

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY BROWN

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 81962

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Valerie Adair, District Judge
District Court No. C-17-326247-1

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

LARRY DECORLEON BROWN,
ANTHONY CARTER,
Defendants.

CASE NO: C-17-326247-1
CASE NO: C-17-326247-2

DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
TUESDAY, APRIL 3, 2018

**RECORDER'S TRANSCRIPT OF HEARING RE:
STATUS CHECK: TRIAL READINESS (BOTH); DEFENDANT
CARTER'S MOTION FOR BAIL REDUCTION**

APPEARANCES:

For the State:

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JOHN L. GIORDANI, III, ESQ.
Chief Deputy District Attorneys

For Defendant Brown:

NICHOLAS M. WOOLDRIDGE, ESQ.
JHERNA A. SHAHANI, ESQ.

For Defendant Carter:

CONNER M. SLIFE, ESQ.
Deputy Public Defender

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 **Las Vegas, Nevada; Tuesday, April 3, 2018**

2 * * * * *

3 [Proceeding commenced at 9:33 a.m.]

4 THE COURT: State versus Larry Brown. And Mr. Brown is
5 present in custody. And is it both Mr. --

6 MR. SLIFE: This is a co-defendant case, Your Honor. I
7 represent Mr. Carter.

8 THE COURT: Where is Anthony Carter?

9 DEFENDANT CARTER: Right here. How are you doing?
10 Good morning.

11 THE COURT: All right. Both defendants are present. This
12 is just on for status check, trial readiness as to both.

13 MS. BEVERLY: And I'm --

14 THE COURT: -- as well as a motion for bail reduction.

15 MS. BEVERLY: And I'm sorry, we're waiting on Mr. --
16 either Mr. Giordani or Mr. Dickerson.

17 THE COURT: All right. We'll have to trail it.

18 [Matter trailed]

19 [Matter recalled at 11:06 a.m.]

20 THE COURT: State versus Larry Brown and Anthony
21 Carter. And both are present in custody. We have Mr. Slife from
22 Public Defender's Office. We did have Mr. Wooldridge here earlier,
23 but now we have --

24 MS. SHAHANI: Jherna Shahani, Bar Number 14421, Your
25 Honor.

1 THE COURT: And are you with Mr. Wooldridge's office?

2 MS. SHAHANI: Yes, Your Honor.

3 THE COURT: All right. This is on for a motion for a bail
4 reduction as to Mr. Carter and a status check as to trial readiness as
5 to both. So why don't we begin with Mr. Carter.

6 MR. GIORDANI: The motion?

7 THE COURT: Yes. And we did get an opposition. And so
8 we'll let Mr. Slife add anything first if he's got anything to add.

9 MR. SLIFE: May I, Judge, just -- I just think one factor to
10 be considered is the strength of the State's case. And I just think
11 the State is overreaching, trying to make it sound like there's a case
12 against Mr. Carter for murder. And I argued all of this in my
13 petition for writ. But just to -- just to highlight that again, really the
14 purported evidence that gets Mr. Carter, is that at the time of the
15 shooting, he knew his co-defendant and he knew the decedent.
16 And that he had had phone contact with both of them prior to the
17 shooting. That's really it.

18 And I know the State makes a big deal of his statement for
19 an hour and a half, two hours to the police. I don't -- not having a
20 perfect interview, there's no confession there, not having a perfect
21 interview is not evidence. That interview is going to be the subject
22 of a motion to suppress that I already filed. But that's it. He knew
23 both these people he had phone contact.

24 THE COURT: Well, it was a little more inculpatory than
25 that.

1 MR. SLIFE: Well, what was, Judge? I mean, what in your
2 opinion is inculpatory?

3 THE COURT: Well, the timing of everything. It wasn't
4 just, oh, he had -- new this guy and he knew this other guy, I mean,
5 it was the timing. And I don't remember verbatim from reading the
6 -- because I didn't re-read the transcripts, I had read the transcripts
7 some time ago.

8 MR. SLIFE: I guess --

9 THE COURT: Not terribly long ago, but --

10 MR. SLIFE: I guess here's the thing -- here's the thing
11 though. The charge is murder. There is no forensic evidence tying
12 Mr. Carter to the scene -- to the shooting. There is no evidence that
13 Mr. Carter set up some kind of ruse between people. There's no
14 evidence that he was there, there's just phone contact. There's no
15 evidence of what that phone contact was.

16 And so the one thing we know for sure because I raised in
17 a motion that the State failed to present exculpatory evidence to the
18 Grand Jury that he actually had an alibi witness. Well, the State
19 went back, and in the third Grand Jury had that person testify that
20 he was with them at the time of the shooting. So I still stand by my
21 argument, I know my writ was denied, but there is -- the evidence is
22 that he had phone contact with these two people at the timing. But
23 that's not evidence for murder.

24 That being said, I know I argued the writ and that was
25 denied, but I think that's a consideration that should be taken into

1 account with regard to bail, Judge. I mean, he's 44, he's lived here
2 almost 20 years with his wife and three kids. His entire family, his
3 entire life is in Las Vegas. There's no risk of flight. He did turn
4 himself in on this case.

5 I know in the State's opposition they basically put down a
6 page, they try to make it appear something nefarious. At the end, it
7 says he turned himself in on this case. There's no risk of flight for
8 him. I think based on his significant ties to the community, the
9 weakness of evidence as it pertains to Mr. Carter for the charge of
10 murder, and that fact that there's no risk of flight. His entire family
11 is here, there's nowhere to go. We're asking for the reduction to
12 50,000.00.

13 THE COURT: Mr. Giordani.

14 MR. GIORDANI: Thank you, Your Honor. Mr. Slife and I
15 have completely different interpretations of the strength of the
16 evidence in this case. As Your Honor knows when it comes to a
17 conspiracy to commit robbery, if someone dies during the course of
18 that robbery, whether it's intentional, unintentional, or accidental,
19 you're on the hook for first degree murder.

20 My position is the evidence of a conspiracy to rob
21 overwhelming. That's not only evidence by the phone context,
22 where the defendant is specifically talking to the victim, setting up
23 this ruse and then immediately talking to Mr. Brown, who
24 ultimately puts a bullet in his chest. That I can say with certainty
25 because Mr. Brown's DNA was found on a latex glove, not a type of

1 glove you may wear to a legitimate drug deal, but a glove you wear
2 to a robbery, underneath the victim's body. So that evidence will
3 come in, assuming this is a joint trial, which my position is it should
4 be. That evidence will come in and that's a factor to consider with
5 regard to the robbery.

6 In addition to that, he gives three different statements to
7 police. So when Mr. Slife says there's no forensic evidence linking
8 him to the scene, well, fine. The defendant himself said he was
9 right beside the apartment. I mean, he gave three different versions
10 of events as to what happened. One version was, oh, the victim did
11 show up, we did a drug deal, but it was out by the basketball courts.
12 The other one was, oh, well, he came inside the house, yeah, we
13 did the deal but then he left, and I don't know if he died. And then
14 the third was something other than that.

15 So we have completely differing views of the evidence. I
16 believe the evidence of the State's case is strong and -- here. With
17 regard to the alibi witness, I presented that out of an abundance of
18 caution. It turns out that that witness is not an alibi witness.

19 THE COURT: Right.

20 MR. GIORDANI: It doesn't help Mr. Carter in any way. He
21 says that Mr. Carter was out on the balcony making phone -- or
22 leaving when his phone rang when presumably he's talking to
23 Mr. Brown, speaking in hushed tones or whatever it is out on the
24 balcony, so Mr. Cave can't hear it. And then he's the one who says
25 the defendant hides within the apartment, tells him shut off the

1 lights when the police start to come, and he hides there until the
2 next morning when he ultimately sneaks out.

3 Lastly, and briefly, the fact that he turns himself in. I'm
4 not disputing that he physically went to the police station and
5 turned himself in. I'm just saying that there's a lot of history behind
6 that, he knew the murder warrant was coming down because I
7 communicated with his former counsel as a courtesy and he then
8 turned himself in. Had he not, the detectives would have picked
9 him up within an hour, so he turned himself in, yes, but it doesn't
10 go to the -- it doesn't obviate the fact that he first hid from
11 detectives, then lied to detectives, and ultimately is arrested on the
12 other charges.

13 With that I believe -- oh, I should add, Mr. Slife's rendition
14 of his criminal history is a minimization to say the least. I went
15 through it, and I'm not going to go back through it, but I went
16 through it in my opposition. His NCIC reflects several arrests for
17 other crimes that weren't mentioned in the motion. So Mr. Brown
18 is currently set at a million, which I believe is appropriate. And the
19 350,000 on Mr. Carter reflects the different levels of culpability. So I
20 think it's appropriate, I'll submit it.

21 THE COURT: Mr. Slife.

22 MR. SLIFE: So, Judge, the criminal record I was aware of
23 was a -- was a possession for cocaine from 2006. And apparently
24 Mr. Giordani has pointed out with the secret NCIC that I can never
25 see that he had some misdemeanors for over 20 years ago.

1 THE COURT: Well, okay, that's -- and -- true --

2 MR. SLIFE: And so --

3 THE COURT: -- but it certainly isn't Mr. Giordani's fault
4 that you can't see the NCIC.

5 MR. SLIFE: Well, but he -- so -- so --

6 THE COURT: Right. I mean --

7 MR. SLIFE: Well, but the secret is that he had two
8 misdemeanors from 20 years ago.

9 THE COURT: Right.

10 MR. SLIFE: I hardly think that that's a big deal for this.
11 Judge, at the end of the day, he did turn himself in knowing it was a
12 murder charge. He could have run at that point. I think that goes to
13 show what somebody's going to do if they have a chance to get out
14 on bail.

15 And so -- and, Judge, I guess we can go back and forth
16 about our interpretations of the evidence. I've heard multiple times
17 in the writ and now today that there was this ruse that Mr. Carter -- I
18 don't know if I'm missing some evidence. I don't -- there's no
19 evidence of that. There's evidence of phone contact, there's no
20 evidence of the substance of that phone contact. It's an assumption
21 to say that it was a ruse and then set up a robbery, there's nothing
22 of that. I don't know if I'm missing something.

23 THE COURT: All right. Suffice it to say, I think the
24 evidence was a lot more inculpatory than the way you're
25 interpreting it. I'm going to consider this further as to Mr. Carter.

1 Any bail reduction, if there is to be one, would be accompanied by
2 further restraint, meaning intermediate or high level supervision.

3 MR. GIORDANI: Understood.

4 THE COURT: Let's go out two weeks for a decision.

5 THE CLERK: April 17th, 9:30.

6 THE COURT: And then right now we're on -- I can always
7 do it also if there is a reduction by way of minute order and notice
8 to the lawyers and the jail.

9 MR. GIORDANI: Okay.

10 THE COURT: Also, we're going to talk about trial
11 readiness. And last time we were here, the Court noted the DNA
12 was completed and a disc was provided.

13 Mr. Slife, you said you'd be filing *motions in limine* and
14 would not be using a DNA expert. So, where are we?

15 MR. SLIFE: The DNA has nothing to do with Mr. Carter, so
16 that's why I don't have an expert.

17 THE COURT: Right.

18 MR. SLIFE: I filed this bail motion, I filed a motion for it to
19 sever that's set on Tuesday -- excuse me, Thursday.

20 THE COURT: Okay.

21 MR. SLIFE: I think I filed a motion to suppress that's set
22 next Tuesday.

23 THE COURT: Okay. So you're busy with motions.

24 MR. SLIFE: I'm busy with motions.

25 THE COURT: Obviously, I don't look ahead to the

1 motions --

2 MR. SLIFE: Sure.

3 THE COURT: -- because they're not calendared yet. So
4 we'll deal with those motions when they come on calendar. And do
5 you, depending on the outcomes of those motions, anticipate also
6 filing addition -- I just said *motions in limine* because that's what's
7 reflected in the minutes.

8 MR. SLIFE: Sure.

9 THE COURT: Do you anticipate --

10 MR. SLIFE: I think it's just motions generic.

11 THE COURT: Right. Do you anticipate then filing any
12 other motions?

13 MR. SLIFE: Potentially.

14 THE COURT: Okay.

15 And then as to Mr. Brown, in terms of motions.

16 MS. SHAHANI: Your Honor, I believe that we will be using
17 a DNA expert, so I --

18 THE COURT: Will be or will not.

19 MS. SHAHANI: Will be using a DNA expert.

20 THE COURT: Okay. Because last time there was this -- all
21 right. Yes.

22 MS. SHAHANI: And my representations may be different
23 from Mr. Wooldridge's, this is just based on my understanding of
24 the case, but he's obviously lead counsel on the case, so doing my
25 best here, I'm covering this hearing for him. He just told me

1 about --

2 THE COURT: Where'd he go?

3 MS. SHAHANI: He had a --

4 THE COURT: He was here for the record this morning.

5 MS. SHAHANI: He did. He had a family court hearing, so
6 he asked me to leave my hearing and come up here.

7 THE COURT: Okay. So do you know if there are any
8 motions that are going to be filed on behalf of Mr. Brown?

9 MS. SHAHANI: At this juncture, I can't think of any that
10 Mr. Wooldridge has represented to me.

11 THE COURT: Okay.

12 MS. SHAHANI: But I know that he wants to use a DNA
13 expert and I know that there are -- is some missing discovery, so --

14 MR. GIORDANI: What.

15 MS. SHAHANI: Specifically, the text messages after
16 February 7th to the date of the incident from Mr. Brown.

17 MR. GIORDANI: That's -- that doesn't exist. I told -- I
18 contacted, not Jherna, but -- I mean, not Ms. Shahani, but the other
19 person in the office and let them know that. They asked for that like
20 last week and I let them know those --

21 THE COURT: Okay. Let's put this on the record now. You
22 looked into that.

23 MR. GIORDANI: Yes.

24 THE COURT: And there were no text messages.

25 MR. GIORDANI: Well, I know for a fact we don't have the

1 content of Mr. Brown's text messages.

2 THE COURT: Okay.

3 MR. GIORDANI: And that's specifically what they wanted.

4 They've had the same data --

5 THE COURT: Because it just wasn't saved, correct?

6 MR. GIORDANI: No.

7 THE COURT: I mean, did you --

8 MR. GIORDANI: No, no, no, they're -- they're in the phone
9 that we --

10 THE COURT: Okay.

11 MR. GIORDANI: -- have in the State's possession, we're
12 working on getting them.

13 THE COURT: Okay.

14 MR. GIORDANI: We don't have them to this date.

15 THE COURT: Okay. So you will be getting those.

16 MR. GIORDANI: Well, maybe, I mean, it depends if we can
17 get into the phone or not.

18 THE COURT: Okay.

19 MR. GIORDANI: I have the feds working on that.

20 THE COURT: Okay. All right. And then probably if you
21 were to go through the phone company, they would not have
22 captured --

23 MR. GIORDANI: They don't have content.

24 THE COURT: -- the content of the text messages, correct?

25 MR. GIORDANI: Correct.

1 THE COURT: Okay.

2 MS. SHAHANI: We were provided a portion of the
3 content. Some -- for some reason though, the weeks leading up to
4 the event are missing and they're the most relevant.

5 MR. GIORDANI: What they've been provided is not
6 content, not the words of the text.

7 THE COURT: Right.

8 MR. GIORDANI: It's the outgoing/incoming --

9 THE COURT: Right.

10 MR. GIORDANI: -- it says the time they're done, and I
11 believe the location --

12 THE COURT: Okay.

13 MR. GIORDANI: -- you know, the cell tower.

14 THE COURT: Can -- have you provided all of that
15 information for both -- for the relevant time period?

16 MR. GIORDANI: Yes, that was all provided --

17 THE COURT: Okay.

18 MR. GIORDANI: -- in the initial discovery dump. I'll
19 recheck.

20 THE COURT: Okay.

21 MR. GIORDANI: If there's something that I'm -- that
22 we're --

23 THE COURT: Yeah, if there's something you think is
24 missing in terms of the numbers to and from, he can do that now.

25 MR. GIORDANI: Yeah.

1 THE COURT: So contact him and let him know. In terms
2 of the content of the text messages, the FBI's trying to get that from
3 the phone.

4 MR. GIORDANI: As to Mr. Brown's phone, yes.

5 THE COURT: And as soon as you get that, you will be
6 providing that, correct?

7 MR. GIORDANI: Yes.

8 THE COURT: Okay. What else does the State still have to
9 do in terms of discovery or any forensic testing or report?

10 MR. GIORDANI: The forensic -- the DNA was rushed, and
11 it was -- I've already provided the underlying data for the DNA. I
12 believe that's what happened last time I left with somebody to
13 provide --

14 THE COURT: Okay.

15 MR. GIORDANI: -- in court. Otherwise, I don't think we
16 have any issues, I would --

17 THE COURT: You did. That was done.

18 MR. GIORDANI: I would ask -- I haven't talked to Mr. Slife
19 about this yet, but if we could just move everything, if we're going
20 to have a 4/17 date, if we can just move everything that's pending
21 between now and then to that date to save us multiple
22 appearances, I would appreciate it.

23 THE COURT: Okay. We don't -- I don't know what date
24 his --

25 [Colloquy between the Court and Clerk]

1 THE COURT: All right. So you want to just have one
2 hearing date as to both motions?

3 MR. GIORDANI: If Mr. Slife doesn't mind.

4 THE COURT: Is that fine?

5 MR. SLIFE: Court's pleasure. I'd rather get all those done.
6 I mean, I filed them now, so we could get them done sooner rather
7 than later, but whatever you want to do, Judge.

8 THE COURT: Well, you -- on April 5th, you had the motion
9 to sever, on April 10th, you have the motion to suppress.

10 MR. GIORDANI: I thought I had another one on my desk.

11 THE COURT: That's all I'm showing right now. The
12 motion to suppress might necessitate an evidentiary hearing, I
13 don't know, so that would be set at a later date. Is there a joinder to
14 the motion to sever? No.

15 MS. SHAHANI: There will be a joinder to that motion.

16 THE COURT: Okay.

17 MR. GIORDANI: I'm just -- just telling the Court now, I
18 haven't had a chance to talk to Mr. Slife because I was trial next
19 week. I have those all sitting on my desk, but I haven't responded
20 to any except for this bail motion.

21 THE COURT: So you're asking us to vacate the hearing for
22 April 5th and set that over to April 10th. Is that what you're asking?

23 MR. SLIFE: I'll defer to you, Judge.

24 THE COURT: All right. We'll go ahead and do that.

25 MR. GIORDANI: So the 17th for everything?

1 THE COURT: I don't have any dates for April 17th.
2 MR. GIORDANI: You just gave us one for the decision.
3 THE COURT: Oh, okay.
4 MR. GIORDANI: That's why I was --
5 THE COURT: It's not on my calendar because I just gave it
6 to you.
7 MR. GIORDANI: Okay.
8 THE COURT: So you're asking us to move both motions
9 to April 17th and that will give you enough time to file oppositions,
10 correct?
11 MR. GIORDANI: Yes, Your Honor.
12 THE COURT: So we won't have to move those again.
13 MR. GIORDANI: Right. Assuming they're telling me
14 they're going to join the motions today, so I can respond just to
15 both.
16 THE COURT: If it's just a simple joinder, you won't need
17 to do anything else.
18 MR. GIORDANI: Okay.
19 THE COURT: If there's a -- it's a substantive, then
20 obviously, you would also need to respond substantively --
21 MR. GIORDANI: Got it.
22 THE COURT: -- to whatever they add.
23 MR. GIORDANI: Got it.
24 THE COURT: All right. April 17th for everything.
25 MR. GIORDANI: Thank you.

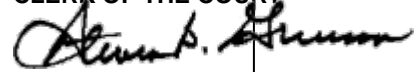
1 THE COURT: That's it. Thank you.
2 MS. SHAHANI: Thank you, Your Honor.
3 MR. SLIFE: Thank you, Judge.
4 MS. SHAHANI: What was the time for the 17th? I didn't
5 catch that.
6 MR. GIORDANI: 17th.
7 THE COURT: April 17th at 9:30.
8 MS. SHAHANI: 9:30. Thank you, Your Honor.
9 [Proceeding concluded at 11:21 a.m.]

10 * * * * *

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

24 

25 Robin Page
Court Recorder/Transcriber



MOT

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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

LARRY BROWN,

Defendant.

Case No.: C-17-326247-1

Dept. 21

**MOTION TO WITHDRAW AS
ATTORNEY OF RECORD**

COMES NOW Nicholas M. Wooldridge, Esq., of Wooldridge Law Ltd. ("Wooldridge Law"), and pursuant to the Nevada Rule of Professional Conduct ("NRPC") 1.16, move to withdraw as attorney of record for Defendant Larry Brown (hereinafter "Mr. Brown"). This motion is made and based upon the points and authorities and the Declaration of Nicholas M. Wooldridge ("Wooldridge Declaration") attached hereto, and such argument and evidence as may be presented at the hearing on this motion, should any occur.

Counsel hereby moves to withdraw as counsel of record for Mr. Brown.

1
2 DATED this 11th day of April, 2018.

Larry Brown,
by his attorney,

3
4 /s/ Nicholas M. Wooldridge

5
6
7 Nicholas M. Wooldridge, Esq.
Wooldridge Law Ltd.
400 South 7th Street, 4th Floor
8 Las Vegas, NV 89101
9 nicholas@wooldridgelawlv.com
10 Telephone: (702) 330-4645
11 Fax: (702) 359-8494

12 **NOTICE OF MOTION**

13 TO: STATE OF NEVADA, Plaintiff; and

14 TO: DISTRICT ATTORNEYS, its attorneys:

15 **PLEASE TAKE NOTICE** that the undersigned will bring the foregoing Motion to
16 Withdraw for hearing in the above-entitled Court on (day) **24** of (month) **APRIL**,
17 2018 in Department **XXI** at (time) **9:30A**
18 m.

19
20 DATED this 11th day of April, 2018.

Larry Brown,
by his attorney,

21
22 /s/ Nicholas M. Wooldridge

23
24 Nicholas M. Wooldridge, Esq.
Wooldridge Law Ltd.
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I.

MEMORANDUM OF POINTS & AUTHORITIES

As set forth in the Declaration of Nicholas M. Wooldridge, Esq., above, a copy of this motion was mailed to Mr. Browns' last known address. Mr. Wooldridge has good cause to withdraw as counsel under the Nevada Rules of Professional Conduct ("NRPC") 1.16, which provides, in pertinent part, a lawyer may withdraw from representation where:

(1) Withdrawal can be accomplished without material adverse effect on the interests of the client;

...

(6) The representation will result in unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) Other good cause exists for withdrawal.

See NRPC 1.16(b).

Here, as detailed in the Wooldridge Declaration, Wooldridge Law's further representation of Mr. Brown has been made untenable by his inability to pay for Wooldridge Law's trial services and further representation creates an unreasonable financial burden on Wooldridge Law. Upon information and belief, Mr. Brown has no assets or accounts receivable from which Wooldridge Law can be paid for either past or future services.

The withdrawal can be accomplished without adverse effect on the interests of the client because Wooldridge Law's withdrawal will not delay proceedings in this matter. Therefore, good cause exists and Mr. Wooldridge's motion to withdraw should be granted.

//

//

1 **WHEREFORE**, for the foregoing reasons, Wooldridge Law’s motion to withdraw should
2 be granted.

3 DATED this 11th day of April, 2018.

Larry Brown,
by his attorney,

/s/ Nicholas M. Wooldridge

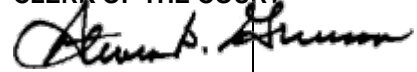
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Chief Deputy District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

/s/ Nancy Toribio

An Employee of Wooldridge Law



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Attorney for Larry D. Brown

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

LARRY DECORLEON BROWN and ANTHONY
CARTER,

Defendants.

Case No.: C-17-326247-1

Dept. III

**MOTION TO JOIN CO-
DEFENDANT ANTHONY
CARTER'S MOTION TO SEVER
AND DEFENDANT'S MOTION TO
SEVER CO-DEFENDANTS**

COMES NOW, LARRY DECORLEON BROWN, (hereinafter, "Mr. Brown"), by and through his undersigned counsel, NICHOLAS M. WOOLDRIDGE ESQ., and hereby files this Motion to Join Co-Defendant Anthony Carter's Motion to Sever and Motion to Sever Co-Defendants. This Motion is accompanied by the attached Memorandum of Points and Authorities, all papers and documents on file, as well as any oral argument, which the Court deems appropriate.

Counsel hereby joins co-defendant Anthony Carter's Motion to Sever filed on March 26, 2018 and moves for an Order requiring that the co-defendants be tried separately.

1
2 Dated this 13th April, 2018

LARRY DECORLEON BROWN,
by his attorney,

3
4
5 /s/ Nicholas M. Wooldridge

6 Nicholas M. Wooldridge, Esq.
7 Wooldridge Law Ltd.
8 400 South 7th Street, 4th Floor
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(702) 359-8494 Fax.

11 **NOTICE OF MOTION**

12 TO: STATE OF NEVADA, Plaintiff; and

13 TO: DISTRICT ATTORNEY, its attorneys:

14 **PLEASE TAKE NOTICE** that the undersigned will bring the foregoing Motion to Join
15 Co-Defendant Anthony Brown's Motion to Sever and Motion to Sever Co-Defendants for
16 hearing in the above-entitled Court on (day) **26** of (month) **APRIL**, 2018 in
17 Department **XXI** at (time) **9:30 a** m.

18
19 Dated this 13th April, 2018

LARRY DECORLEON BROWN,
by his attorney,

20
21
22 /s/ Nicholas M. Wooldridge

23 Nicholas M. Wooldridge, Esq.
24 Wooldridge Law Ltd.
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28 (702) 359-8494 Fax.

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MEMORANDUM OF POINTS & AUTHORITIES

I. BRIEF STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

Larry D. Brown (hereinafter, “Mr. Brown”) together with co-defendant Anthony Carter (“Mr. Carter”) are charged in a three (3) count Indictment with the following: Conspiracy to Commit Robbery (Count One, N.R.S. 200.380), Robbery with Use of Deadly Weapon (Count Two, 200.380), and Murder with Use of a Deadly Weapon (Count Three, N.R.S. 200.010). On March 26, 2018, counsel for Mr. Carter filed a Motion to Sever Co-Defendants and requested that that the defendants be tried separately. Calendar call in this case is scheduled for June 14, 2018 and Jury Trial is scheduled to begin on June 18, 2018.

II. APPLICABLE LAW

N.R.S. § 174.165(1) provides as follows:

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

The decision to join or sever charges falls within the district court’s discretion. *Weber v. State*, 121 Nev. 554, 570, 119 P.3d 107, 119 (2005). The Nevada Supreme Court reviews the exercise of this discretion by determining whether a proper basis for the joinder existed and, if so, whether unfair prejudice nonetheless mandated separate trials. *Id.* at 571, 119 P.3d at 119.

The Confrontation Clause of the Sixth Amendment provides: “In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.” U.S. Const. amend. VI. As the United States Supreme Court observed in *Crawford*, the scope of the right to confront was addressed just three years after the First Congress adopted the Sixth Amendment in *State v. Webb*, 2 N.C. 103 (1794), when a North Carolina court held that

1 “depositions could be read against an accused only if they were taken in his presence.”
2 *Crawford v. Washington*, 541 U.S. 36, 49 (2004).

3 Face-to-face confrontation is the foundation upon which the United States Supreme
4 Court's Confrontation Clause jurisprudence evolved. In *Crawford*, the Court held that the
5 Confrontation Clause bars “admission of testimonial statements of a witness who did not appear
6 at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for
7 cross-examination.” 541 U.S. at 53–54. In so doing, the Supreme Court observed that the
8 Confrontation Clause was a procedural rather than a substantive guarantee. It commands, not that
9 evidence be reliable, but that reliability be assessed in a particular manner: by testing in the
10 crucible of cross-examination. *Id.* at 61.

13 While much of *Crawford's* progeny dealt with the definition of “testimonial,” *see Davis*
14 *v. Washington*, 547 U.S. 813, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006), *Crawford* discussed the
15 Confrontation Clause primarily in terms of unavailability and an opportunity for cross-
16 examination. *See Crawford*, 541 U.S. at 68, 124 S.Ct. 1354. *Crawford* is grounded in the
17 principle that the opportunity to cross-examine is the focal point of the right to confront. *See,*
18 *e.g., Davis v. Alaska*, 415 U.S. 308, 315, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974) (“Confrontation
19 means more than being allowed to confront the witness physically. ‘Our cases construing the
20 [confrontation] clause hold that a primary interest secured by it is the right of cross-
21 examination.’ ” (quoting *Douglas v. Alabama*, 380 U.S. 415, 418, 85 S.Ct. 1074, 13 L.Ed.2d 934
22 (1965))) (alteration in original).

25 The Nevada Supreme Court Confrontation Clause jurisprudence mirrors the U.S.
26 Supreme Court's adherence to the historical roots of the Confrontation Clause. Some 200 years
27 after the *Webb* decision, the Nevada Supreme court reaffirmed the cornerstone principle of the
28

1 Confrontation Clause and its guarantee of a face-to-face meeting with an accuser. *Smith v. State*,
2 111 Nev. 499, 502, 894 P.2d 974, 975 (1995). In *Smith*, the Nevada Supreme Court held that the
3 defendant's Sixth Amendment right to confrontation had been violated because the prosecutor
4 blocked the child-victim's view of the defendant on direct examination. *Id.* at 502–03, 894 P.2d
5 at 976. It determined that, even though *Smith* had an “unfettered opportunity” to cross-examine
6 his accuser, it was not an effective cross-examination because the victim's view of Smith had
7 been blocked. *Id.* at 502, 894 P.2d at 976. In so determining, the Nevada Supreme Court noted
8 that “ ‘[i]t is always more difficult to tell a lie about a person “to his face” than “behind his
9 back.” ’ ” *Id.* (quoting *Coy v. Iowa*, 487 U.S. 1012, 1019, 108 S.Ct. 2798, 101 L.Ed.2d 857
10 (1988)).

13 The Nevada Supreme Court has applied *Crawford* to cases stating that the testimonial
14 hearsay of an unavailable witness requires a prior opportunity to cross-examine the witness
15 concerning the statement for it to be admissible. *Flores v. State*, 121 Nev. 706, 714, 120 P.3d
16 1170, 1175 (2005). Further, the Nevada Supreme Court has observed that “ ‘the Confrontation
17 Clause guarantees an opportunity for effective cross-examination, not cross-examination that is
18 effective in whatever way, and to whatever extent, the defense might wish.’ ” *Pantano v. State*,
19 122 Nev. 782, 790, 138 P.3d 477, 482 (2006) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673,
20 679, 106 S. Ct. 1431, 89 L.Ed.2d 674 (1986)). And the Nevada Supreme Court has explained
21 that discovery is a component of an effective cross-examination. *See Estes v. State*, 122 Nev.
22 1123, 1140, 146 P.3d 1114, 1126 (2006).

25 More recently, in *Chavez v. State*, 125 Nev. 328, 213 P.3d 476 (2009), the Nevada
26 Supreme Court further clarified its post-*Crawford* decisions by holding that a preliminary
27 hearing can afford a defendant an opportunity for effective cross-examination. The Nevada
28

Supreme Court stated that it will “determine the adequacy of the opportunity on a case-by-case basis, taking into consideration such factors as the extent of discovery that was available to the defendant at the time of cross-examination and whether the magistrate judge allowed the defendant a thorough opportunity to cross-examine the witness.” *Chavez*, 125 Nev. at 339, 213 P.3d 484.

III. SEVERANCE IS REQUIRED DUE TO ANTOGNISTIC DEFENSES AND CRAWFORD v. WASHINGTON

As discussed below, Mr. Brown should be tried separately from Mr. Carter for three reasons. First, pursuant to N.R.S. § 174.165(1), Mr. Brown intends to pursue an antagonistic defense and should be tried separately to avoid prejudice by joinder of defendants. Second, Mr. Mr. Brown should be tried separately to protect his rights under the Confrontation Clause as interpreted by the Supreme Court in *Crawford v. Washington*, 541 U.S. 36, 49 (2004). Third, any limiting instruction in this case would be insufficient to overcome the prejudice resulting from a joint trial. Further, in the event this request is denied, Mr. Brown’s request for severance is denied, the State should be precluded from introducing any statements by co-defendant Mr. Carter to protect Mr. Carter’s rights under the Confrontation Clause as interpreted by the Supreme Court in *Crawford*, 541 U.S. at 49.

A. Factors for Consideration

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

possible prejudice to the defendant but also the possible prejudice to the State resulting from expensive, duplicative trials. *Lisle v. State*, 113 Nev. 679, 688–89, 941 P.2d 459, 466 (1997), *limited on other grounds by Middleton v. State*, 114 Nev. 1089, 1117 n. 9, 968 P.2d 296, 315 n. 9 (1998).

Joinder promotes judicial economy and efficiency as well as consistent verdicts and is preferred as long as it does not compromise a defendant's right to a fair trial. *See Brown v. State*, 114 Nev. 1118, 1126, 967 P.2d 1126, 1131 (1998); *Jones v. State*, 111 Nev. 848, 853–54, 899 P.2d 544, 547 (1995); *Zafiro v. United States*, 506 U.S. 534, 537, 113 S.Ct. 933, 122 L.Ed.2d 317 (1993). Nevertheless, despite the concern for efficiency and consistency, the district court has “a continuing duty at all stages of the trial to grant a severance if prejudice does appear.” *Marshall v. State*, 118 Nev. 642, 647, 56 P.3d 376, 379 (2002).

The issue of antagonistic defenses is explored in *Zafiro v. United States*, 506 U.S. 534, 113 S.Ct. 933, 122 L.Ed.2d 317 (1993) where the United States Supreme Court defined the right to trial severance under Federal Rule of Criminal Procedure 14. Rule 14 is essentially the same as NRS § 174.165(1), providing that a court may grant a severance of defendants or other relief if it appears that a defendant is prejudiced by a joinder of defendants for trial. *Id.* at 538, 113 S.Ct. 933 (quoting Rule 14); *see also Marshall*, 118 Nev. at 647, 56 P.3d at 379. The petitioners in *Zafiro* contended that it is prejudicial whenever “two defendants both claim they are innocent and each accuses the other of the crime.” *Zafiro*, 506 U.S. at 538. The Supreme Court rejected their contention, holding that “[m]utually antagonistic defenses are not prejudicial *per se*.” *Id.* A district court should grant a severance “only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence.” *Id.* at 539, 113 S.Ct. 933. The petitioners in *Zafiro*

1 did not “articulate any specific instances of prejudice.” *Id.* The Court explained that it is not
2 prejudicial for a codefendant to introduce relevant, competent evidence that would be admissible
3 against the defendant at a severed trial. *Id.* at 540, 113 S.Ct. 933. Nor had joinder allowed the
4 prosecution to avoid its burden to prove its case beyond a reasonable doubt: “The Government
5 argued that all four petitioners were guilty and offered sufficient evidence as to all four
6 petitioners.” *Id.* The Court also declared that the district court had cured any possibility of
7 prejudice by properly instructing the jury, among other things, that it had to consider the case
8 against each defendant separately. *Id.* at 540-41, 113 S.Ct. 933. The Court concluded that the
9 district court had not abused its discretion in denying the petitioners' motions to sever. *Id.*

12 **B. The Co-Defendants Have Mutually Exclusive Theories of the Case**
13 **and Antagonistic Defenses**

14 Here, it is anticipated that Mr. Carter will claim that he is innocent and attempt to pin the
15 blame, at least in part on Mr. Brown. *See Rowland v. State*, 118 Nev. 31, 39 P.3d 114 (2002).
16 *Rowland* states that “defenses must be antagonistic to the point that they are ‘mutually exclusive’
17 before they are to be considered prejudicial,” requiring severance. *Id.* 118 Nev. at 43, 39 P.3d at
18 122. Defenses are mutually exclusive when “ ‘the core of the codefendant's defense is so
19 irreconcilable with the core of [the defendant's] own defense that the acceptance of the
20 codefendant's theory by the jury precludes acquittal of the defendant.’ ” *Id.* 118 Nev. at 43-44, 39
21 P.3d at 123. Here, Mr. Brown and Mr. Carter’s defenses are irreconcilable and “acceptance of
22 the codefendant's theory by the jury precludes acquittal of the defendant.’ ” *Id.* 118 Nev. at 43-
23 44, 39 P.3d at 123. *See also Buff v. State*, 114 Nev. 1237, 1245, 970 P.2d 564, 569 (1998) (noting
24 that severance may be required where a failure to sever hinders a defendant’s ability to prove his
25 theory of the case).

C. Severance Is Required to Protect Mr. Brown's Confrontation Clause Rights

Additionally, it is anticipated that the State will seek to introduce co-defendant Carter's post-offense and/or post-arrest statements at a joint trial that would otherwise be inadmissible pursuant to *Crawford v. Washington*, 541 U.S. 36, 49 (2004), if Mr. Brown were to be tried separately. Thus, compared to the defendants in *Zafiro*, where there were no admissibility questions or Confrontation Clause issues, here there is a real risk of prejudice that cannot be overcome with any curative instructions to the jury. Indeed, if this Court denies Mr. Brown's motion for severance either based on N.R.S. § 174.165(1) or *Crawford*, 541 U.S. at 49, there is no adequate remedy to protect Mr. Brown from spillover prejudice or to protect his Confrontation Clause rights. Thus, a severance is appropriate under either N.R.S. § 174.165(1) or *Crawford*, 541 U.S. at 49.

IV. CONCLUSION

WHEREFORE, in light of the points and authorities discussed in this memorandum, Mr. Brown's motion to sever should be granted and Mr. Brown and Mr. Carter should be tried separately.

Dated this 13th day April, 2018.

LARRY DECORLEON BROWN,
by his attorney,

/s/ Nicholas M. Wooldridge

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Case Number: C-17-326247-1

1 **Las Vegas, Nevada; Tuesday, April 17, 2018**

2 * * * * *

3 [Proceeding commenced at 10:11 a.m.]

4 THE COURT: State versus Larry Brown and Anthony
5 Carter.

6 DEFENDANT CARTER: Good morning, Your honor.

7 THE COURT: All right. And which one -- who is
8 Mr. Carter? All right. And Mr. Brown is here, but Mr. Wooldridge is
9 not here yet. On the status check concerns both, but there are a
10 number of motions that just concern Mr. Carter, so we can proceed
11 on those motions without Mr. Wooldridge being here.

12 So, Mr. Brown, you can have a seat for right now while we
13 proceed on Mr. Carter's matters.

14 MR. SLIFE: I think, Judge, what I was going to ask, if we
15 can go forward with the motion to suppress.

16 THE COURT: Right.

17 MR. SLIFE: With regard to the motion for severance, I saw
18 that Mr. Wooldridge filed a motion to withdraw.

19 THE COURT: Right.

20 MR. SLIFE: My understanding was he was going to join
21 that motion to sever. I haven't seen a joinder filed, I don't know if
22 that's going to happen now, so I guess I'd ask to pass that until we
23 see whether he's going to be off the case or who an attorney might
24 be to see if they may --

25 THE COURT: What they're --

1 MR. SLIFE: -- decide to join that.

2 THE COURT: Okay. And then -- so the other motion is
3 your motion for a bail reduction.

4 MR. SLIFE: Well, I had -- I had -- we had previously
5 argued that. I think that was under advisement.

6 THE COURT: Oh, okay.

7 MR. SLIFE: The other motion for today was the motion to
8 suppress.

9 THE COURT: Suppress. Now, my question on the motion
10 to suppress is does either side believe we need to have an
11 evidentiary hearing, or do you want the Court just to decide it based
12 on the materials that have been presented?

13 MR. SLIFE: Judge, on the defense's behalf, this was all on
14 video. I don't see that a hearing is going to do anything.

15 THE COURT: Yeah, I mean, if you ask for a hearing, I'll set
16 it for a hearing. But if both sides agree that there's nothing that can
17 be added to the record and that the Court has enough information,
18 just with the information that's been provided to it, then -- that was
19 my initial question.

20 MR. SLIFE: Unless something comes up, I think it's all on
21 video.

22 THE COURT: Okay.

23 MR. SLIFE: I can't think of anything that would add to the
24 video.

25 THE COURT: Okay. All right, fair enough.

1 And I'm assuming, State, you agree with that.

2 MR. GIORDANI: I agree.

3 THE COURT: All right. It seemed pretty clear from the
4 briefs, but I just wanted to bring that up and make it abundantly
5 clear on the record as to why then there wouldn't be an evidentiary
6 hearing on this. All right.

7 So, argument, Mr. Slife.

8 MR. SLIFE: May I just, kind of, summarize?

9 THE COURT: Sure.

10 MR. SLIFE: So, Judge, I think this is a black and white
11 issue. Obviously, Mr. Giordani disagrees.

12 When you watch and listen to the video, not the transcript,
13 at around 11:52:04, I think it's clear Mr. Carter says, quote, you can
14 lock me up, man, or get me a lawyer. And then a few seconds later
15 he says, you can lock me up and get me a lawyer, but I didn't do
16 this, bro. And so I think based on the context of the video, this isn't
17 something where he's bragging, hey, man, I'll get a lawyer and beat
18 this case. This is him saying, I'm done talking, you can either lock
19 me up or get me a lawyer. And I think we know that because one
20 minute later at 11:53:15, after he says I didn't do it, man, I had
21 nothing to do with it. He says, you can take me in, you can take me
22 in, because I don't want to incriminate myself.

23 And so I think it's clear he wants to stop the interview, he
24 doesn't want to incriminate himself. I think it's clear that he asked
25 for a lawyer. His requests were ignored by the first detective in the

1 video, which is Detective Cook, who just keeps accusing him. But
2 we know for sure the other detective in the room, Detective Dosch,
3 he sure thought this was a request for an attorney because the first
4 thing he says when he joins the conversation is, hey, Anthony, can I
5 be straight with you. If you want an attorney, just tell us right now.
6 And then there's a few more questions back and forth about
7 whether he wants an attorney.

8 So he says the words, get me a lawyer. Based on the
9 context, it's clear he doesn't want to incriminate himself; he wants a
10 lawyer. Detective Dosch certainly understands this was request, his
11 unambiguous request. And I think anything past that point has to
12 be suppressed. I know in my reply, I put that the State kind of
13 ignored the one case, which is that *Carter* case, that says once
14 counsel requested all questioning -- once counsel is requested, all
15 questioning must immediately cease. And the right may only be
16 waived if the accused initiates subsequent communication, there's
17 a break in custody, or receives counsel that he asked for. None of
18 those happened here.

19 And so, I think, Judge, it's an unambiguous request for an
20 attorney, it's ignored. He never initiates any subsequent
21 communication. And so, therefore, everything after that request
22 should be suppressed.

23 THE COURT: And for the record, Mr. Wooldridge just
24 walked in.

25 MR. WOOLDRIDGE: Good morning, Your Honor. I

1 apologize, I was stuck in another department.

2 THE COURT: No, that's okay.

3 MR. WOOLDRIDGE: It moved very slowly.

4 THE COURT: We proceeded on the motions concerning
5 Mr. Carter.

6 MR. WOOLDRIDGE: Okay.

7 THE COURT: But we'll move into the matters concerning
8 you as soon as we're done --

9 MR. WOOLDRIDGE: Not a problem, Judge.

10 THE COURT: -- with the hearing on the motion to
11 suppress Mr. Carter's statement.

12 MR. WOOLDRIDGE: Okay.

13 THE COURT: So go on Mr. Slife.

14 MR. SLIFE: That was it, Judge.

15 THE COURT: All right.

16 MR. SLIFE: Thank you.

17 THE COURT: Mr. Giordani.

18 MR. GIORDANI: Briefly, Your Honor. I cited to the
19 transcript, what I had in my file. Mr. Slife didn't have that I guess at
20 the time of the filing of the motion, so I cited to that. And then in
21 response to Mr. Slife's reply to my opposition, I went back and
22 listened to it again.

23 I'm still of the position, respectfully, I just completely
24 disagree with the form and content of what Mr. Carter said. If you
25 listen to it in its entirety, several times when Mr. Carter and the

1 detective, the initial Detective Cook are going back and forth. Prior
2 to the exchange that I cited in my opposition, there's a back and
3 forth where it's -- Detective Cook being accusatory and Mr. Carter
4 coming back, not aggressively, but saying, look, I didn't do this, I
5 didn't do this, take me in, man, I just -- I didn't do this. Going back
6 and forth.

7 So that taken into context with the portions that I cited in
8 my opposition from the transcript, clearly shows that this was a
9 back and forth and in context, it's equivocal. That is further
10 evidenced by, you know, what Mr. Slife believes is evidence that
11 Detective Dosch clearly thought he wanted an attorney. I
12 completely disagree. He goes back and honors the Defendant's
13 rights or attempts to honor them by explaining in detail, look, if you
14 need an attorney, just tell us you need an attorney. We're not going
15 to ask you questions if you need an attorney. Questioning will stop
16 if you need an attorney.

17 And that's specifically approved by the United State's
18 Supreme Court, not the Nevada Supreme Court, the United State's
19 Supreme Court, who I, you know, I cited that *Davis* case in my
20 opposition extensively. And it says, where there is an equivocal or
21 ambiguous potential invocation, it's good police practice to ask
22 further questions and clarify that right. That -- suppressing a
23 statement such as this would deter positive police conduct. They
24 did exactly what they should have done considering this equivocal
25 statement.

1 And real briefly, I didn't -- I didn't cite to *Carter* or analyze
2 *Carter* because it's inapposite here. It's -- in that case it's can I get
3 an attorney? To me that's unambiguous, can I get an attorney.
4 That's invoking your right. The reason I didn't analyze that is
5 because it's completely different with the facts in this instant case.
6 With that I will submit it to the Court.

7 THE COURT: Anything else, Mr. Slife?

8 MR. SLIFE: Judge, to honor his rights would have been to
9 stopped asking him questions and they didn't do it and I think
10 everything after that should be suppressed.

11 THE COURT: All right. The Court's going to review this
12 further and issue a decision from chambers. So there -- since it's a
13 legal ruling, there's no need to have the Defendant present or
14 anything like that, so it will be from chambers by way of order. And
15 that'll be Monday. All right.

16 MR. GIORDANI: Thank you.

17 THE COURT: Moving on to --

18 MR. GIORDANI: And I'm sorry, real quick. The bail
19 motion -- the bail motion that you referenced, we argued that fully
20 time, correct?

21 THE COURT: Right. Right.

22 MR. GIORDANI: Okay. So you're just going to issue a
23 decision.

24 THE COURT: At the -- no, you know what, I thought I had
25 issued a minute order on this one, but I guess I didn't. This motion

1 the Court had intended to deny. I'm not going to rehash what the
2 Court's already said about what I consider to be the strength of the
3 evidence. I think that was fully argued by Mr. Slife previously and
4 his opinion --

5 MR. GIORDANI: Yes, Your Honor. Thank you.

6 THE COURT: -- is clear.

7 All right. Let's turn to Mr. Brown -- Mr. Wooldridge's
8 motion to withdraw.

9 MR. WOOLDRIDGE: Your Honor, can we -- I know that's
10 set for the 25th, I believe.

11 THE COURT: Right.

12 MR. WOOLDRIDGE: Can we keep it on that date? There's
13 a couple of things I want to go over with Mr. Brown.

14 THE COURT: Okay.

15 MR. WOOLDRIDGE: And I attempted to go see him, but
16 they've been on lockdown for -- since -- since like Friday.

17 THE COURT: Okay. So is there a possibility that the issue
18 may be resolved --

19 MR. WOOLDRIDGE: Possibly.

20 THE COURT: -- with the family and so that you may stay
21 on. All I'm going to say is this, that's -- that would --

22 MR. WOOLDRIDGE: The sooner the better, yeah.

23 THE COURT: -- be better. Because then we won't have to
24 bring another lawyer up to speed.

25 MR. WOOLDRIDGE: I get it.

1 THE COURT: But once you commit, then I'm not --

2 MR. WOOLDRIDGE: I understand, Your Honor.

3 THE COURT: -- make sure that you're ready to commit
4 because I don't want to --

5 MR. WOOLDRIDGE: I get it.

6 THE COURT: Right. All right. So any objection -- because
7 Mr. Slife's motion to sever is kind of trailing whether or not you're
8 going to be counsel and joining in.

9 MR. WOOLDRIDGE: And I also joined in the motion to
10 sever. We filed a joint --

11 THE COURT: Oh, you --

12 MR. WOOLDRIDGE: -- I filed a motion to join.

13 THE COURT: Oh, you did file a joinder.

14 MR. WOOLDRIDGE: Yeah, if I'm on, I'm on. If I'm -- I
15 mean, while I'm on I'm still working.

16 THE COURT: Oh, okay. All right.

17 MR. WOOLDRIDGE: You know, so I -- and I file --

18 THE COURT: So I didn't see that, so that's already been
19 joined in.

20 MR. WOOLDRIDGE: I brought a -- and I brought a
21 separate issue within there that the State may want to address. It's
22 a *Crawford* issue based on Mr. Carter's statements where there's
23 some --

24 THE COURT: All right. Well -- so that will trail the ruling
25 on the motion to suppress. Because if Mr. Carter's statement

1 doesn't come in, then that issue is moot.

2 MR. GIORDANI: Right.

3 MR. WOOLDRIDGE: At least my *Crawford* issue, correct.

4 THE COURT: Right.

5 MR. WOOLDRIDGE: But -- but.

6 THE COURT: You're -- that's what I meant.

7 MR. WOOLDRIDGE: Yes.

8 THE COURT: That's what I meant. That would be moot
9 at that time, so -- yes.

10 MR. GIORDANI: I'm sorry. It doesn't need to trail though.
11 As I put in my footnote in the opposition to Mr. Slife's motion to
12 sever. I can sanitize and redact.

13 THE COURT: Redact it.

14 MR. GIORDANI: If that statement if considered or deemed
15 admissible, I wouldn't play it in its entirety.

16 THE COURT: Right.

17 MR. GIORDANI: *Bruton* can be solved and that's not an
18 issue, so.

19 THE COURT: All right.

20 MR. GIORDANI: I mean, if you still want to trail it, it
21 supports --

22 THE COURT: No, I mean, I'm fine going forward on that
23 today if counsel's ready to go forward on the motion to sever today.

24 MR. WOOLDRIDGE: That's fine.

25 THE COURT: All right.

1 Mr. Slife, anything -- or we can -- you're back on the 25th.

2 MR. SLIFE: If you'd like, Judge, could we -- could we
3 continue the motion to sever to the 25th, so I can read
4 Mr. Wooldridge's joinder.

5 THE COURT: Well, wait a minute. The 25th isn't right
6 because that's a Wednesday.

7 THE CLERK: It's on the 24th.

8 THE COURT: It's on the 24th --

9 MR. WOOLDRIDGE: 24th, I apologize.

10 THE COURT: -- which is a Tuesday.

11 MR. WOOLDRIDGE: Got a day off.

12 THE COURT: So that's fine with me. So we'll just pass
13 everything to the 24th.

14 MR. SLIFE: If that's okay.

15 THE COURT: Right.

16 MR. WOOLDRIDGE: That's fine.

17 THE COURT: All right.

18 MR. WOOLDRIDGE: Thank you, Judge.

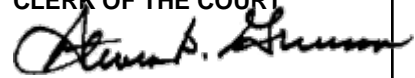
19 [Proceeding concluded at 10:22 a.m.]

20 * * * * *

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



24 Robin Page
25 Court Recorder/Transcriber



MOT
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO: C-17-326247-1

LARRY DECORLEON BROWN,
#8376788

DEPT NO: III

Defendant.

**STATE'S NOTICE OF MOTION AND MOTION TO
COMPEL DEFENDANT BROWN'S CELLULAR PHONE PASSCODE,
OR ALTERNATIVELY, TO COMPEL FINGERPRINT**

DATE OF HEARING:
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN GIORDANI, Chief Deputy District Attorney, and files this Notice Of Motion And Motion To Compel Defendant Brown's Cellular Phone Passcode, Or Alternatively, To Compel Fingerprint.

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

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1 At that subsequent grand jury presentation, Larry Brown's girlfriend, Angelisa Ryder,
2 testified.

3 On October 11, 2017, the Second Superseding Indictment returned charging
4 Defendants Larry Brown and Anthony Carter with the same aforementioned crimes and Larry
5 Brown with the additional crime of Court 6 - Ownership Or Possession Of Firearm By
6 Prohibited Person (Category B Felony - NRS 202.360). At the preceding grand jury
7 presentation, no additional witnesses testified, only a judgment of conviction related to the
8 new crime was admitted.

9 On October 19, 2017, the continued arraignment hearing was held and both Defendants
10 pled not guilty to the charges and waived their speedy-trial right.

11 On November 30, 2017, Defendant Carter filed his Petition for Writ of Habeas Corpus,
12 which was subsequently denied via minute order.

13 On December 13, 2017, the Third Superseding Indictment returned charging
14 Defendants Larry Brown and Anthony Carter with the same aforementioned crimes – Counts
15 1 through 6. At the preceding grand jury presentation, Anthony Carter's friend, Carnell Cave,
16 testified.

17 Jury Trial is currently scheduled to begin on June 18, 2018.

18 **II. STATEMENT OF RELEVANT FACTS**

19 On February 21, 2017, at approximately 10:47 PM, victim Kwame Banks was robbed and
20 murdered in the parking lot of the Sky Pointe Landing Apartment Homes apartment complex
21 located at 5850 Sky Pointe Drive, Las Vegas, Clark County, Nevada. Banks's lifeless body
22 was found in the parking lot with his pants pockets turned inside out and his vehicle having
23 been stolen. Banks's cause of death was a single gunshot wound to his chest that exited his
24 back. (Reporter's Transcript Volume 1 ("RT1"), August 29, 2017, at 14-26). Defendant
25 Anthony Carter does not dispute that Kwame Banks was robbed and murdered. (Def.'s
26 Petition at 10:14-15). Further, evidence presented to the Grand Jury clearly shows probable
27 cause that Larry Brown robbed and murdered Kwame Banks. What follows are the facts
28 presented to the Grand Jury to establish probable cause that Defendant Carter and Larry Brown

1 entered into a conspiracy to rob Kwame Banks, and that Defendant Carter aided and abetted
2 Larry Brown in furtherance of the conspiracy by setting up Kwame Banks in the robbery that
3 ultimately ended in Banks's murder.

4 Defendant Carter had known Kwame Banks for some time. Carter's ex-wife, who he still
5 lives with, Tiffany Carter, testified that Carter knew Kwame Banks. (RT1 at 55:18-20).
6 Defendant Carter also told detectives that he knew Kwame Banks and had communicated with
7 Banks via cellphone about purchasing marijuana on the night of Banks's murder. (RT1 at 33).
8 Cellphone evidence also showed multiple daily contacts between Defendant Carter and
9 Kwame Banks. (Reporter's Transcript Volume 2 ("RT2"), September 5, 2017, at 22).

10 Defendant Carter was present at or near the scene of the crime at the time of the murder.
11 Defendant Carter himself, Tiffany Carter, and Carter's friend Carnell Cave all establish that
12 Defendant Carter was visiting Cave's apartment located within the Sky Pointe Landing
13 apartment complex on the night of the murder. (RT1 at 32-36, 52-54).

14 Additionally, when interviewed by detectives, Defendant Carter provided three different
15 stories about his contact with Kwame Banks on the night of the murder. First, Defendant
16 Carter told detectives he was supposed to purchase marijuana from Banks that evening, but
17 the meeting ending up getting cancelled and the two men were discussing doing the transaction
18 the following day. (RT1 33-36). Next, Defendant Banks told detectives there actually was a
19 marijuana transaction, Kwame Banks came inside Cave's apartment to conduct the transaction
20 and, following the transaction, Banks left. Id. Finally, Defendant Carter told detectives there
21 was a marijuana transaction, but that transaction occurred at Banks's vehicle in the parking lot
22 of the Sky Pointe Landing apartment complex basketball court, which is located on the
23 opposite side of the building from Cave's apartment. Id. Defendant Carter further told
24 detectives that after the transaction, while he was in Cave's apartment, he heard gunshots and
25 looked outside to see police cars and Banks's vehicle parked out front of Cave's apartment.
26 (RT1 34). Notably, Banks's vehicle was taken in the robbery and was gone from the apartment
27 complex before police officers arrived. Id. Defendant Carter hid inside Cave's residence until
28

1 the police cleared the scene, and snuck out the following morning. (Reporter's Transcript
2 Volume 3 (RT3), December 12, 2017, at 10).

3 In addition to knowing Kwame Banks, Defendant Carter admits to knowing Larry Brown
4 since the 1990s from their home state of Georgia. (RT1 36). Additionally, Defendant Carter
5 told detectives that he and Brown had not been in contact in some time but had recently began
6 to associate again. (RT1 37).

7 Evidence presented to the Grand Jury shows there were three cellphones found at the
8 murder scene. (RT1 21-22). The first cellphone was found under Banks's body and identified
9 as belonging to Kwame Banks. (RT1 21; RT2 10). The second cellphone was found about
10 15 feet away from Banks's body in a disturbed landscape area and was identified as belonging
11 to Larry Brown. (RT1 21-22, 27; RT2 10). The third cellphone was found about 100 feet
12 from Banks's body, near the exit of the apartment complex. (RT1 22-23). That third cellphone
13 was identified as also belonging to Kwame Banks. (RT2 10).

14 Cellphone data and pen register evidence indicate Defendant Carter was in constant and
15 increasing telephone communication with both Kwame Banks and Larry Brown in the hours
16 leading up to Banks's murder. (RT2 13-16). However, Kwame Banks and Larry Brown were
17 never in telephone contact and no evidence exists to indicate they knew each other. Id.
18 Specifically, beginning at about 7:30 PM, Defendant Carter had several telephone contacts
19 with Kwame Banks and followed up each contact with a telephone contact to Larry Brown.
20 (RT2 15-16). Shortly after Defendant Carter began telephone contact with Kwame Banks,
21 cellphone-tower location data shows the phones belonging to Defendant Carter and Larry
22 Brown both converge upon the area of the Sky Pointe Landing apartment complex where
23 Kwame Banks was ultimately murdered. (RT2 17-19). At 10:06 PM, there is a phone call
24 between Defendant Carter and Kwame Banks. (RT2 15). Immediately following that phone
25 call, Defendant Carter made several phone calls to Larry Brown. (RT2 15-16). Ultimately,
26 the telephone communication between Defendant Carter and Larry Brown totally stops after
27 10:47 PM, which is the time independent witnesses first called 9-1-1 to report Kwame Banks's
28 shooting death. (RT2 12, 16). Defendant Carter destroyed his cellphone, which he had used

1 to communicate with Banks that evening to set up the robbery, within 24 hours of Kwame
2 Banks's murder. (RT1 38-39, RT3 11).

3 Subsequent to the initial grand jury proceedings, the LVMPD DNA lab authored its report
4 regarding the results of DNA testing conducted on several items of evidence from the scene.
5 Most damning, Defendant Brown's DNA was found on the torn latex glove that was located
6 underneath the victim's body. Not only does this fact seal Defendant Brown's fate, but it also
7 demonstrates that Brown and Carter pre-planned the robbery.

8 As of the date of the filing of this Motion, Detectives have exhausted all known avenues
9 in order to gain access to Defendant Brown's passcode-protected cellphone, to no avail. The
10 State believes that further attempts to break into the phone could destroy vital evidence in the
11 case. Due to the fact that Defendant Carter destroyed his cellphone, and the fact that the
12 cellphone records for both Carter's and Brown's phones do not contain the content of text
13 messages, the State does not currently know the content of the text messages sent and received
14 between Brown and Carter in the minutes leading up to the robbery and murder of Kwame
15 Banks. The State seeks an Order compelling Defendant Brown to: 1) provide his cellphone
16 passcode to the State, or 2) provide his cellphone passcode to the Court in camera, who can
17 then provide it to the LVMPD lab directly. Alternatively, the State requests an Order
18 compelling Defendant Brown to place his thumb on the cellphone in order to access it.

19 20 LEGAL ARGUMENT

21 **I. Defendant Brown should be compelled to provide his passcode or fingerprint** 22 **to unlock his cellular phone because his Fifth Amendment right against self-** 23 **incrimination is not implicated.**

24 The Fifth Amendment right against self-incrimination applies only where three elements
25 are met: 1) compulsion, 2) a testimonial communication or act, and 3) incrimination. *Fisher v.*
26 *United States*, 425 U.S. 391, 408 (1976). Testimony is defined as when a person is compelled
27 to be a witness against himself. *Doe v. United States*, 487 U.S. 201, 210 (1988). The defendant
28 must be asserting a fact or disclosing information. *Id.* An exception to this rule is the foregone
conclusion. The foregone conclusion exception applies when the State can prove: 1) the

1 document exists, 2) the defendant possessed or controlled the document, and 3) the document
2 is authentic. *Fisher*, 425 U.S. at 410–13.

3 Where a fingerprint or passcode is required to unlock a cell phone, it is not testimonial for
4 a defendant to provide either of those to allow law enforcement to unlock that phone. As to a
5 fingerprint, a defendant has no Fifth Amendment right against providing his physical features
6 to law enforcement and so it is not testimonial. *See Schmerber v. California*, 384 U.S. 757,
7 763–65 (1966). As to a passcode, even if the court finds that revealing it is testimonial, the
8 foregone conclusion exception applies in certain circumstances. *Fisher*, 425 U.S. at 410–13.
9 When law enforcement is aware that information exists on the cell phone, is aware that a
10 passcode is needed, knows that the defendant controlled or possessed that phone and passcode,
11 and the technology is self-authenticating, the foregone conclusion exception applies and the
12 defendant should provide the passcode.

13 **a. Providing a fingerprint is not testimonial.**

14 The Supreme Court has held that compelling a defendant to display physical features
15 does not violate the right against self-incrimination. *United States v. Wade*, 388 U.S. 218, 223
16 (1967) (compelled to speak the same words as the witnesses heard at the bank robbery);
17 *Schmerber*, 384 U.S. at 763–65 (compelled to provide blood sample and fingerprints); *Holt v.*
18 *United States*, 218 U.S. 245, 252–53 (1910) (compelled to wear shirt to see if it fit).
19 Compelling a fingerprint to unlock a phone should not be treated differently. *Com. v. Baust*,
20 89 Va. Cir. 267 (2014). Thus, the defendant’s right against self-incrimination is not violated
21 by being compelled to provide a fingerprint.

22 The Fifth Amendment and court-imposed safeguards protect the defendant’s right
23 against self-incrimination when he is compelled to provide a fingerprint. In *Commonwealth v.*
24 *Baust*, the Virginia Supreme Court found that compelling a fingerprint did not violate a
25 defendant’s Fifth Amendment right against self-incrimination. *Baust*, 89 Va. Cir. 267. His
26 physical characteristics were non-testimonial in nature and did not divulge anything of his
27 mental processes. *Id.* Other courts have also recognized that compelling a fingerprint was non-
28 testimonial. *Com. N. Marian Islands v. Bowie*, 243 F.3d 1109, 1120 n.5 (9th Cir. 2001); *State*

1 v. *Diamond*, 905 N.W.2d 870, 875–76 (Minn. 2018). Courts have reached this decision
2 through two justifications. One, by noting that the prosecution did not present evidence at trial
3 that the defendant was the one who opened the phone with his fingerprint. *Diamond*, 905
4 N.W.2d at 872. Two, by finding that compelling a fingerprint does not make the defendant
5 admit that he had exclusive use of the phone or that only his fingerprint would unlock the
6 phone. *State v. Diamond*, 809 N.W.2d 143, 150–51 (Minn. App. 2017).

7 Here, Defendant’s Fifth Amendment right would not be implicated by compelling him
8 to provide a fingerprint. The State is requesting that he provide one of his physical
9 characteristics. He is not divulging any information as to the charges against him by placing
10 his finger on the phone screen. Thus, the State should be able to compel the defendant’s
11 fingerprint to open his cell phone.

12 **b. Providing a passcode is not testimonial; and even if it was, the foregone**
13 **conclusion exception would apply.**

14 The few cases addressing this topic have used two analyses. One court has held that
15 fingerprints and passcodes—in the context of technology—should not be given different
16 protections under the Fifth Amendment. *State v. Stahl*, 206 So. 3d 124 (Fla. Dist. Ct. App.
17 2016). Other courts have held that while revealing a passcode may be testimonial,
18 circumstances may allow the prosecution to compel the passcode because of the foregone
19 conclusion exception. *E.g., Com. v. Davis*, 176 A.3d 869 (Pa. Super. 2017). One solution to
20 further protect the defendant is that if the defendant discloses or uses the passcode to open the
21 phone or computer, then the prosecution will not present at trial that he opened the phone or
22 computer with a passcode. *Diamond*, 905 N.W.2d at 872. Another solution is to compel the
23 defendant to use the passcode to open the phone, but to not directly disclose the passcode to
24 the prosecution. *United States v. Fricosu*, 841 F. Supp. 2d 1232, 1237 (D. Colo. 2012).

25 **1. Providing a passcode is not testimonial.**

26 The Fifth Amendment does not provide more protection for passcodes than it does for
27 fingerprints. In *State v. Stahl*, the court found that compelling the defendant to disclose his
28 passcode did not violate his Fifth Amendment right against self-incrimination. *Stahl*, 206 So.

3d at 134–35. The court reasoned that there should not be greater protection for passcodes over fingerprints. *Id.* at 134. The defendant would not be acknowledging that any incriminating information exists by simply providing his passcode. *Id.* The court found that because the government already tied the potential evidence to the source—the cell phone—the defendant would not be admitting anything as to the charges against him by entering a passcode. *Id.* If a statement is not testimonial, then the mere assertion that it will lead to incriminating evidence does not make it testimonial. *Id.* The passcode had no value or significance as to the charges against the defendant. *Id.* Thus, the Fifth Amendment provides the same protection for both passcodes and fingerprints. *Id.*

If the defendant provided the passcode to unlock his cell phone, then his right against self-incrimination would not be violated. He would not be acknowledging that any evidence found on his phone exists. The State has independently linked the text messages and phone calls to the defendant’s phone through the cell phone records. The passcode has no significance as to the charges against the defendant. Just because entering the passcode may lead to incriminating evidence that does not make entering the passcode testimonial. Using a fingerprint or entering a passcode to open the phone should not be treated differently. Thus, the defendant would not be making a testimonial statement by disclosing the passcode.

2. Even if providing a passcode was testimonial, the foregone conclusion exception applies because revealing the passcode would add little to nothing to the State’s information.

To compel a passcode under the foregone conclusion exception, the State must prove three elements: 1) the evidence’s existence, 2) the defendant’s control or possession of that evidence, and 3) authenticity. *Fisher*, 425 U.S. at 410–13. Those elements must be shown with a reasonable particularity. *In re Grand Jury Subpoena Duces Tecum Dated March 25, 2011*, 670 F.3d 1335, 1344 (11th Cir. 2012). One rationale for the foregone conclusion exception is that the information provided by the defendant “adds little or nothing” to the government’s information. *Fisher*, 425 U.S. at 411. The question then becomes one “not of testimony but of surrender.” *Id.*

i. The State independently knows that the passcode and information on the phone exists.

Under certain factual circumstances, courts have allowed the prosecution to compel a defendant to reveal a passcode to open a cell phone or computer. The prosecution must show that the State is aware that a passcode is required to unlock the phone or computer and that the information on the device exists. *United States v. Apple MacPro Computer*, 851 F.3d 238, 248 (3d Cir. 2017); *Davis*, 176 A.3d at 876; *Stahl*, 206 So. 3d at 136. The foregone conclusion exception does not apply in circumstances where the prosecution is unaware of what it is looking for on the phone or if any information exists on the phone. *Grand Jury Subpoena Duces Tecum Dated March 25, 2011*, 670 F.3d at 1346–47. But where the officers know that information related to the offenses is on the phone, the first element of the foregone conclusion exception is met. *Gelfgatt*, 11 N.E. 3d at 614–15. The prosecution does not need to know the exact contents, just the existence. *Fricosu*, 841 F. Supp. 2d at 1237.

For example, in *Commonwealth v. Gelfgatt*, the defendant had spoken to officers. *Gelfgatt*, 11 N.E. 3d at 615. He told them that he had files on the computer that were related to the offenses, that the computer was encrypted, and that he had access to the computer unencrypted. *Id.* Giving his passcode would not reveal any more information than what he had told the officers because they knew that information existed. *Id.* at 615–16.

Even if compelling the defendant to provide the passcode was testimonial, then the passcode would fall under the foregone conclusion exception. As to the first element, the State has independently uncovered the evidence’s existence on the defendant’s phone. The cell phone records indicate two incoming phone calls from his co-defendant and 15 text messages between the defendant and his co-defendant shortly before the murder. While the State has the time-stamped phone calls and messages, there is no content in those cell phone records. But because the State has had custody of that phone since the night of the murder, the content of those messages are preserved on the phone. The State also knows that the phone has passcode protection. The State has been unable to access the phone after trying other means to decrypt it. Thus, the State has proven the existence of the passcode and the information that it is seeking.

1 **ii. The State independently knows that the defendant controlled and**
2 **possessed the phone and passcode.**

3 When the prosecution has proven that the defendant was the owner and user of the
4 phone or computer, the court has found that the prosecution satisfied the foregone conclusion
5 exception's second element. If the defendant tells officers that he owned and used the device,
6 or other testimony proves that the defendant owned and possessed the phone, then the second
7 element is met. *United States v. Gavegnano*, 305 Fed. Appx. 954, 956 (4th Cir. 2009); *In re*
8 *Grand Jury Investigation*, 88 N.E. 3d 1178, 1182 (Mass. App. Ct. 2017); *Davis*, 176 A.3d at
876; *Gelfgatt*, 11 N.E. 3d at 615.

9 As to the second element, the State has independently proven that the defendant had
10 control and possession of that phone. His girlfriend testified at the grand jury hearing that the
11 defendant has owned and used the phone for about two years. The only time that she reached
12 him on a different number was after the night of the murder when the defendant purchased a
13 new phone. The cell phone records also indicate that the defendant is the owner of the cell
14 phone number. The defendant is aware of the passcode because he has used the phone for two
15 years and a cell phone user knows the passcode to his own phone. Thus, the State has met the
16 second element that the defendant owned and possessed the phone and knows the passcode
17 exists.

18 **iii. The passcode is self-authenticating.**

19 Technology does not squarely fit within the authenticity requirement and must be
20 considered self-authenticating. *Davis*, 176 A.3d at 876 (citing *Stahl*, 206 So. 3d at 134–36). If
21 the passcode allows access to the phone, then the passcode is authentic. *Id.*

22 As to the third element, the passcode is self-authenticating. The defendant's cell phone
23 requires a passcode to allow access. And because the passcode allows access to the phone,
24 then it is self-authenticating. The State has proven the third element of authenticity. Overall,
25 the defendant providing a passcode would be adding little or nothing to the State's information
26 because the State is already aware that a passcode exists, the information exists on the phone,
27 and the defendant owned and used the phone. Thus, the defendant's right to self-incrimination
28

1 would not be implicated because the State has met its burden to show that information revealed
2 on the defendant's phone is a foregone conclusion.

3 **3. As an alternative, providing a decrypted version of the phone can**
4 **resolve any potential Fifth Amendment issue.**

5 While the defendant's right against self-incrimination would not be violated by
6 providing a passcode, there are alternative ways of providing a passcode that would further
7 protect the defendant's right. Some courts have allowed the prosecution to compel a defendant
8 to provide a decrypted version of the phone or computer. *Fricosu*, 841 F. Supp. 2d at 1237; *In*
9 *re Boucher*, No. 2:06-MJ-91, 2009 WL 424718 (D. Vt. Feb. 19, 2009). That would require the
10 defendant to unlock the phone with the passcode, but not directly reveal the passcode to the
11 prosecution. *Fricosu*, 841 F. Supp. 2d at 1237. A further layer of protection that the courts
12 have required is to prohibit the prosecution from presenting at trial that the defendant was the
13 one who entered the passcode. *Id.* at 1238.

14 Therefore, the defendant should be compelled to provide a fingerprint or passcode
15 because his Fifth Amendment right is not implicated and can be thoroughly protected.
16 Providing a fingerprint is not testimonial. Providing a passcode is not testimonial, and even if
17 it is, the foregone conclusion applies. The State is independently aware of the phone's
18 passcode, is aware of the information on the phone, knows the defendant possessed and used
19 the phone, and the passcode is self-authenticating. Further, the court could compel the
20 defendant to enter the passcode without disclosing it to the State. The court may also prohibit
21 the State from presenting at trial that the defendant opened the phone with his fingerprint or
22 passcode, in order to cure any issue relating to ownership of the item, should the defense
23 choose to go that route.

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DATED this 23rd day of April, 2018.

BY /s// JOHN GIORDANI
JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #012381

I hereby certify that service of the above and foregoing was made this 23rd day of April, 2018, by electronic transmission to:

BY /s// E. DEL PADRE
E. DEL PADRE
Secretary for the District Attorney's Office

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1 **RTRAN**

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5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

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THE STATE OF NEVADA,
Plaintiff,

CASE NO: C-17-326247-1
CASE NO: C-17-326247-2

vs.

DEPT. XXI

LARRY DECORLEON BROWN,
ANTHONY CARTER,
Defendants.

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
TUESDAY, APRIL 24, 2018

RECORDER'S TRANSCRIPT OF HEARING RE:
ALL PENDING MOTIONS

APPEARANCES:

For the State: **JOHN L. GIORDANI, III, ESQ.**
Chief Deputy District Attorney

For Defendant Brown: **NICHOLAS M. WOOLDRIDGE, ESQ.**

For Defendant Carter: **CONNER M. SLIFE, ESQ.**
Deputy Public Defender

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 **Las Vegas, Nevada; Tuesday, April 24, 2018**

2 * * * * *

3 [Proceeding commenced at 10:09 a.m.]

4 THE COURT: State versus Larry Brown, who is present in
5 custody with Mr. Wooldridge. And Anthony Carter, who's --

6 DEFENDANT CARTER: Good morning, your Honor.

7 THE COURT: -- good morning -- who's present in custody
8 with Mr. Slife. This is on for status check, the continuation of
9 Mr. Wooldridge's motion to withdraw, and then some other
10 motions that were filed.

11 Let's turn first to Mr. Wooldridge's motion to withdraw.
12 This was passed over last time for Mr. Wooldridge to see if --

13 MR. WOOLDRIDGE: Speak with my client and stuff.

14 THE COURT: -- the family would be able to retain you.

15 MR. WOOLDRIDGE: And I have spoken with Mr. Brown,
16 we've decided to part ways amicably, Your Honor.

17 THE COURT: All right.

18 MR. WOOLDRIDGE: So I would be moving to withdraw.

19 THE COURT: All right. So Mr. Brown and/or family is
20 unable to meet the financial obligations.

21 MR. WOOLDRIDGE: Correct.

22 THE COURT: All right. Which -- Mr. Brown. All right.

23 So, Mr. Brown, based upon your custodial status and
24 financial inability to pay Mr. Wooldridge, are you asking me to
25 appoint counsel to represent you?

1 DEFENDANT BROWN: At this moment, yes.

2 THE COURT: All right. Now, obviously, the Public
3 Defender's Office has already been appointed on the case. I think
4 we would need to -- do -- is anyone aware of a possible conflict with
5 the Special Public Defender? No.

6 MR. WOOLDRIDGE: I don't know of a conflict, Judge.

7 THE COURT: All right. So we'll appoint the Special Public
8 Defender's Office to represent Mr. Brown.

9 And is anybody here from that office? Nope.

10 MR. WOOLDRIDGE: And I'll make arrangements to get
11 whoever -- whoever it is the file.

12 THE COURT: Mr. Hyte and Ms. Trujillo were here, but
13 they're gone, so I don't --

14 MR. GIORDANI: Your Honor, before we move on, should
15 we address -- I mean, since he's already responded or joined -- I'm
16 sorry.

17 THE COURT: Right. We can do those matters.

18 MR. WOOLDRIDGE: That's fine.

19 MR. GIORDANI: Okay.

20 MR. SLIFE: Are you talking about the motion to sever,
21 Judge? I guess I'm ready to -- I guess --

22 THE COURT: Right. We can do the motion to sever and
23 then motion to suppress was on for decision.

24 MR. SLIFE: Well, I guess -- I was thinking it made more
25 sense to wait to see who counsel's going to be to see what their

1 take was on the motion to sever. Because I don't know if they have
2 a -- I don't know if they have a different take with regard to --

3 THE COURT: So even though Mr. -- what you're saying is
4 even though Mr. Wooldridge has joined in, you want to -- am I
5 hearing you correctly? What I'm hearing, reading between the
6 lines, is you want to wait and see if the Special PD or whomever is
7 appointed has, like, some new ideas, some new and better idea as
8 to why the matter should be severed. And you would like that to be
9 considered by the Court before the Court denies your motion.

10 Is that what I'm hearing?

11 MR. SLIFE: I think so, Judge. I had to connect all the dots
12 first.

13 THE COURT: Right.

14 MR. SLIFE: Well, because, Judge, part of --

15 THE COURT: Because you're hoping they think of
16 something that Mr. Wooldridge didn't think of.

17 MR. SLIFE: Well --

18 THE COURT: And that you didn't think of.

19 MR. SLIFE: It's not that. It's -- my argument standing
20 alone is the disparity in evidence, which I'm happy to do at anytime
21 because that's my argument and my argument alone.

22 THE COURT: Right.

23 MR. SLIFE: But one of the other arguments is that there's
24 mutually adverse defenses.

25 THE COURT: Well, not really. I mean, the one argument

1 is it wasn't me, I wasn't involved, I didn't know what was going on, I
2 didn't do it. And the other argument is it wasn't me, I didn't know
3 what was going on, I didn't do it. Right. I don't see how those are
4 mutually adverse.

5 MR. SLIFE: Well --

6 MR. WOOLDRIDGE: I think maybe you would want to
7 hear from defense counsel in chambers because we start putting
8 defense theories on the record and --

9 MR. SLIFE: So, Judge, part of that -- so defendant's
10 antagonistic and mutually exclusive defenses was part two of this.

11 THE COURT: Right. No, no, I read that, but I'm not really
12 sure what would be -- I mean, especially with respect to your client,
13 who, I mean, isn't it going to be, I don't know what was going on, I
14 wasn't involved.

15 MR. SLIFE: Well, I think, Judge --

16 THE COURT: I didn't do it.

17 MR. SLIFE: -- I think, Judge --

18 THE COURT: I wasn't part of the conspiracy.

19 MR. SLIFE: Correct.

20 THE COURT: I didn't know.

21 MR. SLIFE: I think all my cards are on the table.

22 THE COURT: Because if he didn't know what was going
23 on and he didn't do it, he doesn't have any inculpatory information
24 as to the co-defendant because how can he say, oh, it was the other
25 guy. All he can say is, or the inference is, it wasn't me, I didn't

1 know what was going on, right.

2 MR. SLIFE: Well, the --

3 THE COURT: I mean, if he knew it was -- if he knew it was
4 the other guy, then he knew what was going on. I mean, right, all
5 he can say is, hey, I didn't know this was happening.

6 MR. SLIFE: Well, it doesn't have to do with his
7 knowledge, it has to do with my arguments in trial.

8 THE COURT: Well, but you would be arguing --

9 MR. SLIFE: And it has to do with the other evidence
10 against the co-defendant.

11 THE COURT: -- look, if anybody did anything, it's this
12 other guy, but not my client. So I'm saying, you're not presenting
13 any evidence that's adverse to the co-defendant. It would just be,
14 hey, if anybody did anything it's, you know, it's this other person,
15 but that doesn't mean my client did anything. Isn't that --

16 MR. SLIFE: Well, I think it's whether we're pointing the
17 fingers at each other. I think -- all my cards are on the table for my
18 motion, co-defendant's cards are not. And that's why we put in the
19 motion. If you'd like us to approach *ex parte* or do something
20 under seal, then Mr. Wooldridge could tell you his theory of
21 defense and why it would be pointing the finger at me. I don't think
22 that's been --

23 THE COURT: All right. Here's what I'm inclined to do. I
24 mean, you have your motion to sever and that's representing the
25 interest of your client.

1 MR. SLIFE: Correct.

2 THE COURT: And I'm, at this point, not really seeing.
3 Now, if the -- I mean, I would be inclined to pass it as to the
4 co-defendant because otherwise if we appoint new counsel, they're
5 just going to ask to file a motion for reconsideration or something
6 like that if they have come up with a new argument that
7 Mr. Wooldridge didn't think of or there's something else, so.

8 MR. WOOLDRIDGE: And I believe the *Bruton* issue has
9 been cured.

10 THE COURT: Right. Right. I mean, that's not the issue.
11 So like I said, just because, you know, the argument I don't think
12 would be I saw it and he did it. It would be more I didn't do it; I
13 didn't know what was going on. And if they've proven anything, it
14 was against this other guy and they've just dragged my client in
15 here to -- right. Isn't that essentially where you'd be going with
16 this?

17 MR. SLIFE: Well, I'm -- I'm going to be point --

18 THE COURT: Like all of -- I mean, you would be saying,
19 look, all of the evidence that you've heard pertains to the
20 co-defendant.

21 MR. SLIFE: Correct.

22 THE COURT: Or most of the evidence. And so don't get
23 confused, jury, because you may think the co-defendant is guilty.
24 You have to focus on my client separately, right?

25 MR. SLIFE: And my understanding was that the theory of

1 defense or the co-defense could be that -- that pointing the finger at
2 us, that we're the culpable party.

3 THE COURT: Mr. Giordani.

4 MR. GIORDANI: If that were the case -- obviously, I don't
5 have a crystal ball -- but if that were the case, they're still not
6 mutually exclusive. The -- Carter is not charged with conspiring
7 with the victim Kwame Banks. So if, you know, Mr. Wooldridge's
8 client, or the SPD's client now, Mr. Brown, says, hey, I got set up by
9 Carter, Carter had Kwame meet me in the parking lot and Kwame
10 tried to rob me. I took the gun from him and shot him in the chest.

11 That would not preclude the acquittal of both of them.
12 They could still be acquitted. He's not charged with a felony
13 murder, conspiring with Kwame Banks, so I haven't heard anything,
14 I can't fathom anything that would be mutually exclusive, which is
15 what's required for severance.

16 And with regard to the spillover argument, I noted
17 throughout my opposition that the evidence in its entirety would be
18 admissible in either joint trials or severed trials. Because it's State's
19 theory and all of the evidence indicates that they are both --

20 THE COURT: Right.

21 MR. GIORDANI: -- some way communicating. So there's
22 no spillover effect. I understand what the disparity of the evidence
23 argument is. I mean, he's right. There's more evidence that
24 Brown's the shooter, there's a ton of evidence that he's the shooter.
25 But, you know, that doesn't spillover to him, unless the jury

1 believes that he conspired and set this up. So I mean, up to this
2 point, I would just ask you deny this motion. If the SPD wants to
3 get on and says, hey, I changed my theory of defense, they don't
4 need to file for reconsideration, they could just file a new motion --

5 THE COURT: Well --

6 MR. GIORDANI: -- to sever changing their defense theory.

7 THE COURT: Right. All right. So here's what I'm going to
8 do.

9 Anything else from Mr. Slife?

10 MR. SLIFE: Just real quick if I may, Judge.

11 So the law is that the jury has compartmentalize and
12 separate the evidence as it relates to Mr. Carter and make a reliable
13 judgment about his guilt or innocence alone. And so I've already
14 said my peace on more than one occasion how I don't think there's
15 any evidence against Mr. Carter.

16 THE COURT: And I found -- look, the standard is slight or
17 marginal evidence.

18 MR. SLIFE: Sure.

19 THE COURT: That was the standard. I'm not saying they,
20 you know, were even close to proof beyond a reasonable doubt, but
21 that's not for me to consider at this point in time. What's for me to
22 consider is whether or not your client can get fair trial, trying him
23 with the co-defendant. I would just note, and I think this is what
24 Mr. Giordani was saying, is he's going to have to present all of the
25 evidence against the co-defendant even if the cases were severed.

1 He couldn't just present the evidence against Mr. Carter in that trial
2 because it wouldn't make any sense. He would have to present all
3 of the evidence, including the evidence involving the co-defendant.
4 So the jury would be hearing all of that evidence anyways.

5 MR. SLIFE: Sure, but if I may just finish, Judge. A
6 separate trial guarantees that the jury would only be focused on
7 whether Mr. Carter is guilty or not guilty at one time. And if they're
8 both in the same room, there's no way we can guarantee, they're
9 focused only on Mr. Carter, so I don't know why we wouldn't
10 guarantee that they're focused on him by having two separate
11 trials. I think this is an instant where individual rights trump
12 judicial efficiency.

13 THE COURT: Well --

14 MR. SLIFE: And I think one guarantees they focus on him,
15 the other does not.

16 THE COURT: All right.

17 MR. SLIFE: And that's my point.

18 THE COURT: You're making the assumption that the jury
19 is unable to follow the law that tells them to focus on each
20 defendant individually and the evidence pertaining to them. And I
21 don't really at this point -- I think the jury can do that. And I don't
22 find that it's so prejudicial that he would be denied the right to a fair
23 trial and that the jury would just be so incensed, I guess, against
24 one defendant that they wouldn't give fair consideration to your
25 defendant.

1 I don't see that. And I think we have to operate from the
2 assumption that the jury can follow the law and I think they do their
3 best to follow the law and I think overwhelming they discharge their
4 duties consciously. So you're operating from a premise, I guess,
5 that the Court doesn't accept on the ability of the jury to consider
6 each defendant separately.

7 So at this point in time, I'm going to deny Mr. Carter's
8 motion to sever. I'm going to deny that without prejudice. If
9 there's new issues that come up, you can make another motion. On
10 the motion to suppress, that should have been passed to the
11 chambers it appears on the calendar again, so I have put that on for
12 Monday for decision from chambers. You don't need to be here.

13 And in terms of Mr. Wooldridge's motion to withdraw,
14 that is granted.

15 MR. WOOLDRIDGE: Okay.

16 THE COURT: And we'll appoint the Special Public
17 Defender's Office. We'll put this on for confirmation of counsel,
18 we'll notify their office because I don't think anybody will be here
19 today. And we'll put this on for confirmation of counsel for next
20 week.

21 MR. SLIFE: I think there's a status check set for next week
22 anyway.

23 THE COURT: All right. So the status check stays and that
24 will also be confirmation of counsel, so both defendants obviously
25 need to be here because if we -- which I think we probably will --

1 need to set a new trial.

2 [Colloquy between the Court and Clerk]

3 MR. GIORDANI: Your Honor, also, yesterday I filed a
4 motion to compel Brown to give us his cell phone passcode.

5 THE COURT: Okay.

6 MR. GIORDANI: That was served on Mr. Wooldridge.

7 Obviously --

8 MR. WOOLDRIDGE: I saw -- I saw it hit yesterday. I -- I
9 mean --

10 THE COURT: Okay. So --

11 MR. WOOLDRIDGE: I'm not prepared to --

12 MR. GIORDANI: So that's set for the 14th.

13 THE COURT: All right. So if they -- if the Special Public
14 Defender's confirm, then they are the ones who will be filing the
15 opposition to the motion to compel.

16 MR. GIORDANI: Okay.

17 THE COURT: So since Mr. Wooldridge's duties are
18 discharged, he doesn't have to oppose that, and we'll make sure we
19 give them enough time to file an opposition to that.

20 MR. GIORDANI: So real quick --

21 THE COURT: So remember to bring that up when they
22 come in.

23 MR. GIORDANI: I will.

24 THE COURT: All right.

25 MR. GIORDANI: Is his joinder, since you denied Carter's

1 motion to sever, is the joinder --

2 THE COURT: Right. His joinder is denied without
3 prejudice.

4 MR. GIORDANI: Okay.

5 THE COURT: And then if the --

6 MR. GIORDANI: They can refile if they need to.

7 THE COURT: -- Special Public Defender's Office --

8 MR. GIORDANI: Okay.

9 THE COURT: -- has another reason or they change their
10 trial strategy or something like that, your motion is also denied
11 without prejudice. So if there is some new basis, you can bring it
12 before the Court, obviously. But as of right now it's denied.

13 Now, there's the other issue with the trial dates and things
14 like that, so that may be a separate issue that can be brought up by
15 Mr. Slife, based on Mr. Wooldridge's withdrawal and whatnot, so
16 you're free to argue that issue as a separate basis.

17 Fair enough?

18 MR. SLIFE: Fair enough.

19 MR. GIORDANI: Understood.

20 THE COURT: All right. So we currently on for April 26th.

21 [Colloquy between the Court and Clerk]

22 THE COURT: I guess we'll keep that date that she --

23 [Colloquy between the Court and Clerk]

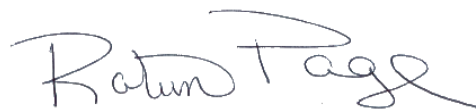
24 THE COURT: Right. So we'll notify the Special Public
25 Defender's Office today.

1 MR. WOOLDRIDGE: And I'll get them the file, Your Honor.
2 THE COURT: All right. Thank you.
3 MR. WOOLDRIDGE: Thank you, Judge.
4 MR. GIORDANI: Thank you, Your Honor.
5 THE COURT: All right. That was it for that.
6 Is that it for you, Mr. Slife?
7 MR. SLIFE: That's it, Your Honor. Thank you.
8 THE COURT: Is that it for you, Mr. Giordani?
9 MR. GIORDANI: Yes, thank you, Your Honor.

10 [Proceeding concluded at 10:23 a.m.]

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

23 
24

25 Robin Page
Court Recorder/Transcriber



1 **RTRAN**

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5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

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THE STATE OF NEVADA,
Plaintiff,

CASE NO: C-17-326247-1
CASE NO: C-17-326247-2

vs.

DEPT. XXI

LARRY DECORLEON BROWN,
ANTHONY CARTER,
Defendants.

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
THURSDAY, APRIL 26, 2018

***RECORDER'S TRANSCRIPT OF HEARING RE:
ALL PENDING MOTIONS***

APPEARANCES:

For the State: KELSEY R. EINHORN, ESQ.
Deputy District Attorney

For Defendant Brown: MONICA R. TRUJILLO, ESQ.
Chief Deputy Special Public Defender

For Defendant Carter: CONNER M. SLIFE, ESQ.
Deputy Public Defender

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 **Las Vegas, Nevada; Thursday, April 26, 2018**

2 * * * * *

3 [Proceeding commenced at 10:28 a.m.]

4 THE COURT: State versus Larry Brown, who is present in
5 custody with Ms. Trujillo and Anthony Carter, who's present in
6 custody with Mr. Slife.

7 This is on for confirmation of counsel as to Mr. Brown.
8 Mr. Wooldridge had been retained on this matter I believe. Is that
9 right?

10 MS. TRUJILLO: Yes.

11 MR. SLIFE: That was my -- that was my understanding.

12 THE COURT: And he was -- the family or whatever --
13 could no longer afford Mr. Wooldridge's services. We were not
14 aware of a conflict, although, maybe there was one, so can you
15 confirm?

16 MR. SLIFE: Oh, that's actually -- Ms. Trujillo --

17 THE COURT: Ms. Trujillo. I'm sorry.

18 MR. SLIFE: -- is here to confirm today, Your Honor.

19 THE COURT: You're right.

20 MS. TRUJILLO: And, Judge, all I have is the declaration of
21 warrant, so I can confirm as counsel, subject to the conflicts check
22 once I receive the discovery.

23 THE COURT: Okay. All right. Basically, we currently also
24 have -- it looks like this is calendared for April 30th.

25 [Colloquy between the Court and Clerk]

1 THE COURT: All right. So I had hoped to actually,
2 Ms. Trujillo, that you would have had more information in order to
3 do a conflicts check. I guess let's pass it out. What do you think a
4 week or two weeks?

5 MS. TRUJILLO: Well, I would say two weeks, so that I can
6 review the discovery and give the Court an accurate assessment of
7 when I can be prepared for trial because I don't think June is a
8 viable date.

9 MS. EINHORN: And, Your Honor, can I just make some
10 representations for Mr. Giordani?

11 THE COURT: Sure.

12 MS. EINHORN: Mr. Giordani advised me that this is also
13 on on May 15th for a motion -- he filed a motion to compel cell
14 phone passcode and that's set for argument on the 15th. He just
15 wanted SPD to be aware of that, so that they know that that motion
16 has been filed, so they can respond to that. And that if there's an
17 issue with the trial date on that point, we can keep that date --

18 THE COURT: Right.

19 MS. EINHORN: -- and then reset the trial.

20 THE COURT: And, obviously, counsel may have an issue
21 responding to the motion by the 15th, so I would just say, I mean --

22 MS. EINHORN: I'll inform Mr. Giordani.

23 THE COURT: Right.

24 I would just say, Ms. Trujillo, that if you do have an issue
25 with filing your opposition, which I think you well might, just

1 contact Mr. Giordani and maybe you can agree to take that off
2 calendar. If not, then we'll set a subsequent briefing schedule or
3 whatever, okay.

4 MS. TRUJILLO: Okay.

5 THE COURT: And then, Mr. Slife, I guess there's really
6 nothing for you to do today is there?

7 MR. SLIFE: I think there's nothing for me to do, Judge.

8 THE COURT: All right. So we'll come --

9 MS. TRUJILLO: Judge --

10 THE COURT: Yes.

11 MS. TRUJILLO: Did you direct the prior attorney to
12 provide me with discovery?

13 THE COURT: Yes.

14 MS. TRUJILLO: Or should I seek it from the State?

15 THE COURT: I can't remember. I think Mr. Wooldridge
16 said he would have discovery available, so I guess my suggestion
17 would be to contact Mr. Wooldridge's office. He knows he has to
18 provide discovery to you. If there's some issue with that, prior to
19 the status check, then just get the -- a new packet of discovery from
20 the State.

21 MS. TRUJILLO: Okay.

22 THE COURT: Although, I believe, when Mr. Wooldridge --
23 before he left last time, indicated he would have the discovery
24 available. That was -- that's my recollection. So we'll set it for
25 another status check.

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[Colloquy between the Court and Clerk]

THE COURT: Do you think May 8th is -- gives you
sufficient time?

MS. TRUJILLO: Yes.

THE COURT: Okay. May 8th for confirmation of counsel.

MS. EINHORN: And, Your Honor, the only other thing
Mr. Giordani wanted me to bring to the Court's attention, it looks
like this was also on for the motion to sever, but he informed me
those have already been denied by Your Honor.

THE COURT: Right.

MS. EINHORN: Okay.

THE COURT: And I think last time the Court indicated it
had been denied, but that the issue might be visited when we come
up on the trial date. And Mr. Slife can make whatever arguments
he wants at that time regarding retaining his trial date because,
obviously, Ms. Trujillo cannot be ready, right.

MR. SLIFE: And I think the only outstanding motion that
Your Honor hadn't ruled on was the motion to suppress.

THE COURT: Right. And the Court will issue a ruling from
chambers.

MR. SLIFE: Thank you.

THE COURT: Did you give a date?

THE CLERK: Yeah.

THE COURT: May 8th, 9:30.

MR. SLIFE: Thank you very much.

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THE COURT: You have to come back, too, Mr. Slife.

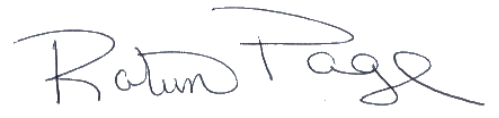
MR. SLIFE: I'll be here.

THE COURT: All right.

[Proceeding concluded at 10:30 a.m.]

* * * * *

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



Robin Page
Court Recorder/Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

LARRY DECORLEON BROWN,
ANTHONY CARTER,
Defendants.

CASE NO: C-17-326247-1
CASE NO: C-17-326247-2

DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
TUESDAY, MAY 8, 2018

**RECORDER'S TRANSCRIPT OF HEARING RE:
CONFIRMATION OF COUNSEL (BROWN);
STATUS CHECK: TRIAL READINESS (BOTH)**

APPEARANCES:

For the State:

DAVID L. STANTON, ESQ.
Chief Deputy District Attorney

For Defendant Brown:

MONICA R. TRUJILLO, ESQ.
Chief Deputy Special Public Defender

For Defendant Carter:

CONNER M. SLIFE, ESQ.
Deputy Public Defender

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 **Las Vegas, Nevada; Tuesday, May 8, 2018**

2 * * * * *

3 [Proceeding commenced at 9:56 a.m.]

4 THE COURT: State versus Larry Brown, who's present in
5 custody and Anthony Carter, also present in custody. And we have
6 Mr. Slife representing Mr. Carter.

7 And, Ms. Trujillo, were you able to get the additional
8 discovery to do a review to see whether or not you can still
9 confirm?

10 MS. TRUJILLO: Judge, I can confirm as counsel. I did
11 receive discovery from Mr. Wooldridge, although, it was willfully
12 deficient. I contacted Mr. Giordani. He indicates he's going to get
13 me, hopefully, a thumb drive with all the discovery, which I
14 understand includes 27,000 pages of cell phone records.

15 THE COURT: How many?

16 MS. TRUJILLO: 27,000 pages of cell phone records.
17 Obviously, I'm sure not all of it's relevant, but I don't have
18 transcribed statements, I don't have an officer's report, which
19 should be, you know, some of the basic -- I don't have any crime
20 scene investigation reports. But, again, Mr. Giordani is going to get
21 that to me. I had the declaration of warrant, so with those witness
22 names I was to confirm. And if there's any issues, I'll put it back on
23 calendar.

24 But as far as the trial date, Judge, can we approach?

25 THE COURT: Sure. And just to make it clear on the

1 record, you confirm no conflict with the list of witnesses you were
2 provided, is that correct?

3 MS. TRUJILLO: Correct.

4 THE COURT: Okay.

5 [Bench conference - not recorded]

6 THE COURT: Let's go out 45 to 60 days for a status check,
7 regarding trial setting, is that correct?

8 MS. TRUJILLO: That's correct.

9 THE COURT: Does the State have any opposition to that?

10 MR. STANTON: No, Your Honor.

11 THE COURT: All right. And then we currently have a
12 motion regarding your client that's calendared for May 15th.

13 Have you discussed that motion with Mr. Giordani?

14 MS. TRUJILLO: I have, and he has agreed to give me until
15 the 18th to file an opposition, so we can take the 15th off calendar.

16 THE COURT: All right. So we'll vacate the hearing date
17 for the 15th. He's giving you -- your opposition is due when, May
18 18th?

19 MS. TRUJILLO: Yes.

20 THE COURT: And then we can set the hearing date out
21 past May 18th at least a week in case the State wants to file a reply.
22 So we'll give a new date for the hearing.

23 THE CLERK: How about May 22nd, 9:30.

24 MS. TRUJILLO: That works.

25 THE COURT: All right.

1 And then we'll put Mr. Carter on also May 22nd for just a
2 status check regarding his trial, Mr. Slife.

3 MR. SLIFE: Perfect.

4 THE COURT: Fair enough?

5 MR. SLIFE: That's perfect, Your Honor, thank you.

6 THE COURT: All right. And then we'll set another status
7 check for 45 to 60 days from today regarding a trial setting. And we
8 can also discuss that more fully on the 22nd at the hearing date.

9 MS. TRUJILLO: Thank you, Judge.

10 THE CLERK: June 26th at 9:30.

11 MS. TRUJILLO: Judge, can we go out -- I'm still going to
12 be in my capital case, probably until -- can we go out second week
13 of July?

14 THE CLERK: July 10th.

15 [Colloquy between the Court and Clerk]

16 THE COURT: No, we're keeping the trial date on for right
17 now as to Mr. Carter. We're going to discuss the issue regarding
18 Mr. Carter sooner. I don't know what Mr. Slife's position is going to
19 be. I mean, if you want to agree today to vacate the trial date -- I'm
20 assuming the State wants to keep them together, but --

21 MR. STANTON: Yes.

22 THE COURT: -- maybe we should status check your client
23 earlier with Mr. Giordani here.

24 I don't know that Mr. Stanton, you feel prepared to, kind
25 of, weigh --

1 MR. STANTON: I can unequivocally state that the State
2 would be imposed to a severance of the defendants.

3 THE COURT: Right. So I mean are you willing to agree to
4 vacate your trial date today?

5 MR. SLIFE: Judge, I'd like to -- I'd like to address that
6 May 22nd.

7 THE COURT: Okay. So we've given you the remaining
8 dates.

9 And, Mr. Slife, I believe you had indicated previously you
10 don't have anything left to do, is that correct? Or did you have --

11 MR. SLIFE: Well, I don't know about that. I do have a few
12 more things to do.

13 THE COURT: Okay. We can discuss that on the 22nd. You
14 may not be ready anyway.

15 MR. SLIFE: Perfect.

16 THE COURT: All right. Thank you.


17 MS. TRUJILLO: Thank you.

18 MR. SLIFE: Thank you, Your Honor.

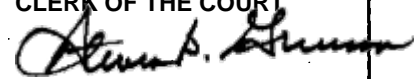
19 [Proceeding concluded at 10:03 a.m.]

20 * * * * *

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

24 

25 Robin Page
Court Recorder/Transcriber



NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #012381
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

LARRY DECORLEON BROWN,
#8376788

Defendant.

CASE NO: C-17-326247-1

DEPT NO: XXI

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

TO: LARRY DECORLEON BROWN, Defendant; and

TO: NICHOLAS WOOLDRIDGE, Counsel of Record:

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

ABBOTT, J. - LVMPD #8872

BANKS, LAQUANDA - 3607 FREESTONE LN, NLV NV

BASILOTTA, EUGENIO - LVMPD P#8447 (or designee): Expert in the analysis of
cellular site information data, including being an expert in the operations of the various cellular
phone companies, including familiarity with the types of records and data kept by the cellular
phone companies, interpreting the records provided by cellular phone companies, including
the interpretation of the times provided in the records including the time zone of the reported
times contained within the records; he is also an expert in the operation of cell towers and

1 location of cell towers for each phone company, including knowledge of cell tower generation
2 of calls and the ability to determine the location where generated based on that knowledge,
3 including the generation of maps documenting the location of cell towers as well as the
4 location of a cellular phone making calls generated through a particular cell tower. He will
5 testify as to cell tower information, cellular phone company records in this case, and any
6 mapping done in the instant case.

7 BENJAMIN, J. - LVMPD #6964

8 BROWN, L. - LVMPD #885 (or designee): is an expert in the field of Fire
9 Investigation; methods of arson, profiling of arsonists; cause and origin of fires and will give
10 related opinions thereto. They will testify as to the findings in this case.

11 BROWNING, CLAIRE - LVMPD P#15291 (or designee): CRIME SCENE
12 ANALYST: Expert in the identification, documentation, collection and preservation of
13 evidence and is expected to testify as an expert to the identification, documentation, collection
14 and preservation of the evidence in this case.

15 BURNETT, A. - LVMPD #4907

16 CALHOUN, G. - LVMPD #6062

17 CARTER, TIFFANY - MT VIEW HOSPITAL

18 CAVE, CARNELL RICK-JAMES - 5850 SKY POINTE DR, #21/2003, LV NV

19 CODY, LARA - LVMPD #7294

20 COOK, DARIN - LVMPD #5730

21 COOK, M. - LVMPD #8088

22 CUSTODIAN OF RECORDS - 76 GAS STATION - 6050 SKY POINTE DR., LV NV

23 CUSTODIAN OF RECORDS - CCDC

24 CUSTODIAN OF RECORDS - FINDLEY HONDA - 7494 WEST AZURE DR., LV

25 NV

26 CUSTODIAN OF RECORDS - FINDLEY VOLKSWAGEN - 7500 WEST AZURE
27 DR., LV NV

28 CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

1 CUSTODIAN OF RECORDS - LVMPD RECORDS

2 CUSTODIAN OF RECORDS - Metro PCS: Expert in the area of cellular phones, and
3 cellular system technology including cell tower generation of calls and ability to determine the
4 location where generated based upon historical records of cellular phone records as well as the
5 creation, functioning, data collection and information received and collected by cellular
6 provider cell sites, its analysis and conclusions which can be drawn and is expected to testify
7 thereto.

8 CUSTODIAN OF RECORDS - ONE STOP AUTO - 7400 WEST AZURE DR., LV
9 NV

10 CUSTODIAN OF RECORDS - SKY POINTE LANDING APARTMENTS, 5850
11 SKY POINTE, LV NV

12 CUSTODIAN OF RECORDS - Sprint: Expert in the area of cellular phones, and
13 cellular system technology including cell tower generation of calls and ability to determine the
14 location where generated based upon historical records of cellular phone records as well as the
15 creation, functioning, data collection and information received and collected by cellular
16 provider cell sites, its analysis and conclusions which can be drawn and is expected to testify
17 thereto.

18 CUSTODIAN OF RECORDS - SUMMERLIN HOSPITAL

19 CUSTODIAN OF RECORDS - T-Mobile: Expert in the area of cellular phones, and
20 cellular system technology including cell tower generation of calls and ability to determine the
21 location where generated based upon historical records of cellular phone records as well as the
22 creation, functioning, data collection and information received and collected by cellular
23 provider cell sites, its analysis and conclusions which can be drawn and is expected to testify
24 thereto.

25 CUSTODIAN OF RECORDS - TOWN CENTER LODGE - 6050 SKY POINTE
26 DRIVE, LV NV

27 CUSTODIAN OF RECORDS - Verizon: Expert in the area of cellular phones, and
28 cellular system technology including cell tower generation of calls and ability to determine the

1 location where generated based upon historical records of cellular phone records as well as the
2 creation, functioning, data collection and information received and collected by cellular
3 provider cell sites, its analysis and conclusions which can be drawn and is expected to testify
4 thereto.

5 DAVENPORT, LANDEN - 5850 SKY POINTE, #20-2011A, LV NV

6 DAVIDOVIC, MARJORIE - LVMPD P#14726 (or designee): Expert in the field of
7 DNA extractions, comparisons, analysis, and the identification of bodily fluids and is expected
8 to testify thereto.

9 DOSCH, MITCHELL - LVMPD #7907

10 ENGLISH, TIMOTHY - LVMPD #13404

11 FLETCHER, R. - LVMPD #4511

12 FLETCHER, SHAWN - LVMPD P#5221 (or designee): CRIME SCENE ANALYST:
13 Expert in the identification, documentation, collection and preservation of evidence and is
14 expected to testify as an expert to the identification, documentation, collection and
15 preservation of the evidence in this case.

16 GUERRERO, GABRIELLE - LVMPD P#15290 (or designee): CRIME SCENE
17 ANALYST: Expert in the identification, documentation, collection and preservation of
18 evidence and is expected to testify as an expert to the identification, documentation, collection
19 and preservation of the evidence in this case.

20 HALL, R. - LVMPD #6756

21 HOSKINS, K. - LVMPD #9303

22 JAEGER, RYAN - LVMPD #5587

23 JARRAD, H. - LVMPD #954 (or designee): is an expert in the field of Fire
24 Investigation; methods of arson, profiling of arsonists; cause and origin of fires and will give
25 related opinions thereto. They will testify as to the findings in this case.

26 KIM, K - LVMPD #14855

27 KOHLER, BRANDON - 5850 SKY POINTE #19-1018A, LV NV

28 KOHLER, KELLY - 5850 SKY POINTE, #18-1018A, LV NV

1 LIF, A. - LVMPD #15392

2 LNU, FNU - GEORGIA CAT TEAM

3 LONG, DANIEL - LVMPD #3969

4 LOUSIGNONT, CRAIG - LVMPD #4125

5 MADLAND, M. - LVMPD #9978

6 MANGIONE, MIKE - P#13727 (or designee): Expert in the area of cellular phones,
7 and cellular system technology including cell tower generation of calls and ability to determine
8 the location where generated based upon historical records of cellular phone records as well
9 as the creation, functioning, data collection and information received and collected by cellular
10 provider cell sites, its analysis and conclusions which can be drawn and is expected to testify
11 thereto.

12 MANIGAULT, LINDA - LVMPD P#15987 (or designee): LATENT PRINT
13 EXAMINER - Expert in the science and techniques of fingerprint comparison, and
14 comparisons done in this case and any reports prepared therefrom.

15 MCGRATH, DAN - LVMPD #4349

16 MCINTYRE, MORETTA - LVMPD P#13207 (or designee): CRIME SCENE
17 ANALYST: Expert in the identification, documentation, collection and preservation of
18 evidence and is expected to testify as an expert to the identification, documentation, collection
19 and preservation of the evidence in this case.

20 MERRICK, FRED - LVMPD #7549

21 MOGG, T. - LVMPD #4191

22 MOON, RICHARD - DA INVESTIGATOR

23 MORENO, R. - LVMPD #4922

24 MORGAN, B. - LVMPD #4216

25 MOTL, JASON - LVMPD #7464

26 NELSON, DEREKA - 650 E. AZURE AVE #3022, NLV NV

27 NORDSTROM, VICTORIA - 4916 ROYAL LAKE AVE., LV NV

28 OCHENHIRT, R. - LVMPD #5438

1 O'CONNELL, C. - LVMPD #4420

2 OLSON, DR. ALANE (or designee): A medical doctor, employed by the Clark County
3 Coroner's Office as a Deputy Medical Examiner/Forensic Pathologist. She is an expert in the
4 area of forensic pathology and will give scientific opinions related thereto. She is expected to
5 testify regarding the cause and manner of death of Kwame Banks.

6 O'NEAL, T - LVMPD #6067

7 QUILES, A. - LVMPD #7433

8 RALYEA, C. - LVMPD #13357

9 RAVELO, E. - LVMPD #6538

10 REED, AIREONTE - 7316 MARBLE LAKE ST., #101, LV NV

11 ROBINSON, M. - LVMPD #7904

12 RUIZ, MATTHEW - LVMPD #6794

13 RYDER, ANGELISA - SUMMERLIN HOSPITAL

14 SAUCEDO, S. - LVMPD #1154 (or designee): is an expert in the field of Fire
15 Investigation; methods of arson, profiling of arsonists; cause and origin of fires and will give
16 related opinions thereto. They will testify as to the findings in this case.

17 SCHELLBERG, PETER - LVMPD P#5413 (or designee): CRIME SCENE
18 ANALYST: Expert in the identification, documentation, collection and preservation of
19 evidence and is expected to testify as an expert to the identification, documentation, collection
20 and preservation of the evidence in this case.

21 SCHOENBECK, CHAZ - 5850 SKY POINTE, #19-2007A, LV NV

22 SMITH, ERIC - 5850 SKY POINTE, #20-2010A, LV NV

23 SMITH, JAKHAI - 5850 SKY POINTE, #19-2008A, LV NV

24 SOLANO, E. - LVMPD #7588

25 SPEAS, WILLIAM - LVMPD P#5228 (or designee): CRIME SCENE ANALYST:
26 Expert in the identification, documentation, collection and preservation of evidence and is
27 expected to testify as an expert to the identification, documentation, collection and
28 preservation of the evidence in this case.

1 SYLVA, W. - LVMPD #4080

2 SYPNIEWICZ, J. - LVMPD #1049 (or designee): is an expert in the field of Fire
3 Investigation; methods of arson, profiling of arsonists; cause and origin of fires and will give
4 related opinions thereto. They will testify as to the findings in this case.

5 THOMAS, KRISTINA - LVMPD P#13574 (or designee): CRIME SCENE
6 ANALYST: Expert in the identification, documentation, collection and preservation of
7 evidence and is expected to testify as an expert to the identification, documentation, collection
8 and preservation of the evidence in this case.

9 TIGHES, R. - LVMPD #15840

10 TRAWICKI, JOSEPH - c/o CCDA, 200 Lewis Avenue, LV, NV 89101

11 TUFTELAND, ERIK - LVMPD P#8971 (or designee): CRIME SCENE ANALYST:
12 Expert in the identification, documentation, collection and preservation of evidence and is
13 expected to testify as an expert to the identification, documentation, collection and
14 preservation of the evidence in this case.

15 VANCE, J. - LVMPD #9004

16 WALLACE, STEVE - 328 ORCHID OASIS AVE., NLV NV

17 WARREN, R. - LVMPD #15873

18 WEGHORST, J. - LVPD #15391

19 WITHAM, S. - LVMPD #4594

20 WRIGHT, NICOLE - c/o CCDA, 200 Lewis Avenue, LV, NV 89101

21 ZINGLEMAN, MEGHAN - LVMPD P#14791 (or designee): CRIME SCENE
22 ANALYST: Expert in the identification, documentation, collection and preservation of
23 evidence and is expected to testify as an expert to the identification, documentation, collection
24 and preservation of the evidence in this case.

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

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

3 A copy of each expert witness' curriculum vitae, if available, is attached hereto.
4

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

7
8 BY



9 JOHN GIORDANI
10 Chief Deputy District Attorney
Nevada Bar #012381

11
12 CERTIFICATE OF ELECTRONIC TRANSMISSION

13 I hereby certify that service of the above and foregoing was made this 8th day of May,
14 2018, by electronic transmission to:

15 NICHOLAS WOOLDRIDGE
16 nicholas@wooldridgelawlv.com

17 BY


18 E. DEL PADRE
19 Secretary for the District Attorney's Office
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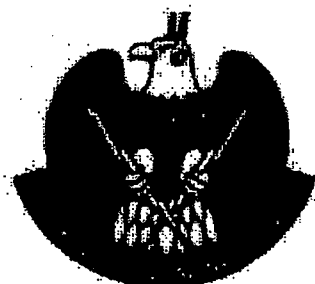
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The Curriculum Vitae Of:

E. "Gino" Basilotta

**Currently Employed By:
Las Vegas Metropolitan Police Department**

Updated: September 2013



Curriculum Vitae of E. "Gino" Basilotta

INTRODUCTION and SUMMARY:

Detective Eugenio "Gino" Basilotta is employed by the Las Vegas Metropolitan Police Department (LVMPD) and is currently assigned to the Organized Crime Bureau's Technical and Surveillance Section (TASS). The Organized Crime Bureau is a part of the Homeland Security Division of Metro Police.

Gino also has experience as an Accident Investigator for almost 3 ½ years working for LVMPD's Traffic Division. Prior to that, he worked for Bolden Area Command and for the Sheriff's Mobile Crime Saturation Team focusing on the highest crime areas in Las Vegas. Gino began his career with LVMPD in August 2004 and has been employed by the Las Vegas Metropolitan Police Department for 9 years as of this writing.

Prior to joining The Las Vegas Metropolitan Police Department, Gino spent 20 years in the private sector working with various computer technologies including specific expertise with Hospitality and Gaming Systems from 1993 until 2004. He worked in the corporate Information Technology departments with Hilton Gaming and Venetian. While employed, he opened 3 casinos – 2 with Hilton gaming (one in South America) and the Venetian Casino in Las Vegas, Nevada. Gino was also a Sales Director for a large Hospitality Technology Company managing West Coast Major Casino Accounts. Gino started his 'computer' career as an installer/technician in the 1980's during the personal computer genesis involved with IBM and Apple computer products. Gino has an Undergraduate degree in Management Information Systems (Business Administration) from The University of Arizona, in Tucson.

Currently Gino is a member in good standing with the National Technical Investigators Association and holds a Certified Technical Investigator Status.

**Detective, Technical and Surveillance Section (T.A.S.S.)
Las Vegas Metropolitan Police, Organized Crime Division
November 2010 to Present**

Gino has worked in this unit Since November of 2010. The Technical and Surveillance Section is responsible for providing technical and surveillance support to the department's commitment to the investigation of all crimes and the suppression and prevention of terrorist acts. This is accomplished through the provisioning of a myriad of electronic surveillance & technical solutions. The technical and surveillance functions support is provided to all department sections and task forces conducting criminal investigations.

TASS Unit Goals:

- Provide electronic surveillance support
- Provide physical surveillance support
- Provide technical support for barricade and/or hostage situations
- Conduct audio/video enhancements
- Provide anti-terrorism and counter-terrorism support
- Facilitate Pen Register implementation
- Facilitate Precision Location
- Facilitate Title III implementation

Gino is currently a Member of NATIA, (National Technical Investigators Association). Membership in NATIA is restricted to full time employees of Law Enforcement agencies who are actively engaged in technical surveillance, communications, and specialized support of law enforcement or intelligence activities. These individuals must represent Municipal, County, State, Federal and Military involved in the application of electronic surveillance technologies.

Gino currently holds a "Certified Technical Investigator" (CTI) certification from NATIA. CTI certification is awarded to NATIA members who have undergone extensive specialized training and have passed a rigorous examination in technical electronic surveillance techniques, procedures, equipment, and related issues. Continued advanced education is required.

During Gino's time in TASS, he has worked with many different technologies, including GPS Tracking, Cell Phone technologies, Wire Taps (Title IIIs), Pen Registers, Audio and Video Surveillance, and more proprietary technologies used within the unit, requiring a commitment to non-disclosure and OPSEC / Privacy policies.



One of Gino's main responsibilities is the maintenance and operation of the Pen Registers installed department wide by detectives and investigators. This involves handling and the provisioning of lawful Pen Register orders filed to the court by investigators.

Gino also serves on the SWAT callout resource team within TASS. TASS is deployed to active crime scenes involving Hostage and/or Barricaded suspects. TASS deploys technology to aid SWAT and Negotiators in their critical decision making processes.

Gino developed a POST certified Pen Register class which he currently teaches for LVMPD Police Detectives and other agencies. This class educates detectives on the latest technologies used by criminals to avoid law enforcement and the procedures to obtain Pen Registers and Title III's. Gino also teaches this Pen Class in the "New Detective School" and the "Advanced Investigators School" which are offered yearly to LVMPD qualified officers and detectives.

Gino testified on record to Nevada Senator's, supporting the passage of Nevada Senate Bill 268, in April 2013. The bill was nicknamed the "Kelsey Smith Act". This involved giving real world examples on how law enforcement has used cellular phone techniques in the location of missing or endangered persons. The Bill received support and has since passed and will come into effect October 2013. Gino testified on record to Nevada Senator's with regards to Assembly Bill 313. This was involving the proposal of language modification for NRS 179.530. This involved citing real world examples involving Law Enforcement and the use of Pen Registers.

**Traffic Investigator / Motor Officer, Traffic Bureau
Las Vegas Metropolitan Police, Patrol Division
May 2007 to November 2010**

Gino was assigned to the Traffic Section from May 2007 until November 2011 with his duties including DUI enforcement, accident/fatal investigation and handling calls for the valley wide Las Vegas area. Gino's goal, while in traffic, was to reduce traffic deaths and injuries by improving driving environments through education and enforcement of traffic laws. In addition, Gino's approach was to work high crime areas, to contribute to reduction in crime. Gino immediately obtained his Drug Recognition Expert certification to aid in identifying drug impaired drivers.

His work experience included setting up DUI checkpoints, Accident Investigation, Fatal Investigation, Hit and Run, and various other Traffic Enforcement Duties. His Certifications included:

- Drug Recognition Expert

Curriculum Vitae of E. "Gino" Basilotta

- RADAR,
- HGN (Horizontal Gaze Nystagmus),
- PBT (Portable Breath Testing Device),
- Intoxilyzer 5000 Breath Machine (used during booking)

While in traffic, Gino investigated over 500 accidents over a 3 ½ year period including close to 100 DUI arrests. Basilotta has also testified many times in court and has much experience regarding testifying for DUI's.

Basilotta attended classes for Accident Investigation, DUI Detection, Standardized Field Sobriety Testing, Mobile Field Force/Tactics, Incident Command Systems, National Incident Management Systems, and Excited Delirium. Basilotta attended Metro's 160 hour Motorcycle Safety course which is known to be one of the most challenging in the United States and is based on Northwestern University's techniques.

Gino obtained a D.R.E. (Drug Recognition Expert) status on July 2007 by the National Highway Traffic Safety Administration. This certification allows D.R.E.'s to evaluate individuals and accurately categorize them as users of a particular type of drug. Less than 1% of Las Vegas Metropolitan Police officers held this certification at the time.



DEGREES, EXPERIENCE AND CERTIFICATIONS

DEGREES

High School Diploma, 1984

Valley High School, Las Vegas, Nevada

BSBA, Business Administration, Management Information Systems, 1991

University of Arizona, Tucson, Arizona

LAW ENFORCEMENT TIMELINE:

November 2010 to Present

Detective, Organized Crime Bureau,
Technical and Surveillance Section

April 2007 to November 2010

Investigator, Traffic Division

January 2005 to March 2007

Patrol, Bolden Area Command
Mobile Saturation Crime Team
Problem Solving Unit
Community Oriented Policing

CERTIFICATIONS OBTAINED:



Drug Recognition Expert, May 2007



Certified Technical Investigator, March 2011,
Expiration, February 17th, 2014
Certification Number 2-021711



Certified Instructor, Advanced Training
Las Vegas Metropolitan Police Department

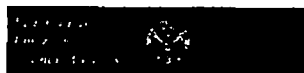
LAW ENFORCEMENT RELATED TRAINING

January 21st, 2011



Orion GPS Tracking Devices
COBHAM

February 2011



CESP 102
Covert Electronic Surveillance Program
Federal Law Enforcement Training Center,
Glynco, Georgia

August 2011



FBI DA/IS Conference
Surveillance, Intercepts and related
Technologies

August 29th – 30th, 2012



Pen-Link CIA
Pen Registers / Title IIIs
Lincoln, Nebraska

June 2012



Cellular Phone Training

August 27th – 28th, 2013



Pen-Link CIA
Pen Registers / Title IIIs
Lincoln, Nebraska

September 9th – 10th 2013



NDCAC – US DOJ/FBI
(National Domestic Communications
Assistance Center)
FBI CAST – PPP (Project Pin Point)
Project Pin Point (PPP) is a geo-spatial intelligence tool
developed in 2004 by a Special Agent on the FBI's Violent
Crimes Task Force in Philadelphia. The tool was initially
intended for fugitive apprehension, but evolved to include
historical cell site analysis, informant development, and targeting
capabilities for intelligence related functions. It is now used by
most FBI field offices.

MISCELLANEOUS SUPPORTING DOCUMENTATION

Curriculum Vitae of E. "Gino" Basilotta



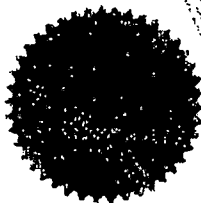
This Document Certifies that

EUGENIO BASILOTTA

*Having passed the examination as prescribed by the NATIA Certified Technical Investigator Program is hereby issued this PROVISIONAL CTI Certificate. Upon completion of the experience and/or membership requirements as defined by NATIA, a fully certified CTI Certificate will be granted when all requirements are met.
Review date for obtaining full CTI status is January 31, 2013.*

PROVISIONAL Certified Technical Investigator*

*Only valid for certification and requires NATIA membership



ASSOCIATION

2/17/14

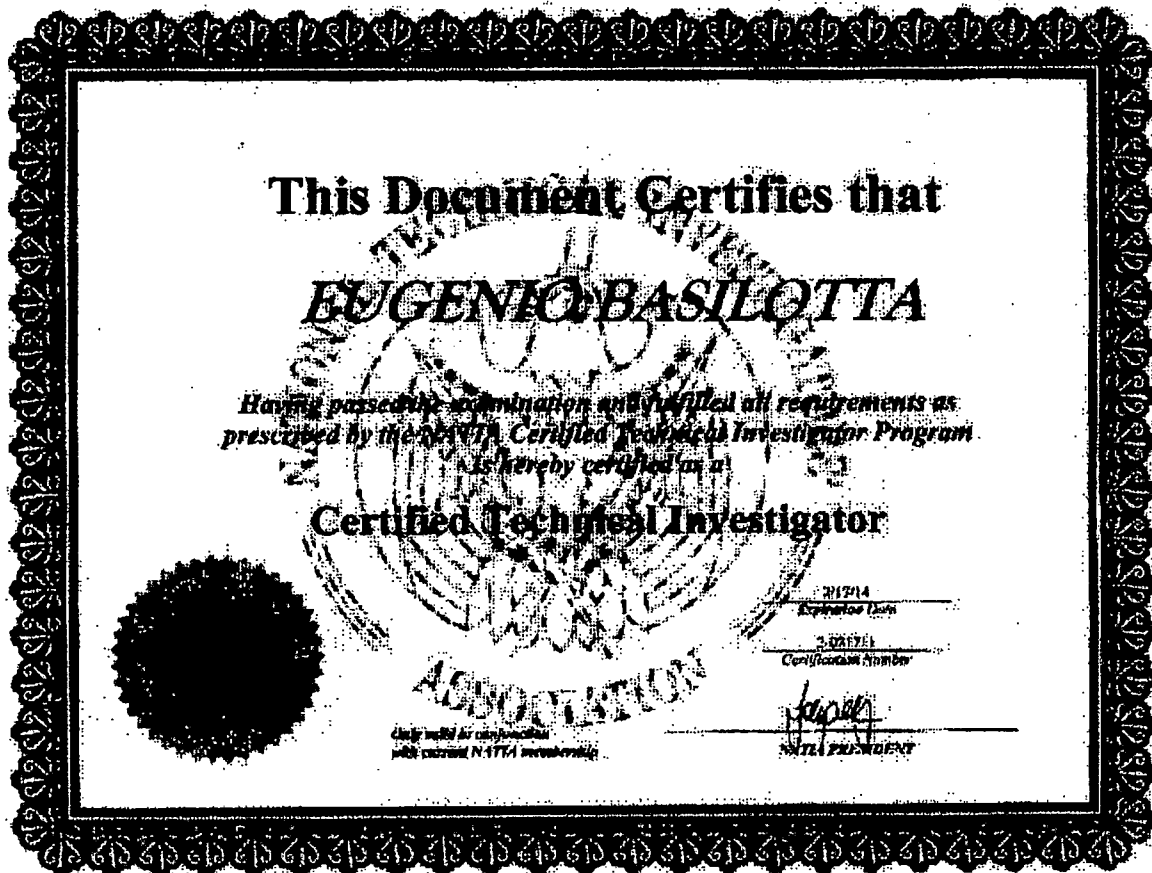
Expiration Date

2-021711

Certification Number

[Signature]

NATIA PRESIDENT



This Document Certifies that

EUGENIO BASILOTTA

Having passed the examination and fulfilled all requirements as prescribed by the NATIA Certified Technical Investigator Program is hereby certified as a

Certified Technical Investigator



ASSOCIATION

2/17/14

Expiration Date

2-021711

Certification Number

[Signature]

NATIA PRESIDENT

Only valid for certification and requires NATIA membership

COBHAM

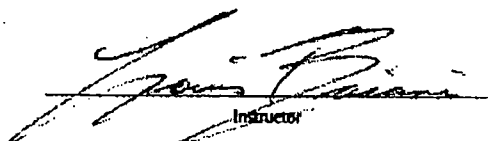
Orion Training Course

Congratulations to

Gino Basilotta
Las Vegas Metropolitan Police Dept.

for successfully completing an Orion training course on

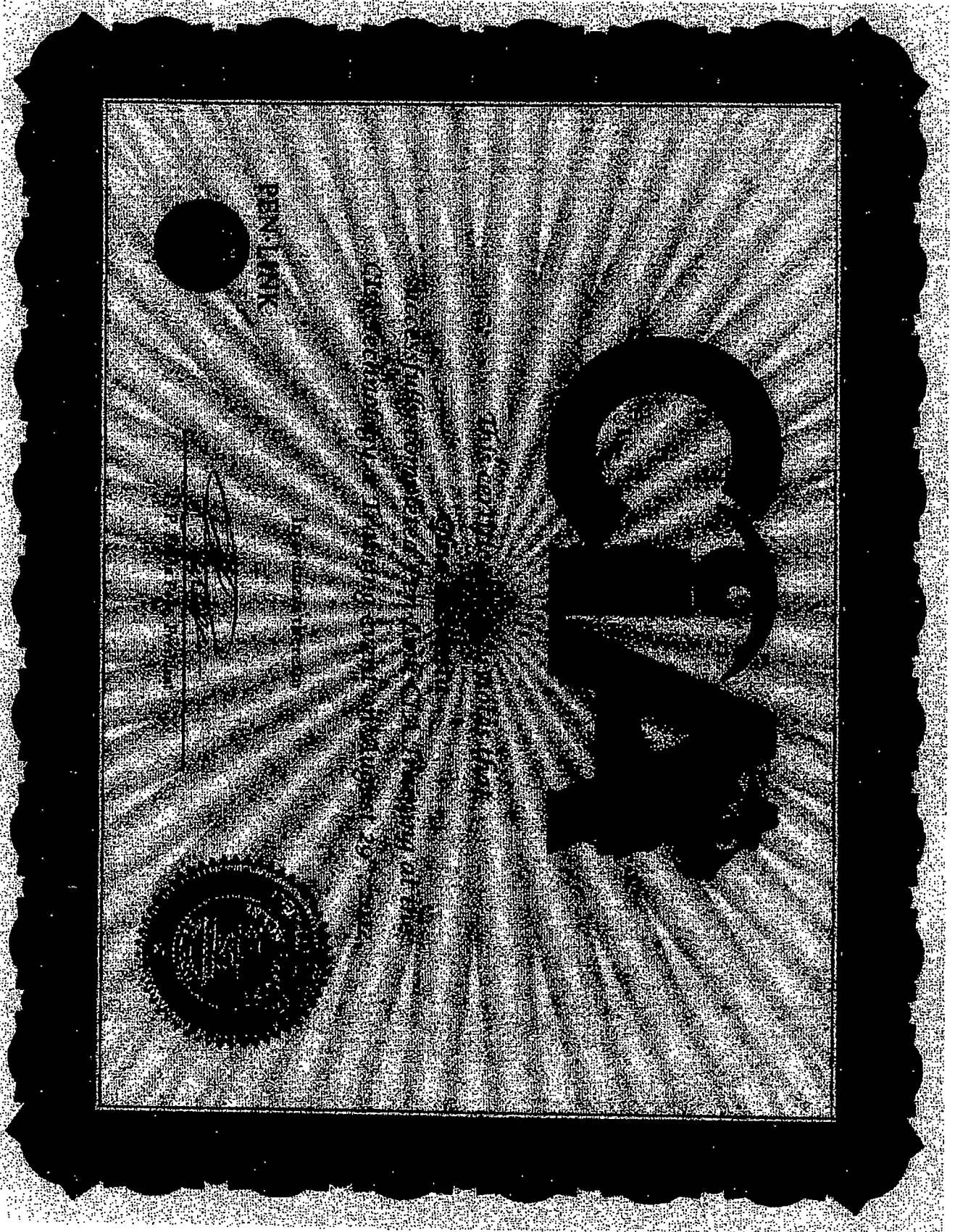
Orion GPS Tracking Devices

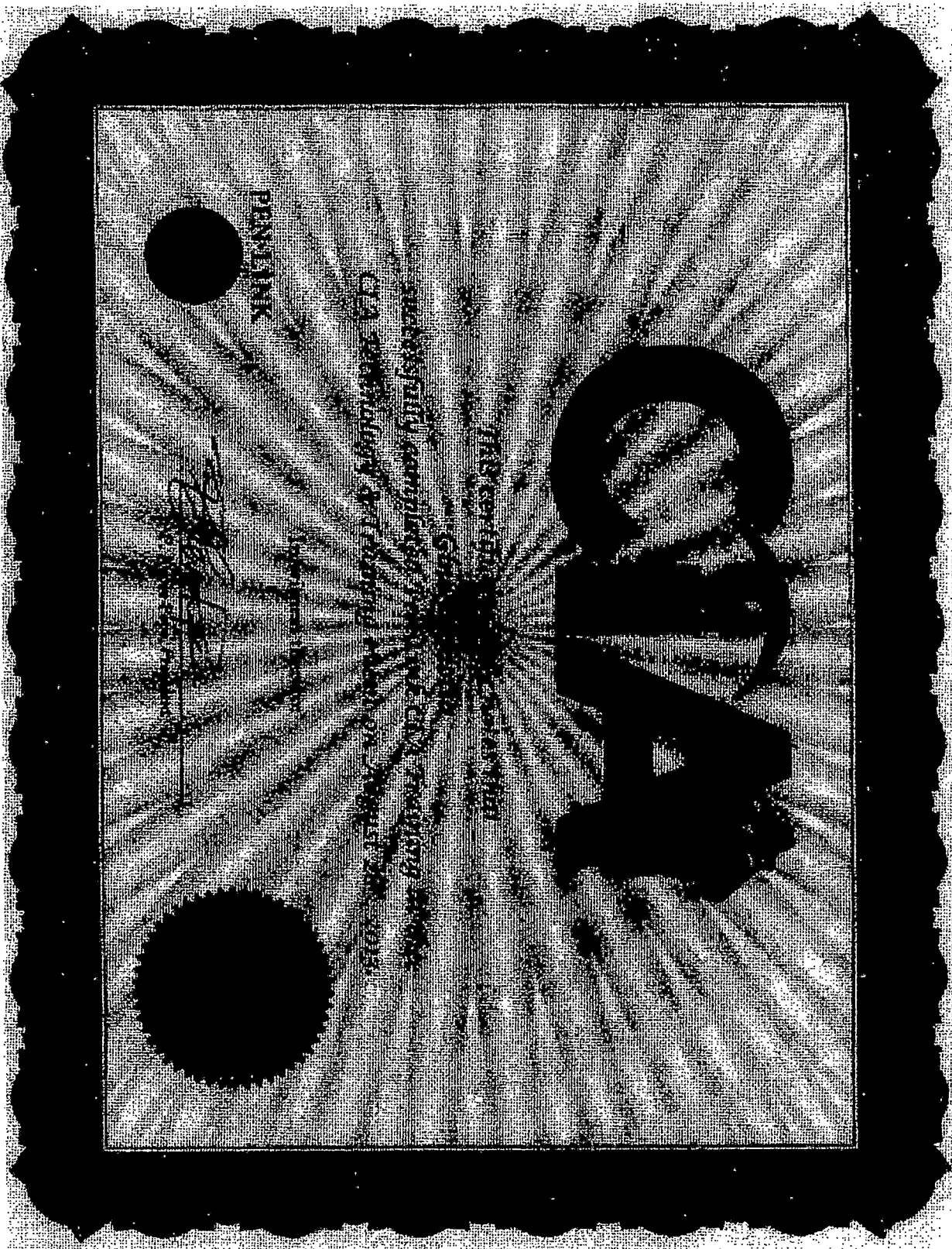

Instructor

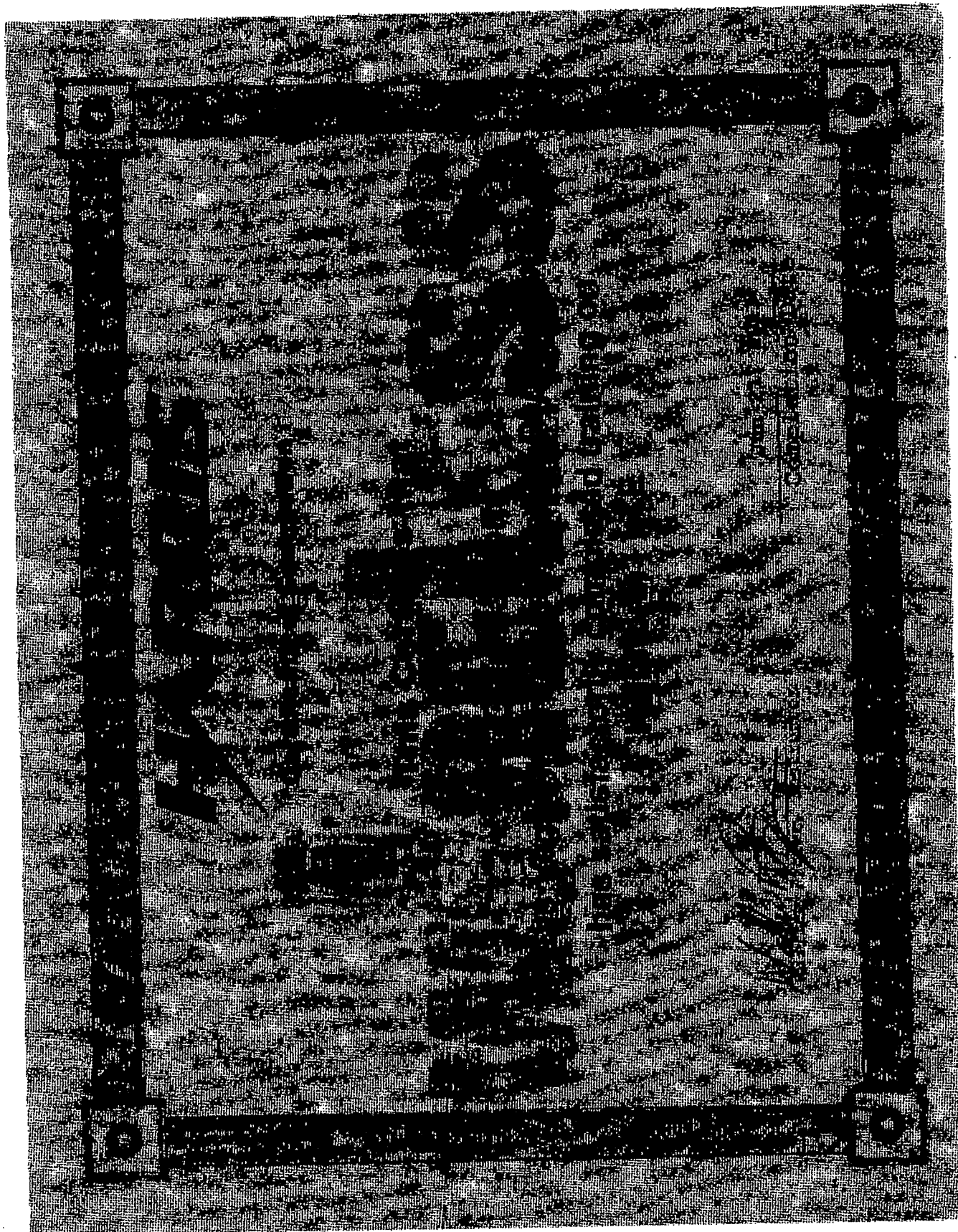
Jan 21, 2011
Las Vegas, NV

Curriculum Vitae of E. "Gino" Basilotta

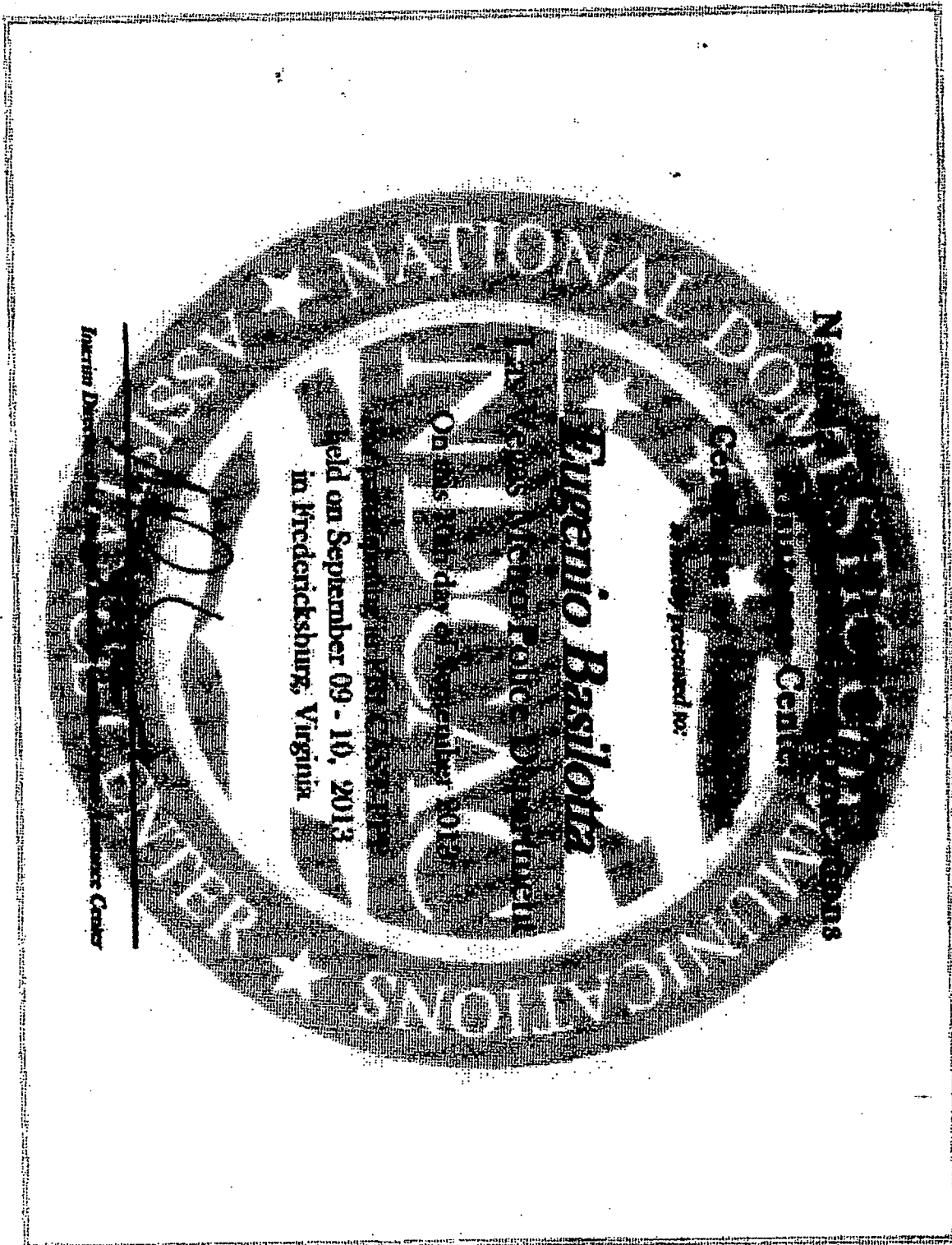
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Curriculum Vitae of E. "Gino" Basilotta



Curriculum Vitae of E. "Gino" Basilotta

ASCLD/LAB-International

STATEMENT OF QUALIFICATIONS

| | | | |
|-------------|--------------------------|-------------|-----------|
| Name | Claire Browning P# 15291 | Date | 6/26/2017 |
|-------------|--------------------------|-------------|-----------|

| | |
|-------------------|---|
| Laboratory | Las Vegas Metropolitan Police Department - Crime Scene Investigations Section |
|-------------------|---|

| | |
|------------------|-----------------------|
| Job Title | Crime Scene Analyst I |
|------------------|-----------------------|

Indicate all disciplines in which you do casework:

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

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

| |
|--|
| Crime Scene Investigation; Body Fluid Identification |
|--|

Breath Alcohol Calibration Categories

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Date: 10/13/14

Name: Marjorie Davidovic

P#: 14726

Classification: Forensic Scientist II

Current Discipline of Assignment: Biology / DNA Detail

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

| EDUCATION | | | |
|------------------------|----------------|-----------------------|------------------|
| Institution | Dates Attended | Major | Degree Completed |
| Stony Brook University | 01/98 – 05/03 | Biochemistry | BS |
| Touro College | 09/04 – 06/07 | Forensic Examinations | MS |
| | | | |

| ADDITIONAL TRAINING / SEMINARS | | |
|--|---------------|--|
| Course / Seminar | Location | Dates |
| CJIS Security Awareness Training – (online) | Las Vegas, NV | 05/30/14 |
| Probabilistic Genotyping & Software Programs (Part I) – NIST webinar | Las Vegas, NV | 05/28/14 |
| CODIS 7.0, various modules/sessions CJIS – (online) | Las Vegas, NV | 04/29/14, 05/12/14, 05/13/14, 05/14/14 |
| Technical & Administrative Review Training to Make Casework Easier | Las Vegas, NV | 10/15/13 |

CURRICULUM VITAE -Name

| ADDITIONAL TRAINING / SEMINARS | | |
|---|------------------|---------------------|
| Course / Seminar | Location | Dates |
| Ethics in Forensic Science West Virginia University Extended Learning (on-line) | Las Vegas, NV | 09/16/13 |
| AB 3500 Genetic Analyzer, Identifiler Suffolk County Crime Laboratory | Hauppauge, NY | 09/11/12 - 09/13/12 |
| NEAFS Annual Meeting | Newport, RI | 11/02/11 - 11/04/11 |
| Surviving a DNA Cross Examination, NEAFS | Newport, RI | 11/02/11 |
| Cognitive Factors in Forensic Decision Making Office of the Chief Medical Examiner, New York, NY | New York, NY | 09/14/11 - 09/15/11 |
| NIJ Conference: Translational Criminology | Arlington, VA | 06/20/11 - 06/22/11 |
| TrueAllele Casework System Software Training, Cybergenetics, Suffolk County Crime Laboratory | Hauppauge, NY | 04/12/11 - 04/14/11 |
| Forensic Y-STR Training, Marshall University Forensic Science Center, Suffolk County Crime Laboratory | Hauppauge, NY | 07/27/10 - 07/29/10 |
| ASCLD/LAB International Preparation Course | White Plains, NY | 05/25/10 - 05/27/10 |
| DNA Symposium - Office of the Chief Medical Examiner, New York, NY | New York, NY | 09/23/09 |
| Expert Witness Testimony Workshop, DCJS | Albany, NY | 9/14/09 - 9/15/09 |
| DNA Workshop given by Dr. John Butler Office of the Chief Medical Examiner, New York, NY | New York, NY | 03/25/09 |
| Cedar Crest College Forensic Science Training Institute: Statistical Interpretation of Forensic DNA Evidence | Allentown, PA | 06/16/08 - 06/17/08 |
| HID 7500 RT-PCR, Minifiler and Quantifiler Training, Applied Biosystems, Suffolk County Crime Laboratory | Hauppauge, NY | 05/15/08 |
| Local Laboratory DNA Academy, Northeast Regional Forensic Institute, SUNY Albany | Albany, NY | 7/17/07 - 8/31/07 |
| Applied Biosystems HID 3130 Systems Training Program Suffolk County Crime Laboratory | Hauppauge, NY | 04/13/07 - 04/14/07 |
| | | |
| | | |
| COURTROOM EXPERIENCE | | |
| Court | Discipline | Number of Times |

| ADDITIONAL TRAINING / SEMINARS | | |
|---|--|-----------------|
| Course / Seminar | Location | Dates |
| Suffolk County Criminal Courts, NY | Forensic Biology (Serology and DNA) | 8 |
| EMPLOYMENT HISTORY | | |
| Employer | Job Title | Date |
| Las Vegas Metropolitan Police Department | Forensic Scientist II | 07/13 - Current |
| Suffolk County Crime Laboratory | Forensic Scientist I | 03/08 – 07/13 |
| On Assignment Staffing Agency assigned to the Suffolk County Crime Laboratory | Research Assistant / Laboratory Technician | 09/05 – 03/08 |
| Center for Molecular Genetics & Microbiology, Stony Brook University | Research Technician II | 07/04 – 05/05 |
| Altana, Inc. | Associate Microbiologist | 08/03 – 07/04 |
| Cold Spring Harbor Laboratory | Media Maker / Research Technician | 09/02 – 08/03 |
| Veterans Affairs Medical Center | Research Technician | 07/01 – 07/02 |
| PROFESSIONAL AFFILIATIONS | | |
| Organization | Date(s) | |
| Northeastern Association of Forensic Scientists, member. | 2006 - 2013 | |
| PUBLICATIONS / PRESENTATIONS: | | |
| | | |
| | | |
| OTHER QUALIFICATIONS: | | |
| | | |

Curriculum Vitae

Las Vegas Criminalistics Bureau Statement of Qualifications

Name: Shawn Fletcher

P# 5221

Date: 8-28-03

| CURRENT CLASSIFICATION | | | |
|-------------------------------|--------------------------------|---|--------------------|
| | <i>Classification</i> | <i>Minimum Qualifications</i> | |
| | Crime Scene Analyst I | AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation. | |
| | Crime Scene Analyst II | 18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I. | |
| X | Senior Crime Scene Analyst | Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst. | |
| | Crime Scene Analyst Supervisor | Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field. | |
| FORMAL EDUCATION | | | |
| | <i>Institution</i> | <i>Major</i> | <i>Degree/Date</i> |
| | Central Michigan University | Health & Fitness | Degree 1990 |
| | CCSN | Criminal Justice/Law Enforcement | Degree 1995 |
| | | | |
| | | | |
| TESTIMONY | | | |
| | Yes | No | |
| | | | |
| | | | |
| EMPLOYMENT HISTORY | | | |
| | <i>Employer</i> | <i>Title</i> | <i>Date</i> |
| | LVMPD | Sr. Crime Scene Analyst | 7-29-96 |
| | | | |

FLETCHER, SHAWN
SENIOR CSA

P# 5221
SS#: 381-94-9092

CRIMINALISTICS BUREAU - FIELD
DOH: 07-29-96

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

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

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

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

ASCLD/LAB-International

STATEMENT OF QUALIFICATIONS

| | | | |
|-------------|-----------------------------|-------------|----------|
| Name | Gabrielle Guerrero P# 15290 | Date | 6/5/2017 |
|-------------|-----------------------------|-------------|----------|

| | |
|-------------------|---|
| Laboratory | Las Vegas Metropolitan Police Department - Crime Scene Investigations Section |
|-------------------|---|

| | |
|------------------|-----------------------|
| Job Title | Crime Scene Analyst I |
|------------------|-----------------------|

Indicate all disciplines in which you do casework:

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

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

| |
|--|
| Crime Scene Investigation; Body Fluid Identification |
|--|

Breath Alcohol Calibration Categories

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

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

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

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

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

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

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

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

| |
|--|
| |
|--|

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

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

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

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

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

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

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

| |
|--|
| |
|--|



DETECTIVE MICHAEL MANGIONE P# 13727

Las Vegas Metropolitan Police Department

Computer Forensics Lab

400 S. Martin Luther King Blvd.

Las Vegas, NV 89106

Office: (702) 828-3364

Email: m13727m@lvmpd.com

CURRICULUM VITAE

CURRENT EMPLOYMENT

- **Detective and Computer Forensic Examiner, Las Vegas Metropolitan Police Department, Secret Service Electronic Crimes Task Force (2016 to present).**
- **Employed with LVMPD since 2008.**
- **Acquired over 2400 hours of police specific training, of which, more than 650 hours are in areas relevant to conducting examinations on electronic storage devices and associated technical concepts.**

BACKGROUND AND EDUCATION CURRICULUM

- **Nevada POST Certification**
 - **Basic - Las Vegas Metropolitan Police Department 2009**
 - **Intermediate - Las Vegas Metropolitan Police Department 2014**
 - **Advanced - Las Vegas Metropolitan Police Department 2014**
- **College of Southern Nevada**
 - **Associate of Business – 2008**
- **Herzing University**
 - **Bachelor of Science in Homeland Security and Public Safety - 2013**

CERTIFICATIONS

- **CFCE – Certified Forensic Computer Examiner (IACIS) – July 2017**
- **DVR Examiner Certified User – June 2017**
- **GASF – GIAC Advanced Smartphone Forensics (SANS) – April 2017**
- **EnCE – Encase Certified Examiner – April 2017**
- **CERT-F - Cellebrite Certified Repair Technician – Forensic – November 2016**
- **CCLO - Cellebrite Certified Logical Operator – October 2016**
- **CCPA – Cellebrite Certified Physical Analyst – October 2016**
- **MCFE - Magnet Certified Forensics Examiner – September 2016**
- **ACE - AccessData Certified Examiner – June 2016**

COMPUTER FORENSIC TRAINING

- **AccessData Bootcamp**
 - By AccessData, February 2016
- **Internet Forensics**
 - By AccessData, April 2016
- **Networking for Incident Response**
 - By AccessData, April 2016
- **Dead Box Analysis for Incident Response**
 - By AccessData, May 2016
- **AccessData Advanced FTK**
 - By AccessData, May 2016
- **Mac Forensics**
 - By AccessData, May 2016
- **Linux Forensics**
 - By AccessData, May 2016
- **Windows 8 Forensics**
 - By AccessData, May 2016
- **Windows OS Forensics**
 - By AccessData, May-June 2016
- **Basic Computer Skills for Law Enforcement**
 - By National White Collar Crime Center, June 2016
- **Encryption**
 - By National White Collar Crime Center, June 2016
- **Identifying and Seizing Electronic Evidence**
 - By National White Collar Crime Center, June 2016
- **Introduction to Cellphone Investigations**
 - By National White Collar Crime Center, June 2016
- **Computer Forensics and the Cloud**
 - By AccessData, June 2016
- **Search Warrants & Digital Evidence**
 - By National White Collar Crime Center, June 2016
- **Applied Decryption**
 - By AccessData, June 2016
- **Windows 10 Forensics**
 - By AccessData, July 2016
- **Log Analysis for Incident Response**
 - By AccessData, July 2016
- **Introduction to Computer Networks**
 - By National White Collar Crime Center, July 2016
- **RAM Analysis for Incident Response**
 - By AccessData, August-September 2016
- **Internet Evidence Finder Essentials**
 - By Magnet Forensics, September 2016
- **Advanced Forensics**
 - By AccessData, September 2016
- **Cellebrite Certified Logical Operator**
 - By Cellebrite, October 2016

- **Cellebrite Certified Physical Analyst**
 - By Cellebrite, October 2016
- **Cellebrite Certified Repair Technician – Forensic**
 - By Cellebrite, November 2016
- **Windows Forensic Registry**
 - By AccessData, December 2016
- **Password Recovery**
 - By AccessData, December 2016
- **Magnet AXIOM Transitions**
 - By Magnet Forensics, January 2017
- **AXON 5 Video Forensics**
 - By AXON, March 2017
- **Advanced Smartphone Forensics**
 - By SANS, March 2017
- **Basic Computer Forensic Examiner (BCFE)**
 - By International Association of Computer Investigative Specialists (IACIS), May 2017
- **DVR Examiner Certified User**
 - By DME Forensics, June 2017
- **Advanced Forensics Training**
 - By USSS National Computer Forensics Institute (NCFI), August 2017

Las Vegas Metropolitan Police Department
Forensic Laboratory

CURRICULUM VITAE

Date: 10/31/2017

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

Current Discipline of Assignment: Latent Prints

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

Las Vegas Metropolitan Police Department
Forensic Laboratory

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

Las Vegas Metropolitan Police Department
Forensic Laboratory

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

Las Vegas Metropolitan Police Department
Forensic Laboratory

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

Las Vegas Metropolitan Police Department
Forensic Laboratory

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

Curriculum Vitae

**Las Vegas Criminalistics Bureau
Statement of Qualifications**

Name: Moretta McIntyre

P# 13207

Date: 03-25-08

| CURRENT CLASSIFICATION | | |
|-------------------------------|--------------------------------|---|
| | <i>Classification</i> | <i>Minimum Qualifications</i> |
| X | Crime Scene Analyst I | AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene |
| | Crime Scene Analyst II | 18 months - two (2) years continuous service with LVMPD as a Crime Scene Analyst I. |
| | Senior Crime Scene Analyst | Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst. |
| | Crime Scene Analyst Supervisor | Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field. |
| FORMAL EDUCATION | | |
| <i>Institution</i> | <i>Major</i> | <i>Degree/Date</i> |
| Grossmont College | Forensic Technology | Associate/May 2007 |
| | | |
| | | |
| | | |
| TESTIMONY | | |
| <i>Yes</i> | <i>No</i> | |
| | | |
| | | |
| EMPLOYMENT HISTORY | | |
| <i>Employer</i> | <i>Title</i> | <i>Date</i> |
| LVMPD | Crime Scene Analyst I | 03-10-08 to Present |
| Seirus Innovations | Accounting Clerk | 01/02 - 08/07 |
| Agri-Beef Company | Accounting Assistant | 10/99 - 12/01 |
| Kitsap P.U.D. | Accounting Intern | 12/98 - 07/99 |
| Todd McLean | Nanny | 06/96 - 12/98 |

000363

Curriculum Vitae
ALANE M. OLSON, M.D.
Clark County Coroner's Office
1704 Pinto Ln.
Las Vegas, NV 89106
702-455-1862
e-mail: alo@co.clark.nv.us

EMPLOYMENT

| | |
|---------------|--|
| 9/12/05 | Clark County Coroner's Office |
| 7/1/00-9/9/05 | Ellen G.I. Clark, M.D., P.C., Washoe County Coroner/Medical Examiner's Office |

EDUCATION

| | |
|-----------|---|
| 7/99-6/00 | Forensic Pathology Fellowship: Milwaukee County Medical Examiner's Office/MCWAH |
| 7/94-6/99 | Residency in combined Anatomic and Clinical Pathology: Oregon Health Sciences University, Portland, OR |
| 5/94 | MD degree: University of Nevada School of Medicine, Reno, NV |
| 6/87 | Bachelor of Science: Microbiology, University of Idaho, Moscow |

PROFESSIONAL ACTIVITIES

| | |
|-----------|--|
| 2001 | Co-author, <u>Liquid Petroleum Explosion without Fire</u> , American Board of Medico legal Death Investigators Newsletter. |
| 2000 | Co-author, elder abuse presentation, given at September meeting of National Association of Medical Examiners, Indianapolis, IN |
| 1999-2000 | Team Teacher and laboratory instructor, MCW sophomore Pathology course |
| 1995-1999 | Laboratory instructor, Oregon health Sciences University Medical School sophomore Pathology course |
| 1955-1999 | Team teacher, Oregon Health Sciences University Medical Technologist School Pathophysiology course |
| 1998-1998 | Autopsy instructor, Oregon Health Sciences University Department of Pathology, incoming residents and student fellows |
| 1997 | Hematopathology in-service lecture, Kaiser Permanente Regional Laboratory |

LICENSURE

1995-1999

State of Oregon

1999-present

State of Wisconsin

2000-present

State of Nevada

PROFESSIONAL BOARD CERTIFICATION

Anatomic and Clinical Pathology

Forensic Pathology

Curriculum Vitae

**Las Vegas Criminalistics Bureau
Statement of Qualifications**

Name: SCHELLBERG, Peter

P# 5413

Date: 05-15-13

| CURRENT CLASSIFICATION | | |
|--|--------------------------------|---|
| | <i>Classification</i> | <i>Minimum Qualifications</i> |
| | Crime Scene Analyst I | AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation. |
| | Crime Scene Analyst II | 18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I. |
| | Senior Crime Scene Analyst | Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst. |
| X | Crime Scene Analyst Supervisor | Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field. |
| FORMAL EDUCATION | | |
| <i>Institution</i> | <i>Major</i> | <i>Degree/Date</i> |
| Saddleback Community College-Viejo, CA | Administration of Justice | Associates Degree |
| | | |
| | | |
| | | |
| TESTIMONY | | |
| <i>Yes</i> | <i>No</i> | |
| X | | District Court, Justice Court |
| X | | Federal Court, Military Court |
| EMPLOYMENT HISTORY | | |
| <i>Employer</i> | <i>Title</i> | <i>Date</i> |
| LVMPD | Crime Scene Analyst Supervisor | 07-26-08 to Present |
| LVMPD | CSA I / II / Sr. CSA | 01-27-97 to 07-26-08 |
| | | |
| | | |
| | | |

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Curriculum Vitae
Las Vegas Criminalistics Bureau
Statement of Qualifications

Name: William Speas

P# 5228

Date: 10-1-03

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

| FORMAL EDUCATION | | |
|-------------------------|------------------|------------------------|
| <i>Institution</i> | <i>Major</i> | <i>Degree/Date</i> |
| CCSN | Criminal Justice | Associates Degree-2000 |
| | | |
| | | |
| | | |

| TESTIMONY | | |
|------------------|-----------|--|
| <i>Yes</i> | <i>No</i> | |
| | | |
| | | |
| | | |

| EMPLOYMENT HISTORY | | |
|---------------------------|------------------------|-------------|
| <i>Employer</i> | <i>Title</i> | <i>Date</i> |
| LVMPD | Crime Scene Analyst II | 7-29-96 |

SPEAS, WILLIAM
CSA II

P# 5228
SS#: 570-82-5191

CRIMINALISTICS BUREAU FIELD
DOH: 07-29-96

| DATE | CLASS TITLE | AGENCY | CREDIT HOURS |
|-------------------|---|--|-------------------------------------|
| 08-06-90 | Electronic Systems Technology | Community College of the Air Force | Associate Degree |
| 02-25-91 | Audiovisual Production Services | Community College of the Air Force | Associate Degree |
| 08-11-95 | COMMUNITY COLLEGE OF THE AIR FORCE - SEE ATTACHED FOR PARTICULARS - Medical Laboratory Technician | Applied Science - Medical Laboratory Technician | Associate Degree of Applied Science |
| 05-21-97 | To Your Good Health - 90s | LVMPD | 7 |
| 05-15-00 | COMMUNITY COLLEGE OF SOUTHERN NEVADA - SEE ATTACHED FOR PARTICULARS - Criminal Justice - Law Enforcement Emphasis | Applied Science - Criminal Justice - Law Enforcement Emphasis | Associate Degree of Applied Science |
| 02-23 to 02-25-99 | Latent Print Identification - (in cooperation with FBI) | Law Enforcement Officers Training School | 24 |
| 04-28 to 04-30-99 | First Annual Educational Conference Opening Ceremonies (2) | NSDIAI | 2 |
| " | DNA Evidence | NSDIAI | 2 |
| " | Body ID Techniques | NSDIAI | 2 |
| " | Superglue | NSDIAI | 2 |
| " | Blood Enhancement | NSDIAI | 4 |
| " | Child Abuse | NSDIAI | 2 |
| " | Traffic Photography | NSDIAI | 2 |
| " | Clandestine Labs | NSDIAI | 2 |
| " | Laboratory Photography | NSDIAI | 2 |
| " | Death Investigations | NSDIAI | 2 |
| " | Footwear/Tire Tracks | NSDIAI | 2 |
| 09-02-99 | Active Charter Member - # 00023 | NSDIAI | |
| 10-21-99 | New Civilian Employee Orientation Course | LVMPD | 56 |
| 10-25 to 11-18-99 | Crime Scene Analyst Academy - followed by | LVMPD | 175 |
| | | | |

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|-------------------|--|---|-----|
| 11-22-99 | Civilian Use of Force/Firearms | LVMPD | 21 |
| 11-22-99 | Optional Weapon | LVMPD | 1 |
| | Field Training | LVMPD | 400 |
| 11-10-00 | Certificate - completed Basic Program in Forensic Science | American Institute of Applied Science, Inc. | 230 |
| 11-29-00 | Principles of Crime Scene Diagramming | North LV Police Dept. | 8 |
| 12-09-99 | Driver Training - Class II | LVMPD | 8 |
| 01-17-01 | Commission on Peace Officers' Standards and Training - "Courtroom Testimony for Police Officers" | State of Nevada | 4 |
| 02-12 to 02-14-01 | Clandestine Laboratory Safety Certification Course - Occasional Site Worker | LVMPD | 24 |
| 04-12-02 | Documentation of Footwear & Tire Impressions | LVMPD - Criminalistics Bureau | 1 |
| 04-19-02 | Clandestine Laboratory Safety - Fingerprint Processing | LVMPD - Criminalistics Bureau | 1 |
| 04-22-02 | Forensic Anthropology | LVMPD - Criminalistics Bureau | 1.5 |
| 05-06-02 | Major Case Prints | LVMPD - Criminalistics Bureau | 3 |
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Curriculum Vitae

**Las Vegas Criminalistics Bureau
Statement of Qualifications**

Name: Joseph Szukiewicz

P# 5411

Date: 10-1-03

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

| FORMAL EDUCATION | | |
|------------------|------------------|-----------------------|
| Institution | Major | Degree/Date |
| UNLV | Criminal Justice | Bachelors Degree-1989 |
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| TESTIMONY | | |
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| Yes | No | |
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| EMPLOYMENT HISTORY | | |
|--------------------|-------------------------|---------|
| Employer | Title | Date |
| LVMPD | Sr. Crime Scene Analyst | 1-27-97 |
| | | |
| | | |

SZUKIEWICZ, JOSEPH
SENIOR CSA

P# 5411
SS#: 530-86-0383

CRIMINALISTICS BUREAU - FIELD
DOH: 01-27-97

| DATE | CLASS TITLE | AGENCY | CREDIT HOURS |
|--------------------------|--|--|--------------|
| 1989 | Criminal Justice | UNLV | Degree |
| 01-27 to 02-28-97 | Crime Scene Analyst Academy | LVMPD | 175 |
| 02-03-97 | Hazard Communication Training Certificate - Video | LVMPD | |
| 02-06-97 | Ethics & Leadership | LVMPD | 7 |
| 02-10-97 | Stress Management | LVMPD | 4 |
| 02-12, 13, & 02-19-97 | Civilian Use of Force & Firearm Training | LVMPD | 21 |
| 02-17-97 | Civil & Criminal Law | LVMPD | 5 |
| 02-18-97 | CAPSTUN for Civilians | LVMPD | 2 |
| 03-17-97 | Combat Shooting Simulator/FATS | LVMPD | 1 |
| 03-27-97 | Ultraviolet (UV) Light Orientation and Safety Presentation | LVMPD | 1 |
| 03-03 to 05-02-97 | Criminalistics Bureau - Field Training | LVMPD | 360 |
| 03-30-97 | Duty Weapon Qualification | LVMPD | 2 |
| 04-03-97 | Driver Training - Level 2 | LVMPD | 8 |
| 05-20 to 05-22-97 | Top Gun Class | LVMPD | 21 |
| 06-13-97 | NCIC - Phase I - Video | LVMPD | 20 Min |
| 07-02-97 | Duty Weapon Qualification | LVMPD | 2 |
| 07-21-97 | Critical Procedures Test | LVMPD | |
| 09-30-97 | Duty Weapon Qualification | LVMPD | 2 |
| 10-13-97 | Forensic Science - American Institute of Applied Science | American Institute of Applied Science | 260 |
| 11-03 to 11-07-97 | Courtroom Presentation of Evidence: Effective Expert Witness Testimony Workshop | CAT/NWAFS/SWAFS/SAT Joint Meeting | 7 |
| 12-31-97 | Duty Weapon Qualification | LVMPD | 2 |
| 11-03 to 11-07-97 | Crime Scene Investigation Workshop | CAT/NWAFS/SWAFS/SAT Joint Meeting | 7 |
| 01-27-98 | Domestic Violence | LVMPD | 1 |
| 02-25-98 | Clandestine Lab Dangers - Video | LVMPD | 30 Min. |
| 03-06-98 | Secondary Devices - Video | LVMPD | 30 Min. |
| 03-31-98 | Duty Weapon Qualification | LVMPD | 2 |

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|----------------------|--|---|---------|
| 06-12-98 | Duty Weapon Qualification | LVMPD | 2 |
| 06-22-98 | Trauma Shooting - Video | LVMPD | 30 Min. |
| 07-15-98 | Critical Procedures Test | LVMPD | 2 |
| 09-14 to 09-18-98 | Crime Scene Technology II | Northwestern University, Traffic Institute | 40 |
| 12-03-98 | WordPerfect 8.0 - Basic | LVMPD | 4 |
| 12-08-98 | Duty Weapon Qualification | LVMPD | 2 |
| 12-30-98 | Training - Motor Home Driving | LVMPD | 4 |
| 02-23 to 02-25-99 | Latent Print Identification | Law Enforcement Officers Training School | 24 |
| 03-02-99 | Optional Weapon | LVMPD | |
| 03-30-99 | Duty Weapon Qualification | LVMPD | 2 |
| 04-30-99 | Critical Procedures Test | LVMPD | 2 |
| 06-08-99 | Duty Weapon Qualification | LVMPD | 2 |
| 08-16 to 08-20-99 | Bloodstain Evidence Workshop I | Northwestern University, Traffic Institute | 40 |
| 09-24-99 | Duty Weapon Qualification | LVMPD | 2 |
| 12-08-99 | Combat Shooting Simulator/FATS | LVMPD | 1 |
| 01-19-00 | Latent Fingerprint Development Workshop | U.S. Secret Service | 8 |
| 04-10 to 04-12-00 | LVMPD Clandestine Laboratory Safety Certification Course | LVMPD | 24 |
| 05-22 to 05-24-00 | Practical Homicide Investigation (Advanced Course of Instruction) | P.H.I., Investigative Consultants, Inc. | 24 |
| 12-23-00 | International Association for Identification - Crime Scene Cer- tification Board - Qualified/Certified as a Crime Scene Analyst | IAI | |
| 10-03-01 | Bloodstain Pattern Analysis - Angle of Impact Proficiency Exercise - Certificate # 07 | LVMPD - Criminalistics Bureau | 3 |
| 03-30-02 | Documentation of Footwear & Tire Impressions | LVMPD - Criminalistics Bureau | 1 |
| 03-30-02 | Forensic Anthropology | LVMPD - Criminalistics Bureau | 1.5 |
| 04-18-02 | Objective Approach to the Crime Scene | LVMPD - Criminalistics Bureau | 1 |
| 04-25-02 | Chemical Enhancements of Bloodstains, Preliminary Steps | LVMPD - Criminalistics Bureau | 1 |
| 04-25-02 | Clandestine Laboratory Safety - Fingerprint Processing | LVMPD - Criminalistics Bureau | 1 |
| 08-04 to 08-10-02 | 87 th International Educational Conference - See below | IAI | |
| " | Advanced Documentation for Bloodstain Evidence Using Mapping Techniques, Diagrams, and Measurements | " | 3 |

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|----------------------|--|-------|---------|
| “ | Forensic Evidence in the Courts, Expert Testimony, Lab Assurance and Credibility | “ | 30 Min. |
| “ | Fingerprints for the 21 st Century: How Digital Imaging Can Help Us Solve Crime | “ | 30 Min. |
| “ | The Effect of Un-du on Latent Print Developments | “ | 1 |
| “ | Investigating Cult and Occult Crime | “ | 2 |
| “ | Suicide....Or is it? | “ | 1 |
| 02-03 to 02-05-03 | Shooting Incident Reconstruction - Forensic Identification Training Seminars | LVMPD | 24 |
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Curriculum Vitae

**Las Vegas Metropolitan Police Department: Criminalistics Bureau
Statement of Qualifications**

Name: Kristina M. Thomas P# 13574 Date: 05/26/09

Current Classification:

- Crime Scene Analyst I (Hire Date: 09/02/08)

Formal Education:

- Elmira College Elmira New York
June 2004 Bachelor of Science in Criminal Justice
- George Washington University Washington, D.C.
June 2006 Master of Forensic Science-
Crime Scene Investigation

Additional Classes and Training:

- Las Vegas Metropolitan Police Department Crime Scene Analyst Academy
10 weeks Las Vegas Metropolitan Police Department
- Basic Bloodstain Pattern Analysis
40 hours International Association of Bloodstain Pattern Analysts
Elmira New York
- Crime Scene Technology 2: A Crime Scene Practicum
40 hours Institute of Applied Forensic Technology
- Ethics in Forensic Science
Continuing & Professional Education Certificate Program
West Virginia University
- Bloodstain Pattern Analysis
Continuing & Professional Education Certificate Program
West Virginia University

Curriculum Vitae

**Las Vegas Criminalistics Bureau
Statement of Qualifications**

Name: Erik Tufteland

P# 8971

Date: 8-10-2014

| CURRENT CLASSIFICATION | | |
|------------------------|--------------------------------|---|
| | <i>Classification</i> | <i>Minimum Qualifications</i> |
| X | Crime Scene Analyst I | AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation. |
| | Crime Scene Analyst II | 18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I. |
| | Senior Crime Scene Analyst | Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst. |
| | Crime Scene Analyst Supervisor | Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field. |
| FORMAL EDUCATION | | |
| <i>Institution</i> | <i>Major</i> | <i>Degree/Date</i> |
| UNLV | History | BA / 2003 |
| | | |
| | | |
| | | |
| TESTIMONY | | |
| <i>Yes</i> | <i>No</i> | |
| X | | Justice Court |
| X | | District Court |
| EMPLOYMENT HISTORY | | |
| <i>Employer</i> | <i>Title</i> | <i>Date</i> |
| LVMPD | Crime Scene Analyst I | 01-04-14 to Present |
| LVMPD | Forensic Multimedia Analyst II | 06-30-10 to 01-03-14 |
| LVMPD | Forensic Multimedia Analyst I | 07-12-08 to 06-30-10 |
| LVMPD | Photo Technician | 12-27-05 to 07-12-08 |
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000375

ASCLD/LAB-International

STATEMENT OF QUALIFICATIONS

| | | | |
|-------------|---------------|-------------|------------|
| Name | Meg Zingelman | Date | 05/06/2015 |
|-------------|---------------|-------------|------------|

| | |
|-------------------|---|
| Laboratory | Las Vegas Metropolitan Police Department - Crime Scene Investigations Section |
|-------------------|---|

| | |
|------------------|-----------------------|
| Job Title | Crime Scene Analyst I |
|------------------|-----------------------|

Indicate all disciplines in which you do casework:

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

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

| |
|--|
| Crime Scene Investigation; Body Fluid Identification |
|--|

Breath Alcohol Calibration Categories

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

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

| Institution | Dates Attended | Major | Degree Completed |
|-----------------------|--------------------|--------------------------------|---------------------|
| University of Phoenix | 08/2007 to 11/2009 | Human Services Management | Bachelor of Science |
| National University | 05/2010 to 07/2012 | Forensic Science Investigation | Master's |
| | | | |
| | | | |

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

| |
|--|
| 12-15-10 ICS 100 FEMA Las Vegas, NV. 12-16-10 ICS 200 FEMA Las Vegas, NV. 12-17-10 ICS G191 NLVPD North Las Vegas, NV. 01-30-14 Emergency Preparedness LVMPD Las Vegas, NV. 01-30-14 Major Evidence Recovery Vehicle Operations LVMPD Las Vegas, NV. 02-10-14 SB1305 OSHA 2012 Revised HazCom Standard and GHS LVMPD Las Vegas, NV. 02-10-14 PT 14061 Reporting Child Abuse and Neglect LVMPD Las Vegas, NV. 02-11-14 ICS 700 FEMA Las Vegas, NV. 02-11-14 Hazard Communications & Chemical Hygiene LVMPD Las Vegas, NV. 04-25-14 Crime Scene Analyst Academy LVMPD - Criminalistics Las Vegas, NV. 07-02-14 Latent Print Suitability for Crime Scene Analysts LVMPD - Criminalistics Las Vegas, NV. 09-12-14 Basic Bloodstain Pattern Recognition Course Seemore Forensics Las Vegas, NV. 09-14-14 Death Investigation Texas A&M Engineering Extension Las Vegas, NV. 10-01-14 Shotgun Familiarization and Pattern Documentation LVMPD - Criminalistics Las Vegas, NV. 11-11-14 Understanding & Documenting Strangulation LVMPD-Criminalistics Las Vegas, NV. |
|--|

ASCLD/LAB-International Statement of Qualifications

Approval Date: August 3, 2012

Approved By: Executive Director

Page 1 of 2

Effective Date: August 3, 2012

AL-PD-3018-Ver 3.0

000376

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

Testified in court from 01/24/2014 to present:

Crime Scene Investigation - 0
Body Fluid Identification - 0

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

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

| | | | |
|--|--|---------------|-----------------------|
| Job Title | Crime Scene Analyst I | Tenure | 01/24/2014 to present |
| Employer | Las Vegas Metropolitan Police Department | | |
| Provide a brief description of principal duties: | | | |
| Respond to and investigate crime scenes; perform a variety of tasks in documenting crime scenes including photographically documenting crime scenes, photographing fingerprints, and sketching and diagramming crime scene; powder or chemically process for latent fingerprints; perform and submit fingerprint comparisons; classify fingerprints as appropriate; collect, preserve, and safely package evidence; prepare crime scene and related reports and documentation; ensure accuracy and completeness; testify as an expert witness in court; ensure the adherence to standard safety precautions; recover, unload and impound firearms; and perform related duties as required. | | | |

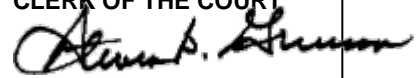
| | |
|---|---------------|
| Job Title | Tenure |
| Employer | |
| Provide a brief description of principal duties: | |

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

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

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

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



OPPM
JONELL THOMAS
SPECIAL PUBLIC DEFENDER
Nevada Bar #4771
MONICA R. TRUJILLO
Chief Deputy Special Public Defender
Nevada Bar #11301
330 So. Third Street, Suite #800
Las Vegas, Nevada 89155
(702) 455-6265
FAX: (702) 455-6273
EMAIL: trujilmr@clarkcountynv.gov
Attorney for Larry Decorleon Brown

DISTRICT COURT

CLARK COUNTY, NEVADA

| | | |
|------------------------|---|------------------------|
| STATE OF NEVADA, |) | CASE NO. C-17-326247-1 |
| |) | DEPT. NO. 21 |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| LARRY DECORLEON BROWN, |) | |
| ID 8376788, |) | |
| |) | |
| Defendant. |) | |

**OPPOSITION TO STATE'S MOTION TO COMPEL DEFENDANT BROWN'S
CELLULAR PHONE PASSCODE, OR ALTERNATIVELY, TO COMPEL
FINGERPRINT**

DATE: May 22, 2018
TIME: 9:30 a.m.

COMES NOW, Defendant Larry Decorleon Brown, by and through his attorneys JoNell Thomas, Special Public Defender, and Monica R. Trujillo, Chief Deputy Special Public Defender, and hereby moves this Honorable Court pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, Article 1, Section 8, of the Nevada Constitution, and applicable state law, to deny the State's request for this Court to order Mr. Brown to provide his passcode or fingerprint.

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PROCEDURAL HISTORY

On September 14, 2017, Mr. Brown was arraigned on an Indictment in District Court, Department 3. Mr. Brown entered a plea of Not Guilty and waived his state right to a speedy trial. Thereafter, the State filed a Second Superseding Indictment, adding one count as to Mr. Brown. On October 19, 2017, Mr. Brown again entered a plea of Not Guilty and waived his state right to a speedy trial. On December 19, 2017, this Honorable Court received a Third Superseding Indictment. At that hearing, this Court noted that it did not need to arraign Mr. Brown because there were no charges added, only additional evidence and testimony regarding the charges. At a status check on October 31, 2017, this Court scheduled trial for June 18, 2018. On April 11, 2018, Nicholas Wooldridge filed a Motion to Withdraw as Attorney of Record. This Court granted Mr. Wooldridge's motion on April 24, 2018 and appointed the Special Public Defender's Office. Thereafter on April 26, 2018, the Special Public Defender's Office confirmed as counsel. At a status check on May 8, 2018, counsel informed this Court that while Mr. Wooldridge provided the discovery in his possession, several items were missing. The State agreed to provide counsel with complete discovery as well as agreed that counsel could file an opposition to the instant motion on May 18, 2018.

Mr. Brown is charged by way of Third Superseding Indictment with one count of Conspiracy to Commit Robbery, one count of Robbery with Use of a Deadly Weapon, one count of Murder with Use of a Deadly Weapon and one count of Ownership or Possession of Firearm by Prohibited Person.

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PERTINENT FACTS

On February 21, 2017, officers responded to the parking lot of Sky Pointe Landing Apartments at 5850 Sky Pointe Drive. See, Declaration of Warrant, p. 1 (hereafter referred to as Exhibit A). Upon arrival, officers discovered the body of Kwame Banks deceased from a

1 gunshot wound. Exh. A, p. 1. While canvassing the scene, officers found three cell phones in
2 the area. Exh. A, p. 2. The first cell phone was located under Banks' body. Exh. A, p. 2. The
3 second cell phone was located approximately ten to fifteen feet from Banks' body in a landscaped
4 area. Exh. A, p. 2. The third cell phone was located approximately one hundred feet north of
5 Banks' body. Exh. A, p. 2. According to officers, two of the cell phones were examined, but
6 forensic analysts were unable to examine the third cell phone. Exh. A, p. 5. Detectives obtained
7 the integrated circuit card identifier from that phone and sent the information to Sprint who
8 subsequently identified the subscriber as Larry Brown. Exh. A, p. 5. Sprint further identified
9 the number associated with the account. Exh. A, p. 5.

11 **LEGAL ARGUMENT**

12 **I. COMPELLING MR. BROWN TO PROVIDE THE STATE WITH HIS** 13 **PASSWORD OR FINGERPRINT WOULD VIOLATE HIS FIFTH** 14 **AMENDMENT RIGHT AGAINST SELF-INCRIMINATION**

15 It is well-settled that the Fifth Amendment protects a person in any criminal from being
16 a witness against himself. The United States Supreme Court has held that the Fifth Amendment
17 covers testimonial communications. Doe v. United States, 487 U.S. 201, 207 (1988).
18 Testimonial communications are those in which the communication explicitly or implicitly
19 relates a factual assertion or discloses information. Id. at 210.

21 The High Court has further extended the privilege to cover acts. "It is clear that the
22 protection of the privilege reaches an accused's communications, whatever form they might take,
23 and the compulsion of responses which are also communications, for example, compliance with
24 a subpoena to produce one's papers." Schmerber v. Cal., 384 U.S. 757, 763-64 (1966) (citing
25 Boyd v. United States, 116 U.S. 616). "The touchstone of whether an act of production is
26 testimonial is whether the government compels the individual to use 'the contents of his own
27 mind' to explicitly or implicitly communicate some statement of fact." United States v. Doe,
28 670 F.3d 1335, 1345 (11th Cir. 2012) (citations omitted).

1 **A. The Act of Producing a Fingerprint is Testimonial**

2 While counsel for the State asserts that providing a fingerprint to unlock a phone is non-
3 testimonial and merely a physical act not protected by the Fifth Amendment, this so-called
4 “physical act” goes beyond what the United States Supreme Court has held is a permissible use
5 of a physical characteristic.

6 In reviewing the historical underpinnings of the Fifth Amendment, the Court in Doe v.
7 United States noted,

8 [t]he Self-Incrimination Clause reflects “a judgment...that the prosecution
9 should [not] be free to build up a criminal case, in whole or in part, with
10 the assistance of enforced disclosures by the accused.”

11 487 U.S. 201, 212 (1988) (citations omitted). The Court also acknowledged the instances where
12 the Fifth Amendment is not implicated, namely compelling a suspect to: 1) furnish a blood
13 sample, 2) provide handwriting exemplars, 3) provide voice exemplars, 4) stand in a line-up or
14 5) try on clothing. Id. at 210. The distinction between courts and the legal process to compel a
15 defendant to provide physical characteristics or attributes versus actual communications is that
16 the former is used solely for a comparison of the physical properties, “not for the testimonial or
17 communicative content of what was to be said.” United States v. Dionisio, 410 U.S. 1 (1973).
18 Undoubtedly, if the State successfully obtains anything of evidentiary value, the contents of
19 those messages will be used a trial to inculcate Mr. Brown. Furthermore, production of the
20 password in this case is not sought for comparative purposes as the State has nothing to compare
21 it to. This fact is what distinguishes the act of producing a password from the “physical acts”
22 described by various courts. Rather the State seeks the password to access the contents of the
23 phone to aid in its prosecution.
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27 Counsel for the State cites Commonwealth v. Baust as support for its argument that
28 compelling a defendant to produce his fingerprint to unlock a phone was not testimonial. 89 Va.
Cir. 267 (2014). There, the victim in the case told officers that the defendant recorded the assault

1 on his phone. Id. at 267. Officers recovered the phone and received affirmation from both the
2 defendant and the victim that the phone “‘could have possibly’ recorded the assault and the
3 recording ‘may exist’ on the phone.” Id. at 267-68. Ultimately, the goal was to retrieve the
4 alleged video to aid in prosecution.

5 While the Court ordered the motion to compel the fingerprint granted, the Court also
6 cautioned that the Commonwealth had not requested that the defendant be compelled to provide
7 the unencrypted video, the ultimate goal and the reason the Commonwealth sought the password
8 to begin with. Baust, 89 Va. Cir. 267 at 271. The Court determined that the existence and
9 location of the recording was not a foregone conclusion and compelling the defendant to produce
10 an unencrypted video would be self-incriminating. “Defendant’s production of the unencrypted
11 recording would be testimonial because Defendant would be admitting the recording exists, it
12 was in his possession and control, and that the recording is authentic.” Id. at 271. The Court
13 also unequivocally concluded that compelling the defendant to produce his password forced him
14 to ‘disclose the contents of his own mind’ and therefore was both compelled and testimonial. Id.
15 at 271. The Court denied the Commonwealth’s request to compel production of the password.

16 Most importantly, while the Court in Baust granted the motion to compel the fingerprint,
17 it also recognized the inherent danger and implication of the Fifth Amendment in actually
18 accessing the contents of the phone. The Court held that while the Commonwealth had not
19 actually asked to compel the video recording, it ultimately could not ask because it would violate
20 the Fifth Amendment. Baust, 89 Va. Cir. 267 at 271. While the dissection of the issue by the
21 Court is an interesting approach, the result is clear: production of the video is testimonial and
22 implicates the Fifth Amendment. The only way the video would be produced is by the fingerprint
23 providing access to the phone. If this Court is to follow the analysis in Baust, the conclusion
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1 would be to compel Mr. Brown to unlock the phone with his fingerprint, but not allow the State
2 to access his text messages as that act would be self-incriminating.

3 **B. The Act of Producing a Password is Testimonial**

4 The act of producing a password is testimonial in and of itself. In United States v.
5 Hubbell, the United States Supreme Court stressed that the privilege against Self-Incrimination
6 extends to answers that would, “furnish a link in the chain of evidence needed to prosecute the
7 claimant for a federal crime.” 530 U.S. 27, 38 (2000) (citing Hoffman v. United States, 341 U.S.
8 479, 486 (1951)). Specifically, “[c]ompelled testimony that communicates information that may
9 ‘lead to incriminating evidence’ is privileged even if the information itself is not inculpatory.”
10 Id. (citations omitted). “The touchstone of whether an act of production is testimonial is whether
11 the government compels the individual to use ‘the contents of his own mind’ to explicitly or
12 implicitly communicate some statement of fact.” United States v. Doe (In re Jury Subpoena
13 Duces Tecum), 670 F.3d 1335, 1345 (2012) (citations omitted).

14
15
16 Here, Mr. Brown would actually be required to communicate a statement, namely the
17 password. Therefore, the statement is a testimonial communication and is protected by the Fifth
18 Amendment. In United States v. Doe, the United States Court of Appeals for the Eleventh Circuit
19 held that the act of requiring Doe to decrypt the hard drives he was ordered to produce implicated
20 the Fifth Amendment. 670 F.3d 1335, 1346 (11th Cir. 2012). The Court stressed that the act of
21 decryption, essentially providing a password, was not just a physical act but would require him
22 to use the contents of his mind. Id. In discussing the foregone conclusion doctrine, the Court
23 determined that the Government did not know whether any files even existed on the hard drives.
24 Specifically, while the Government there possessed the drives, it did not know what, if anything,
25 was on those drives. Id. at 1346-47. Similarly here, by the State’s own admission, it does not
26 know what, if anything, is on Mr. Brown’s cell phone. According to the State, Co-Defendant
27 Carter destroyed his phone, the cell phone records do not contain the contents of any messages
28

1 and there is no other independent evidence that any information is on the password protected
2 cell phone. State's Motion, p. 6. Like in Doe, the act of compelling Mr. Brown to communicate
3 his password would require him to "use the contents of his mind". Therefore, being compelled
4 to provide a password to unlock a cell phone is without question testimonial.

5 **II. THE FOREGONE CONCLUSION DOCTRINE DOES NOT APPLY UNDER**
6 **THESE FACTS**

7 "Where the location, existence, and authenticity of the purported evidence is known with
8 reasonable particularity, the contents of the individual's mind are not used against him, and
9 therefore no Fifth Amendment protection is available." United States v. Doe, 670 F.3d 1335,
10 1344 (11th Cir. 2012). The existence of text messages is not a foregone conclusion in this case.

11
12 To begin, the information provided by Mr. Brown, if compelled to do so, potentially adds
13 significant information to the State's case. Namely, providing the password or fingerprint would
14 provide the link in the chain to constitute the Conspiracy to Commit Robbery charge and possibly
15 other charges. The State has made clear that its theory is that, "Defendant Carter destroyed his
16 cellphone, which he had used to communicate with Banks that evening to set up the robbery..."
17 State's Motion, pp. 5-6. The State further believes that the contact between Mr. Brown and Mr.
18 Carter's phone the night of the incident has something to do with Mr. Banks' death. State's
19 Motion, p. 5. Finally, and perhaps most evident is that the password cannot be a foregone
20 conclusion, because if it were, the State would not need Mr. Brown to access the phone.
21

22
23 **A. The State has No Independent Knowledge that Mr. Brown Possessed the**
24 **Phone and Password or that Any Evidence Exists on Mr. Brown's Cell Phone**
25 **with Reasonable Particularity (the existence and location prong)**

26 The act of producing a password or fingerprint is comparable to the compelled production
27 of documents by way of subpoena. The State does not know that Mr. Brown possessed the phone
28 and password independent of him acknowledging that he did. By the State's own recitation of
facts, the cell phone in question was not in Mr. Brown's possession at the time it was found near

1 the scene. Furthermore, Mr. Brown has never admitted to having possessed the phone on the
2 day of the incident or ever for that matter. While the State suggests that testimony by his
3 girlfriend before the Grand Jury establishes he had control and possession of the phone,
4 interestingly enough there appears to be no statement that he had his phone on the day of the
5 incident, knows the password to that phone or that any evidence exists on the phone.

6
7 Furthermore, there is no independent evidence that anything of evidentiary value exists
8 on Mr. Brown's cell phone. Mr. Carter's phone does not exist. The State assumes that there is
9 something of evidentiary value on the cell phone it seeks to access, but such speculation is not
10 independent corroboration. While the State cites to United States v. Fricosu as authority for
11 merely needing to know about the existence of evidence, that case is distinguishable from the
12 instant facts. 841 F. Supp. 2d 1232 (2012). The Court in that case specifically found that during
13 a recorded phone call the defendant made admissions which confirmed the existence of the
14 specific evidence the State sought on her laptop, and divulged that the information was password
15 protected and that she could access the information. Id. at 1235-36. Here, the State has no such
16 information. Mr. Brown has never acknowledged that anything exists on the cell phone he once
17 used. Here, the State merely has a suspicion that the messages exist and if they do exist, the
18 State assumes the messages would likely be in Mr. Brown's cell phone. That suspicion does not
19 establish existence and location aside from Mr. Brown's "testimony" that he in fact possesses
20 the information and can access it.

21
22
23 The State cites to Fisher v. United States in support of its argument that Mr. Brown's
24 password or fingerprint is a foregone conclusion. The State, however, failed to point out that in
25 Fisher the documents sought were documents possessed by both the attorneys and accountants
26 in the case. The United States Supreme Court in United States v. Hubbell later analyzed the
27 facts in Fisher and stressed that the Government in Fisher, "already knew that the documents
28

1 were in the attorneys' possession and could independently confirm their existence and
2 authenticity through the accountants who created them..." 530 U.S. 27 at 44-45. That is simply
3 not the case here. The State cannot independently establish that Mr. Brown has the password to
4 the cell phone or that any evidence exists on it without him incriminating himself and implicitly
5 acknowledging that something of evidentiary value is located on the phone.

6
7 **B. The State Cannot Authenticate the Password Without Mr. Brown**

8 According to the Court of Appeals for the Ninth Circuit,

9 [t]he authenticity prong of the foregone conclusion doctrine requires the
10 government to establish that it can independently verify that the compelled
documents 'are in fact what they purport to be'

11 Doe v. United States, (In re Grand Jury Subpoena) 383, F.3d 905, 912 (9th Cir. 2004). Part of
12 that analysis requires the State to show that the object compelled would be admissible
13 independent of the witness' production. Clearly, the State cannot make that showing. Again, if
14 the password were independently admissible, the State would not have filed the instant motion
15 and it would be able to access the contents of the phone.

16
17 **III. THERE IS NO ALTERNATIVE TO CIRCUMVENT THE FIFTH AMENDMENT**

18 Regardless of how the password or fingerprint is provided, the result is the same. The
19 product of compulsion would provide the link in the chain of evidence needed to prosecute Mr.
20 Brown. The State repeatedly notes in its motion that if this Court compels Mr. Brown to provide
21 his password or fingerprint it will not present that fact as evidence in a trial against him. The
22 State, however, misses the point.

23
24 The question, however, is not whether the response to the subpoena may be
25 introduced into evidence at his criminal trial...But the fact that the Government
26 intends no such use of the act of production leaves open the separate question
27 whether it has already made 'derivative use' of the testimonial aspect of that act in
obtaining the indictment against respondent and in preparing its case for trial.

28 Hubbell, 530 U.S. 27 at 41. While the United States Supreme Court in Hubbell analyzed the
foregone conclusion doctrine in the context of derivative use immunity and the response to a

1 subpoena to produce documents, the analysis remains the same. Forcing Mr. Brown to produce
2 either a password or fingerprint is a testimonial act in and of itself and the State will use the
3 results of that search to aid in its prosecution.

4 If the United States Supreme Court has concluded that the privilege extends to targets of
5 a grand jury investigation when questioned about the existence of sources of potentially
6 incriminating evidence as well as to the response to subpoenas seeking discovery of similar
7 sources, then this Court should likewise conclude that the privilege also extends to a court order
8 requiring a defendant to give the State access to potentially incriminating evidence against
9 himself. Hubbell, 530 U.S. 27 at 43.

11 **IV. ACCESS TO THE CELL PHONE IMPLICATES PRIVACY CONCERNS**

12 The Court should not allow the State to have unfettered access to the cell phone in the
13 instant case. The Court in Riley v. California held that officers must generally secure a warrant
14 before searching a cell phone unless a particular warrantless exception applies. 134 S. Ct. 2473,
15 2485 (2014). The Court based its ruling, in part, on the fact that cell phones are essentially,
16 “minicomputers that also happen to have the capacity to be used as a telephone.” Id. at 2489.
17 Specifically, “the sum of an individual’s private life can be reconstructed” through their immense
18 storage capacity. Id. From photographs, internet searches, contacts, historical location
19 information, specific applications and personal records of everyday life, access to this most
20 private possession requires a warrant for a reason. Id. at 2489-90. Access to a cell phone’s
21 contents invades one’s privacy.

22 Defense counsel recognizes that the State obtained a warrant to search the instant cell
23 phone; however, because the State is unable to access the contents, the inquiry should end there.
24 Allowing the State to have complete access to extensive personal data, not only forces Mr. Brown
25 to implicate himself with regard to the alleged text messages that may be on the phone, but can
26
27
28

1 also force him to incriminate himself with anything on the phone that dates back to when it was
2 first operable. The risk to Mr. Brown is far too great and an intrusion of his privacy.

3 **CONCLUSION**

4 Based on the foregoing, Mr. Brown respectfully requests that this Court deny the State's
5 Motion to Compel Mr. Brown to provide his passcode or fingerprint to access the cell phone as
6 it would violate his Fifth Amendment right against Self-Incrimination.
7

8 Dated: May 18, 2018

9 SUBMITTED BY

10 /s/ MONICA R. TRUJILLO

11
12 _____
13 MONICA R. TRUJILLO
14 Attorney for Brown

14 **CERTIFICATE OF ELECTRONIC FILING**

15 I hereby certify that service of the above mentioned matter was made pursuant to
16 EDCR 7.26 on the attorney for the named parties by means of electronic mail to the email
17 address provided to the court's electronic filing system for this case. Proof of Service is the
18 date service is made by the court's electronic filing system by email to the parties and contains
19 a link to the file stamped document.
20

21 PARTY
22 STATE OF NEVADA

EMAIL
DISTRICT ATTORNEY'S OFFICE email:
motions@clarkcountyda.com

23 Dated: 5/18/2018

24
25 /s/ ELIZABETH ARAIZA

26 _____
27 An employee of the Special Public Defender
28

EXHIBIT A

DECLARATION OF WARRANT/SUMMONS

(N.R.S. 171.106)

(N.R.S. 53 amended 7/13/1993)

"PRINT"["Click to Add/Edit Event # on All Pages"](#)Event Number: 170221-4563

STATE OF NEVADA) Larry Decorleon Brown

) ss: ID#: 8376788

COUNTY OF CLARK)

Darin Cook P# 5730, being first duly sworn, deposes and says:

That he is a Detective with the Las Vegas Metropolitan Police Department, being so employed for a period of 19 years, assigned to investigate the crime(s) of Murder E/DW NRS 200.010, Robbery E/DW NRS 200.380 committed on or about 02/21/17, which investigation has developed Larry Decorleon Brown as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME, TO WIT:

On February 21, 2017, at approximately 2247 hours, the LVMPD Communications Center received several 9-1-1 callers who reported a shooting in the parking lot of the Sky Pointe Landing Apartment Homes located at 5850 Sky Pointe Drive in Las Vegas. Patrol officers and emergency medical personnel were dispatched to the scene under LVMPD event 170221-4563. Patrol officers and emergency medical personnel arrived and discovered the body of an adult black male, later identified as Kwame Banks ID #2690931, deceased from an apparent gunshot wound. Patrol officers contacted witnesses, secured the crime scene with yellow crime scene tape and awaited the arrival of homicide personnel.

Homicide personnel responded to the crime scene and assume investigatory responsibility. Detective Cook and Detective Dosch examined the crime scene for evidence and noted the body was located in a parking space under a carport in front of building [REDACTED]. Evidence at the crime scene consisted of apparent blood, foot impressions in apparent blood, a .40 caliber cartridge case, a black latex glove and a black cloth glove. Banks' pants pockets were pulled out, which suggested the decedent was also the victim of a robbery. Banks' body was lying almost face-down on the ground. There was an apparent shoe impression in the victim's blood. The shoe impressions continued south from the body and appeared to end at carport spot [REDACTED]. This suggested the suspect stepped in the victim's blood

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and ran due to the stride distance between shoe impressions. This suggested the suspect ran to a vehicle that may have been parked in the now-vacant carport spot.

There were three cell phones located in the crime scene. A black LG Samsung cell phone with a cracked screen and apparent blood was located under Banks' body. A black Samsung cell phone in a black case was found approximately 10 to 15 feet away from the Banks' body in a landscaped area, which appeared to have been disturbed and suggested a fight took place. The third cell phone, a black cell phone with a cracked screen and apparent blood was found approximately 100' north of Banks' body in the parking lot near the main entrance. The phone was in three pieces (phone, battery and battery cover). Just west of the dismantled or broken cell phone was another latex glove with apparent blood and a \$10.00 bill.

Detective D. Cook took possession of the cell phones and turned them over to the custody of the LVMPD Computer Forensics Lab (CFL). Detective M. Dosch obtained a search warrant for the cell phones, which was signed by District Court Judge Douglas Smith. The search warrant authorized a forensic examination of the cell phones for digital evidence and to determine ownership.

During the investigation homicide detectives contacted and interviewed several witnesses. On February 22, 2017, at approximately 0150 hours, Detective Dosch conducted an audio-recorded interview with Dereka Nelson, who stated round 2240 hours Nelson heard what sounded like a male yelling for help, which was followed by a gunshot. Nelson went to her bedroom, called 9-1-1 and looked outside her bedroom window. Underneath the carport and next to her white Toyota Solara were two men involved in a physical altercation. The fight moved onto the top of her hood and the victim was under the suspect. Nelson heard a second gunshot, but did not see a weapon. The suspect was wearing a dark colored cap, a dark colored hooded sweatshirt, dark colored pants, and "shiny" gloves. Nelson retreated to her closet for cover and spoke to the dispatcher. About one minute later Nelson returned to the window as saw the victim lying motionless on the ground next to her car.

A male then approached the victim's body from the east and began searching the victim's pants pockets. Nelson believed the person going through the victim's pockets was most likely the same suspect the victim had fought with. The suspect walked away and within approximately 10 seconds Nelson saw a navy blue or black four-door sedan southbound through the parking lot toward the south entrance. The vehicle had tinted windows and appeared to be an older model. Nelson did not see the suspect's face and cannot make an identification. Nelson said the

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vehicles parked to the south of her car and to the north of the victim's body belonged to other tenants in the complex.

On February 22nd, 2017 at approximately 0214 hours, Detective Merrick obtained a recorded statement from Jakhai Smith at 5850 Sky Pointe Drive [REDACTED], Jakhai lives in a second floor apartment and his bedroom window looks out to the parking lot where the victim was lying. Smith was in his bedroom and heard people arguing outside his window, so he got up and peered out through the blinds. Smith saw two males engaged in a fight. Smith described the victim as a black male adult wearing gray sweat pants and red "air force" shoes. Smith described the suspect as a black male adult wearing all black clothing and had a chrome semi-auto handgun in his right hand. The suspect and the victim were fighting over the gun when the suspect shot the victim one time in the stomach. The suspect told the victim not to move prior to shooting him. The suspect then went through the victim's front pant pockets and took some money. The suspect then walked out of sight and proceeded south bound through the parking lot. Also present during the recorded statement was Smith's mother, Lonnetta Smith, DOB: [REDACTED].

On February 22, 2017, at approximately 0141 hours, Detective Merrick obtained a recorded statement from Branden Kohler who stated he was inside his apartment which is located near the tennis courts. Kohler's wife, Kelly Kohler, yelled at him to come back outside. Once on the patio, Kohler heard two men arguing in the direction where the victim was located. One of the men was yelling "no, no, no", then Kohler heard one gunshot. Kohler then went back into his apartment and retrieved his firearm, then went back outside to his patio. Kohler heard the two men arguing again, then heard a second gunshot. Kohler then saw a male stand up and start to walk north bound towards the leasing office. The male was wearing a dark hoodie with white lettering. Kohler lost sight of the male and then saw a vehicle back out of a covered parking spot which is south of the victim's location. The vehicle then exited south through the parking lot. Kohler believed the vehicle was a dark colored Nissan Maxima or Altima.

On February 22nd, 2017, at approximately 0157 hours, Detective Merrick obtained a recorded statement from Kelly Kohler who was sitting on her patio when she heard screaming and a male voice saying "help, help, help". Kohler told her husband to come outside and then she heard a female screaming. Kohler then heard a gunshot and Kohler went inside her

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apartment. Kohler called 911 and while she was talking to the operator she heard a second gunshot.

On February 22nd Detective Cook and Detective Dosch attended Banks' autopsy at the Clark County Coroner's Office. A search of the clothes worn by Banks at the time of his death revealed \$1,880 dollars in his jacket pocket. Dr. Olson determined Banks' cause of death as a gunshot wound to the chest and Banks' death was ruled a homicide.

On February 23rd Detective Cook and Detective Dosch located Banks' Nissan Altima parked on the west end of a business complex located at 7495 Azure Drive, which was less than a mile from the crime scene. The vehicle's license plates were missing and the interior of the vehicle had been set on fire in an attempt to destroy evidence. Detective Dosch contacted businesses across the street, which had video surveillance of the adjacent business complex where Banks' vehicle had been dumped. The video surveillance showed Banks' vehicle pulling into the business complex on February 21st, at approximately 2332 hours, which was approximately 45 minutes after the murder was reported to law enforcement. At approximately 2356 hours a newer model, mid-size white sport utility vehicle (SUV) arrived and parked next to Nissan Altima. Six minutes later, at approximately 0002 hours, a marked LVMPD vehicle pulled into the same parking lot just as the white SUV exited the business complex. The marked LVMPD unit pulled up behind the Nissan Altima and appeared to shine a spotlight on the vehicle.

Detective Dosch received information from LVMPD that the officer who arrived in the business complex just as the white SUV was leaving was Officer English. Officer English ran Banks' California license plate at approximately 0003 hours. The existence of Banks' stolen vehicle was not known to detectives at that time and was not put into NCIC until later that day. Detective Dosch contacted Officer English and asked him about the incident. Officer English said he was westbound on Azure Drive when he looked into the parking lot and saw a black male standing next to a black Nissan Altima. Officer English described the black male as having a large frame, 230+ pounds, over 6'0" and wearing all dark clothing. It appeared suspicious to Officer English who then pulled into the parking lot. At the same time a newer model white SUV drove next to him, which was driven by an apparent black female. Officer English did not see the black male in the white SUV and could not get the SUV's license plate before it drove away on Azure Drive. Officer English pulled in behind Banks' vehicle and found it was unoccupied and the black male was gone.

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The video surveillance also showed Banks' Nissan Altima still parked in the parking lot on the early morning hours of February 23rd, at approximately 0243 hours, the vehicle appeared to be set on fire. A vehicle could not be seen entering the business complex before the fire. However, a white SUV, similar to the one depicted on video surveillance on February 21st, was observed driving in both directions on Azure Drive. The vehicle appeared to be set on fire three separate times. Each time the vehicle was set on fire the white SUV was seen driving by.

On February 24th the forensic examination of the cell phones were completed for two of the three cell phones. The third cell phone, which was found in the scuffed rocks approximately five to six feet away from Banks' body, was locked. Detectives were able to obtain the cell phone's integrated circuit card identifier (ICCID) from the subscriber identity module (SIM card). The ICCID was the serial number for the SIM card. The ICCID was sent to Sprint who identified the subscriber as Larry Brown, date of birth [REDACTED], and social security number [REDACTED]. Brown was a black male and his address was in Atlanta, Georgia. Brown's phone number was identified as [REDACTED].

A records check on Brown showed he had served prison time in Georgia for bank robbery and narcotics-related offenses. It also showed Brown attempted to get a Nevada identification card on June 24th, 2016 through Nevada DMV, which was denied for incomplete documents. The address listed by Brown was [REDACTED], in Las Vegas. Brown also listed his cell phone number of [REDACTED]. Brown's possible girlfriend was then identified as Angelisa Ryder ID #8376789. Ryder lives at the same address, [REDACTED], and had been there since 2014. Ryder listed a 2015 Jeep SUV bearing Nevada registration [REDACTED] registered at the same address.

The other two cell phones had phone numbers of [REDACTED] and [REDACTED]. From the contact list of cell phone [REDACTED], Detectives located a name "Poe ATL". The corresponding cell phone number was [REDACTED]. Detective Cook obtained the phone records from T-Mobile, which identified the subscriber of 7 [REDACTED] as Anthony Carter with an address of [REDACTED] in Las Vegas. A SCOPE records check on Carter revealed he was a black male born in Atlanta, Georgia and his listed moniker was "Poke."

The decedent Kwame Banks' cell phone showed a lot of activity between his phone number [REDACTED] and Anthony Carter's phone number [REDACTED]. Detective Cook obtained a pen register for [REDACTED] and a court order for [REDACTED]. Both legal

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documents were signed by District Court Judge Jerry Wiese. The pen register was sent to T-Mobile for service and the court order was sent to Sprint for service.

Detective Cook and Detective Dosch reviewed Carter's cell phone records and at the time of the murder his calls hit off a cell tower located less than 1/2 a mile northwest of the crime scene. A further review of the call records revealed significant text message activity between Carter's cell phone and Brown's cell phone between 2207 hours and 2222 hours, which was right before the murder. Then at 2240 hours there was another text message sent from Carter's phone to Brown's phone. After that there was no more contact between the two cell phones and Carter turned off his phone by 1230 hours on February 22nd. Carter's phone at the time of the incident was an HTC Desire 530 cell phone.

Detective Cook and Detective Dosch reviewed Brown's phone records. The last voice call Brown made was at 2017 hours. The call hit off a cell phone tower located less than 1/4 of a mile south of the crime scene. That was then followed by exclusive text message activity between Brown's cell phone and Carter's cell phone, which was between 2206 hours and 2240 hours. Then on February 22nd between 0427 hours and 0523 hours Brown's cell phone received several text messages from phone number [REDACTED], which belonged to Angelisa Ryder. A LVMPD records check revealed Brown never made a report for a lost or stolen cell phone.

On February 25th Detective Dosch conducted an on-line records check of the VIN number of Ryder's vehicle. The records check revealed the vehicle was listed for sale by Enterprise Car Rental in 2016. The on-line flyer included several images of the vehicle, which was a white 2015 Jeep Compass. The vehicle bared a strong resemblance to the white SUV depicted in the video surveillance recovered from across the street of the business complex where Banks' vehicle was dumped and burned.

On March 18th Detective Dosch drafted a search warrant for the residences connected to Anthony Carter and Larry Brown. The search warrant was signed by the honorable Judge Jerry Wiese. On March 20th the LVMPD SWAT unit conducted service of the search warrant. Anthony Carter and Tiffany Carter were taken into custody at [REDACTED] after leaving the residence at [REDACTED]. Anthony and Tiffany Carter were transported to LVMPD Headquarters for interview.

At approximately 1030 hours Detective Cook and Detective Dosch conducted an interview in the family interview room with Tiffany Carter. The door was unlocked and Tiffany

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was told she is able to leave at any time. Tiffany said in summary, she works as a patient coordinator at Mountain View Hospital. She was at home with her parents and children all night on February 21st. Her ex-husband, Anthony Carter, also lives at the residence and shares her bed. On the night of February 21st Anthony left the house and did not return all night. She woke up in the morning of February 22nd, and Anthony was still gone. She saw on the morning news that a shooting had taken place at the apartment complex located on Sky Pointe Drive. She knew that Anthony had a friend by the moniker of "Biggs," who she identified from a photograph as Carnell Cave. She knew Biggs lived at the apartments on Sky Pointe Drive. She said Anthony had recently taken her to Cave's apartment located at 5850 Sky Pointe Drive.

On the morning of February 22nd she went to work at Mountain View Hospital and returned home at approximately 1730 hours, Anthony had returned home and told her how there was a shooting near Biggs' (Carnell Cave) apartment and Kwame Banks was killed. She claimed she didn't ask any further question but she admitted Banks was an acquaintance of Anthony's. She admitted she has known Anthony to go out all night to sell drugs however she keeps that part of his life at a distance. She has known for several years that Anthony sells narcotics and she has rented vehicles for Anthony to make narcotic runs to northern California to purchase marijuana. She claimed on occasions to have gone to northern California, while Anthony was picking up quantities of marijuana, but claimed she does not have any part in the sales.

She recall Anthony having another friend that had recently been to her house. Tiffany said the friend drove a white SUV. She was shown a photographs of Larry Brown and the white Jeep Compass owned by Angelisa Ryder. She replied, "Yes," this is the friend that she has seen over at the house and he drove a white SUV. She gave two cell phone number for Anthony, she said Anthony changes phone frequently because of the drug sales. She gave a phone number of [REDACTED] as the phone number he previously used prior to the shooting. Tiffany said Anthony normally keeps his marijuana in the garage in a blue suite case.

Detective Cook and Detective Dosch conducted an audio and video interview with Anthony Carter. Anthony was read his Miranda rights at 1139 hours, which he stated he understood his rights and agreed to speak to Detectives. Anthony Carter said in summary: He lives with his wife, Tiffany Carter, and his three children at [REDACTED]. He has lived in Las Vegas for approximately 17 years. Anthony is not employed and sells small amounts of marijuana. He recently purchased a small amount of marijuana from a person in

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Redding California. He recently drove to Redding and brought back two large plastic baggies of marijuana. Detectives explained a search warrant was issued for his residence at [REDACTED] and Detectives located a large amount of marijuana and a Firearm described as a (Springfield 9mm handgun serial number MG975091 with (3) three magazines). Anthony said that he had just purchased the firearm and said he only sells small bags of marijuana.

Anthony said on February 21st, he was at his friend's apartment who he named as Carnell Cave, who lives at 5850 Sky Pointe Drive [REDACTED]. He received a ride to the apartment from a friend he referred to as Dakota. Anthony stayed at Cave's apartment waiting for a male known to him as "B" (Kwame Banks) who was going to deliver (3) three quarter pounds of marijuana. Anthony said Banks had texted him earlier in the day but later text that he didn't have any marijuana and he would have to wait until the next day. Anthony then changed his statement to say Banks arrived outside Cave's apartment in a dark, 4 door, Nissan Altima. Banks had parked his vehicle under the covered parking facing west towards Cave's apartment building. Banks' then brought (3) three quarter pound plastic baggies of marijuana into Cave's apartment and delivered it to Anthony. Anthony said the (3) three baggies were intended for Larry Brown, Dakota and himself. Banks' delivered the marijuana and left.

Anthony said a few minutes later he heard (4) four to (5) five gunshots and looked outside. Anthony saw Police officers at the bottom of the stairs and he saw Banks' vehicle still parked under the covered parking. Anthony stayed inside Cave's apartment all night playing video games until the next morning. Anthony changed his story and said Banks' did not actually come inside Cave's apartment, he met him at the basketball court. Banks' had backed his vehicle into the parking stall next to the basketball court and his vehicle was facing west. Anthony walked up to Banks' driver's window and purchased (3) three quarter pounds of marijuana from Banks. Anthony watched as Banks drove out of the complex. Anthony said he returned to Caves' apartment where he and Cave was playing video games. Anthony then heard (4) four to (5) five gunshots and looked out the door to see police and Banks' vehicle parked under the cover parking just below Caves stairway entrance. Anthony could not explain how he saw Banks drive away, then saw his vehicle parked in front of Cave's apartment after hearing the gunshots and saw police outside.

Anthony statement changed several times and had many inconsistencies. Anthony gave two different cell numbers he used [REDACTED]. Anthony said the day

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after Banks' was killed he discarded his HTC Desire 530 cell phone with a cellular number [REDACTED], because he knew Detectives would come and investigate Banks murder and learn about the drug sales between him and Banks. Anthony was asked about sending and receiving text and phone messages to Larry Brown at phone [REDACTED] Anthony said he has known Larry Brown for many years and they are both from Decatur, Georgia. Anthony recently heard that Brown was in town and only recently began hanging out with Brown.

Anthony was shown a photograph of Larry Brown DOB [REDACTED]. Anthony identified Brown and said he recently came by his house at [REDACTED]. Anthony identified the white Jeep Compass, which Brown is known to drive. Anthony admitted to being in Brown's vehicle recently. Anthony denied having any knowledge of being present when Banks' was murder or being outside when the shooting took place. Anthony said he was in Cave's apartment all night and never heard Detectives knocking on the door. Anthony left Cave's apartment early the next morning on February 22nd and walked to the nearby Sinclair gas station and got coffee, then walked home. Anthony could not explain how he knew Kwame Banks was the victim of the shooting prior to the coroner releasing the information to the media.

On March 20th, at approximately 0917 hours, Detective Jaeger conducted a taped interview with Angelisa Ryder in front of her apartment. Ryder said in summary, Larry Brown and Angelisa Ryder lived in Atlanta, Georgia before moving to Las Vegas. Ryder has known Brown for the last four years, and lived with him for the last 18 months. Ryder and Brown share the master bedroom, and Brown has a "man cave" in the spare bedroom. Brown works as a mobile car detailer and drove a white Chevrolet Express van. The van was recently towed due to mechanical issues and was being repaired. Brown normally drives Ryder to work at Summerlin Hospital in her 2015 Jeep Compass, with NV License [REDACTED], and picks her up after work so Brown can use her vehicle while she is at work. Ryder works nights at the hospital as a monitor technician from 1900 hours to 0700 hours in the Telemetry Room.

On February 22nd, at approximately 0500 hours, Ryder was working at the hospital and received a message that Brown was at the hospital and wanted to see her. Ryder left the Telemetry Room and met Brown. Ryder described Brown as visibly shaken, walking with a limp, he had a swollen knee and scratches on both arms, and complained of a headache. Brown claimed he was with his friend "Poke" (Anthony Carter), when two unknown men tried to rob and kill him. One of the men pointed a gun at Brown, so Brown tossed his phone in the

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rocks as a distraction and fought with the man. Ryder told Brown to call police and Brown replied, "Don't ask too many questions." Ryder gave Brown some aspirin for his headache and returned to work. A few days later Brown went to the Sprint store located on Lake Mead Boulevard and obtained a replacement cell phone. Ryder said Brown recently left to Georgia on Allegiant Airlines.

Due to the above facts and circumstances Larry Brown did willfully and unlawfully use force and violence against the person of Kwame Banks by using a .40 Caliber semi-auto handgun to shoot Banks in the chest causing his death, constituting Murder with the Use of a Deadly Weapon NRS 200.010

Larry Brown did willfully and unlawfully take personal property from the person of Kwame Banks by going through Banks pockets, while Banks was shot and lying face down on the pavement. Brown then took Banks' Nissan Altima and fled the crime scene which constitutes the crime of Robbery with Use of a Deadly Weapon in violation of NRS 200.380

Wherefore, Declarant prays that a Warrant of Arrest be issued for suspect Larry Decorleon Brown on the charge(s) of Murder E/DW, Robbery E/DW.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on this 2nd day of May, 2017.

DECLARANT _____

WITNESS: _____

DATE: _____



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

LARRY DECORLEON BROWN,
ANTHONY CARTER,
Defendants.

CASE NO: C-17-326247-1
CASE NO: C-17-326247-2

DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
TUESDAY, MAY 22, 2018

***RECORDER'S TRANSCRIPT OF HEARING RE:
STATE'S MOTION TO COMPEL DEFENDANT BROWN'S CELLULAR
PHONE PASSCODE, OR ALTERNATIVELY, TO COMPEL
FINGERPRINT (BROWN); STATUS CHECK: TRIAL READINESS
(BOTH)***

APPEARANCES:

| | |
|-----------------------|--|
| For the State: | JOHN L. GIORDANI, III, ESQ. Chief Deputy District Attorney |
| For Defendant Brown: | CLARK W. PATRICK, ESQ. Chief Deputy Special Public Defender |
| For Defendant Carter: | CONNER M. SLIFE, ESQ. Deputy Public Defender |

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 **Las Vegas, Nevada; Tuesday, May 22, 2018**

2 * * * * *

3 [Proceeding commenced at 9:49 a.m.]

4 THE COURT: State versus Larry Brown. And no one is
5 here representing Mr. Brown. And then Anthony Carter and we've
6 got Mr. Slife is here representing Mr. Carter. And this motion
7 -- the motion that's on today concerns Mr. Brown.

8 MR. GIORDANI: Correct.

9 THE COURT: And you had asked to continue that because
10 you're in another department.

11 MR. GIORDANI: Correct, Your Honor.

12 THE COURT: You have trial, correct?

13 MR. GIORDANI: Yes.

14 THE COURT: And have you had any contact with
15 Mr. Brown's counsel?

16 MR. GIORDANI: Ms. Trujillo never responded to my email
17 yesterday. Mr. Slife did, but Ms. Trujillo has not, and I haven't
18 talked to her since.

19 THE COURT: All right. And we are, what, 21 minutes into
20 the calendar and she hasn't checked in yet, so we can go ahead and
21 pass that and then in terms of the status check, trial readiness, as to
22 Carter, any information?

23 MR. SLIFE: So, Judge, I can't announce ready until this --
24 until this phone issue is resolved.

25 THE COURT: Okay.

MR. SLIFE: But I can say that I -- as soon as this issue is

1 resolved, I'll be ready a whole lot sooner than July.

2 THE COURT: Okay.

3 MR. SLIFE: Which I think Ms. Trujillo indicated would be
4 her earliest date.

5 THE COURT: All right. Well, let's come back with
6 Mr. Carter as well as Mr. Brown and we'll move it.

7 When will be done in front of Judge Smith or do you
8 care?

9 MR. GIORDANI: I think if we just set it next week. Do you
10 have a Thursday calendar next week?

11 THE COURT: Yes.

12 MR. GIORDANI: If we could do that, I'm sure I'll be done
13 by then.

14 THE COURT: I don't know if it's full, but if not --

15 THE CLERK: May 31st, 9:30.

16 MR. GIORDANI: Thank you.

17 THE COURT: All right. Thank you.

18 MR. SLIFE: Thank you.

19 [Matter trailed]

20 [Matter recalled at 10:03 a.m.]

21 THE COURT: I think on this one -- we'll call State versus
22 Larry Brown. And Mr. Giordani is in trial next door, so we called
23 this earlier. He asked that we continue it for argument on the
24 motion because he wanted to be next door. And he said he'd sent
25 an email to Ms. Trujillo, but he didn't hear back from her.

1 MR. PATRICK: And that's because she's out sick today,
2 Your Honor, which is why I'm here.

3 THE COURT: Oh, she wouldn't have been ready.

4 MR. PATRICK: So she was going to ask for a short
5 continuance also.

6 THE COURT: Okay.

7 MR. PATRICK: So whatever -- either Thursday or next
8 week, whatever's convenient for Mr. Giordani is fine with her.

9 THE COURT: All right. We already gave a date, and the
10 Clerk will tell you the date.

11 MR. PATRICK: Okay.

12 THE CLERK: It's May 31st at 9:30.

13 THE COURT: All right. Thank you.

14 MR. PATRICK: Thank you, Your Honor.

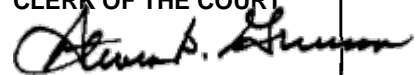
15 [Proceeding concluded at 10:04 a.m.]

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

23 
24

25 Robin Page
Court Recorder/Transcriber



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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

LARRY DECORLEON BROWN,
#8376788

Defendant.

CASE NO: C-17-326247-1

DEPT NO: XXI

**ORDER GRANTING STATE'S MOTION TO COMPEL FINGERPRINT AND
DENYING STATE'S MOTION TO COMPEL DEFENDANT'S CELLULAR PHONE
PASSCODE**

DATE OF HEARING: 05/31/2018
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 31st day of May, 2018, the Defendant being present, represented by MONICA TRUJILLO, Public Defender, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through JOHN GIORDANI, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the State's Motion to Compel Fingerprint, shall be,
2 and it is GRANTED; and that the State's Motion to Compel Defendant's Cellular Phone
3 Passcode, shall be, and it is DENIED.

4 DATED this 31st day of May, 2018.

5
6 
DISTRICT JUDGE 

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

9
10 BY 
11 JOHN GIORDANI
12 Chief Deputy District Attorney
13 Nevada Bar #012381
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

LARRY DECORLEON BROWN,
ANTHONY CARTER,
Defendants.

CASE NO: C-17-326247-1
CASE NO: C-17-326247-2

DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
THURSDAY, MAY 31, 2018

**RECORDER'S TRANSCRIPT OF HEARING RE:
STATE'S MOTION TO COMPEL DEFENDANT BROWN'S CELLULAR
PHONE PASSCODE, OR ALTERNATIVELY, TO COMPEL
FINGERPRINT (BROWN); STATUS CHECK: TRIAL READINESS
(BOTH)**

APPEARANCES:

| | |
|-----------------------|--|
| For the State: | JOHN L. GIORDANI, III, ESQ. Chief Deputy District Attorney |
| For Defendant Brown: | MONICA R. TRUJILLO, ESQ. Chief Deputy Special Public Defender |
| For Defendant Carter: | CONNER M. SLIFE, ESQ. Deputy Public Defender |

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 **Las Vegas, Nevada; Thursday, May 31, 2018**

2 * * * * *

3 [Proceeding commenced at 11:15 a.m.]

4 THE COURT: State versus Larry Brown, who is present in
5 custody, and Anthony Carter, who is also present in custody.

6 This is on for, several things, the State's motion to compel the
7 cellular phone passcode and fingerprint, trial readiness. I also had
8 prepared a minute order, but it wasn't posted so I can announce my
9 decision on the motion to suppress, which you -- I don't think it was
10 posted; correct?

11 MR. SLIFE: I didn't see it, Your Honor.

12 THE COURT: All right. I'm going to start with that. I was
13 trying to pull up my notes --

14 [Colloquy between attorneys]

15 MR. SLIFE: Sorry, Judge.

16 THE COURT: What's wrong?

17 MR. SLIFE: Oh, I --

18 MS. TRUJILLO: Nothing, sorry, I was just asking a question.

19 THE COURT: All right. On the motion to suppress, I listened
20 to the critical part several times and I actually had staff listen to it
21 because it was -- the first parties -- and I'm trying to get my notes, I may
22 misquote this slightly -- Mr. Carter says, you can take me down. And it
23 sounded like or get me an attorney and then he says it again, you can,
24 something like, you can take me down or get me an attorney in the
25 second part. The first one was either and/or, I listened to it like five or

1 six times, it sounded like and/or. And then the detective attempts to
2 clear it up later with the -- do you want an attorney?

3 So I find that those statements are ambiguous at best. It
4 wasn't a clear invocation of his right to counsel. The detective attempted
5 to clarify it and the right to counsel was not requested. So for those
6 reasons the motion is denied.

7 And I did note in the minute order, that you didn't get,
8 Mr. Carter previously had said, you can take me down, something. And
9 then he said a few minutes, like right after, you can take me down and
10 get me a lawyer and then you can take me down or get me a lawyer. So
11 I think if you look at the context of all of that it wasn't clearly invoking his
12 right to counsel. So I think it was ambiguous.

13 So the State is directed to prepare a detailed order on that;
14 okay.

15 MR. GIORDANI: Understood.

16 THE COURT: Now, moving on, are we ready to proceed on
17 the motion to compel the phone passcode and the fingerprint?

18 MS. TRUJILLO: On behalf of Mr. Brown, yes.

19 And, Judge, before we begin though I would like to address
20 one issue.

21 THE COURT: Okay.

22 MS. TRUJILLO: It's come to my attention that maybe my
23 colleague did not inform this Court that the reason I didn't appear in
24 court last time on behalf of Mr. Brown is because I was seriously ill.

25 THE COURT: Oh.

1 MS. TRUJILLO: I was at home and he should have informed
2 the Court that. I would never not show up for a client. I think this Court
3 is well aware that I show up pretty much 30 --

4 THE COURT: And you're always on time.

5 MS. TRUJILLO: -- 30 minutes early --

6 THE COURT: Yes, you are.

7 MS. TRUJILLO: -- to court. So I just meant no disrespect and
8 I apologize that my colleague did not inform the Court that I was sick.

9 THE COURT: And to be honest, I can't remember what was
10 said regarding that, but I do agree with you that you are always on time
11 in here so.

12 MS. TRUJILLO: Thank you, Judge.

13 THE COURT: And I just really don't remember what was said.

14 MS. TRUJILLO: Okay.

15 THE COURT: Okay. So on the issue of the phone passcode
16 and the fingerprint, I have a question, other than the issue as to whether
17 or not the passcode itself is testimonial, so say I order, hey, you know,
18 Mr. Brown has to turn over the passcode and he says, [nonverbal sound]
19 I'm not going to do it, what do we do -- what do you do then?

20 MR. GIORDANI: Well, that is a great question, but it's --

21 THE COURT: I mean, you can't beat it out of him --

22 MR. GIORDANI: No.

23 THE COURT: -- clearly, so what are you going to do?

24 MR. GIORDANI: I think --

25 THE COURT: I mean if he just chooses not to say anything?

1 MR. GIORDANI: I think that is something that we should
2 address once we get there, if we get there.

3 THE COURT: I mean, and what do we sanction him --

4 MR. GIORDANI: There are --

5 THE COURT: -- we stick him in jail, I mean --

6 MR. GIORDANI: Right.

7 THE COURT: -- right?

8 MR. GIORDANI: You hold him in contempt every 25 days for
9 10 years. I mean, I don't know the answer to that question. But, you
10 know, what I do know is that the legal authority supports the granting of
11 the motion. I think we can address how it's procedurally done.

12 THE COURT: Because that -- I mean, the fingerprint is the
13 fingerprint, you can force a fingerprint.

14 MR. GIORDANI: Right.

15 THE COURT: You know, you can grab his hand and
16 obviously take the -- take the print. But this other idea of actually making
17 him either write something down or verbally articulate something, how
18 do you -- how do you get there even if -- that -- that was my question.

19 MR. GIORDANI: Yeah.

20 THE COURT: But this is your motion, so anything you want to
21 add to what's provided to the Court?

22 MR. GIORDANI: I'll be relatively brief. I just want to kind of
23 address the big picture here, so obviously we have a murder that
24 occurred, and we have a cell phone that's found underneath the victim --

25 THE COURT: Right.

1 MR. GIORDANI: -- that comes back to Mr. Brown. So we
2 have phone records that we were able to obtain, we have a lawful
3 search warrant that was executed -- I don't know if this Court signed it
4 but one of the Courts signed it -- on the cell phone.

5 THE COURT: I don't think I did but.

6 MR. GIORDANI: We were unable to get into that cell phone. I
7 can say with near certainty that we know evidence of this homicide
8 exists on this phone. And we know that because we were able to get
9 the cell phone records of Mr. Carter, Mr. Brown, and the victim. We
10 know that Mr. Brown and Mr. Carter are communicating repeatedly
11 leading up to --

12 THE COURT: Right.

13 MR. GIORDANI: -- I mean, within like 20 minutes of the
14 murder and we know that in the interim Mr. Brown -- I'm sorry,
15 Mr. Carter's contacting the victim. We were unable to get content from
16 Mr. Carter's phone because he ditched it. So the only way we're going
17 to know the, you know, information in that conversation is through
18 Brown's phone. We know the evidence exists. The question is whether
19 or not he can hide it, or this Court can order him to turn it over. I mean,
20 he knows the evidence exists on that phone, we all know the evidence
21 exists on that phone, because it's corroborated by the phone records.

22 So, you know, big picture here, yes, the information on the
23 phone is going to help the State most likely, but it could --

24 THE COURT: Well --

25 MR. GIORDANI: -- also exonerate Mr. Carter. I mean, we've

1 got actual --

2 THE COURT: -- well, the question is though, do we, I mean,
3 I'm comfortable on the fingerprint because clearly that's nontestimonial.

4 MR. GIORDANI: Okay.

5 THE COURT: But where I have less comfort is to make
6 somebody tell you something in their head, which is either by writing it
7 down or, you know, putting their fingers up, or in some way conveying
8 information to you, which is getting to be more testimonial. And, like I
9 said, then there's the issue of forcing or compelling somebody to do it.
10 And because now it takes an affirmative act on their part, as opposed to
11 a fingerprint or a DNA swab --

12 MR. GIORDANI: Right.

13 THE COURT: -- or something like that, which doesn't. But
14 now you have to get somebody to take information in their head and
15 somehow convey it to you. Like I said, he can hold up fingers, he can
16 write it down, he can talk, whatever, but that's where I'm getting a little --
17 having more -- a little more discomfort.

18 And, clearly, even if you were allowed to do that, you could
19 never disclose that he gave you the passcode.

20 MR. GIORDANI: Right.

21 THE COURT: Because now it's testimonial, now it's like he's
22 admitting he knows the passcode and it's his phone. So, clearly, that
23 would be completely -- do you see what I'm saying? I'm just really --

24 MR. GIORDANI: I completely understand, yes.

25 THE COURT: -- I don't know because now it's something in

1 your head, information and knowledge that you have that the State is
2 trying to make somebody tell you. Like I said, the fingerprint is different,
3 that -- that I don't see as testimonial. But the other --

4 MR. GIORDANI: Right. I understand the Court's concern.
5 And, again, I would -- I would just ask the Court to wait to address how
6 it's done until you make the decision --

7 THE COURT: Right.

8 MR. GIORDANI: -- on whether it's --

9 THE COURT: But I think they're kind of part and parcel
10 together, because, number one, like I said, it's like a DNA swab or
11 something like that, you can open, you know, you can take somebody's
12 hand and get a fingerprint. But how do you make someone tell you
13 what's in their head? And that for me is where we're going.

14 I mean, now you're saying, this person, you have to tell me
15 what's in your memory, you have to convey by some means, whether it's
16 tapping his foot, or you know what I'm saying? I mean, he has to convey
17 information from his brain and that is a little more disturbing to me.

18 MR. GIORDANI: I do understand.

19 Now, what I'll say is the State's position is it's not testimonial.

20 THE COURT: Right.

21 MR. GIORDANI: It's not a statement made in preparation or
22 with the intent that it be used at a criminal proceeding. What it is is a
23 statement --

24 THE COURT: No, I get it, it wouldn't be used, and you would
25 never disclose --

1 MR. GIORDANI: Of course.

2 THE COURT: -- that you'd gotten the passcode from him
3 because that would show knowledge on his part, which then is
4 testimonial --

5 MR. GIORDANI: Right.

6 THE COURT: -- and you wouldn't be allowed to do.

7 MR. GIORDANI: And even if it were testimonial, I don't
8 believe it is testimonial because it's not the actual statement itself that
9 would ever be used in the trial. It would not be testimonial -- I don't
10 believe it is testimonial, but even if it were, the foregone conclusion is
11 exception applies. And that only has three requirements that, one, the
12 evidence exists, or the State can show that the evidence exists, that the
13 defendant has control or possession of that evidence, and authenticity.

14 Here it's kind of a weird self-authenticating type of thing where
15 if he was to give the passcode, it works on the phone, then it's
16 self-authenticating. So I don't think that prong really applies in this
17 particular case.

18 I already addressed the fact that we know the evidence exists
19 on the phone and we know it's in his control or possession --

20 THE COURT: Right.

21 MR. GIORDANI: -- because he has it password protected.

22 THE COURT: The problem is though, I mean, it still is asking
23 for additional information that's coming from the defendant himself as
24 opposed to a pre-existing document. Because the information is code.

25 MR. GIORDANI: Right.

1 THE COURT: And that's making somebody convey additional
2 information to you to be used against him, not in a testimonial way but to
3 obtain additional information against him. And so that's my discomfort is
4 you're making him take something from his mind, his memory, and
5 disclose that. And it's not a pre-existing -- you know, it's not finding
6 something -- I don't know. That's -- that's my -- that's my big concern
7 and the difference essentially between the fingerprint, you know, which
8 is there and -- and the something that's -- that is literally controlled by his
9 memory.

10 MR. GIORDANI: Right. I -- I --

11 THE COURT: And, of course, the obvious thing is he says, I
12 don't remember.

13 MR. GIORDANI: Right.

14 THE COURT: Then what do you do?

15 MR. GIORDANI: I understand, and I have some thoughts as
16 to what to do at that point. I just think, you know, I mean, I respect the
17 Court's decision. I believe that it's not testimonial even --

18 THE COURT: Because we're not waterboarding, you know
19 what I'm saying?

20 MR. GIORDANI: Right.

21 THE COURT: What do you -- what do you do anymore?
22 What do you do at that point?

23 And I think that that -- and the reason I started with that is I
24 think that that really brings up the inherent issue with this type of
25 information --

1 MR. GIORDANI: Right.

2 THE COURT: -- as opposed to a fingerprint or a DNA swab or
3 something like that. But this really is strictly within the control of the
4 defendant's mind.

5 MR. GIORDANI: I understand. And when I filed the motion,
6 I'm fully aware that he can say, I don't remember it. I get it.

7 THE COURT: Right.

8 MR. GIORDANI: I was just asking the Court --

9 THE COURT: Well, now, I'm curious, what we would do at
10 that point? What would you --

11 MR. GIORDANI: Well, there are options, I mean, number one,
12 hold him in contempt, which obviously when you're serving -- you're
13 sitting in trial pending murder, you're going to be in for a couple years
14 anyway or hopefully less than a couple of years.

15 There's also the option of -- if the order -- if the Court has
16 ordered him and the Court believes and finds on the record that there is
17 evidence on this phone, there is the option that if he doesn't comply with
18 the Court's order, he gets charged with hiding evidence.

19 So, I mean, if the Court makes its order, and he doesn't
20 comply with that order, of course we would have to prove that he
21 knowingly didn't comply, that he genuinely didn't forget it, and I don't
22 think we ever -- probably ever could. But, I mean, there are steps that
23 could be taken.

24 If -- I respect the Court's decision if you're saying the
25 fingerprint's okay, that's the direction you're going, I'll just submit it on --

1 THE COURT: Well, do we know the fingerprint wouldn't
2 work?

3 MS. TRUJILLO: No.

4 THE COURT: So we may be --

5 MS. TRUJILLO: Sorry to step off, but no.

6 THE COURT: -- I mean, this is kind of interesting, but you
7 may just get where you need to be with the fingerprint, which is opposed
8 by the defense, but I don't see the fingerprint as testimonial at all. But,
9 again, I would be very concerned about making somebody disclose
10 additional information.

11 MR. GIORDANI: Understood.

12 THE COURT: Which whether it leads to inculpatory or
13 exculpatory or no information, that's the -- in my view, that's more of the
14 defendant's decision to make, not the State's decision and the Court's
15 decision.

16 Anything else, Mr. Giordani?

17 MR. GIORDANI: No, Your Honor. Thank you.

18 THE COURT: Ms. Trujillo?

19 MS. TRUJILLO: Yes, Judge. Okay, I have a couple of points,
20 first of all I disagree with the State's recitation of the facts, the phone in
21 question was not found under Mr. Banks' body. And actually it's
22 interesting because in the declaration of arrest on page 5, there were
23 three phones found, the third cell phone, which was found in the scuffled
24 rocks approximately five to six feet away from Banks' body was locked,
25 that's the one that -- that's the phone in question.

1 However, on page 2 earlier, nowhere does it say five to six
2 feet. It actually says 10 to 15 feet. So even in the declaration itself it's
3 unclear where exactly the phone was. But the one that's tied to
4 Mr. Brown allegedly was not under Mr. Banks' body. So I just wanted to
5 be clear on that point.

6 Secondly, I disagree with the State's assessment that a
7 password -- that the case law is clear that a password is not testimonial.
8 I think it's actually the opposite. Even the cases that the State cites,
9 which I point out in my opposition, password is absolutely testimonial,
10 and it can lead to further --

11 [Audio interruption]

12 MS. TRUJILLO: -- and it can lead to further evidence that
13 could be incriminating. I covered it thoroughly, they cited to state *Baust*
14 out of Virginia. Where even in that case where the -- their district court
15 determined that they could use a fingerprint, the next step wasn't
16 followed because the Court said that they couldn't ask for the video,
17 which they were actually seeking to get from the phone by using the
18 fingerprint.

19 So it doesn't even really make sense, you're going to allow
20 them to open the -- access the phone with the fingerprint but not access
21 the video, which is the whole point of opening the phone. So they
22 dissect the analysis, but the point is clear it's going to lead to evidence
23 that's incriminating the defendant, in this case Mr. Brown.

24 THE COURT: Yeah, but what if, I mean, to me a fingerprint,
25 let's just say you had a fingerprint on the gun and they want to take his

1 fingerprint to compare it to the gun, the fingerprint on the gun, how is this
2 really any different because that would be inculpatory if it's -- if it turns
3 out to be his fingerprint on the gun.

4 MS. TRUJILLO: That's a good question, Judge, and here's
5 the distinction, and a very important distinction, in all the cases that the
6 United States Supreme Court has ruled that you can do physical acts,
7 like exemplars, handwriting, fingerprints --

8 THE COURT: Right.

9 MS. TRUJILLO: -- there is -- they're for comparative
10 purposes. There is no comparative purpose here. It's solely to seek
11 information to aid in the prosecution. That is a huge difference. And the
12 Fifth Amendment protects, citing *Doe v United States*, 487 U.S. 201, the
13 privilege protects against any disclosures that the witness reasonably
14 believes could be used in a criminal prosecution or could lead to other
15 evidence that might be so used. That's the United States Supreme
16 Court and that applies to either the fingerprint or the password in this
17 case.

18 So I think the huge difference is it's not for comparative
19 purposes because the State has nothing to compare it to. And while the
20 State is saying, oh, we know that it exists, they don't know that any
21 content exists, they know there was an exchange but there's no text
22 message information on those records, so they can't know that it exists.
23 There was communication that exist, they don't know the content, and
24 therein lies the problem.

25 Judge, I'd also like to point you to footnote 12 of the same

1 case, *Doe v United States*, the Court says, in *Miranda*, the Court
2 addressed the suspects Fifth Amendment privilege in the face of
3 custodial interrogation by the government. Our test for when a
4 communication is testimonial does not authorize law enforcement
5 officials to make an unwilling suspect speak in this context. It's clear
6 that the accused in a criminal case is exempt from giving answers
7 altogether.

8 I understand they're talking about that context, in my opinion,
9 there's no difference here. And, in fact, it's worse because, one, the
10 State is a law enforcement agency seeking to make a suspect, who is
11 now charged with crime, so it's even worse. And therefore this Court
12 shouldn't order him to provide anything to the State.

13 THE COURT: All right. Anything else, Mr. Giordani?

14 MR. GIORDANI: Can I briefly just respond to a couple of
15 those points?

16 THE COURT: Sure.

17 MR. GIORDANI: So just -- the claim that we don't know the
18 content exists, that's false, we do know the content exists. The actual
19 cell phone records say a text is sent or a text is received. It doesn't just
20 say some kind of communication between these two phones, some kind
21 of communication. It says, text sent; text received.

22 When we do ultimately get access to his phone, if we do get
23 access to this phone, we'll do a CFL dump on the phone, and whether
24 he did a factory reset or not, we will most likely be able to get access to
25 those messages. I don't know what they say. I'm not saying that it's

1 inculpatory evidence. I'm saying we know they exist, and we know they
2 are on that device.

3 And, secondly, with just with regard to that *Baust* case that
4 Ms. Trujillo cited, they didn't compel the defendant to give the actual
5 video, that's true. We didn't -- the State didn't even request it in that
6 case. And I'm not requesting him to give me the content of the
7 messages. I'm not asking him, hey, tell me what your text messages
8 say. I'm asking to get access to a device that contains known evidence
9 in a homicide, there's a big distinction there, access versus actual
10 information.

11 THE COURT: All right.

12 MS. TRUJILLO: May I respond briefly, Judge?

13 THE COURT: Sure.

14 MS. TRUJILLO: First of all, I didn't cite the *Baust* case, the
15 State did.

16 THE COURT: Right.

17 MS. TRUJILLO: I just, in my motion, laid out why it's
18 distinguishable from the facts in the instant case.

19 Secondly, content, knowing that a text message exists, yeah, I
20 acknowledged that in my argument. They don't know the content, they
21 don't know the words, otherwise they wouldn't be here requesting this,
22 and that's a huge distinction.

23 Finally, Judge -- Court's indulgence.

24 And, Judge, with that I'll submit it.

25 THE COURT: All right. I'm going to grant the motion as to the

1 fingerprint. Look, if it wasn't passcode or fingerprint protected, they'd be
2 able to get into it with just a warrant. Or if they could figure out how to
3 do it without the cooperation, they could still get into it and read the
4 content and I don't think the fingerprint is testimonial in nature. It's
5 granted as to the fingerprint.

6 It's denied without prejudice as to the passcode, because,
7 again, I feel very uncomfortable with trying to compel someone to
8 convey information that is in their mind. Setting aside the logistical
9 issues, I think that that is getting testimonial in nature. And so it is
10 denied as to that.

11 Mr. Giordani, would you prepare the order?

12 MR. GIORDANI: Yes, Your Honor.

13 MS. TRUJILLO: Thank you, Judge.

14 THE COURT: All right. Thank you.

15 MR. GIORDANI: Briefly, can we address the trial date.

16 THE COURT: Oh, yes. I don't know why I sounded that
17 normally excited about that, but yes.

18 MR. GIORDANI: I know it's been brought up a couple of
19 times, depending on the -- the decisions you made on these two
20 motions, that the date might be moved. I'd just like to address it now.

21 THE COURT: Okay.

22 MR. GIORDANI: I have no opposition to that. I just --

23 THE COURT: Well, why don't we see what's on the phone
24 because it's possible that all of those text messages were deleted and
25 there is no content. Or the content is sort of, you know, ambiguous or

1 not inculpatory, not exculpatory, just nothing, you know. I guess that
2 would be more exculpatory, but you know.

3 MR. SLIFE: Well, I guess, this --

4 THE COURT: Like, hey, let's get a burger or whatever, but,
5 you know, has nothing to do one way or the other. I don't know.

6 Yes.

7 MR. SLIFE: Well, and this is only an issue with regard to
8 Mr. Carter, because I think Ms. Trujillo has already vacated the trial date
9 with regard to Mr. Brown. So my position remains the same as last court
10 date that I can't announce ready until I see what's going to happen on
11 this.

12 MR. GIORDANI: That's new to me, I'm sorry, I didn't know
13 Mr. Brown's trial was ever vacated.

14 THE COURT: I don't show that it actually -- well --

15 MS. TRUJILLO: Well, I informed the Court there was no way I
16 could be ready to go to trial in June.

17 THE COURT: Right. Basically what we did is we kept the trial
18 date and then we set a status check regarding trial setting as to Brown.

19 MR. GIORDANI: Oh. In that case --

20 THE COURT: So it was discussed. So --

21 MR. GIORDANI: -- if Brown's getting vacated, then I'd ask to
22 move Carter.

23 THE COURT: Right. I don't --

24 MR. GIORDANI: I mean, we can't force a severance.

25 THE COURT: -- I don't remember exactly what was

1 discussed. I just can tell you, and it's not clear from the minutes, I can
2 tell you though that it was set for a separate status check. So obviously
3 Ms. Trujillo must have said something, and I apologize that I don't have
4 a better recollection of that.

5 So mister --

6 MR. SLIFE: Ms. Trujillo had agreed to vacate; I had not.

7 THE COURT: Okay. So, Mr. Slife, at this point --

8 MR. SLIFE: And we were --

9 THE COURT: -- you would also like to vacate the trial date; is
10 that correct or?

11 MR. SLIFE: Well, no.

12 THE COURT: Okay.

13 MR. SLIFE: But I can't announce ready until I figure out
14 what's happening with this cell phone. I can just tell the Court that I'm
15 going to be ready a lot earlier than July, which I think Ms. Trujillo has
16 indicated is the earliest she's going to be available to go.

17 MS. TRUJILLO: And we just set a July trial on Tuesday in
18 here, Judge.

19 MR. GIORDANI: And my position is whether or not Mr. Carter
20 agrees to it, I think it should be continued to the date that is set for
21 Brown. I mean, we can't just force a severance.

22 MR. SLIFE: Well, Judge, and I think you had left that open to
23 me to come back and argue at some point.

24 THE COURT: Right. I mean, if it's to be passed a month,
25 then I don't really see any prejudice to Mr. Carter. If it's passed a year

1 and Mr. Carter's sitting in jail an additional year because Ms. Trujillo
2 can't be ready, then I think at that point, okay, now we have some
3 prejudice to Mr. Carter who's sitting in jail another year. And at that
4 point I would say, well, Mr. Slife, if you're ready, it's going to have to be
5 severed because I don't want one defendant to have to spend all this
6 additional time in jail because another defendant's lawyer isn't ready.
7 So at that point I might consider it. That's more what I meant.

8 MR. SLIFE: Understood.

9 THE COURT: But if it's only going to be a month, then I don't
10 really see the harm, and considering judicial economy and everything
11 else, I don't see the harm in passing both of them.

12 So, Ms. Trujillo, would you be ready -- do you want to just
13 keep the calendar call date, which is in basically two weeks, to see
14 where we are on the phone?

15 MR. GIORDANI: This is the only thing, I would ask to just
16 address it now and I'd ask for an August date, if that works for
17 Ms. Trujillo and Mr. Slife, just because there are several -- there's at
18 least two out of state witnesses I know about and my investigator's
19 running around trying to get people served. So if it's going to inevitably,
20 you know --

21 THE COURT: Right.

22 MR. GIORDANI: -- move no matter what, I'd just ask that we
23 address it now --

24 THE COURT: Okay.

25 MR. GIORDANI: -- so it doesn't have to --

1 THE COURT: Mr. Slife and Ms. Trujillo, what about August?

2 MS. TRUJILLO: Judge, can we check when we set Michael
3 Cooley, I think we set him end of July, so that's going to be the issue.

4 THE COURT: It would be the last -- let's see -- it would have
5 been the week of the 30th if we set it.

6 MS. TRUJILLO: I don't have my schedule with me --

7 MR. SLIFE: I don't either.

8 MS. TRUJILLO: -- my trial schedule, sorry. But --

9 THE COURT: Do you want to come back then --

10 MR. SLIFE: Sure.

11 THE COURT: -- next week and we'll set a trial date?

12 MR. GIORDANI: Okay. Whatever works.

13 THE COURT: Does that work?

14 MR. SLIFE: Maybe we'll have cell phone information by then
15 as well.

16 THE COURT: Doubt it.

17 MR. GIORDANI: So are we vacating it as to now?

18 THE COURT: Any objection to vacating the trial date and
19 coming back next week to set another trial date?

20 MR. SLIFE: I just can't announce ready without the cell phone
21 information.

22 THE COURT: Okay.

23 MR. SLIFE: So, I mean, I can't -- I can't say I'm ready.

24 THE COURT: All right. I think then what I'm hearing is we
25 can vacate the trial date, we'll come back next week, everybody will

1 bring their calendar to set another trial.

2 MR. SLIFE: Perfect.

3 MR. GIORDANI: Okay.

4 THE COURT: And then at that point, Mr. Giordani, maybe
5 you'll have some information on where --

6 MR. GIORDANI: Yes, Your Honor.

7 THE COURT: -- we are on the cell phone.

8 MR. GIORDANI: Understood.

9 THE COURT: Okay.

10 THE CLERK: June 7th at 9:30.

11 MS. TRUJILLO: Thank you.

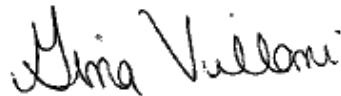
12 THE COURT: All right. Thank you.

13 MR. SLIFE: Thank you.

14 [Proceeding concluded at 11:39 a.m.]

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

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23 _____
24 Gina Villani
25 Court Recorder/Transcriber
District Court Dept. IX



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

LARRY DECORLEON BROWN,
ANTHONY CARTER,
Defendants.

CASE NO: C-17-326247-1
CASE NO: C-17-326247-2

DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
THURSDAY, JUNE 7, 2018

**RECORDER'S TRANSCRIPT OF HEARING RE:
STATUS CHECK: RESETTING TRIAL DATE**

APPEARANCES:

For the State: JOHN L. GIORDANI, III, ESQ.
Chief Deputy District Attorney

For Defendant Brown: MONICA R. TRUJILLO, ESQ.
Chief Deputy Special Public Defender

For Defendant Carter: CONNER M. SLIFE, ESQ.
Deputy Public Defender

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 **Las Vegas, Nevada; Thursday, June 7, 2018**

2 * * * * *

3 [Proceeding commenced at 11:09 a.m.]

4 THE COURT: State versus Larry Brown and Anthony Carter.
5 And Mr. Brown is present in custody with Ms. Trujillo. Mr. Carter is
6 present in custody with Mr. Slife. This is on for a status check, resetting
7 of the trial date. And last time we were here, I directed all the parties to
8 bring your schedules and to know when we could set this for.

9 So have you had an opportunity to meet among yourselves?

10 MS. TRUJILLO: Briefly, Judge. I think I'm the one that has
11 the trial issues. As this Court is aware, I'm looking at August 2019, and
12 specifically August 26th. I know Mr. Slife isn't happy with that. The Court
13 I'm sure is not going to be, and I'm not sure what the State's position is.
14 I think everyone wants to be ready a little sooner. There's just my -- I've
15 gone through this -- my schedule with the Court. It's just not possible to
16 be effective for Mr. Brown.

17 THE COURT: Mr. Slife.

18 MR. SLIFE: And, Judge, I could be ready as soon as I figure
19 out the situation with the phone --

20 THE COURT: Okay.

21 MR. SLIFE: -- which I think the State is working on.

22 THE COURT: State.

23 MR. GIORDANI: Correct. We are working on it. Last time we
24 were here, you granted the motion to compel the fingerprint. In the
25 interim, I filed that motion I believe about a month before it was granted.

1 There were -- it was kicked out a couple weeks when Mr. Wooldridge
2 was still on the case, et cetera.

3 In the interim our lab sent it -- or Metro's lab sent out the cell
4 phone out to the Cellebrite lab. Very long story short, Your Honor,
5 they're in the process. They have some new technology for that type of
6 phone, they're in the process of getting into it and I don't want to pull the
7 plug on that just to go try to get his fingerprint. So we're going to try to
8 just let that proceed as it will. But I expect, based upon the statements
9 from our CFL people, to have the results within 30 days of today.

10 So I could be ready, too, as soon as that's ready. The -- you
11 know, I understand Ms. Trujillo's schedules jammed up, but I don't want
12 to force a severance based upon that. So I'm ready, literally, August
13 2018, a year before August 2019, so.

14 MS. TRUJILLO: And, Judge, just for the record, I did receive
15 several, approximately, maybe 90 something gigabytes of discovery
16 from the State that I haven't even reviewed. We set a status check July
17 10th, right after my death case. It's actually scheduled to start June 18th
18 and to go four weeks, so I'm not even going to be done. I haven't even
19 read all the discovery in this case, so I can't give an accurate
20 assessment, even if the Court wants me to go sooner than that until after
21 my death penalty case in front of Department 3.

22 THE COURT: All right. Why don't we do this, why don't we
23 set it for the date that Ms. Trujillo says that she's available. We'll come
24 back for a status check in 45 days or 30 days on the phone and Mr. -- I
25 would actually like to do it after Ms. Trujillo's death penalty case. We'll

1 see where we are and perhaps Ms. Trujillo will have had some cases
2 resolve or her schedule will have, you know, emptied out a little bit.

3 Is 45 days do you think enough for you to get the cell phone
4 records and to have a better idea where you are, or should we go out 60
5 days?

6 MR. GIORDANI: I think 60's safe.

7 THE COURT: Let's go out 60 days. That will give everyone --
8 and then, obviously, Mr. Slife, you will have a better, I guess,
9 understanding of when you would be ready. And of course you can still
10 pitch to the Court the idea of a severance, based on the fact that your
11 client is sitting in custody, based on Ms. Trujillo's schedule. I'm not
12 saying what I would do, but that's certainly something you can bring to
13 the Court's --

14 MR. SLIFE: I anticipate that that will be my pitch.

15 THE COURT: Right. Okay. So but you don't know when
16 you're going to be ready at this point anyway, so let's give you this trial
17 date, which is a firm trial date, based on her existing schedule. We can
18 still move it up; we can still sever the defendants.

19 Okay, so you said August of 2019, Ms. Trujillo.

20 MS. TRUJILLO: August 26th of 2019.

21 THE COURT: All right. And then also hopefully within the 60
22 days, I'd like you to have had an opportunity to review the however
23 many gigabytes of discovery that's been provided to you and then --

24 MS. TRUJILLO: Yes.

25 THE COURT: -- give you a better assessment.

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MR. GIORDANI: Thank you.

THE COURT: All right. 60 days for status check. And then we'll also give the August 26th trial date and everybody's ready -- everybody's available on that trial date if we don't --

MR. GIORDANI: Yes.

THE COURT: Okay.

THE JUDICIAL EXECUTIVE ASSISTANT: And that's obviously a firm at 9:00 a.m. on August 26th, 2019, and calendar call is August 22nd at 9:30.

MR. GIORDANI: And the --

THE CLERK: And that the status check is August 9th.

MR. GIORDANI: Of '18. Thank you. Have a good day.

MS. TRUJILLO: Thank you.

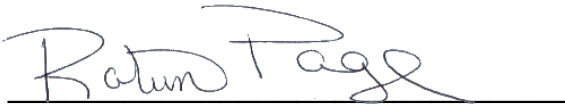
THE COURT: All right. Thank you.

MR. SLIFE: Thank you.

[Proceeding concluded at 11:15 a.m.]

* * * * *

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


Robin Page
Court Recorder/Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

LARRY DECORLEON BROWN,
ANTHONY CARTER,
Defendants.

CASE NO: C-17-326247-1
CASE NO: C-17-326247-2

DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
THURSDAY, AUGUST 9, 2018

**RECORDER'S TRANSCRIPT OF HEARING RE:
STATUS CHECK: RESETTING TRIAL DATE**

APPEARANCES:

For the State:

TALEEN R. PANDUKHT, ESQ.
Chief Deputy District Attorney

For Defendant Brown:

MONICA R. TRUJILLO, ESQ.
Chief Deputy Special Public Defender

For Defendant Carter:

CARLI L. KIERNY, ESQ.
Deputy Public Defender

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 **Las Vegas, Nevada; Thursday, August 9, 2018**

2 * * * * *

3 [Proceeding commenced at 10:51 a.m.]

4 THE COURT: State versus Larry Brown. Mr. Brown is
5 present in custody. This is on -- is this a multiple defendant case?

6 MS. TRUJILLO: Yes.

7 MS. KIERNY: Yes.

8 MS. TRUJILLO: Ms. Kierny's here on Carter.

9 THE COURT: Yes, it is. State versus Anthony -- I'm sorry.
10 Let me start over. State versus Larry Brown, who's present in custody
11 with Ms. Trujillo. State versus Anthony Carter, who's present in custody
12 with --

13 MS. KIERNY: Ms. Kierny.

14 THE COURT: Ms. -- and is it just the two of them? Yes.

15 MS. KEIRNY: Correct.

16 THE COURT: All right. This is on for a status check and
17 setting trial date.

18 MS. TRUJILLO: Yes. And Mr. Giordani's not here and I don't
19 believe he's left his trial schedule. I do however have dates.

20 THE COURT: Is he coming?

21 MS. PANDUKHT: No, he is at grand jury today and he wrote
22 in the email on this case he thought it was on for status check on phone
23 data, so he said nothing new since last court date. The phone in
24 question is still being processed; trial is in 2019, so feel free to set
25 another status check.

1 THE COURT: Yeah, it's calendared -- okay, I'm sorry.
2 There's a million mistakes on this calendar and I apologize. It says
3 status check, resetting trial date if you read the minutes. So maybe it's
4 not a mistake because that's what counsel understood.

5 MS. TRUJILLO: Yes.

6 THE COURT: Is that right?

7 But then if you read the minutes, the last time you were here,
8 counsel indicated discovery needed to be reviewed to consider whether
9 or not there would be, I guess, stipulated severance or a motion to
10 sever. So that's what we were here -- there -- in the minutes, there's no
11 mention of phone records, but that may have been discussed, but I don't
12 have an independent recollection.

13 So, Ms. Trujillo, on the phone records issue.

14 MS. TRUJILLO: It was actually as to whether -- that Metro
15 was able to access the phone. Remember the Court ruled on the
16 fingerprint issue. They did not follow up with my client as to the
17 fingerprint issue because they believed they could open it separately.

18 THE COURT: Okay.

19 MS. TRUJILLO: And so the follow up was to the status check,
20 trial setting as well as whether or not they were able to open the phone
21 and it's my understanding he has no update on that. That was two
22 weeks ago and of course the email indicates the same. But I -- it was
23 my understanding we were setting the trial today.

24 THE COURT: Okay.

25 MS. KIERNY: And, Your Honor, the --

1 MS. PANDUKHT: We have a trial date, so are you talking
2 about resetting it?

3 THE COURT: Well, we have a trial date.

4 MS. TRUJILLO: I -- as to Mr. Brown, I never set a trial date
5 because I hadn't reviewed the information, I was -- experts were
6 outstanding and I wasn't sure.

7 [Colloquy between counsel]

8 MS. KIERNY: My understanding was that the severance was
9 as to us, but we obviously couldn't say whether we'd be ready to go
10 more immediately than the July date that Ms. Trujillo had available
11 because we didn't have the phone back. And obviously, we thought the
12 phone could be exculpatory to us.

13 THE COURT: Okay. Well, actually, the current trial setting is
14 way out.

15 MS. PANDUKHT: Yes, in 2019.

16 MS. TRUJILLO: Okay.

17 THE COURT: It's not until 2019. So at this point, unless we
18 were going to move up the trial date --

19 MS. KIERNY: Which is --

20 THE COURT: -- I think it's premature to talk about vacating
21 that and moving it back.

22 MS. TRUJILLO: Okay.

23 THE COURT: But --

24 MS. TRUJILLO: Can we approach, Judge?

25 THE COURT: Sure.

1 [Bench conference - not recorded]

2 THE COURT: My understanding and, counsel, correct me if
3 I'm wrong, is both counsel are considering whether or not we can move
4 up the trial date. But at this time, don't know if that's a possibility
5 because you haven't received the phone records, is that correct?

6 MS. KIERNY: That is correct.

7 THE COURT: Is that correct, Ms. Trujillo?

8 MS. TRUJILLO: That's correct.

9 THE COURT: All right. And it seems like from your notes,
10 Ms. Pandukht --

11 [Colloquy between the Court and the Clerk]

12 THE COURT: -- it seems like, Ms. Pandukht, from your notes,
13 Metro is currently trying to see if they can open the phone and download
14 whatever the data is, is that true?

15 MS. PANDUKHT: The phone -- according to the email, the
16 phone in question is still being processed, which leads me to believe
17 they are currently processing it.

18 THE COURT: Okay. So I think what we agreed on upon at
19 the bench was to come back about three weeks for a status check
20 regarding the phone records. Hopefully, that will have been made
21 available at that time and then counsel -- defense counsel will have a
22 better idea of how much longer it's going to take and whether or not they
23 want to move up the trial date or not.

24 Is that a fair summation of what's going on, Ms. Trujillo?

25 MS. TRUJILLO: Yes, Judge.

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THE COURT: Is that a fair summation?

MS. KIERNY: Yes, that's accurate, Your Honor.

THE COURT: Okay. So we'll give you a status check in
about three weeks.,

THE CLERK: It will be August 30th at 9:30.

MS. TRUJILLO: Thank you.

THE COURT: All right. Thank you.

MS. KIERNY: Thank you, Your Honor.

[Proceeding concluded at 10:57 a.m.]

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



Robin Page
Court Recorder/Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

LARRY DECORLEON BROWN,
ANTHONY CARTER,
Defendants.

CASE NO: C-17-326247-1
CASE NO: C-17-326247-2

DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
THURSDAY, AUGUST 30, 2018

***RECORDER'S TRANSCRIPT OF HEARING RE:
STATUS CHECK: PHONE RECORDS***

APPEARANCES:

For the State:

JOHN L. GIORDANI, III, ESQ.
Chief Deputy District Attorney

For Defendant Brown:

MONICA R. TRUJILLO, ESQ.
Chief Deputy Special Public Defender

For Defendant Carter:

CONNER M. SLIFE, ESQ.
CARLI L. KIERNY, ESQ.
Deputy Public Defenders

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

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Las Vegas, Nevada; Thursday, August 30, 2018

* * * * *

[Proceeding commenced at 10:29 a.m.]

THE COURT: State versus Larry Brown, who's present in custody with Ms. Trujillo. And then Anthony Carter, who's present in custody with Mr. Slife and Ms. --

MS. KIERNY: Kierny.

THE COURT: I was going to say Keenan.

MS. KIERNY: That's okay.

THE COURT: But I knew that wasn't right. I was close.

All right. This is on for status check, phone records.

MR. GIORDANI: Yes, Your Honor. I spoke to both defense counsel. I had a conversation with the detective, I believe it was last week, and he had just talked to the lab at Cellebrite. The phone is still on the machine. I've been assured that the moment they get anything back from it I'll know. And of course when I know, the defense counsel will know as well. I can't give a timeline, they don't know. It's an algorithm on a machine, so they can't really tell me when.

THE COURT: Okay. Is that the only thing that's outstanding from the State's perspective?

MR. GIORDANI: Oh, there was one other item, Ms. Trujillo inquired about a personnel file that was -- there was an admin subpoena issued for it, but their detectives never received it back. She inquired about that, it brought it to the detective's attention, so

1 now he's following up to make sure that the hospital got it. So as
2 soon as I get that as well, I'll pass it along.

3 THE COURT: All right.

4 Ms. Trujillo.

5 MS. TRUJILLO: That's accurate statement. That's all that
6 I believe is outstanding, at this point, other than the cell phone
7 records.

8 THE COURT: Okay. And then in terms of your
9 preparation, what else remains to be done?

10 MS. TRUJILLO: I have already sent all the case notes, the
11 lab reports, and the forensic analysis to my DNA expert. I have a
12 cell phone expert ready to go, I just need the cell phone
13 information.

14 THE COURT: Okay.

15 MS. TRUJILLO: So those are the next steps.

16 THE COURT: All right.

17 And then, Mr. Slife, Ms. Kierny.

18 MR. SLIFE: We're just waiting on the cell phone, Judge.

19 THE COURT: All right. So what do we think for our next
20 status check because I don't want to keep coming back and being
21 told the same thing that --

22 MR. GIORDANI: I'd prefer 90 days if we could.

23 MS. TRUJILLO: Fine on behalf of Mr. Brown.

24 THE COURT: All right.

25 MR. SLIFE: That's fine. And if we need to, we'll try to put

1 it back on sooner.

2 MR. GIORDANI: Right.

3 THE COURT: Okay. All right. 90 days.

4 THE CLERK: That's November 27th at 9:30.

5 MR. GIORDANI: Thank you, Your Honor.

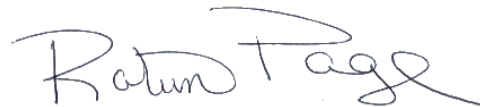
6 MS. TRUJILLO: Thank you.

7 THE COURT: Thank you.

8 [Proceeding concluded at 10:31 a.m.]

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

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Robin Page
Court Recorder/Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

LARRY DECORLEON BROWN,
ANTHONY CARTER,
Defendants.

CASE NO: C-17-326247-1
CASE NO: C-17-326247-2

DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
TUESDAY, NOVEMBER 27, 2018

**RECORDER'S TRANSCRIPT OF HEARING RE:
STATUS CHECK: PHONE RECORDS**

APPEARANCES:

For the State:

JOHN L. GIORDANI, III, ESQ.
Chief Deputy District Attorney

For Defendant Brown:

MONICA R. TRUJILLO, ESQ.
Chief Deputy Special Public Defender

For Defendant Carter:

CONNER M. SLIFE, ESQ.
Deputy Public Defender

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 **Las Vegas, Nevada; Tuesday, November 27, 2018**

2 * * * * *

3 [Proceeding commenced at 10:46 a.m.]

4 THE COURT: State versus Larry Brown.

5 MS. TRUJILLO: And the co-defendant counsel is here as
6 well.

7 THE COURT: And what page is the co-defendant?
8 Anthony Carter.

9 MR. SLIFE: Page three, Your Honor. Mr. Carter.

10 THE COURT: All right. Both are present in custody. We
11 have Ms. Trujillo, we have Mr. Slife here. And this is just on for
12 status check regarding the phone records.

13 MR. GIORDANI: I still don't have them, Your Honor. As I
14 represented last time, they're doing a brute force attack on the
15 phone, it takes quite a while. As soon as they have that done,
16 they're going to inform me, and I'm going to inform defense
17 counsel and provide everything. I have no doubt they're going to
18 get into it, it just takes some time.

19 THE COURT: Okay.

20 Is there anything else still outstanding?

21 MR. GIORDANI: No, Your Honor. There was an offer
22 conveyed a while back, I don't recall if it was rejected or not, but I
23 mean there's really nothing else, we're just waiting on that. So I
24 just ask for -- if you're going to set another status check, do it after
25 the first of the year.

1 THE COURT: All right.

2 Mr. Slife, anything to add?

3 MR. SLIFE: No, Judge, we just -- we just need that
4 information. I know Mr. Carter is frustrated because he's been in
5 custody for almost a year and a half. Apart from that, if we would
6 have had this information, we would have been ready to go to trial
7 in the summer, but I know it is what it is and we just -- we just need
8 the information.

9 THE COURT: Ms. Trujillo, anything to add?

10 MS. TRUJILLO: No, Judge.

11 THE COURT: I mean, I don't really know what at this point
12 to do to speed it up.

13 MR. GIORDANI: I asked you to force him to give us his
14 password and you denied that, so.

15 MS. TRUJILLO: But she granted the fingerprint.

16 MR. GIORDANI: Yeah, but once the brute force has
17 started, they can't just pull the plug.

18 THE COURT: Right. I mean here's, you know, the thing,
19 he can certainly voluntarily give his password.

20 MR. GIORDANI: Sure can.

21 THE COURT: And if the argument is being made that
22 Mr. Carter is spending too much time in jail because of the delay
23 with the phone records, that's something within his power to
24 correct by giving the password.

25 MR. SLIFE: Well, Mr. Carter doesn't have access to the

1 password. It's Mr. Brown, Your Honor.

2 THE COURT: I'm sorry, Mr. Brown. I misspoke. So I
3 would just note that at least with one defendant, he's sort of in
4 some way controlling the timing of all of this. With the other
5 defendant, he doesn't have any power, unless he knows the
6 password, to do anything about it. I just want to, you know, note
7 that.

8 MR. SLIFE: That's why I just wanted to air --

9 THE COURT: I mean, there's no prohibition on voluntary
10 cooperation with that password. I'm just not compelling it --

11 MR. SLIFE: That's why I wanted to air Mr. --

12 THE COURT: -- because really how do you --

13 MR. SLIFE: -- Mr. Carter's frustrations.

14 THE COURT: -- how do you compel it? I mean, he either
15 says it or he doesn't, which was my whole problem with forcing
16 him to say it because you can't.

17 MR. GIORDANI: Yep.

18 THE COURT: Right. I mean, he's either going to say it or
19 he's not. So I just wanted note that. All right.

20 MR. GIORDANI: As soon as --

21 DEFENDANT CARTER: Excuse me, Your Honor, may I
22 speak, please? Basically, I've been here 16 months.

23 MR. SLIFE: Judge, I --

24 THE COURT: Yeah, it might not be a good idea. I mean,
25 basically --

1 DEFENDANT CARTER: Well, can I -- can I --

2 THE COURT: -- your lawyer is pointing out you're sitting
3 in jail all this time waiting for discovery and it's within the province
4 of the State to get that done and provide it.

5 DEFENDANT CARTER: Can I invoke my rights to a speedy
6 trial?

7 THE COURT: Well, I think you had previously waived your
8 right to a speedy trial.

9 DEFENDANT CARTER: Right.

10 THE COURT: You have a general constitutional right to a
11 speedy trial and we're trying to move this forward as quickly as
12 possible, which is why I make them come back --

13 DEFENDANT CARTER: Okay.

14 THE COURT: -- and make sure that they're working on it.

15 DEFENDANT CARTER: But you told me in June that it
16 wouldn't be fair for me sit here a whole year because my
17 co-defendant had a new lawyer. I've been here another five and a
18 half months, so I was just asking if I can get a -- my right to invoke
19 to a speedy trial --

20 THE COURT: Well, okay --

21 DEFENDANT CARTER: -- which you said that it wouldn't
22 be fair for me. I mean --

23 THE COURT: Here's -- wait --

24 DEFENDANT CARTER: -- it wouldn't be fair for me to sit
25 here.

1 THE COURT: Okay. You don't have a trial coming up until
2 August. Now, if in August, the State says they're not ready, your
3 counsel can certainly seek to go forward, seek whatever remedy he
4 thinks is appropriate at that time by way of motion. So I think we're
5 kind of putting the cart before the horse a little bit here.

6 MR. SLIFE: I don't know if you remember, Judge, I filed a
7 motion to sever.

8 THE COURT: Right.

9 MR. SLIFE: And part of the reason this guy continued
10 another year is because Mr. Brown got new counsel. And so there
11 was a point at which if we had had this information, I could have
12 announced ready.

13 THE COURT: Right.

14 MR. SLIFE: And we could have revisited the motion to
15 sever. And, potentially, Mr. Carter would have already had his trial.
16 So that's what he's frustrated about.

17 THE COURT: I get it.

18 MR. SLIFE: But I understand there's nothing we can do to
19 force this information to become -- to come to us.

20 MR. GIORDANI: I have nothing to add.

21 THE COURT: Can you enlighten me as to why this is
22 taking so -- I mean --

23 MR. GIORDANI: I'm not a computer scientist, Your Honor.
24 The details I'm giving the Court are what I'm getting from the Metro
25 lab who had to outsource it to another lab to do this. She's assured

1 me --

2 THE COURT: I mean, are they working on it or just --

3 MR. GIORDANI: Oh, yeah. They're working on it.

4 THE COURT: Okay.

5 MR. GIORDANI: It remains plugged in to whatever system
6 they're using to get into it.

7 THE COURT: All right. We'll --

8 MR. GIORDANI: He's assured me multiple times as soon
9 as he hears, and he knows the Court is waiting on it, and defense is
10 waiting on it, that he'll let me know.

11 THE COURT: All right. We'll come back after the first of
12 the year for another status check.

13 THE CLERK: January 17th at 9:30.

14 THE COURT: Is that it for you three?

15 MR. GIORDANI: I have a couple other matters, Your
16 Honor.

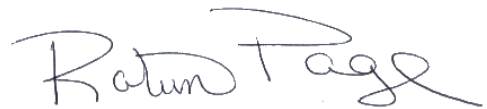
17 THE COURT: All right. Thank you.

18 MS. TRUJILLO: Thank you.

19 [Proceeding concluded at 10:51 a.m.]

20 * * * * *

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

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25 Robin Page
Court Recorder/Transcriber



1 **RTRAN**

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5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

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THE STATE OF NEVADA,
Plaintiff,

CASE NO: C-17-326247-1
CASE NO: C-17-326247-2

vs.

DEPT. XXI

LARRY DECORLEON BROWN,
ANTHONY CARTER,
Defendants.

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
THURSDAY, JANUARY 17, 2019

***RECORDER'S TRANSCRIPT OF HEARING RE:
STATUS CHECK: PHONE RECORDS***

APPEARANCES:

For the State: BRIANNA K. LAMANNA, ESQ.
Deputy District Attorney

For Defendant Brown: MONICA R. TRUJILLO, ESQ.
Chief Deputy Special Public Defender

For Defendant Carter: CONNER M. SLIFE, ESQ.
Deputy Public Defender

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

1 **Las Vegas, Nevada; Thursday, January 17, 2019**

2 * * * * *

3 [Proceeding commenced at 10:24 a.m.]

4 THE COURT: State versus Larry Brown, who's present in
5 custody --

6 MR. SLIFE: And Mr. Carter, Your Honor.

7 THE COURT: And Mr. Carter, who's also present in
8 custody. We've got Ms. Trujillo representing Mr. Brown, we've got
9 Mr. Slife representing Mr. Carter.

10 And, Ms. Lamanna, are you handling this?

11 MS. LAMANNA: Yes, Your Honor.

12 THE COURT: All right. On behalf of?

13 MS. LAMANNA: Mr. Giordani.

14 THE COURT: All right. And where is he?

15 MS. LAMANNA: He had to leave for a 10:30 meeting, so
16 he left the file with me.

17 MS. TRUJILLO: We have representations, though, Judge.

18 THE COURT: All right. Go ahead. This is on actually
19 status check, phone records.

20 MS. TRUJILLO: Yes.

21 THE COURT: So, Ms. Trujillo.

22 MS. TRUJILLO: We have received the CFL report, both of
23 us. I have retained -- orally retained a cell phone expert. I have to
24 officially retain him and get him the discovery.

25 Additionally, we had some follow up with DNA lab. We

1 were missing some of the DNA case file. And so I subbed the lab
2 separately, they responded to me and John. And they told him that
3 there was originally nothing missing. However, there is some
4 information missing that they realize, so they will have it to him by
5 next week, he will copy it for us.

6 THE COURT: Okay. Was there anything else that was
7 outstanding?

8 MS. TRUJILLO: No, those were the two outstanding
9 things. And then I have to give the DNA to my expert to go over.

10 THE COURT: Okay.

11 MS. TRUJILLO: And then I'll be filing motions if anything
12 is necessary after that.

13 THE COURT: Okay. Any idea -- let's see, we have quite a
14 bit of time until August. Did either of your experts' sort of give you
15 a ballpark in terms of how long it would take for them to review
16 everything to determine whether or not they would even be make --
17 doing reports?

18 MS. TRUJILLO: Mine did not because he couldn't
19 complete the analysis without the missing data, which is why I was
20 in contact with Mr. Giordani. And the cell phone expert, I haven't
21 even given anything yet.

22 THE COURT: Right. Because he hasn't formerly retained.

23 All right. Mr. Slife.

24 MR. SLIFE: Same for me on the cell phone, Judge. I'm
25 going to be looking into an expert. I don't have any DNA in the

1 case that pertains to Mr. Carter though, so that doesn't apply to me.

2 THE COURT: Okay. So you'll -- have you -- so you haven't
3 located an expert yet.

4 MR. SLIFE: Not yet. We just -- we just got this, what, last
5 week.

6 THE COURT: All right.

7 Anything else outstanding from your perspective?

8 MR. SLIFE: Nothing from me, Judge. Not for today.

9 THE COURT: All right.

10 Anything else that remains to be done in terms of your
11 preparation, other than the cell phone and the expert and all that?

12 MR. SLIFE: Not that I see right now.

13 THE COURT: Okay. I don't know, maybe 60 days for
14 another status check. At that point, you should know whether or
15 not your experts will be doing reports and hopefully are not.

16 MS. TRUJILLO: Hopefully, yes.

17 THE COURT: Okay.

18 THE CLERK: That's March 21st at 9:30.

19 THE COURT: And did you have any representations to
20 make on behalf of Mr. Giordani?

21 MS. LAMANNA: No, Your Honor.

22 THE COURT: All right. Thank you.

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MS. TRUJILLO: Thank you.

MR. SLIFE: Thank you.

[Proceeding concluded at 10:27 a.m.]

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



Robin Page
Court Recorder/Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

LARRY DECORLEON BROWN,
ANTHONY CARTER,
Defendants.

CASE NO: C-17-326247-1
CASE NO: C-17-326247-2

DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
THURSDAY, MARCH 21, 2019

***RECORDER'S TRANSCRIPT OF HEARING RE:
STATUS CHECK***

APPEARANCES:

For the State:

JOHN L. GIORDANI, III, ESQ.
Chief Deputy District Attorney

For Defendant Brown:

MONICA R. TRUJILLO, ESQ.
Chief Deputy Special Public Defender

For Defendant Carter:

CONNER M. SLIFE, ESQ.
Deputy Public Defender

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 **Las Vegas, Nevada; Thursday, March 21, 2019**

2 * * * * *

3 [Proceeding commenced at 9:33 a.m.]

4 THE COURT: State versus Larry Brown, who's present in
5 custody with Ms. Trujillo. And State versus Anthony Carter, who's
6 present in custody with Mr. Slife. And we have Mr. Giordani
7 representing the State. This is on for just status check. And last
8 time there was some missing discovery and information and -- so
9 can you update the Court?

10 MS. TRUJILLO: Can we approach?

11 THE COURT: Sure.

12 [Bench conference - not recorded]

13 THE COURT: All right. So my understanding from our
14 conversation at the bench is Mr. Giordani either provided it himself
15 or had the lab provide all of the missing information regarding the
16 DNA, is that correct?

17 MS. TRUJILLO: That's correct.

18 THE COURT: And both of you got that, or.

19 MS. TRUJILLO: I got it. I'm not sure -- I don't think --

20 THE COURT: Mr. Slife may not have wanted it.

21 MS. TRUJILLO: -- Mr. Slife received it because it doesn't
22 apply to him.

23 MR. SLIFE: It's not relevant to Mr. Carter.

24 THE COURT: Okay. All right. And so your expert is
25 reviewing that and determining how to proceed, is that fair?

1 MS. TRUJILLO: That's correct. And I plan on consulting
2 with him the week of April 9th.

3 THE COURT: Okay. And then, Mr. Slife, from your
4 perspective, is everything on track?

5 MR. SLIFE: Yes.

6 THE COURT: Anything that remains to be done?

7 MR. SLIFE: Not at this time.

8 THE COURT: All right. And then, Ms. Trujillo, is the DNA
9 issue, kind of, the only thing outstanding from your perspective or
10 is there other investigation and other -- other than possibly some
11 motions.

12 MS. TRUJILLO: I'm still looking at the cell phone stuff, but
13 I'm just not sure I'm going to use an expert for sure.

14 THE COURT: Okay. All right. So why don't we come
15 back, I don't know, mid to late April.

16 MS. TRUJILLO: Late April I'd prefer.

17 THE COURT: Late April. Is that fine?

18 MR. GIORDANI: Yes, Your Honor.

19 THE CLERK: April 16th, 9:30.

20 MS. TRUJILLO: Can we do --

21 THE COURT: That's mid-April.

22 THE CLERK: Go later.

23 THE COURT: Let's go to late April.

24 THE CLERK: How about April 25th?

25 MS. TRUJILLO: Perfect.

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THE COURT: Is that good for everybody?

MR. GIORDANI: Yes, Your Honor.

THE COURT: All right. Thank you.

MR. GIORDANI: Thank you.

MS. TRUJILLO: Thank you.

THE COURT: Did you have anything else? Anybody have anything else?

MR. GIORDANI: No, ma'am.

THE COURT: All right.

MR. GIORDANI: Thank you.

MR. SLIFE: Thank you.

[Proceeding concluded at 9:36 a.m.]

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



Robin Page
Court Recorder/Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

LARRY DECORLEON BROWN,
ANTHONY CARTER,
Defendants.

CASE NO: C-17-326247-1
CASE NO: C-17-326247-2

DEPT. XXI

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE
THURSDAY, APRIL 25, 2019

**RECORDER'S TRANSCRIPT OF HEARING RE:
STATUS CHECK**

APPEARANCES:

For the State: ADAM B. OSMAN, ESQ.
Deputy District Attorney

For Defendant Brown: MONICA R. TRUJILLO, ESQ.
Chief Deputy Special Public Defender

For Defendant Carter: DANIEL R. JENKINS, ESQ.
Deputy Public Defender

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 **Las Vegas, Nevada; Thursday, April 25, 2019**

2 * * * * *

3 [Proceeding commenced at 9:48 a.m.]

4 THE COURT: State versus Larry Brown, who is present in
5 custody with Ms. Trujillo. And Anthony Carter, who's present in
6 custody with Mr. Jenkins.

7 MR. JENKINS: Standing in for Mr. Slife, yes, Your Honor.

8 THE COURT: All right. And where is Mr. Slife today?

9 MR. JENKINS: Mr. Slife had some family issues --

10 THE COURT: Okay.

11 MR. JENKINS: -- that -- he texted me about the case and
12 said there weren't any real issues present today.

13 THE COURT: Okay. This is just on for status check. Last
14 time we were here, Ms. Trujillo, you'll recall that Mr. Giordani
15 stated that the lab had provide all of -- provided, I'm sorry -- all the
16 DNA data and your expert was going to look at that.

17 So where are we on the DNA?

18 MS. TRUJILLO: My experts reviewed all the lab
19 information in the case file, and he will not be authoring a report.

20 THE COURT: Okay.

21 MS. TRUJILLO: I will notice him as a witness, but I'm not
22 sure he will be a witness. So that's where we're at. No report,
23 DNA's been reviewed.

24 THE COURT: All right. And the State then can take
25 whatever action the State deems appropriate if he's notice without

1 a report.

2 MR. OSMAN: And I apologize, what was the name of that
3 expert?

4 THE COURT: What's that?

5 MR. OSMAN: The name of the expert, so I can write the
6 note.

7 MS. TRUJILLO: George Schiro.

8 MR. OSMAN: Okay. Thank you.

9 THE COURT: I'm sorry, can you spell it, the surname.

10 MS. TRUJILLO: Last name, S-C-H-I-R-O.

11 THE COURT: All right. And then the other issue we
12 discussed last time was the cell phone data and you were still
13 looking at that and what are we going to -- where are on that?

14 MS. TRUJILLO: Same thing. I'm going to notice him, but
15 I'm not sure I'm going to use him as a witness.

16 THE COURT: Okay.

17 Anything else relating to your preparation, Ms. Trujillo.

18 MS. TRUJILLO: I informed Mr. Giordani I do want to do a
19 file review in the next month and that's it and then it'll be motions,
20 but I'm kind of waiting on Fuller in this Court, whether that's going
21 before I can start the motions in this case.

22 THE COURT: Okay. And has there been, with respect to
23 Mr. Brown -- would you refresh my memory, has there been any
24 discussion regarding a resolution with respect to Mr. Brown?

25 MS. TRUJILLO: There was an offer, and it was rejected.

1 THE COURT: All right. And did we go over that last time
2 or the time --

3 MS. TRUJILLO: I don't recall if we did or not.

4 THE COURT: All right. And with respect to Mr. Carter, I
5 think last time Mr. Slife said everything was on track, he had
6 nothing left to be done.

7 Do you have any other information, Mr. Jenkins?

8 MR. JENKINS: That's the same information he conveyed
9 to me this morning, that everything's on track and that he should be
10 prepared to go on the case.

11 THE COURT: All right. Let's come back in about, I don't
12 know, 30 days or so, maybe do 40 days, a little more.

13 MR. JENKINS: Just for trial readiness, Your Honor?

14 THE COURT: Yes, status check, trial readiness.

15 THE CLERK: How about May 30th at 9:30?

16 MR. JENKINS: Thank you, Your Honor.

17 MS. TRUJILLO: Thank you.

18 MR. OSMAN: Thank you.

19 THE COURT: All right. Thank you.

20 [Proceeding concluded at 9:51 a.m.]

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

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25 Robin Page
Court Recorder/Transcriber



1 **RTRAN**

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5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

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8 **THE STATE OF NEVADA,**
9 **Plaintiff,**

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)
) **CASE NO: C-17-326247-1**
) **CASE NO: C-17-326247-2**

10 **vs.**

)
) **DEPT. XXI**

11 **LARRY DECORLEON BROWN,**
12 **ANTHONY CARTER,**
13 **Defendants.**

14 **BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE**
15 **THURSDAY, MAY 30, 2019**

16 ***RECORDER'S TRANSCRIPT OF HEARING RE:***
17 ***STATUS CHECK***

18 **APPEARANCES:**

19 **For the State:**

JOHN L. GIORDANI, III, ESQ.
Chief Deputy District Attorney
TALEEN PANDUKHT, ESQ.
Deputy District Attorney

22 **For Defendant Brown:**

ROBERT ARROYO, ESQ.
Chief Deputy Special Public Defender

24 **For Defendant Carter:**

CONNOR M. SLIFE, ESQ.
Deputy Public Defender

25 **RECORDED BY: ROBIN PAGE, COURT RECORDER**

1 **Las Vegas, Nevada; Thursday, May 30, 2019**

2 * * * * *

3 [Proceeding commenced at 10:30 a.m.]

4 THE COURT: State versus Larry Brown, who's present in
5 custody with Mr. Arroyo. This is on for status check, trial readiness.
6 And we have two defendants.

7 MR. GIORDANI: Yes.

8 THE COURT: Anthony Carter. And Mr. Slife is
9 representing Mr. Carter. I haven't seen him this morning.

10 MR. GIORDANI: I have not seen him either.

11 THE MARSHAL: He was here earlier.

12 MR. GIORDANI: Okay. I told Mr. Arroyo, Mr. Slife has
13 been consistently ready throughout. It's kind of been Ms. Trujillo
14 and I going back and forth on Mr. Brown, so --

15 THE COURT: All right.

16 MR. GIORDANI: -- if we could just address this.

17 THE COURT: So we'll go ahead and deal with Mr. --
18 -- you can sit down, Mr. Carter -- with the issues that are unique to
19 Mr. Brown and Mr. Arroyo's defense of him.

20 So, Mr. Arroyo, go ahead. Where are we?

21 MR. ARROYO: I'm covering this for Ms. Trujillo, who I
22 think has been in contact with Mr. Giordani. And all I have today is
23 that she plans to be ready for trial and there will motions coming in
24 June.

25 THE COURT: All right. Last time there was -- and where is

1 Ms. Trujillo? I'm sorry.

2 MR. ARROYO: Mitigation trip.

3 THE COURT: Do we know anything about the DNA?

4 MR. GIORDANI: Yes.

5 THE COURT: Okay.

6 MR. GIORDANI: The underlying data was previously
7 provided. She did have her expert in communication with me and
8 with the DNA lab directly, so I know they've been working on it. I
9 have not received a report, but I know she's been diligently working
10 on that.

11 THE COURT: All right. Let's go out 30 days for another
12 status check. If the motions are calendared before that time, we can
13 deal with the status check at that date.

14 MR. ARROYO: Okay.

15 THE COURT: All right.

16 THE CLERK: June 27th at 9:30.

17 MR. ARROYO: Thank you.

18 MR. GIORDANI: Thank you.

19 [Matter trailed]

20 [Matter recalled at 11:25 a.m.]

21 THE COURT: State versus Anthony Carter, who's now
22 present -- well, he was present, who's present with Mr. Slife, who is
23 now present.

24 Anything to advise? You're still ready to go.

25 MR. SLIFE: Ready to go I think -- at this time.

1 THE COURT: All right. So we'll just give you the same
2 status check as the co-defendant.

3 MS. PANDUKHT: John Giordani was here.

4 THE COURT: I know.

5 MS. PANDUKHT: He's not coming back.

6 THE COURT: We discussed --

7 MS. PANDUKHT: Okay.

8 THE CLERK: June 27th at 9:30 a.m.

9 MR. SLIFE: Thank you very much.

10 MS. PANDUKHT: And that's the same date he already
11 had, right?

12 THE COURT: Right. Thank you.

13 MS. PANDUKHT: Thank you, Your Honor.

14 [Proceeding concluded at 10:32 a.m.]

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