Contact was attempted with the victim's (VC2257630) next of kin, and they have not responded as of this date. An information letter and claim form was provided to the next of kin; however, a claim has not been received. Therefore, the Division is unable to provide this information. If the requested information is received after this report has been submitted, it will be provided to the court at sentencing. Contact was attempted with the Clark County District Attorney's Victim Witness Assistance Center to verify if a speaker reservation was made; however, as of the date of this report they have not responded. Contact was made with Victims of Crime and Clark County Social Services and confirmed that funds have not been applied for counseling or related services. Therefore, the Division is not recommending restitution for the instant offense.

VIII. CUSTODY STATUS/CREDIT FOR TIME SERVED

Custody Status: In Custody, CCDC

CTS: 975 DAYS: 08-15-17 to 04-15-20 (CCDC)

IX. PLEA NEGOTIATIONS

N/A

X. RECOMMENDATIONS

Based on information obtained and provided in this report, the following recommendations are submitted.

190 Day Regimental Discipline Program: N/A

Deferred Sentence Per NRS 453.3363, 458.300,
458A.200, 176A.250, 176A.280: N/A

**PRESENTENCE INVESTIGATION REPORT
DAVONTAE AMARRI WHEELER
CC#: C-17-328587-3**

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FEES

Administrative Assessment: \$25.00	Chemical/Drug Analysis: N/A	DNA: \$150.00
DNA Admin Assessment: \$3.00		
Domestic Violence Fee: N/A	Extradition: N/A	Psychosexual Fee: N/A

SENTENCE**COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (F)**

Minimum Term: 24 months	Maximum Term: 72 months	Location: NDOC
Consecutive to/Concurrent With: N/A	Probation Recommended: No	Probation Term: N/A
Fine: None	Restitution: None	Mandatory Probation/ Prison: N/A

COUNT 3 – SECOND DEGREE MURDER (F)

Minimum Term: N/A	Maximum Term: For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.	Location: NDOC
Consecutive to: Count 1	Probation Recommended: N/A	Probation Term: N/A
Fine: N/A	Restitution: None	Mandatory Prison: Yes

☒ Pursuant to NRS 239B.030, the undersigned hereby affirms this document contains the social security number of a person as required by NRS 176.145.

☐ Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

Per the Nevada Revised Statutes, any changes to factual allegations in the Presentence Investigation Report may be ordered by the court within 180 days of the entry of Judgement of Conviction. The prosecuting attorney and defendant must agree to correct the contents.

The information used in the Presentence Investigation Report may be utilized reviewed by federal, state and/or local agencies for the purpose of prison classification, program eligibility and parole consideration.

In accordance with current Interstate Commission for Adult Offender Supervision rules and requirements, all felony convictions and certain [gross] misdemeanants are offense eligible for compact consideration. Due to Interstate Compact standards, this conviction may or may not be offense eligible for courtesy supervision in the defendant's state of residence. If not offense eligible, the Division may still authorize the offender to relocate to their home state and report by mail until the term of probation is complete and/or the case has been completely resolved.

**PRESENTENCE INVESTIGATION REPORT
DAVONTAE AMARRI WHEELER
CC#: C-17-328587-3**

Page 8

Respectfully Submitted,

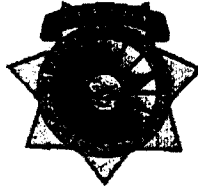
Anne K. Carpenter, Chief

Report prepared by: K. Lomprey
DPS Parole and Probation, Specialist III
sccourtservices@dps.state.nv.us

Approved by:

E. Lopez, DPS Parole and Probation Supervisor
Digitally signed by E. Lopez, DPS
Parole and Probation Supervisor
Date: 2020.03.30 15:43:19 -0700

E. Lopez, DPS Parole and Probation Supervisor
Southern Command, Las Vegas
sccourtservices@dps.state.nv.us

Steve Sisolak
GovernorNevada Department of
Public Safety
DEDICATION PRIDE SERVICEGeorge Togliatti
DirectorAnne K. Carpenter
Chief**DIVISION OF PAROLE AND PROBATION**

March 27, 2020

PROBATION SUCCESS PROBABILITY (PSP)**SCORE**

Offender:	WHEELER, DAVONTAE	Offense Score Total:	14
PSI #:	593206	Social Score Total:	19
BIN #:	1005173921	Raw Score Total:	12
Case #:	C328587-3	Total PSP Score:	33

Prior Criminal History:

Felony Convictions:	1 = None	Jail Sentences:	0 = 3 or more
Misdemeanor Convictions:	0 = 4 or more	Juvenile Commitments:	2 = None/or over 24
Pending, unrelated cases:	2 = None	Years free of Conv:	2 = 3 - 5
Subsequent Crim Hist:	2 = None	Prior Formal Suprv:	2 = None
Prior Incarcerations:	3 = None	Criminal Pattern:	0 = Same Type or Increased Severity

Present Offense:

Circumstances of Arrest:	2 = Non-prob.	Sophistication/Premeditation:	1 = Moderate
Type of Offense:	0 = Person	Plea Bargain Benefits:	2 = N/A
Psych or Medical Impact:	10 = Death	Financial Impact:	2 = Minimal or no loss
Weapon:	-4 = Used	CnOffender:	1 = Equal Responsibility
Controlled Substances:	3 = N/A	Motive:	1 = Under Influence/Alch or Drugs

Raw Score x 1.2 = Offense Score Total: 14**Social History:**

Age:	1 = Under 25	Family Situation:	0 = Disruptive
Employment/Program:	2 = Sporadic	Education:	1 = Incomplete
Financial:	1 = Inadequate	Military:	1 = Hon Discharge/No Mil Service
Employability:	1 = Could be developed		

Pre Sentence Adjustment:

Commitment/Ties:	2 = Local/In State	Resource Availability:	2 = Available
Program Participation:	2 = Completed	Substance Drug:	0 = Regular Use
Honesty/Cooperation:	2 = Candid	Substance Alcohol:	3 = Non-Problematic
Attitude/Supervision:	1 = Indifferent	Attitude/Offense:	0 = Denies

Social Score Total: 19**Offense Score + Social Score = PSP TOTAL SCORE: 33**

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF PAROLE AND PROBATION
SENTENCE RECOMMENDATION SELECTION SCALE☒ Felony☐ GM

Defendant's Name: Davontae Amarri Wheeler

CC# C-17-328587-3

CT: 1	Offense: Conspiracy to Commit Robbery (F)	200.380, 199.480 NRS:	Category: B
24 - 72 months NDOC Recommendation:		<input type="checkbox"/> Probation Only <input type="checkbox"/> Non-Probation	
CT: 3	Offense: Murder (Second Degree) (F)	209.010, 200.030, 2 NRS:	Category: A
For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served. Count 3 to run consecutive to Count 1 Recommendation:		<input type="checkbox"/> Probation Only <input checked="" type="checkbox"/> Non-Probation	
CT:	Offense:	NRS:	Category:
Recommendation:		<input type="checkbox"/> Probation Only <input type="checkbox"/> Non-Probation	
CT:	Offense:	NRS:	Category:
Recommendation:		<input type="checkbox"/> Probation Only <input type="checkbox"/> Non-Probation	

PSP TOTAL SCORE: 33 0-54 = Denial ☒ 55-64 = Borderline ☐ 65-100 = Probation ☐

DEVIATION JUSTIFICATION In to OR Out to Probation ☐ In / Prison ☐ Out / Probation ☐

Raw Score (Offense): 12 Diversion Recommended: 453 ☐ 458 ☐ Veterans ☐ Mental Health ☐ Other ☐

(transfer score to corresponding risk range below)

SENTENCE STRUCTURE	CATEGORY Score	LOW RANGE 39-49 <input type="checkbox"/>	LOW - MEDIUM 28-36 <input type="checkbox"/>	MEDIUM RANGE 17-27 <input type="checkbox"/>	MEDIUM - HIGH 6-16 <input checked="" type="checkbox"/>	MAXIMUM ≤ 5 (or less) <input type="checkbox"/>
964 days Begin sentence consideration at request for month sentence and adjust based on factors delineated	Gross Misdemeanor (OM)	Factors to justify greater sentence: Prior criminal history, harm to victim, issues can be addressed via probation, restitution will be ordered. Factors to justify lesser sentence and/or fine only: Minimal/no financial loss, minimal/no prior criminal history, age of offender, out of state offender, no issues to be addressed via probation, time in custody prior to sentencing, contemplated in plea negotiations				
1 - 4 years <input type="checkbox"/>	Category D	12-30 months <input type="checkbox"/>	12-32 months <input type="checkbox"/>	12-34 months <input type="checkbox"/>	12-48 months <input type="checkbox"/>	19-48 months <input type="checkbox"/>
1 - 5 years <input type="checkbox"/>	Category C	12-32 months <input type="checkbox"/>	12-34 months <input type="checkbox"/>	12-36 months <input type="checkbox"/>	18-60 months <input type="checkbox"/>	24-60 months <input type="checkbox"/>
1 - 6 years <input checked="" type="checkbox"/>	Category B	12-36 months <input type="checkbox"/>	12-36 months <input type="checkbox"/>	12-48 months <input type="checkbox"/>	24-72 months <input checked="" type="checkbox"/>	28-72 months <input type="checkbox"/>
1 - 10 years <input type="checkbox"/>	Category B	12-36 months <input type="checkbox"/>	12-48 months <input type="checkbox"/>	16-72 months <input type="checkbox"/>	36-120 months <input type="checkbox"/>	48-120 months <input type="checkbox"/>
1 - 15 years <input type="checkbox"/>	Category B Enhancement	12-48 months <input type="checkbox"/>	24-60 months <input type="checkbox"/>	36-96 months <input type="checkbox"/>	48-180 months <input type="checkbox"/>	60-180 months <input type="checkbox"/>
2 - 10 years <input type="checkbox"/>	Category B	24-60 months <input type="checkbox"/>	28-72 months <input type="checkbox"/>	32-84 months <input type="checkbox"/>	36-120 months <input type="checkbox"/>	48-120 months <input type="checkbox"/>
2 - 15 years <input type="checkbox"/>	Category B	24-72 months <input type="checkbox"/>	32-84 months <input type="checkbox"/>	36-120 months <input type="checkbox"/>	48-180 months <input type="checkbox"/>	66-180 months <input type="checkbox"/>
3 - 10 years <input type="checkbox"/>	Category B	36-90 months <input type="checkbox"/>	40-100 months <input type="checkbox"/>	42-110 months <input type="checkbox"/>	44-120 months <input type="checkbox"/>	48-120 months <input type="checkbox"/>
3 - 15 years <input type="checkbox"/>	Category B	36-96 months <input type="checkbox"/>	42-120 months <input type="checkbox"/>	48-120 months <input type="checkbox"/>	60-180 months <input type="checkbox"/>	72-180 months <input type="checkbox"/>
5 - 15 years <input type="checkbox"/>	Category B	60-150 months <input type="checkbox"/>	64-162 months <input type="checkbox"/>	68-174 months <input type="checkbox"/>	72-180 months <input type="checkbox"/>	72-180 months <input type="checkbox"/>
1 - 20 years <input type="checkbox"/>	Category B	12-48 months <input type="checkbox"/>	18-96 months <input type="checkbox"/>	24-120 months <input type="checkbox"/>	36-240 months <input type="checkbox"/>	72-240 months <input type="checkbox"/>
2 - 20 years <input type="checkbox"/>	Category B	24-60 months <input type="checkbox"/>	30-96 months <input type="checkbox"/>	36-120 months <input type="checkbox"/>	48-240 months <input type="checkbox"/>	84-240 months <input type="checkbox"/>
3 - 20 years <input type="checkbox"/>	Category B	36-72 months <input type="checkbox"/>	42-108 months <input type="checkbox"/>	54-144 months <input type="checkbox"/>	66-240 months <input type="checkbox"/>	96-240 months <input type="checkbox"/>
5 - 20 years <input type="checkbox"/>	Category B & habitual offender	60-150 months <input type="checkbox"/>	64-162 months <input type="checkbox"/>	72-174 months <input type="checkbox"/>	84-240 months <input type="checkbox"/>	96-240 months <input type="checkbox"/>
Life w/o without parole <input checked="" type="checkbox"/>	Category A & habitual offender	Life/possibility of parole after 20 years <input type="checkbox"/>	Life/possibility of parole after 20 years <input type="checkbox"/>	Life w/possibility of parole <input type="checkbox"/>	Life w/possibility of parole <input checked="" type="checkbox"/>	Life with no possibility of parole <input type="checkbox"/>

Other Areas of Concern (Check all that apply):

- ☐ Low Intelligence / Cognitive Difficulties ☐ Physical Handicap ☐ Mental Health Issues
- ☐ Reading and Writing Limitations / Significant Learning Disabilities
- ☐ Other: _____

IMPORTANT: The factors and areas of concern identified above should not result in a negative impact when formulating a sentencing recommendation. If any of these factors apply to an offender, a downward sentence deviation towards leniency may be appropriate.

ANY RECOMMENDATION THAT DEVIATES FROM SUGGESTED SENTENCE MUST INCLUDE JUSTIFICATION (+) OR (-)
DEVIATION JUSTIFICATION:

K. Lomprey, Specialist III

Digitally signed by K. Lomprey, Specialist III
Date: 2020.03.27 13:30:46 -0700

Specialist:

5029

CID #

Friday, March 27, 2020

Date

E. Lopez, OPS Parole and Probation Supervisor

Digitally signed by E. Lopez, OPS Parole and Probation Supervisor
Date: 2020.03.30 15:43:47 -0700

4706

CID #

Monday, March 30, 2020

Date

Supervisor:

Lock All Fields

Page 2 of 2



To All Medical Providers:

During this unprecedented global health crisis due to COVID-19 outbreak, we are committed to doing our part in providing critical imaging services for our patients who rely on our services. We are taking the necessary steps to ensure the safety and health of all our patients and staff.

We are mindful that all other disease process and injuries are not going to stop because of this pandemic. We are aware that we play a critical role in the diagnosis, management, and treatment of diseases for our patients.

We have already implemented a COVID-19 screening process at all LVR facilities. Patients are screened over the phone prior to arrival and are also evaluated for possible virus exposure before the time of their exam. Patients exhibiting high risk symptoms will be directed to their PCP for further evaluation and reschedule their exam when cleared by their PCP.

To help accommodate patients during this tough and unsure time, we will continue to remain open for all modalities Monday- Friday from 8am-5pm and MRI hours Monday- Friday from 8am-11pm; Saturday & Sunday from 8am-5pm.

We hope everyone stays safe and healthy; we will all get through this together. If you have any questions or concerns, please don't hesitate to contact us at 702-254-5004.

Sincerely,

Las Vegas Radiology Team

Steven B. Wolfson

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

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 DAVONTAE WHEELER,
14 #5909081
15 Defendant.

CASE NO: C-17-328587-3

DEPT NO: XII

16 **ORDER**

17 DATE OF HEARING: January 15, 2020
18 TIME OF HEARING: 08:30 A.M.

19 THIS MATTER having come on for hearing before the above entitled Court on the
20 15th day of January, 2020, the Defendant being present, REPRESENTED BY JAMES J.
21 RUGGEROLI, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District
22 Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and the Court
23 having heard the arguments of counsel, based on the pleadings and good cause appearing
24 therefor,

25 ///

26 ///

27 ///

28 ///

RECEIVED

FEB 27 2020

DEPT.12

W:\2017\2017F\143\69\17F14369-ORDR-(WHEELER_DAVONTAE)-001.DOCX

1 IT IS HEREBY ORDERED that DEFENDANT'S MOTION TO SUPPRESS, OR, IN
2 THE ALTERNATIVE, MOTION FOR JACKSON V. DENNO HEARING COURT
3 ORDERED, Motion GRANTED.

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

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

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

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

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

18 DATED this 27 day of February, 2020.

19
20 
DISTRICT JUDGE

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

23
24 BY /s/ GIANCARLO PESCI
25 GIANCARLO PESCI
26 Chief Deputy District Attorney
27 Nevada Bar #007135

28 17F14369C/jh/MVU

Steven D. Grierson

1 **JAMES J. RUGGEROLI**
2 James J. Ruggeroli, Esq.
3 Nevada Bar No. 7891
4 601 South 7th Street
5 Las Vegas, Nevada 89128
6 Telephone: (702) 258-2022
7 *Attorney for Defendant*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

8 STATE OF NEVADA

9 Plaintiff,

Case No: C-17-328587-3

10 vs.

Dept No: XII

11 DAVONTAE WHEELER,
12 #2778458,

13 Defendant.

ORDER FOR EXPEDITED TRANSCRIPTS OF PROCEEDINGS

14 It appearing to the satisfaction of the Court, and good cause appearing therefor,

15 IT IS HEREBY ORDERED that the certified court reporter prepare at the State's expense a
16 transcript of Jackson v. Denno Hearing heard on February 11, 2020 in Department XII.

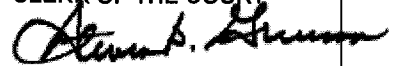
17 IT IS HEREBY FURTHER ORDERED that said transcript shall be completed by February 18,
18 2020.

19 DATED this 18 day of February 2020.

20
21
22 *[Signature]*
23 DISTRICT COURT JUDGE

24 SUBMITTED BY:
25 **JAMES J. RUGGEROLI**

26 By /s/ James J. Ruggeroli
27 James J. Ruggeroli, Esq.
28 Nevada Bar No. 7891
601 South 7th Street
Las Vegas, Nevada 89101



1 SANDRA L. STEWART
2 Attorney at Law
3 Nevada Bar No. 6834
4 1361 Babbling Brook Court
5 Mesquite, Nevada 89034
6 (702) 526-1867

7 Attorney for DAVONTAE WHEELER

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 STATE OF NEVADA,

11 Plaintiff,

12 v.

13 DAVONTAE WHEELER,

14 Defendant.

DISTRICT COURT NO.: - C-17-328587-3

GRAND JURY NO.: - 17BGJ017C

SUPREME COURT NO.: - TBD

**ORDER APPOINTING APPELLATE
COUNSEL**

15 The district court having determined that DAVONTAE WHEELER wishes to appeal from
16 his judgment of conviction, that he is indigent, and good cause appearing therefor,
17

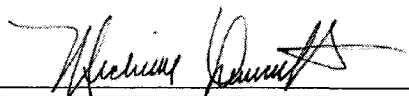
18 **IT IS HEREBY ORDERED AS FOLLOWS:**

19 1. SANDRA L. STEWART, Esq. be, and hereby is, appointed as counsel to
20 represent DAVONTAE WHEELER at the appellate level;

21 2. The clerk of the Eighth District Judicial Court shall provide a copy of the entire
22 court file to Ms. Stewart; and
23

24 3. All requested transcripts shall be prepared and served on Ms. Stewart.

25 Dated this 5th day of June, 2020.

26 
27 Hon. MICHELLE LEAVITT
28 Judge, Eighth Judicial District Court

June 3, 2020

Steven D. Grierson

1 **SANDRA L. STEWART**
2 Attorney at Law
3 Nevada Bar No. 6834
4 1361 Babbling Brook Court
Mesquite, Nevada 89034
(702) 526-1867

5 Attorney for DAVONTAE WHEELER

6
7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10
11 STATE OF NEVADA,
12 Plaintiff,
13 v.
14 DAVONTAE WHEELER,
15 Defendant.

DISTRICT COURT NO.: - C-17-328587-3
GRAND JURY NO.: - 17BGJ017C
SUPREME COURT NO.: - TBD
**ORDER APPOINTING APPELLATE
COUNSEL**

16 The district court having determined that DAVONTAE WHEELER wishes to appeal from
17 his judgment of conviction, that he is indigent, and good cause appearing therefor,

18 **IT IS HEREBY ORDERED AS FOLLOWS:**

- 19 1. **SANDRA L. STEWART, Esq.** be, and hereby is, appointed as counsel to
20 represent DAVONTAE WHEELER at the appellate level;
21
22 2. The clerk of the Eighth District Judicial Court shall provide a copy of the entire
23 court file to Ms. Stewart; and
24
25 3. All requested transcripts shall be prepared and served on Ms. Stewart.

26 Dated this 5th day of June, 2020.

27 *Michelle Leavitt*
Hon. MICHELLE LEAVITT
Judge, Eighth Judicial District Court

28 June 3, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2020, I served a copy of the:
**DAVONTAE WHEELER REQUEST FOR FULL TRANSCRIPTS OF DISTRICT
COURT PROCEEDINGS TO:**

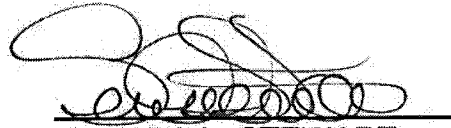
KRISTINE SANTI

by mailing a copy via first class mail, postage thereon fully prepaid, to the following:

KRISTINE SANTI, COURT RECORDER
EIGHTH JUDICIAL DISTRICT COURT
200 LEWIS AVENUE, DEPT. 12, CTRM. 14D
LAS VEGAS, NV 89155

and by e-filing the document with the Eighth Judicial District Court via Wiznet, thereby
providing access to a copy to all other interested parties, including but not limited to, the
following:

STEVEN B. WOLFSON, ESQ.
CLARK COUNTY DISTRICT ATTORNEY
200 LEWIS AVENUE
LAS VEGAS, NV 89155-2212


SANDRA L. STEWART



JAMES J. RUGGEROLI
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
Telephone: (702) 258-2022
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Plaintiff,

Case No. C-17-328587-3

vs.

Dept No. XII

DAVONTAE AMARRI WHEELER,
#5909081.

Defendant.

DEFENDANT WHEELER'S SENTENCING MEMORANDUM

COMES NOW Defendant, DAVONTAE AMARRI WHEELER, through JAMES J. RUGGEROLI, ESQ., and submits the following Sentencing Memorandum.

This Memorandum is made and based upon all the papers and pleadings on file herein, and oral argument at the time of hearing.

DATED this 4th day of June, 2020.

JAMES J. RUGGEROLI

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The jury in this matter has found Mr. Wheeler guilty of Count 1 – Conspiracy to Commit Robbery and Count 3 Murder (Second Degree). This Honorable Court must now determine the appropriate sentence. For the reasons set forth below, Mr. Wheeler respectfully makes the following request for the minimum sentence in this case.

III. LAW AND ARGUMENT

NRS 176.0131 provides:

The Legislature hereby finds, and declares to be the public policy of this State, that:

1. Sentencing and corrections policies should embody fairness, consistency, proportionality and opportunity.
2. The laws of this State should convey a clear and purposeful rationale regarding sentencing and corrections. The statutes governing criminal justice should articulate the purpose of sentencing, and related policies and practices should be logical, understandable and transparent to stakeholders and the public.
3. A continuum of sentencing and corrections options should be available, with imprisonment reserved for the most serious offenders and adequate community programs for diversion and supervision of other offenders.
4. Sentencing and corrections policies should be resource sensitive as those policies may impact costs, inmate populations and public safety. Criminal justice agencies should strive to effectively measure costs and benefits.
5. Criminal justice information should be a foundation for effective data driven sentencing and corrections policies.
6. Sentencing and corrections policies should reflect current circumstances and needs.
7. Strategies to reduce crime and victimization should involve prevention, treatment, health and labor and must endeavor to utilize all available federal, academic and private resources and expertise.

Furthermore, although the jury did not convict Mr. Wheeler of first-degree murder, mitigating factors and circumstances from NRS 200.035 may be referenced to provide some context for sentencing in this matter. NRS 200.035 provides:

1 Murder of the first degree may be mitigated by any of the following
2 circumstances, even though the mitigating circumstance is not sufficient to
3 constitute a defense or reduce the degree of the crime:

- 4 1. The defendant has no significant history of prior criminal activity.
- 5 2. The murder was committed while the defendant was under the
6 influence of extreme mental or emotional disturbance.
- 7 3. The victim was a participant in the defendant's criminal conduct
8 or consented to the act.
- 9 4. The defendant was an accomplice in a murder committed by
10 another person and the defendant's participation in the murder was
11 relatively minor.
- 12 5. The defendant acted under duress or under the domination of
13 another person.
- 14 6. The youth of the defendant at the time of the crime.
- 15 7. Any other mitigating circumstance.

16 In Mr. Wheeler's case, there are a number of circumstances and factors that the defense
17 respectfully requests this court consider when determining the appropriate sentence to impose
18 concerning his Second Degree Murder and Conspiracy to Commit Murder convictions:

- 19 1. Mr. Wheeler has no significant criminal history; he has no prior felony or gross
20 misdemeanor convictions;
- 21 2. Although Mr. Wheeler has always asserted his innocence, police reports
22 demonstrate that he claimed to have been high at prior to the shooting in this case;
- 23 3. Mr. Wheeler was found by the jury to be an accomplice in the killing; the jury
24 clearly found that he did not shoot Mr. Valenzuela because it acquitted him of the deadly
25 weapon enhancement;
- 26 4. With respect to Mr. Valenzuela's memory and to his family, Mr. Wheeler was not
27 found in this case to have been a direct participant in the murder, and a strong argument has
28 been made that he was not a participant in the killing;
- 29 5. Mr. Wheeler was only 22 years old at the time of this event;
- 30 6. Mr. Wheeler has strong family and friend support; See a true and accurate copy of
31 letters of support from Mr. Wheeler's family and friends attached hereto as **Exhibit A**;
- 32 7. Mr. Wheeler is a loving father of two young children;
- 33 8. Mr. Wheeler has a 75-year-old disabled grandmother;

1 9. Mr. Wheeler's mother has poor health and he previously served as her caretaker;

2 10. Mr. Wheeler helped support his family, and they need him when he is released;

3 11. He has a history of employment, including serving as a full-time personal care
4 assistant for Addus Home Health Care from 2016-2017;

5 12. He previously contributed to his church and community;

6 12. He has changed and matured since going into custody on August 15, 2017;

7 13. He has plans for his future upon release, including helping young African
8 American's stay out of trouble and stay out of jail, contributing to his community and church,
9 working and taking care of his children, and loving and caring for his family;

10 14. Parole and Probation is recommending a 24-72 month sentence on Count 1 and a
11 10-25 year definite term on Count 2 to be run consecutive;

12 15. Mr. Wheeler, though maintaining his innocence in the killing, would very
13 respectfully like to express his condolences to Mr. Valenzuela's family;

14 16. Mr. Wheeler has spent approximately 1025 days (8-15-17 to 6-5-20) in custody.

15 For the mitigating factors provided above, Mr. Wheeler respectfully requests that this
16 court impose a 24-72 month sentence on Count 1 and a definite term of 10-25 years in prison to
17 be run *concurrently*.

18 DATED this 4th day of June, 2020.

19 JAMES J. RUGGEROLI

20 By: /s/ James J. Ruggeroli
21 James J. Ruggeroli, Esq.
22 Nevada Bar No. 7891
23 400 South 4th Street, Suite 280
24 Las Vegas, Nevada 89101
25 Attorney for Defendant

26 **CERTIFICATE OF SERVICE**

27 I certify that on the 4th day of June, 2020, I emailed a copy of this motion to:
28 motions@clarkcountyda.com.

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

Page 4 of 4

JAMES J. RUGGIEROLI, ESQ.

400 South 4th Street, Suite 280
Las Vegas, Nevada 89101

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

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EXHIBIT A

Dear Judge

Im writing in regards to My Son
DaVontae Wheeler Sr.

Im asking that my Sons life
and Future be taken into Consideration
at his Sentencing. He wasnt a bad Kid
or Adolescent. He has a 75yr grandmother
Disabled Mother and 2 Small Children
2yrs + 5yrs, His Family Needs him he's
a good Son, and a Great Father
I would just ask as a mother
that my grandchildren have a chance
to see their Father outside of jail
and being given a real chance
at the Magna Carta.

Sincerely Nicole Hill (Mother)
1400 e. Reno
L.V. N.V. 89119

Dear Jury,

I am writing in regard to Davontae Wheeler, inmate #5909081.

It is hard for this family to have their love one incarcerated. Children are growing up without their father and mother of his children is longing for the partnership and support of their family member. Davontae Wheeler has a strong support system through his family, we are taking every possible step to gather support to aid in release from prison.

Davontae Wheeler has served the adequate time for this case. He is extremely remorseful for the victim family. The years spent incarcerated has changed his life forever. He will work diligently on making a difference in the world by keeping young African American men out of jail. He needs to get back to his family and to his community. Allow Davontae Wheeler to work, raise his children, pay taxes and support his family while also sparing taxpayers the unnecessary \$60,000 annual cost for incarceration.

Sincerely,

The Hills

MUSTARD SEED

Luke 13:18-19



FAITH OF A MUSTARD SEED CHRISTIAN MINISTRIES



Senior Pastor
Rev. Norniece Norment

Overseer
Rev. David F. Norment

And the Lord said, If you
had faith as a grain of
mustard seed, you might
say to this sycamine tree,
Be you plucked up by the
root...

—Luke 17:6

June 1, 2020

RE: Davontae Wheeler
ID#: 5909081
Case#c17328587-3
Court Rm:14d

To The Honorable Judge,

I am writing this character letter on behalf of Davontae Wheeler. It is with compassion that I plea to the court on his behalf. I have known Davontae Wheeler and his family for over 22 years.

He has always been a polite and caring young man. He has made some mistakes in his life, in which he was making a great effort to turn his mistakes into positive change. He is the loving father of two beautiful children ages 2 and 5 years old, whom he loves and cherish.

He is a loving and caring son. He was the caretaker of his mother after she became seriously ill and was not able to care for herself. He is the youngest of three children and was setting an example to his siblings and other family members on working hard to provide for his family.

Davontae Wheeler is deeply missed by his mother, children, and family near and far. I believe that he has truly learned a valuable lesson on the decisions he makes in life and the type of people whom he chooses to associate with.

Although he must pay the price for his mistakes in life and in the court of law. It is my hope that he will be looked upon as the caring young man he truly is and who can be reformed with the possibility of a shorter sentence.

It is my hope that you take note of my letter in the sentencing phase of Davontae Wheeler and have leniency.

Sincerely,

Norniece Norment,
Senior Pastor,
702-292-9235

Church Correspondence / Mailing Address

3053 W. Craig Rd. Ste E - #186, North Las Vegas, Nevada 89032

Telephone Number (702) 292-9235

Email Address: faithofamustardseedcm@gmail.com

To whom it may concern

My name is Antonia Pinerio, I have known Davontae Withers for over 6 years now. I have always known him to help out in different churches as well as trying to help the community. He is always with a job, consistently working and providing for his household. He has always shown extreme responsibility with his children always making them a top priority and still being able to maintain & assess any issues that come his way. He has always been there for me if me and my children needed anything he was & has been there to help. He continues to make a great impact on anyone placed in his life by providing the support and guidance needed for their situation. Davontae constantly shows growth in every relationship established and always portrays the growth within himself.

Sincerely

Antonia Pinerio

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

June 11, 2020

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

June 11, 2020 12:00 PM Sentencing

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. Ruggeroli	Attorney for Defendant
Parker Brooks	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

DEFT WHEELER ADJUDGED GUILTY of COUNT 1 CONSPIRACY TO COMMIT ROBBERY (F) and COUNT 3 MURDER WITH USE OF A DEADLY WEAPON (F). Arguments by counsel. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$8,729.53 restitution to be paid jointly and severally with Co-Defendant, \$150.00 DNA Analysis fee including testing to determine genetic markers and \$3.00 DNA Collection fee, Deft. SENTENCED as follows:

as to COUNT 1 to a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS

and as to COUNT 3 to LIFE with a MINIMUM parole eligibility of TEN (10) YEARS, CONSECUTIVE to COUNT 1, for an AGGREGATE SENTENCE of a MINIMUM PAROLE ELIGIBILITY after ONE HUNDRED FORTY-FOUR (144) MONTHS and a MAXIMUM of LIFE with ONE THOUSAND THIRTY-TWO (1,032) DAYS credit for time served. COURT FURTHER ORDERED, COUNT 2 DISMISSED pursuant to the Verdict.

Mr. Ruggeroli moved to withdraw. COURT SO ORDERED.

NDC



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. C-17-328587-2

C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, JUNE 11, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
SENTENCING**

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney
PARKER BROOKS
Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 11, 2020, 12:48 P.M.

2 * * * * *

3 THE COURT: State of Nevada versus Raekwon Robertson and Davontae
4 Wheeler, case C328587.

5 THE CLERK: All of the parties are on Bluejeans, Judge.

6 THE COURT: Okay. So Mr. Robertson and Mr. Wheeler are both present
7 and in custody.

8 Mr. Robertson, is there any legal cause or reason why judgment should
9 not be pronounced against you at this time?

10 DEFENDANT ROBERTSON: No.

11 THE COURT: Mr. Robertson, any reason why we shouldn't proceed with
12 sentencing?

13 DEFENDANT ROBERTSON: No, there is not.

14 THE COURT: Okay. By virtue of the jury verdict and guilty plea agreement in
15 this matter, I hereby adjudicate you guilty of Counts 1 and 4, conspiracy to commit
16 robbery; Count 2, attempt robbery with use of a deadly weapon; Count 3, first
17 degree murder with use of a deadly weapon; and Count 5, robbery with use of a
18 deadly weapon.

19 Does the State wish to be heard on this?

20 MR. PESCI: Yes, Your Honor. I would note that I believe we have online a
21 victim speaker.

22 THE COURT: Okay.

23 MR. PESCI: Which is John Relato, and so I would ask that pursuant to
24 statute he would be able to go last.

25 THE COURT: Okay. And is the victim appearing by Bluejeans?

1 MR. PESCI: I saw -- I thought I saw his name listed, but, yes.

2 THE COURT: Okay.

3 MR. RELATO: Yes, sir. I'm in Bluejeans right now.

4 THE COURT: Okay. Thank you.

5 Go ahead, Mr. Pesci.

6 MR. PESCI: Thank you very much, Your Honor. You know the case, so I
7 won't go over the facts again with you. In looking at the Department of Parole and
8 Probation's recommendation, and here's the thing I want to underscore, the State
9 stands by its recommendation and negotiation as far as Counts 4 and 5. Those
10 counts are to run concurrent to what you give for Counts 1, 2, and 3. I think the
11 sentencing put forth by Parole and Probation as far as Counts 4 and 5 are
12 appropriate as far as that length of sentence and as far as 4 and 5 running
13 consecutive to each other. But they should, altogether, run concurrent.

14 When you look at what your decision is as far as the sentence on the
15 murder, P and P is recommending a life sentence and that's appropriate as a life
16 has been taken. As far as the deadly weapon enhancement, they're looking at a
17 36-to-240 months. And so when you take into consideration this particular
18 defendant, you know, he really does not have much of a criminal history before.
19 Obviously, that inures to his benefit in this particular situation when you're looking at
20 that deadly weapon enhancement. The problem is, however, is the other case,
21 Counts 4 and 5, I mean, it's a part of this case, but Counts 4 and 5 where he did use
22 a weapon in another case.

23 And then I think what's really, really telling and why you should deviate
24 from the Division's recommendation and go higher on the deadly weapon
25 enhancement is in fact his conviction under C347711 where, as I read it, it was an

1 attempt possession of a dangerous weapon or facsimile by incarcerated person. So
2 that's a charge he picked up in the Detention Center after his arrest on this homicide
3 prior to our sentencing. From Odyssey, it appears he was on calendar today on
4 that, so I'm not sure if he was adjudicated, that was also to run concurrent. So, but I
5 think that kind of speaks to the risks associated with him and the underlying facts as
6 far as, you know, that first shot is the shot that comes from his weapon that
7 incapacitates the victim and puts him in the position where he gets that head shot.

8 And so I think it would be appropriate to go higher on the deadly
9 weapon enhancement and otherwise, those -- those Counts 1, 2, and 3, they should
10 run consecutive and we'll submit it to your discretion.

11 And right now do you want me to just speak about Raekwon
12 Robertson's?

13 THE COURT: Sure, yeah, just Raekwon.

14 MR. PESCI: The other thing, for Mr. Robertson's benefit, I -- I don't know how
15 to answer his letters. He's written me a letter. He was looking for the P.S.I. I just
16 wanted to let him know, I cannot communicate with him because he's represented
17 by counsel. But as soon as I got the letter, I sent a copy of the P.S.I. to Mr. Sanft
18 who I believe already had it. But it's just I'm not allowed to talk to him and so that's
19 why I couldn't bring him his P.S.I., but I sent it to his counsel.

20 THE COURT: Thank you. Thank you.

21 Mr. Robertson, do you want to say anything?

22 DEFENDANT ROBERTSON: Yeah, I received my P.S.I. yesterday, I sent the
23 letter on Friday. I basically sent him the letter because I couldn't get in contact with
24 my attorney and I didn't want my sentencing day to get pushed back because I
25 didn't have my P.S.I.

1 THE COURT: Okay. Do you want --

2 MR. PESCI: Which he said, and I just -- I just didn't -- I couldn't respond or
3 communicate with him so I wanted to explain that to him here today.

4 THE COURT: Okay.

5 DEFENDANT ROBERTSON: That's fine.

6 THE COURT: Mr. Robertson, are you okay to go forward or do you need
7 additional time?

8 DEFENDANT ROBERTSON: No, I got it. I got it. I received it yesterday.

9 THE COURT: Okay. Do you want to say anything?

10 DEFENDANT ROBERTSON: No. I'm -- no.

11 THE COURT: Okay. Mr. Sanft?

12 MR. SANFT: Do you mind if I --

13 THE COURT: No, go ahead.

14 MR. SANFT: Your Honor, I think in this matter with regards to Mr. Robertson
15 the Court has -- had heard the facts in this case during the course of the trial. I've
16 spoken with Mr. Robertson and explained to him what his options are at this
17 particular point and based upon the recommendation of P and P, you know, the
18 bigger issue that we have is that he was convicted of a first degree kid -- first degree
19 murder with use of a deadly weapon, so obviously the suggestion at this particular
20 point is a life-tail or a life sentence. The question then becomes whether or not it's
21 20-to-life plus a consecutive whatever that looked like on the other end.

22 We're going to submit everything to the Court. And the reason for that
23 is this, Mr. Robertson is intent on filing an appeal, is intent on going forward with that
24 aspect of it. I believe that ultimately what we have here is a situation where
25 Mr. Robertson's in a position where the reason why he's not talking to the Court or

1 saying anything to the Court is because he wants to reserve that -- that right.

2 With that being said, the suggestion that I think -- at this particular point
3 is that we don't run the sentences consecutive to one another in terms of the
4 charges, we instead focus on I believe it's Count 3, which is the --

5 THE COURT: The murder.

6 MR. SANFT: -- the murder with use and we run all the other sentences
7 concurrent to that -- to that charge. That would be my only request at this particular
8 point.

9 THE COURT: Okay.

10 MR. SANFT: And we'll submit it.

11 THE COURT: Thank you.

12 MR. PESCI: And, Judge, if I could really fast, I apologize, he also has eight
13 additional days credit for time served based on the timing of our sentencing. So it
14 looks like the P.S.I. says 1,024 as of June 3rd, but now we're at the 11th, and so he
15 should -- I think that adds up to 1,032. Is that right, Mr. Sanft?

16 MR. SANFT: We have no objection to 1,032, Your Honor.

17 THE COURT: Okay. And do you want to call your first speaker?

18 MR. PESCI: Or do you want him at the end, Your Honor? Because we still
19 have to do Mr. Wheeler and pursuant to statute, the speaker gets to go last.

20 THE COURT: Okay. All right. I'm assuming you have no objection to that?

21 MR. SANFT: No, Your Honor.

22 THE COURT: Okay. Mr. Robertson, in accordance with the laws of the State
23 of Nevada, this Court does now sentence you as follows, in addition to the
24 administrative assessment, the D.N.A. fee, and the collection fee, you'll be required
25 to submit to genetic marker testing if you've not already done so. As to Count 1, the

1 Court's going to sentence you to 24 to 72 months in the Nevada Department of
2 Corrections. As to Count 2, the Court's going to sentence you to 48 to 120 months,
3 plus a consecutive 48 to 120 months for the deadly weapon enhancement. As to
4 Count 3, the Court's going to sentence you to life in the Nevada Department of
5 Corrections with parole eligibility beginning after a minimum of 20 years has been
6 served, and an 8-to-20 years for the deadly weapon enhancement to run
7 consecutive. As to Count 4, the Court's going to sentence you to 24 to 72 months;
8 as to Count 5, 48 to 180 months, plus a consecutive 48 to 180 months for the deadly
9 weapon enhancement.

10 They're all to run concurrent for an aggregate of 28 to life in the Nevada
11 Department of Corrections, impose restitution as to Count 5 of \$200.00 and then
12 restitution of 8,729.53 joint and several with your codefendant as to the other
13 charges. And he has 1,032 days credit for time served.

14 MR. SANFT: Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. PESCI: Thank you, Your Honor.

17 THE COURT: Mr. Wheeler.

18 DEFENDANT WHEELER: Yes. Yes, Your Honor.

19 THE COURT: You're ready to go forward?

20 DEFENDANT WHEELER: Yes, ma'am. I am.

21 THE COURT: Okay. By virtue of the jury verdict returned in this matter, I
22 hereby adjudicate you guilty of Count 1, conspiracy to commit robbery; and Count 3,
23 second degree murder; and pursuant to the verdict, Count 2 will be dismissed.

24 Does the State wish to be heard?

25 MR. PESCI: Yes, Your Honor. Your Honor, what I would ask you to do is

1 follow the Department's recommendation as far as Count 1 being 24 to 72 months. I
2 think that's appropriate. However, I would ask you to part company with the
3 Department's recommendation on Count 3, as they do not recommend a life-tail. I
4 think it would inappropriate for the codefendant to get the life-tail and this one to not.
5 I understand that he has been convicted of second degree murder, but nonetheless,
6 a life was taken and it's appropriate that there should be at least a life-tail. So -- and
7 it's also appropriate from P and P to run it consecutive. So I think Count 3 should be
8 a 10-to-life and that should run consecutive to the 24-to-72 on Count 1.

9 As far as the restitution, I'd ask for the same joint and several. And
10 then I'm sure Mr. Ruggeroli, I hope he's got it figured out, the credit for time served
11 because the P.S.I. had it factored out to an April 15th date and obviously we're a little
12 bit further along, so whatever that number is I'll defer it to Mr. Ruggeroli and ask that
13 the victim's cousin, who testified at trial, who's on Bluejeans, gets to speak last.

14 THE COURT: Okay. Mr. Wheeler, do you want to say anything?

15 DEFENDANT WHEELER: No. No, ma'am.

16 THE COURT: Okay. Thank you.

17 Mr. Ruggeroli.

18 MR. RUGGEROLI: Thank you, Your Honor. Judge, I would like to point out a
19 number of factors in mitigation for Mr. Wheeler. Judge, you know this, but he was
20 not alleged to have participated in the other counts that were referenced regarding
21 the codefendant. So his allegations were limited to this case, Judge.

22 The jury has spoke and I'm going to ask you to take a look at what they
23 actually said in their verdict. I don't want to go through a lot of the facts, but some of
24 the things are appropriate for Your Honor to consider. I would like to point out some
25 background on Mr. Wheeler's behalf, Judge. He has no significant criminal history

1 whatsoever. He has no prior felonies, no prior gross misdemeanors, and no other
2 cases, as I mentioned that he was alleged to have been involved in regarding this
3 period of time.

4 Judge, he has asserted his innocence. But we do want to point some
5 things out in terms of expressing our condolences to the victim and the victim's
6 family. Judge, the jury found kind of interesting conclusion for Mr. Wheeler's counts
7 because they did find that he was part of a conspiracy, however, they found him
8 guilty of second degree murder but not having a weapon involved and what's
9 interesting about that, Judge, is that the State had presented their case that
10 Mr. Wheeler was armed. They believed and presented it to the jury that he was also
11 present at the time of the shooting, Judge. It very much appears that the jury did not
12 agree with their version of events in a number of ways, and most importantly, they
13 have acquitted him of the deadly weapon and I do think that that is very significant.

14 Judge, again, we want to express our condolences to the family, but
15 also mention, the jury did not find that Mr. Wheeler was a direct participant with the
16 murder in this case. We are going to take those issues up on appeal. In looking at
17 some additional factors for mitigation, Judge, I would like to point out that
18 Mr. Wheeler was only 22 years old at the time of this offense. He has strong family
19 and friend support. I did provide Your Honor with some letters from friends and
20 family.

21 Additionally, I believe his mother and another family member are
22 present in court today. They've been present on almost every appearance
23 throughout his litigation in this case, Judge. He has that family support, friend
24 support, church support in place for when he is eventually released from custody
25 and I'm going to ask Your Honor to give him a sentence that allows him the

1 opportunity to have a future and to get out and to utilize those resources and to
2 continue being a part of that family and his community the way he was before these
3 allegations came about.

4 Mr. Wheeler is a father to two very young children. Judge, those letters
5 show that he is -- he was a good father and wants to be available for those children.
6 He has a disabled 75-year-old grandmother. His mother, who, again, I believe is
7 present in court, has poor health. Mr. Wheeler previously provided her with
8 caretaking and was a tremendous asset to her in her life. Additionally, Your Honor,
9 Mr. Wheeler helped out his family and the community. He helped out the church.
10 He has a history of employment prior to being arrested in this case.

11 He has also served full time as a personal care assistant for the Addus,
12 and that's A-D-D-U-S, Home Healthcare. Judge, he provided to the church and the
13 community. We have provided letters. During his time in custody, family has noted
14 that he has exhibited a clear display of change and maturity. He has plans for the
15 future including being a part of helping African-Americans stay out of trouble, stay
16 out of jail, contributing to the church and the community, taking care of his children,
17 and loving his family the best way that he knows how, Your Honor.

18 Parole and Probation is recommending 24 to 72 and then they are very
19 importantly recommending a 10-to-25-year definite term on the second degree
20 murder, Judge. Now, they are asking for that to be run consecutive. It is our
21 request that you would follow P and P's recommendation but run the counts
22 concurrent. Again, Judge, we do want to express our condolences to the family. I
23 calculated 1,034 days and I do believe that that is the correct number.

24 Finally, Judge, I do need to respectfully move to withdraw. Ms. Sandra
25 Stewart will be taking over as appellate counsel. And I believe she's already

1 submitted an order to proceed really immediately after the sentencing this afternoon.
2 THE COURT: Okay. Thank you very much.
3 The State may call their witness, their first witness.
4 MR. PESCI: Judge, I believe Mr. Relato is online. I would also just, really
5 fast, as far as the credit for time served, I think it's the same amount of time as the
6 codefendant because I think they were arrested at the same time, same day.
7 THE COURT: Okay. So 1,032?
8 MR. PESCI: That's what I believe but we'll submit it to the Court.
9 THE COURT: Okay. What's his name again?
10 THE RECORDER: Relato, John Relato.
11 THE COURT: John Relato.
12 MR. RELATO: Yes, ma'am.
13 THE COURT: Mr. Relato, are you appearing by video and audio?
14 MR. RELATO: What did -- what -- can I -- do I need to attend on video?
15 THE COURT: Well, I don't know how I'm going to swear you in.
16 MR. RELATO: Oh, I'm sorry. Okay. I'll --
17 THE COURT: Oh, there you go. Okay. All right. Will you please raise your
18 right hand so you can be sworn?
19 **JOHN RELATO,**
20 [having been called as a speaker and first duly sworn, testify as follows:]
21 THE CLERK: Can you please state and spell your first and last name for the
22 record.
23 THE SPEAKER: John Relato.
24 THE CLERK: Go ahead and spell, please.
25 THE SPEAKER: First name John, J-O-H-N, last name Relato, R-E-L-A-T-O.

1 THE CLERK: Thank you.

2 THE COURT: Go ahead, Mr. Relato.

3 THE SPEAKER: So I was told that I was -- I was to be given time to say a
4 few words --

5 THE COURT: Sure.

6 THE SPEAKER: -- regarding my cousin. My -- I'm -- the victim, Gabriel
7 Valenzuela, is my cousin, but practically he was my brother. I grew up with him. I
8 celebrated birthdays, graduations with him and my own mother has practically
9 raised him as her own. It really broke our hearts to lose him that night. I recall
10 nights when my own mom and his mom, who is standing right besides me actually,
11 would cry themselves to sleep every night due to the traumatic event of him losing
12 his life protecting my family.

13 I'm sorry, this is really hard for me.

14 THE COURT: That's okay.

15 THE SPEAKER: My own sister who is autistic would need assistance for
16 performing certain tasks and Gabriel was -- was actually, practically his -- her
17 caretaker. He'd take her to groceries, Opportunity Village events, and to her friends
18 for social gatherings.

19 On top of that, he was also a nursing student at the College of Southern
20 Nevada. I may not be there with him as a nursing student, but I thought a few words
21 from -- a few letters from his friends and cohorts describing him.

22 He is a great friend with so much to offer for his community. He is
23 funny, kind, and a warm person, a member of the student nursing -- student nurse
24 association and willing to step in when -- when needed. Gabe sets an example of
25 what life could have been when it's full of happiness, love, and positivity. And he -- I

1 guess this is my favorite one, He was an angel among us.

2 He grew up wanting to be a nurse. His mom worked so hard as a
3 caretaker to pay for his tuition and fulfill his dreams. That traumatic event that night
4 delayed her scheduled surgery to the point that it worsened her condition. It pains
5 me to attend these court events, but I'm just -- I am here to see that justice is carried
6 out for my cousin's murder. Thank you, Judge.

7 THE COURT: Thank you, very much.

8 THE SPEAKER: Thank you, Your Honor.

9 THE COURT: Anything else? Okay. In accordance with the laws of the
10 State of Nevada, this Court does now sentence you as follows, in addition to the
11 administrative assessment, the D.N.A. fee, and the collection fee, you'll be required
12 to submit to genetic marker testing. As to Count 1, the Court's going to sentence
13 you to 24 to 72 months in the Nevada Department of Corrections. As to Count 3,
14 the Court's going to sentence you to life in the Nevada Department of Corrections
15 with parole eligibility beginning after a minimum of 10 years has been served.
16 Count 3 to run consecutive to Count 1. He has 1,032 days credit for time served.
17 And restitution in the amount of \$8,729.53 will be imposed and it's joint and several
18 with your codefendant, for an aggregate term of 144 months to life.

19 Thank you.

20 MR. PESCI: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. RUGGEROLI: Judge, may I be allowed to withdraw, please?

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THE COURT: Yes. Yes, your motion to withdraw is granted. Thank you.

MR. RUGGEROLI: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 1:08 P.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

Heather S. Smith
CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAVONTAE AMARRI WHEELER
#5909081

Defendant.

CASE NO. C-17-328587-3

DEPT. NO. XII

JUDGMENT OF CONVICTION
(JURY TRIAL)

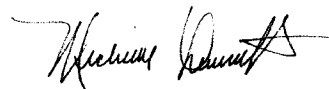
The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 2 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.330, 193.165; and COUNT 3 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; and COUNT 3 – SECOND DEGREE MURDER (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; thereafter, on the 11th day of

1 June, 2020, the Defendant was present in court for sentencing with counsel JAMES J.
2 RUGGEROLI, ESQ., and good cause appearing,

3 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
4 addition to the \$25.00 Administrative Assessment Fee, \$8,729.53 Restitution to be
5 paid Jointly and Severally with Co-Defendant, and \$150.00 DNA Analysis Fee
6 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the
7 Defendant is sentenced to the Nevada Department of Corrections (NDC) as follows:
8
9 **COUNT 1** - a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole
10 eligibility of TWENTY-FOUR (24) MONTHS; and **COUNT 3** - LIFE with a MINIMUM
11 parole eligibility of TEN (10) YEARS, CONSECUTIVE to COUNT 1; with ONE
12 THOUSAND THIRTY-TWO (1,032) DAYS credit for time served. Defendant found
13 NOT GUILTY as to COUNT 2. The AGGREGATE TOTAL sentence is LIFE with a
14 MINIMUM of ONE HUNDRED FORTY-FOUR (144) MONTHS.
15

16 DATED this _____ day of June, 2020.

Dated this 17th day of June, 2020



B7B AFB 2F45 38EE
Michelle Leavitt

MICHELLE LEAVITT
DISTRICT COURT JUDGE

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada

CASE NO: C-17-328587-3

vs

DEPT. NO. Department 12

Davontae Wheeler

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Judgment of Conviction was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Envelope ID: 6195331
Service Date: 6/17/2020

Dept 12 Law Clerk

dept12lc@clarkcountycourts.us

JAMES RUGGEROLI

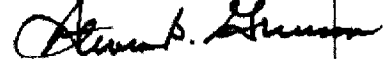
ruggeroli@icloud.com

Giancarlo Pesci

giancarlo.Pesci@clarkcountyda.com

RACHEL O'HALLORAN, DDA

rachel.ohalloran@clarkcountyda.com



SANDRA L. STEWART
Attorney at Law
Nevada Bar No. 6834
1361 Babbling Brook Court
Mesquite, Nevada 89034
(702) 526-1867

Attorney for DAVONTAE WHEELER

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

DAVONTAE WHEELER,

Defendant.

DISTRICT COURT NO.: - C-17-328587-3


GRAND JURY NO.: - 17BGJ017C

SUPREME COURT NO.: - TBD

NOTICE OF APPEAL

NOTICE is hereby given that Defendant, DAVONTAE WHEELER, hereby appeals to the Nevada Supreme Court, from the Eighth Judicial District Court's Judgment of Conviction and all other appealable rulings rendered in this case.

Dated this 18th day of June, 2020.



SANDRA L. STEWART
Attorney for DAVONTAE WHEELER

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2020, I served a copy of the:

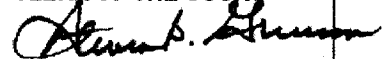
NOTICE OF APPEAL

by e-filing the document with the Eighth Judicial District Court via Wiznet, thereby providing access to a copy to all other interested parties, including but not limited to, the following:

STEVEN B. WOLFSON, ESQ.
CLARK COUNTY DISTRICT ATTORNEY
200 LEWIS AVENUE
LAS VEGAS, NV 89155-2212



SANDRA L. STEWART



SANDRA L. STEWART
Attorney at Law
Nevada Bar No. 6834
1361 Babbling Brook Court
Mesquite, Nevada 89034
(702) 526-1867

Attorney for DAVONTAE WHEELER

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

DAVONTAE WHEELER,

Defendant.

DISTRICT COURT NO.: - C-17-328587-3

GRAND JURY NO.: - 17BGJ017C

SUPREME COURT NO.: - TBD

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

DAVONTAE WHEELER

2. Identify the judge issuing the decision, judgment, or order appealed from:

Hon. MICHELLE LEAVITT

3. Identify all parties to the proceedings in the district court:

DAVONTAE WHEELER

State of Nevada

4. Identify all parties involved in this appeal:

DAVONTAE WHEELER

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State of Nevada

5. Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent:

Sandra L. Stewart	Steven B. Wolfson, Esq.
Attorney at Law	Clark County District Attorney
1361 Babbling Brook Court	200 Lewis Avenue
Mesquite, NV 89034	Las Vegas, NV 89101
702-526-1867	702-671-2700
(for Davontae Wheeler)	(for State)

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Appointed.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appointed.

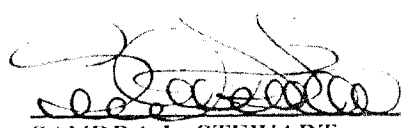
8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

No.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

December 14, 2017.

Dated this 18th day of June, 2020.



SANDRA L. STEWART
Attorney for DAVONTAE WHEELER

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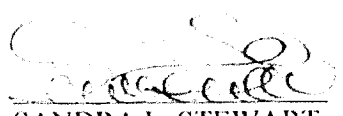
CERTIFICATE OF SERVICE

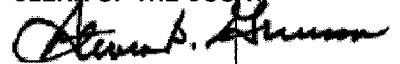
I hereby certify that on June 18, 2020, I served a copy of the:

CASE APPEAL STATEMENT

by e-filing the document with the Eighth Judicial District Court via Wiznet, thereby providing access to a copy to all other interested parties, including but not limited to, the following:

STEVEN B. WOLFSON, ESQ.
CLARK COUNTY DISTRICT ATTORNEY
200 Lewis Avenue
Las Vegas, NV 89155-2212


SANDRA L. STEWART



1 COSCC

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 * * * *

7 STATE OF NEVADA

CASE NO.: C-17-328587-3

8 VS

DEPARTMENT 12

9 DAVONTAE WHEELER

10
11 CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

12 Upon review of this matter and good cause appearing,

13 IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
14 statistically close this case for the following reason:

15 DISPOSITIONS:

- 16 ☐ Nolle Prosequi (before trial)
17 ☐ Dismissed (after diversion)
18 ☐ Dismissed (before trial)
19 ☒ Guilty Plea with Sentence (before trial)
20 ☐ Transferred (before/during trial)
21 ☐ Bench (Non-Jury) Trial
22 ☐ Dismissed (during trial)
23 ☐ Acquittal
24 ☐ Guilty Plea with Sentence (during trial)
25 ☐ Conviction
26 ☐ Jury Trial
27 ☐ Dismissed (during trial)
28 ☐ Acquittal
☐ Guilty Plea with Sentence (during trial)
☐ Conviction

☐ Other Manner of Disposition

DATED this 15 day of June, 2020.


MICHELLE LEAVITT
DISTRICT COURT JUDGE

3326

6-16-20