

**CASE NO. 82271**  
**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**ARLEO EARL DAVIS**

PETITIONER,

vs.

Electronically Filed  
Jan 04 2021 02:07 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF CLARK, AND THE  
HONORABLE MICHAEL VILLANI, DISTRICT JUDGE,**

RESPONDENT,

AND

**STATE OF NEVADA,**

REAL PARTY IN INTEREST.

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**PETITIONER'S APPENDIX**

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PETITION FROM THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA  
DISTRICT COURT CASE NO. C-20-346920-3  
THE HONORABLE MICHAEL VILLANI

---

**Joshua Tomsheck, Esq.**  
**HOFLAND & TOMSHECK**  
228 South 4th Street, 1st Floor  
Las Vegas, Nevada 89101  
702-895-6760  
*Attorney for Petitioner*

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CLARK COUNTY, NEVADA

DISTRICT COURT

GJ Case No. 19CGJ007A-B  
DC Case No. C346920

Defendants.

8:25 a.m.

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

00:00:59 1 GRAND JURORS PRESENT ON FEBRUARY 13, 2020:  
2  
3 KENNETH DICKINSON, Foreperson,  
4 JANSSEN REMBERT, Deputy Foreperson  
00:00:59 5 DENISE WALLACE, Secretary  
6 WENDY MOORE, Assistant Secretary  
7 GULLIVER FLYNN  
8 BELINDA MILLER  
9 EMMETT MORGAN  
00:00:00 10 ANEDA MURRAY  
11 JOHN PLUNKETT  
12 VIRGIL RAYOS  
13 JESSIE SAULSON  
14 SCOTT STEVENSON  
00:00:00 15 DEBORAH TILLEMA  
16 VATCHARA VICHAIKUL  
17 GLORIA WYETH  
18  
19  
00:00:00 20  
21 Also present at the request of the Grand Jury:  
22 Jory Scarborough  
23 Deputy District Attorney  
24 Pamela Weckerly  
25 Chief Deputy District Attorney  
00:00:00

1

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MITCHELL DOSCH

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LAS VEGAS, NEVADA, FEBRUARY 13, 2020

2

\* \* \* \* \*

3

4

DONNA J. McCORD,

00:00:02

5

having been first duly sworn to faithfully

6

and accurately transcribe the following

7

proceedings to the best of her ability.

8

9

THE FOREPERSON: Let the record reflect

00:00:02

10

that I have canvassed the waiting area and no one has

11

appeared in response to Notice of Intent to Seek

12

Indictment.

13

MR. SCARBOROUGH: Good morning, ladies and

14

gentlemen.

08:25:28

15

A JUROR: Good morning.

16

A JUROR: Good morning.

17

MR. SCARBOROUGH: My name is Deputy

18

District Attorney Jory Scarborough. I'm presenting the

19

case of 19CGJ007A and B, the State of Nevada versus

08:25:38

20

Jecory Eles Kemp and Tyeshia Evan James. In the

21

Indictment Jecory Kemp and Tyeshia James are charged

22

with conspiracy to commit robbery, murder with use of a

23

deadly weapon under the premeditation theory and the

24

felony murder theory, first degree kidnapping with use

08:25:55

25

of a deadly weapon resulting in substantial bodily harm

08:25:58 1 and robbery with use of a deadly weapon. May the record  
2 reflect that all members of the Grand Jury have a copy  
3 of this indictment. Noting all nods in affirmance.

4 For the record I've also marked as I  
08:26:11 5 believe Exhibit 2 are my instructions to the elements of  
6 the offense. Included in the instructions are all of  
7 the instructions for conspiracy, what robbery means,  
8 murder, what a deadly weapon is, the different theories  
9 of murder, what kidnapping is, what robbery with a  
08:26:29 10 deadly weapon is and also case law instructions that  
11 I'll refer to as the Mendoza instructions. I'm talking  
12 about a robbery in relation to a kidnapping.

13 Also, there are case law instructions  
14 included in the packet that I will refer to as the  
08:26:44 15 Bruton case law. The Bruton case law delineates that  
16 when a statement is introduced of one defendant, you can  
17 only use the information learned from that statement  
18 against that defendant, meaning you can't use  
19 information one defendant says against another. That  
08:27:03 20 would violate constitutional rights of the other  
21 defendant and that is subsequent to the Bruton case law.

22 I will remind you of that when we get into the  
23 statements of Mr. Kemp and Miss James when we begin.

24 Noting that, are there any preliminary  
08:27:19 25 questions as to the elements of the offenses that I have



08:27:22 1 briefly discussed now? No questions at this point.

2 With that, ladies and gentlemen, I will begin my  
3 presentation.

4 What you're going to do is stand here,  
08:27:55 5 that's the guy that's going to swear you in, raise your  
6 hand and then sit down.

7 THE FOREPERSON: You do solemnly swear that  
8 the testimony that you're about to give upon the  
9 investigation now pending before this Grand Jury shall  
08:28:00 10 be the truth, the whole truth, and nothing but the  
11 truth, so help you God?

12 THE WITNESS: I do.

13 THE FOREPERSON: Thank you. Please be  
14 seated.

08:28:13 15 You're advised that you are here today to  
16 give testimony in the investigation pertaining to the  
17 offenses of conspiracy to commit robbery, murder with  
18 use of a deadly weapon, first degree kidnapping with use  
19 of a deadly weapon resulting in substantial bodily harm  
08:28:27 20 and robbery with use of a deadly weapon involving Jecory  
21 Eles Kemp and Tyeshia Evan James.

22 Do you understand this advisement?

23 THE WITNESS: I do, sir.

24 THE FOREPERSON: Thank you. Please state  
08:28:38 25 your first and last name and spell both for the record.

08:28:41 1 THE WITNESS: First name Arturo,  
2 A-R-T-U-R-O, last Alvarado, A-L-V, as in Victor,  
3 A-R-A-D-O.

4 ARTURO ALVARADO,  
08:28:48 5 having been first duly sworn by the Foreperson of the  
6 Grand Jury to testify to the truth, the whole truth  
7 and nothing but the truth, testified as follows:

8  
9 EXAMINATION  
08:28:50 10 BY MR. SCARBOROUGH:

11 Q Mr. Alvarado, how are you currently  
12 employed?

13 A I'm currently a detective for the San  
14 Bernardino County Sheriff's Department located in  
08:28:58 15 California.

16 Q Are you a part of any particular division  
17 as a detective in that San Bernardino department?

18 A I am. I'm part of the specialized  
19 investigation division, specifically the homicide  
08:29:07 20 division.

21 Q In the course of your -- how long have you  
22 been employed in that capacity as a homicide detective?

23 A As a homicide detective three years now.

24 Q During the course of your tenure as a  
08:29:17 25 homicide detective, is it safe to say that you've

08:29:20 1 responded to many scenes that include a potentially  
2 violent homicide?

3 A Many.

08:29:28 4 Q Would some of those scenes, or a vast  
5 majority of those scenes include the use of a potential  
6 firearm?

7 A Yes.

08:29:38 8 Q And have you had occasion amongst your just  
9 tenure as a police officer in general and as a homicide  
10 detective to respond to scenes where there's a fire  
11 component?

12 A Yes, on both occasions.

08:29:50 13 Q Okay. And in your training and experience  
14 you seen many scenes where there would be a fire  
15 component?

16 A Yes.

17 (Miss Weckerly entered the Grand Jury room.)

08:29:58 18 Q So I want to direct your attention to  
19 December 30th and December 31st of last year. Did you  
20 have occasion to be called out to a scene of an alleged  
21 homicide?

22 A Yes, I was.

23 Q Okay. And where was that scene?

08:30:10 24 A It was an area off the 15 freeway between  
25 Baker and Barstow.

08:30:12 1 Q Okay. And what was the nature of the call  
2 when you responded?

3 A It was a death investigation, a vehicle on  
4 fire and a victim that was deceased that had been on  
08:30:28 5 fire.

6 Q Okay. So as a homicide detective are you  
7 on call, like on a rotational basis to where scenes get  
8 called in and then you get called out to respond?

9 A Yes.

08:30:39 10 Q And is that what happened in this case?

11 A Yes, I was the on-call team for that week.

12 Q Okay. So when you responded to the scene,  
13 walk the members of the Grand Jury just through the  
14 basics of the scene as you responded to it.

08:30:53 15 A Okay. So the I-15 freeway, it's a main  
16 U.S. highway. It connects Southern California with Las  
17 Vegas. So for me I was coming from the south side so we  
18 traveled north on the 15 and the exit's Field Road. If  
19 you exit there's nothing there other than just desert.

08:31:15 20 The area of the location was on the west side of the  
21 freeway in a dirt open area.

22 Q Okay. So as I approach you I'm going to  
23 hand you a stack of photographs. I'm handing you Grand  
24 Jury proposed 20 through 28. If you could briefly flip  
08:31:32 25 through all those photographs, please, and look up at me

08:31:35 1 when you're done.

2 A Done, sir.

3 Q So do you recognize what's depicted in that  
4 series of photos of Grand Jury Exhibits 20 through 28?

08:32:05 5 A Yes, I do.

6 Q And how do you recognize those photographs?

7 A It was the crime scene that our division  
8 responded to of the incident.

9 Q Now, when you responded to the scene did  
08:32:14 10 you walk all areas of the scene and look at all of the  
11 relevant pieces of evidence at the scene?

12 A Yes.

13 Q Okay. And do these pictures, Grand Jury  
14 Exhibits 20 through 28, fairly and accurately represent  
08:32:26 15 the scene as you saw it on that day when you responded?

16 A Yes, it does.

17 Q Okay. So publishing for the members of the  
18 Grand Jury Grand Jury Exhibit Number 20, if we look at  
19 the T.V. what are we looking at here?

08:32:39 20 A Right here we are looking at the crime  
21 scene from an aerial photograph taken from our  
22 helicopter unit. As you look down that's the I-15 on  
23 the right-hand side oriented at, if you're looking up  
24 that's oriented north and the west side of the freeway.

08:32:58 25 Q So at the top of the freeway, that would be

08:33:00 1 the northern direction?

2 A Yes, sir.

3 Q Okay. And the northern direction heads  
4 where?

08:33:04 5 A Toward Las Vegas.

6 Q Now, as we go towards the left side of the  
7 photograph, is the area of the investigation or the  
8 scene depicted small but in the left area of the  
9 photograph?

08:33:13 10 A Yes, it is, sir.

11 Q Okay. Showing you Grand Jury Exhibit  
12 Number 21, what are we looking at there?

13 A Okay. We're looking at again aerial  
14 photographs. Now we're oriented, up is west and that's  
08:33:29 15 our scene as well.

16 Q So off of the freeway westbound of the  
17 freeway is where our scene is?

18 A Yes.

19 Q Okay. And again pointing to the top maybe  
08:33:38 20 left of the screen a little bit as I circle with my  
21 hand, is that the scene?

22 A Yes, that's the vehicle.

23 Q Okay. Now, when you approached the scene  
24 and looked at the vehicle, did you notice any obvious  
08:33:50 25 damage to the vehicle?

08:33:51 1 A Yes, the vehicle was fully burned to the  
2 ground essentially.

3 Q Okay. And in your training and experience  
4 you had seen property or any different structures and  
08:34:04 5 vehicles when or after they are burned?

6 A Yes.

7 Q What would lead you to conclude that this  
8 was burned in this case?

9 A Clearly looking at it you knew it had been  
08:34:14 10 burned. There was no question. Everything was burned  
11 to a crisp.

12 Q Was the coloring like a charring on all the  
13 metal and everything?

14 A It was charred, any rubber was already  
08:34:22 15 burned away, any plastic was burned away. Basically it  
16 was just metal and —

17 Q Okay. Showing you Grand Jury Exhibit  
18 Number 22, what are we looking at there?

19 A That is a close-up photograph of the  
08:34:32 20 vehicle.

21 Q And was that a Lexus vehicle?

22 A You know, at the time it was burned to a  
23 crisp we couldn't even figure out what the vehicle was  
24 but it turned out to be a Lexus.

08:34:45 25 Q Okay. And then showing you Grand Jury

08:34:47 1 Exhibit Number 23, what are we looking at there?

2 A We're looking at the passenger side of the  
3 same vehicle.

4 Q Indicating all the burn and charring marks  
08:34:55 5 that you had referred to earlier, correct?

6 A Yes, sir.

7 Q And that's on the exterior of the vehicle?

8 A That's the exterior of the vehicle.

9 Q Showing you Grand Jury Exhibit Number 24,  
08:35:02 10 just another angle, right?

11 A Yes, and that's the driver side. As you  
12 can see it's fully burned.

13 Q Okay. Now looking towards the interior of  
14 the vehicle, did you notice obvious damage in the  
08:35:15 15 interior?

16 A Yes.

17 Q What was that?

18 A Everything had burned away, all the  
19 material and plastic had burned away.

08:35:21 20 Q Okay. Grand Jury Exhibit Number 25, what  
21 are we looking at there?

22 A That's the picture from the driver's side  
23 door open and everything on the inside was consumed by  
24 the fire.

08:35:33 25 Q Grand Jury Exhibit Number 26, what are we



08:35:36 1 looking at there?

2 A That's a close-up picture again of the  
3 interior of the vehicle fully burned out.

08:35:46 4 Q Okay. Now, when you arrived on scene near  
5 the vehicle, did you see what appeared to be a deceased  
6 body?

7 A Yes, I did see a deceased body, yes.

8 Q And where was that located in relation to  
9 the vehicle?

08:35:56 10 A In relation to the vehicle it was to the  
11 rear of the trunk area.

12 Q And when you arrived was the victim  
13 breathing?

14 A No, the victim was obviously deceased.

08:36:05 15 Q Okay. Showing Grand Exhibit Number 27,  
16 it's pretty graphic, what are we looking at there?

17 A We're looking at the victim's body which  
18 was face down. It had more burn toward the legs as  
19 opposed to the upper body.

08:36:22 20 Q Now, is it typical for you when you respond  
21 to a scene, are you going to touch the body and  
22 manipulate the body?

23 A No.

24 Q Who would?

08:36:30 25 A By law, California law, only the coroner's

08:36:32 1 division is allowed to touch the body.

2 Q So at this scene you did not touch the  
3 body?

4 A No.

08:36:39 5 Q Did eventually the coroner respond to the  
6 scene and the body was eventually removed?

7 A Yes, the coroner division responds and at  
8 that point they do what we call is a body roll.

9 Q And what is a body roll?

08:36:51 10 A The body roll is when we, whatever position  
11 the body is found we roll it, roll the person to the  
12 other side to assess any injuries or address the victim.

13 Q So after the coroner responded and there  
14 was a body roll, as you referred to, did you ultimately  
08:37:08 15 develop information that led you to contact Las Vegas  
16 homicide detectives?

17 A We did.

18 Q Okay. And I'm showing you Grand Jury  
19 Exhibit Number 28. Without getting into what people  
08:37:22 20 told you or just basic reading information, what's the  
21 relevance in this photograph?

22 A The relevance of this photograph, this is a  
23 key card which was around a lanyard around the victim's  
24 neck.

08:37:36 25 Q And let me stop you there. So based on

08:37:39 1 information from the lanyard, is that what led you to  
2 contact Las Vegas homicide detectives?

3 A It's more of the key card itself rather  
4 than the lanyard and the rest of the investigation that  
08:37:53 5 we did that led us to Las Vegas.

6 Q Just generally again in terms of the rest  
7 of the investigation, did information pertaining to the  
8 actual vehicle involved in this event lead you, along  
9 with this information from the key card, to contact  
08:38:07 10 detectives in Las Vegas?

11 A Yes, a combination of both things.

12 Q Okay. And so then eventually after you  
13 contacted detectives in Las Vegas did you actually take  
14 part and help assist in the investigation later on in  
08:38:19 15 Las Vegas?

16 A Yes, we worked from the night into the  
17 morning.

18 Q And did you contact a Detective Mitch  
19 Dosch?

08:38:28 20 A I did.

21 Q All right. Brief indulgence.

22 I have no other questions for this witness  
23 if any members of the Grand Jury do. We have one  
24 question.

08:38:37 25 ///

08:38:37

1 BY A JUROR:

2 Q Detective, based on your knowledge of  
3 burned vehicles or whatever you know about burned  
4 vehicles, did this vehicle look like this fire could  
5 have been set just by lighting a match or would there  
6 have had to have been some kind of an accelerant poured  
7 in there as far as you know?

8 MR. SCARBOROUGH: Go ahead, Detective.

08:38:50

9 THE WITNESS: I'm not an expert but we had  
10 our bombs and arson expert show up who later determined  
11 an accelerant but I wasn't part of that investigation.

08:39:02

12 BY A JUROR:

13 Q Okay. But they did determine that an  
14 accelerant was used in that fire?

08:39:16

15 A I was told by the bombs and arson, yes.

16 MR. SCARBOROUGH: And I just want to  
17 admonish the members of the Grand Jury that the  
18 information that he was told, that is in fact hearsay.

19 A JUROR: Okay.

08:39:25

20 MR. SCARBOROUGH: And also it would require  
21 some form of expert foundation so you can't consider  
22 that for the truth.

23 A JUROR: Okay.

24 MR. SCARBOROUGH: And actually that isn't

08:39:33

25 information he can testify to through his personal

08:39:37 1 knowledge, okay?

2 A JUROR: Okay.

3 MR. SCARBOROUGH: Thank you. Any other  
4 questions from the members of the Grand Jury? Noting no  
08:39:41 5 hands.

6 Thank you, sir.

7 THE FOREPERSON: By law these proceedings  
8 are secret and you are prohibited from disclosing to  
9 anyone anything that transpired before us including any  
08:39:43 10 evidence presented to the Grand Jury, any event  
11 occurring or a statement made in the presence of the  
12 Grand Jury or any information obtained by the Grand  
13 Jury.

14 Failure to comply with this admonition is a  
08:39:43 15 gross misdemeanor punishable up to 364 days in the Clark  
16 County Detention Center and a \$2,000 fine. In addition  
17 you may be held in contempt of court punishable by an  
18 additional \$500 fine and 25 days in the Clark County  
19 Detention Center.

08:39:43 20 Do you understand this admonition?

21 THE WITNESS: I do, sir.

22 THE FOREPERSON: Thank you. You're  
23 excused.

24 THE WITNESS: Thank you and you have a good  
08:40:20 25 day.

08:40:21 1 A JUROR: Thank you.

2 A JUROR: Thank you.

3 MR. SCARBOROUGH: Thank you, sir.

4 And for the record, ladies and gentlemen,

08:40:37 5 Chief Deputy District Attorney Pam Weckerly walked in.

6 She's with me and accompanying me through this

7 presentation for the record. I will now call my next

8 witness.

9 THE FOREPERSON: You do solemnly swear that

08:40:55 10 the testimony that you're about to give upon the

11 investigation now pending before this Grand Jury shall

12 be the truth, the whole truth, and nothing but the

13 truth, so help you God?

14 THE WITNESS: I do.

08:41:06 15 THE FOREPERSON: Thank you. Please be

16 seated.

17 THE WITNESS: Thank you.

18 THE FOREPERSON: You're advised you're here

19 today to give testimony in the investigation pertaining

08:41:12 20 to the offenses of conspiracy to commit robbery, murder

21 with use of a deadly weapon, first degree kidnapping

22 with use of a deadly weapon resulting in substantial

23 bodily harm and robbery with use of a deadly weapon

24 involving Jecory Eles Kemp and Tyeshia Evan James.

08:41:28 25 Do you understand this advisement?

08:41:31 1 THE WITNESS: Yes, I do.

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

4 THE WITNESS: My name is Mitchell,  
08:41:35 5 M-I-T-C-H-E-L-L, Dosch, D-O-S-C-H.

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

08:41:41 10  
11 EXAMINATION

12 BY MR. SCARBOROUGH:

13 Q Good morning, Mr. Dosch. How are you  
14 currently employed?

08:41:48 15 A As a detective with the Las Vegas  
16 Metropolitan Police Department currently assigned to the  
17 homicide section.

18 Q And how long have you been in the homicide  
19 section?

08:41:55 20 A Seven years.

21 Q In your training and experience is it safe  
22 to say that you've responded and investigated many  
23 scenes involving the use of a possible firearm?

24 A That's correct.

08:42:06 25 Q Have you also responded to many scenes with

08:42:08 1 a fire or arson component?

2 A Yes.

08:42:19 3 Q Okay. Now, I want to direct your attention  
4 to December 30th, 2019. Did you have occasion to become  
5 involved in a homicide investigation alleged to have  
6 occurred around that time?

7 A Not on the 30th. We actually became  
8 involved as members of the Las Vegas Metropolitan Police  
9 Department on December 31st through contact from the San  
08:42:31 10 Bernardino County Sheriff's Department.

11 Q And just walk the members of the Grand Jury  
12 through how that came to be, how did you become  
13 involved?

14 A I have a partner, his name is Breck,  
08:42:41 15 B-R-E-C-K, Hodson, H-O-D-S-O-N, and we work as a team.  
16 On that particular day, again that being December 31st,  
17 2019, Detective Hodson received contact from the San  
18 Bernardino County Sheriff's Department homicide section  
19 requesting information on a death investigation they  
08:43:00 20 were actively investigating.

21 Q All right. Ultimately based on that  
22 contact from San Bernardino, did you become affiliated  
23 or direct your attention specifically to an address  
24 located at 6555 Boulder Highway?

08:43:15 25 A Yes.



08:43:15 1 Q And specifically was that address 11309?

2 A Yes, 11309 actually is the building, number  
3 11, and the apartment, 309.

4 Q What is the significance of that address?

08:43:28 5 A That ended up being the primary crime  
6 scene.

7 Q So when you were directed to that address  
8 did you ultimately respond to that physical scene?

9 A Yes, I did.

08:43:38 10 Q When you responded to that physical scene,  
11 what became apparently or abundantly relevant to you as  
12 you walked the exterior of the building leading up to  
13 the apartment?

14 A Just in context, the 309 apartment, again  
08:43:52 15 in building 11, is located on the third floor which is  
16 the top floor of that particular building located in the  
17 northwest corner. To get to apartment 309 you must go  
18 up one of two stairwells, the stairwell that's  
19 immediately outside of apartment 309 and then around  
08:44:10 20 that building there was an apparent blood trail that  
21 actually looked like it initiated just outside of  
22 apartment 309, went all the way down to the ground  
23 floor, around the building into the parking lot.

24 Q Okay. So as I approach I am showing you  
08:44:26 25 Grand Jury Exhibits 6 through 15. If you could briefly

08:44:29 1 flip through those, please.

2 A I am familiar with these photos.

3 Q And I'm sorry, Detective, I forgot one  
4 more. Showing you Grand Jury Exhibit 5, does that  
08:44:58 5 photograph look familiar to you as well?

6 A It does.

7 Q So after looking at Grand Jury Exhibits 5  
8 through 15, do you recognize what's depicted in those  
9 photographs?

08:45:07 10 A I do.

11 Q And how do you recognize what is depicted  
12 in them?

13 A Because I've been there and I've had  
14 experience at that particular location.

08:45:14 15 Q Okay. And do these photographs fairly and  
16 accurately represent the scene at the apartment building  
17 11 and apartment 309 as you saw it when you responded  
18 that day?

19 A Yes, they do.

08:45:27 20 Q Including the exterior portion leading up  
21 and the stairwell?

22 A Correct.

23 Q And is that location here in Clark County,  
24 Las Vegas, Nevada?

08:45:33 25 A It is.

08:45:35 1 Q Okay. Showing you or the members of the  
2 Grand Jury Grand Jury Exhibit Number 5, just walking  
3 through what are we looking at here?

08:45:46 4 A That is the number 11 which identifies that  
5 particular building as being building 11 within this  
6 complex.

7 Q Okay. Showing you Grand Jury Exhibit  
8 Number 6, what are we looking at there?

08:45:57 9 A That's an up-close photograph of the front  
10 door to apartment 11309.

11 Q Showing you Grand Jury Exhibit Number 7,  
12 you had alluded to a blood trail earlier. Is that what  
13 we're looking at here?

08:46:09 14 A Correct, that appears to be the end  
15 location. This is the east parking lot and if you'll  
16 notice to the left in the upper left-hand corner that is  
17 the north end of building 11.

18 Q Thank you. Showing you Grand Jury Exhibit  
19 Number 8, what are we looking at there?

08:46:24 20 A That's an up-close photograph of that last  
21 photo but looking almost 90 degrees down where at the  
22 end of that parking space it's apparent blood on the  
23 asphalt surface.

08:46:36 24 Q Okay. Showing you Grand Jury Exhibit  
25 Number 9 to give you perspective, is that apparent blood

08:46:41 1 splatter or trail located near like the trunk of the  
2 vehicle that would be located in that parking space?

3 A Generally speaking, yes, with the idea that  
4 most vehicles park front in.

08:46:51 5 Q Showing you Grand Jury Exhibit Number 11,  
6 what are we looking at here?

7 A Now, this photograph is the person, we're  
8 standing at the north end of building 11 looking toward  
9 the east, that same parking lot. So whereas those other  
08:47:04 10 photographs were somebody from the east looking toward  
11 the west, this is the west looking towards the east.

12 Q And what is significant, I know we've been  
13 going over it, what is significant in terms of the  
14 yellow cones that are placed in --

08:47:16 15 A The yellow cones are placed there by crime  
16 scene analysts to document either apparent footwear or  
17 blood or apparent blood.

18 Q Showing you Grand Jury Exhibit Number 12,  
19 are we continuing along that same path?

08:47:30 20 A Yes. Now we are on the west side of  
21 building 11 and this is at the ground floor to the  
22 stairwell.

23 Q Okay. Eventually did you make your way up  
24 the stairwell and see apparent blood on the stairs too?

08:47:41 25 A Yes.

08:47:41 1 Q Okay. Showing you Grand Jury Exhibit  
2 Number 13, what are we looking at here?

3 A More of that same stairwell.

4 Q Okay. And just to orient the members of  
08:47:50 5 the Grand Jury, that looks like it's coming from the  
6 landing going back down towards the ground?

7 A That is correct.

8 Q Okay. And another photograph from the same  
9 angle, Grand Jury Exhibit Number 14?

08:48:00 10 A Just more of the same stairwell in that  
11 same prospective looking downward.

12 Q Okay. And more yellow cones or orange  
13 cones just establishing demarcations of the trail?

14 A Correct. And this is actually the second  
08:48:11 15 floor looking to the ground floor.

16 Q Perfect. Showing you Grand Jury Exhibit  
17 Number 15, what are we looking at there?

18 A That's up at the top of the second floor  
19 rounding to the walkway if a person were then to  
08:48:27 20 continue up to the third floor.

21 Q Okay. Now, eventually based on that trail,  
22 do you ultimately draft and obtain a search warrant for  
23 that apartment?

24 A Yes, my partner actually was the affiant in  
08:48:40 25 that search warrant.

08:48:41 1 Q Okay. And then did you eventually execute  
2 the search warrant on the apartment?

3 A We did.

08:48:48 4 Q Now, when you made entry into the  
5 apartment, did a lot of factors and physical evidence  
6 become abundantly relevant to the investigation?

7 A Immediately.

8 Q So now I am showing you 16. I'm sorry,  
9 okay, so this is Grand Jury Exhibit Number 10. Do you  
08:49:05 10 recognize that photograph?

11 A I do.

12 Q Okay. And how do you recognize that  
13 photograph?

14 A This is a photograph taken inside the  
08:49:11 15 apartment, again that being 11309.

16 Q Okay. And then just that was a little out  
17 of order. So now I'm going to show you 16, 17, 18 and  
18 19. If you could look through those, please. Okay.  
19 And do you recognize what is depicted in all those  
08:49:36 20 photographs?

21 A I do.

22 Q Okay. And how do you recognize them?

23 A Because I have been there.

24 Q Okay. And do those fairly and accurately  
08:49:42 25 represent the scene as the interior of the apartment

08:49:44 1 that you made entry based on the search warrant?

2 A And a small portion of the exterior of the  
3 apartment, yes.

4 Q Perfect. Okay. Showing you Grand Jury  
08:49:52 5 Exhibit Number 16, what are we looking at there?

6 A So this is standing on the landing outside  
7 of apartment 11309. 11309 is the door to the left and  
8 that is a downward photo looking at the landing.

9 Q Okay. Now, just briefly, what would you  
08:50:11 10 say the layout just generally of that apartment is?

11 A It's a very small apartment. It consists  
12 of a living room, a kitchen, a bedroom and a bathroom.

13 Q Okay. So showing you Grand Jury Exhibit  
14 Number 19, what are we looking at there?

08:50:26 15 A This is an interior shot looking from west  
16 to east because the front door to the apartment is a  
17 west facing door. So when you come in you would be  
18 standing in the living room, which I don't know if the  
19 folks can see it, but on the lower portion of that  
08:50:41 20 photograph you see an area that's demarcated with carpet  
21 and then you see the tile which represents the kitchen.

22 Q Okay. What became very relevant in this  
23 area?

24 A There's multiple things that are quite  
08:50:55 25 relevant to that photograph, although not well depicted,

08:50:58

1 is that floor looks very clean and in fact it was so  
2 clean that you could see some white residue. When I,  
3 along with the other entry team, made entry into this  
4 apartment, I was hit with the overwhelming stench of

08:51:11

5 cleaning material. Then getting toward the kitchen  
6 which has the tile floor, you could see that the tile  
7 floor was very clean again with the white residue that  
8 was on there. And then on the far side where the  
9 appliances are there was apparent blood.

08:51:29

10 Q Okay. So as we're in the kitchen now,  
11 Grand Jury Exhibit Number 18, what are we looking at in  
12 that photograph?

08:51:42

13 A So obviously the previous photo didn't have  
14 any stickers. Those stickers were placed there by crime  
15 scene analysts but those stickers represent apparent  
16 footwear.

17 Q And Grand Jury Exhibit 17, what are we  
18 looking at here and why are the stickers relevant?

08:51:55

19 A The stickers are relevant, and again they  
20 were placed there by crime scene analysts, they are  
21 documenting the apparent blood that was found on the  
22 cabinets and on the appliances.

23 Q Okay. In an area of the apartment was  
24 there apparent blood also found on a light fixture?

08:52:09

25 A Yes. If you were to look 90 degrees



08:52:11 1 straight up in that kitchen, there is a dome and there  
2 was apparent blood on the exterior of the light.

3 Q Okay. And alluding back to the  
4 overwhelming stench of what you said to be cleaning  
08:52:23 5 products apparently, showing you Grand Jury Exhibit  
6 Number 10, what are we looking at there?

7 A They're cleaning materials.

8 Q So based on the search of the apartment and  
9 all the steps in your investigation, did you ultimately  
08:52:33 10 develop two suspects?

11 A We did.

12 Q Okay. And who were they?

13 A They were Jecory Kemp, that's J-E-C-O-R-Y,  
14 and Tyeshia James.

08:52:46 15 Q Showing you Grand Jury Exhibit Numbers 3  
16 and 4, do you recognize the people depicted in those  
17 photographs?

18 A I do. It's Mr. Kemp and Miss James.

19 Q And so for the record Grand Jury Exhibit  
08:52:57 20 Number 3 would be Mr. Kemp and Grand Jury Exhibit  
21 Number 4 would be Miss James. Ultimately did you become  
22 aware that Mr. Kemp and Miss James were apprehended?

23 A Yes.

24 Q Okay. And then eventually did you and  
08:53:09 25 another detective subsequently make contact with both of

08:53:12 1 these individuals?

2 A We did.

3 Q Okay. And then were they read Miranda?

4 A They were.

08:53:17 5 Q Okay. And did they acknowledge their  
6 rights and wish to speak with detectives?

7 A They did.

8 Q Now, showing you Grand Jury Exhibit  
9 Number 3, is that Mr. Kemp?

08:53:26 10 A It is.

11 Q Okay. And as stated before in the  
12 instructions, ladies and gentlemen, there is the Bruton  
13 case law where you are only to take the evidence of  
14 someone's statement as evidence against them, not  
08:53:38 15 against any other co-defendant or any other  
16 co-conspirator. I'm about to introduce a statement by  
17 which you are only to consider the evidence against  
18 Mr. Kemp, okay?

19 So when you interviewed Mr. Kemp, walk us  
08:53:52 20 through what he told you about his involvement in the  
21 incident and maybe any subsequent plans involving the  
22 incident.

23 A Mr. Kemp appeared to be forthright in his  
24 statement. He basically laid out what led to the victim  
08:54:09 25 getting killed inside the apartment that he was staying

08:54:12 1 at.

2 Q Okay. Now, did he admit to a general plan  
3 in order to rob the alleged victim in this incident?

4 A Yes.

08:54:23 5 Q And what was that?

6 A The plan was developed either a day to two  
7 days before the actual murder which occurred on

8 December 30th, 2019, and the plan was to purchase or  
9 request a large amount of marijuana which would then be

08:54:42 10 sold to the occupants of his apartment, that being  
11 11309. When the victim arrived with the marijuana it  
12 was their intent to rob him of the marijuana and not  
13 make payment for the marijuana they had requested.

14 Q How did Mr. Kemp tell you the event  
08:55:02 15 unfolded once the victim arrived at the apartment?

16 A On that particular day the victim,  
17 Mr. Anderson, came to the door, was let in, the door was  
18 closed behind him. Mr. Anderson moved to the kitchen  
19 area after dropping down a backpack. Inside the

08:55:21 20 backpack was purportedly one of the two pounds of  
21 marijuana that was sought in the drug deal. Another  
22 individual within the residence opened up the backpack,  
23 examined and noticed that there was a pound short. It

24 was then discussed that the other pound would be made  
08:55:40 25 available as the money was paid. And shortly thereafter

08:55:44 1 some individuals who were hidden in the bedroom, again,  
2 the way that the apartment is set up, you have a living  
3 room followed by a kitchen, there was a doorway that  
4 separates the southern half of the apartment from the  
08:55:56 5 northern half which contains the bathroom and the  
6 bedroom, two individuals were laid off on that side and  
7 at one point they came out and the robbery is now  
8 underway.

9 Q So as the robbery was underway, can you  
08:56:10 10 describe what Mr. Kemp told you about the interaction  
11 between the victim and the parties now in the living  
12 room?

13 A Yes. Upon Mr. Anderson seeing these  
14 individuals who emerged suddenly from the bedroom,  
08:56:23 15 Mr. Anderson purportedly pulled a firearm and kept it by  
16 his side, it sounds like it was in his right hand and  
17 pointed downward. That caused another individual within  
18 the apartment to produce a firearm and pointed it at  
19 Mr. Anderson.

08:56:39 20 Q Then what did Mr. Kemp say in relation to a  
21 potential shooting?

22 A That's when the shooting occurred. At  
23 least one round was fired which appeared to strike  
24 Mr. Anderson.

08:56:50 25 Q Now, did Mr. Kemp talk to you about what

08:56:52 1 the parties did after the gunshot went off?

2 A Yes. There were multiple people inside the  
3 apartment at that particular time and some of the  
4 individuals had purportedly gone through the victim's  
08:57:04 5 pockets and left the apartment. Eventually Mr. Kemp and  
6 Miss James left the apartment and returned to the  
7 apartment where they initiated the process of cleaning  
8 up the apartment and removing his body from the  
9 residence.

08:57:21 10 Q Okay. And based on -- I'm sorry for  
11 interrupting, Detective.

12 A No, that's it.

13 Q Sorry to interrupt. And now based on the  
14 statements of Mr. Kemp and what we alluded to earlier,  
08:57:28 15 was there physical evidence that corroborated statements  
16 made by Mr. Kemp in terms of cleaning up the scene?

17 A Yes, as stated previously it appears that  
18 they had done a great deal of or put forth a great deal  
19 of effort to clean the tile but unfortunately had missed  
08:57:44 20 a lot of the walls and even the ceiling.

21 Q Now, did eventually Mr. Kemp relay to you  
22 attempts to move and relocate the victim's body?

23 A Yes.

24 Q And what did he tell you him and the other  
08:57:58 25 people did?

08:57:58

1           A       The first thing that they had to do was  
2 prepare the body to be moved, meaning that they had  
3 placed it in trash bags. The second thing that had to  
4 be done was that Mr. Anderson is a fairly large statured  
08:58:12 5 individual and to move him, at one point there was a  
6 plan to utilize a table within the apartment where they  
7 broke off a couple legs and almost in a gurney-like  
8 fashion they would utilize that table to carry the body  
9 out. That plan was scrapped and eventually his body was  
08:58:31 10 attached to a small shopping cart which was then used to  
11 bring the body down those flights of stairs and into the  
12 parking lot and into the awaiting vehicle.

08:58:47

13           Q       So what did Mr. Kemp reveal to you about  
14 that specific vehicle where they transported the  
15 victim's body?

08:59:07

16           A       So Mr. Kemp had done two things with the  
17 victim's vehicle. He had a 1998 Lexus four-door sedan.  
18 After the murder Mr. Anderson's vehicle was moved to a  
19 different location outside of the apartment complex to,  
08:59:21 20 in his mind, to take the victim's vehicle away, to not  
21 have it necessarily attached to the apartment complex,  
22 but when it was determined that they were going to  
23 utilize the victim's vehicle for the purposes of  
24 disposing of the body, Mr. Kemp went and retrieved  
25 Mr. Anderson's car, brought it back to the parking lot

08:59:24 1 near building 11 and Mr. Anderson's body was loaded into  
2 the trunk of his car.

3 Q Where did you ultimately learn from  
4 Mr. Kemp where that car and that body ended up?

08:59:36 5 A Mr. Anderson, excuse me, Mr. Kemp talked  
6 about how he drove the victim's car from the apartment  
7 complex all the way out to that area known as Interstate  
8 15 and Field Road which is in San Bernardino County.

9 Q Okay. And, Detective, you and I spoke  
08:59:53 10 before and you had indicated you had actually made a  
11 visit out to that scene in San Bernardino, correct?

12 A Yes, several weeks later my partner and I  
13 went out there so we could examine the scene obviously  
14 minus a vehicle and body.

09:00:06 15 Q Okay. So showing you Grand Jury Exhibit  
16 Number 21, an aerial view, if I was represent to you  
17 that in the top maybe middle of the photograph would be  
18 the scene, is that the scene that you visited?

19 A It was.

09:00:19 20 Q And that's in the San Bernardino area?

21 A Correct.

22 Q Okay. Now, did Mr. Kemp talk to you about  
23 what happened when they got to that area of the San  
24 Bernardino scene?

09:00:31 25 A Yes. Once the vehicle was in place,

09:00:34 1 probably about a hundred to 200 yards off of the  
2 freeway, obviously it's pitch black, the car was doused  
3 with gasoline and set on fire.

4 Q Okay. And did he tell you about any other  
09:00:48 5 event in terms of making arrangements for another person  
6 to pick him up?

7 A Yes. When they were driving the car down  
8 to California Mr. Kemp was actually following another  
9 vehicle where another individual involved in this  
09:01:05 10 incident was riding.

11 Q And what happened with that other vehicle?

12 A He claimed that it had left and that  
13 another vehicle was summoned to pick them up and bring  
14 them all back to Las Vegas.

09:01:19 15 Q Okay. So you had also made reference that  
16 you had come into contact with Tyeshia, correct?

17 A Correct.

18 Q Okay. And then we had asked before, was  
19 she read Miranda?

09:01:31 20 A She was.

21 Q And did she acknowledge those and still  
22 wish to speak with detectives?

23 A Yes, she did.

24 Q Okay. Showing you Grand Jury Exhibit  
09:01:38 25 Number 4, that's Tyeshia, correct?



09:01:40 1 A Yes, it is.

2 Q When you spoke with her did she too reveal  
3 information about the event, her involvement and her  
4 role?

09:01:48 5 A Yes.

6 Q Okay. Just briefly and generally, so what  
7 did she reveal to you in terms of her involvement in the  
8 initial set-up of the victim?

9 A Initially Miss James lied about having any  
09:02:02 10 role and actually lied about even being on the property  
11 grounds on the day that the murder occurred, but  
12 eventually her story changed and she recounted a very  
13 similar story minus the movement of the body to  
14 California as her boyfriend provided to us.

09:02:23 15 Q Okay. And did she indicate that she in  
16 fact was the renter of that 11309 apartment?

17 A Yes, she had a lease for it.

18 Q Okay. And when was the lease, according to  
19 her, in effect?

09:02:36 20 A I believe, according to lease paperwork,  
21 she had gotten the apartment in mid to late November and  
22 it was, the lease was set to expire either on the 4th or  
23 5th of January of 2020.

24 Q And what was her recounting of the actual  
09:02:54 25 event where there was the shooting?

09:02:55 1 A She had talked about the robbery being  
2 planned either a day or two before. At the time of the  
3 murder she and another female were asked to leave the  
4 apartment before Mr. Anderson arrived at the apartment  
09:03:11 5 and then later on they heard about what had happened and  
6 set forth a plan to clean up the apartment and help move  
7 the body from the apartment downstairs into the awaiting  
8 vehicle.

9 Q So she admitted to her role in terms of  
09:03:24 10 cleaning up the apartment and a possible transportation  
11 of the body?

12 A She is not part of the transportation of  
13 the body to California, but she did have a role in  
14 taking the body out of the apartment, down the sets of  
09:03:38 15 stairs and to the awaiting vehicle in the Sienna Suites  
16 apartments.

17 Q So after speaking with those two people,  
18 are you familiar just generally kind of the autopsy  
19 procedures maybe in San Bernardino?

09:03:53 20 A Yes.

21 Q Is that going to happen right away or did  
22 the autopsy in this event take place sometime after?

23 A Yes, contrasting it to the Clark County  
24 Coroner's office, we typically have our autopsies within  
09:04:06 25 24 to 48 hours after the event. San Bernardino appears

09:04:09 1 to be a much busier, much larger county, and the autopsy  
2 for Mr. Anderson did not occur until January 21st of  
3 2020 which we attended.

4 Q Okay. That's where I was getting to next.  
09:04:21 5 So when you attended the autopsy were you able to  
6 determine the identity of the named victim?

7 A Yes, he had been previously positively  
8 identified as Marion B. Jabbar, J-A-B-B-A-R, Anderson.

9 Q Did people colloquially refer to him, and  
09:04:40 10 by people I mean the parties that you interviewed, as  
11 A.J.?

12 A Yes.

13 Q Okay. So any references to A.J. would have  
14 meant the victim in this instance?

09:04:48 15 A That's correct.

16 Q Okay. You ultimately attended the autopsy  
17 and identified that victim, correct?

18 A He was identified — the way that they have  
19 it set up is that he had already been positively  
09:04:58 20 identified several days, weeks prior to the actual  
21 autopsy itself.

22 Q Now, when you attended the autopsy did you  
23 see any obvious wounds to the victim?

24 A Yes.

09:05:10 25 Q Okay. And what did you see?

09:05:12 1 A If I could just say very easily there was  
2 an apparent gunshot wound to his upper left chest and  
3 that there was quite a bit of thermal damage to his  
4 body, specifically the lower half.

09:05:24 5 Q Okay. Showing you Grand Jury Exhibits 29  
6 through 30, do you recognize what is depicted in those  
7 two photographs?

8 A I do.

09:05:36 9 Q Okay. And how do you recognize what is  
10 depicted?

11 A The first photo is Mr. Anderson at the time  
12 of the autopsy and the second photo is an up-close  
13 photograph of the apparent gunshot wound to his upper  
14 left chest.

09:05:48 15 Q Okay. And just briefly, it is a graphic  
16 image, ladies and gentlemen, showing you Grand Jury  
17 Exhibit Number 29, is that the victim as he lay in the  
18 autopsy?

19 A It is.

09:05:57 20 Q And just to briefly walk through, you had  
21 indicated there was thermal damage and burning. Do we  
22 see that depicted in this photograph?

23 A Yes, especially on that left arm and then  
24 his lower half of his body, fire damage.

09:06:09 25 Q And then lastly Grand Jury Exhibit Number

09:06:11 1 30, what are we looking at there?

2 A That's a 90-degree photograph or  
3 practically a 90-degree photograph of the apparent  
4 gunshot wound to his upper left chest.

09:06:20 5 Q Okay. Brief indulgence.

6 I have no other questions for this witness  
7 if any members of the jury do.

8 BY A JUROR:

9 Q Was Mr. Kemp one of the individuals that  
09:06:30 10 was in the bedroom at the apartment hiding?

11 A No, he was not.

12 Q Okay.

13 MR. SCARBOROUGH: Any other questions from  
14 the members of the Grand Jury?

09:06:41 15 A JUROR: Quick question.

16 MR. SCARBOROUGH: Yes.

17 BY A JUROR:

18 Q Was Tyeshia present during the actual  
19 shooting?

09:06:46 20 A No, she indicated to us that she had left  
21 the apartment prior to the murder and Mr. Kemp had  
22 stated the same thing.

23 Q Thank you.

24 BY MR. SCARBOROUGH:

09:06:55 25 Q Just to follow up on that, Tyeshia did

09:06:58 1 admit to you her involvement in the planning and  
2 bringing that victim over to the apartment, correct?

3 A Yes, she talked about the planning again  
4 which occurred either one to two days prior to the  
09:07:07 5 incident.

6 Q Okay.

7 Any other questions from the members of the  
8 Grand Jury? Noting no hands.

9 THE FOREPERSON: By law these proceedings  
09:07:13 10 are secret and you are prohibited from disclosing to  
11 anyone anything that transpired before us including any  
12 evidence presented to the Grand Jury, any event  
13 occurring or a statement made in the presence of the  
14 Grand Jury or any information obtained by the Grand  
09:07:13 15 Jury.

16 Failure to comply with this admonition is a  
17 gross misdemeanor punishable up to 364 days in the Clark  
18 County Detention Center and a \$2,000 fine. In addition  
19 you may be held in contempt of court punishable by an  
09:07:13 20 additional \$500 fine and 25 days in the Clark County  
21 Detention Center.

22 Do you understand this admonition?

23 THE WITNESS: I do.

24 THE FOREPERSON: Thank you. You're  
09:07:48 25 excused.

09:07:49 1 A JUROR: Thank you.

2 MR. SCARBOROUGH: Ladies and gentlemen,  
3 that will conclude my presentation. Before I walk out I  
4 just want to briefly remind you of the Bruton case law  
09:07:57 5 that I had indicated. At this point I will submit it  
6 for your deliberation.

7 A JUROR: I have a question.

8 MR. SCARBOROUGH: Yes, sir.

9 A JUROR: 15 is very much traveled, I  
09:08:07 10 travel it a lot going to California. If there's a fire  
11 there I would call it in. Was the fire department  
12 called to put it out or anything like that?

13 MR. SCARBOROUGH: So this is a question for  
14 a witness that I can't answer.

09:08:18 15 A JUROR: Okay.

16 MR. SCARBOROUGH: If you would have had  
17 that for the witness I would have allowed him to answer.  
18 I can't answer that question. It's not my personal  
19 knowledge, sorry about that.

09:08:28 20 Any other questions though preliminarily,  
21 anything else before I submit for deliberation? Thank  
22 you.

23 (At this time, all persons, except the  
24 members of the Grand Jury, exited the room at 9:08 and  
09:08:32 25 returned at 9:21.)

09:21:04

1 THE FOREPERSON: Mr. District Attorney, by  
2 a vote of 12 or more Grand Jurors a true bill has been  
3 returned against the defendants Jecory Eles Kemp and  
4 Tyeshia Evan James charging the crimes of conspiracy to  
5 commit robbery, murder with use of a deadly weapon,  
6 first degree kidnapping with use of a deadly weapon  
7 resulting in substantial bodily harm and robbery with  
8 use of a deadly weapon.

09:21:14

9 We instruct you to prepare an Indictment in  
10 conformance with the proposed Indictment previously  
11 submitted to us.

09:21:26

12 MR. SCARBOROUGH: Thank you, sir.

13 (Proceedings concluded.)

14 --oo0oo--

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09:21:31

1

**REPORTER'S CERTIFICATE**

2

3

**STATE OF NEVADA** )

: ss

4

**COUNTY OF CLARK** )

09:21:31

5

6

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

7

certify that I took down in Shorthand (Stenotype) all of

8

the proceedings had in the before-entitled matter at the

9

time and place indicated and thereafter said shorthand

09:21:31

10

notes were transcribed at and under my direction and

11

supervision and that the foregoing transcript

12

constitutes a full, true, and accurate record of the

13

proceedings had.

14

Dated at Las Vegas, Nevada,

09:21:31

15

February 17, 2020.

16

17

/S/DONNA J. MCCORD

18

Donna J. McCord, CCR 337

19

09:21:31

20

21

22

23

24

09:21:31

25

## 1 AFFIRMATION

2 Pursuant to NRS 239B.030

3  
4 The undersigned does hereby affirm that the preceding  
5 TRANSCRIPT filed in GRAND JURY CASE NUMBER 19CGJ007A-B:  
6  
78 X Does not contain the social security number of any  
9 person,

10 -OR-

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

-OR-

15 B. For the administration of a public program  
16 or for an application for a federal or  
17 state grant.18 /S/DONNA J. MCCORD  
19 SignatureFebruary 17, 2020  
Date20 Donna J. McCord  
21 Print Name22 Official Court Reporter  
23 Title  
24  
25

<b>A JUROR:</b> [12] 5/14 5/15 18/18 18/22 19/1 19/25 20/1 43/14 44/25 45/6 45/8 45/14 <b>BY A JUROR:</b> [4] 17/25 18/11 43/7 43/16 <b>BY MR.</b> <b>SCARBOROUGH:</b> [3] 8/9 21/11 43/23 <b>MR. SCARBOROUGH:</b> <b>[15]</b> 5/12 5/16 18/7 18/15 18/19 18/23 19/2 20/2 43/12 43/15 45/1 45/7 45/12 45/15 46/11 <b>THE FOREPERSON:</b> <b>[13]</b> 5/7 7/6 7/12 7/23 19/6 19/21 20/8 20/14 20/17 21/1 44/8 44/23 45/25 <b>THE WITNESS:</b> [11] 7/11 7/22 7/25 18/8 19/20 19/23 20/13 20/16 20/25 21/3 44/22	11/14 11/18 <b>200 yards</b> [1] 38/1 <b>2019</b> [3] 22/4 22/17 33/8 <b>2020</b> [7] 1/15 2/1 5/1 39/23 41/3 47/15 48/18 <b>21</b> [4] 3/4 4/14 12/12 37/16 <b>21st</b> [1] 41/2 <b>22</b> [2] 4/14 13/18 <b>23</b> [12] 4/6 4/7 4/7 4/8 4/8 4/9 4/9 4/10 4/10 4/11 4/15 14/1 <b>239B.030</b> [1] 48/2 <b>24</b> [4] 4/6 4/15 14/9 40/25 <b>25</b> [4] 4/16 14/20 19/18 44/20 <b>26</b> [2] 4/16 14/25 <b>27</b> [2] 4/17 15/15 <b>28</b> [9] 4/11 4/12 4/12 4/13 4/17 10/24 11/4 11/14 16/19 <b>29</b> [3] 4/18 42/5 42/17	18/3 20/10 32/16 32/20 34/10 34/25 36/13 37/6 37/22 38/1 38/4 39/3 39/9 39/10 40/1 40/5 44/3 45/19 <b>abundantly</b> [2] 23/11 28/6 <b>accelerant</b> [3] 18/6 18/11 18/14 <b>accompanying</b> [1] 20/6 <b>according</b> [2] 39/18 39/20 <b>accurate</b> [1] 47/12 <b>accurately</b> [4] 5/6 11/14 24/16 28/24 <b>acknowledge</b> [2] 32/5 38/21 <b>actively</b> [1] 22/20 <b>actual</b> [5] 17/8 33/7 39/24 41/20 43/18 <b>actually</b> [10] 17/13 18/24 22/7 23/2 23/21 27/14 27/24 37/10 38/8 39/10 <b>addition</b> [2] 19/16 44/18 <b>additional</b> [2] 19/18 44/20 <b>address</b> [5] 16/12 22/23 23/1 23/4 23/7 <b>administration</b> [1] 48/15 <b>admit</b> [2] 33/2 44/1 <b>admitted</b> [1] 40/9 <b>admonish</b> [1] 18/17 <b>admonition</b> [4] 19/14 19/20 44/16 44/22 <b>advised</b> [2] 7/15 20/18 <b>advisement</b> [2] 7/22 20/25 <b>aerial</b> [3] 11/21 12/13 37/16 <b>affiant</b> [1] 27/24 <b>affiliated</b> [1] 22/22 <b>affirm</b> [1] 48/4 <b>affirmance</b> [1] 6/3 <b>AFFIRMATION</b> [1] 48/1 <b>AFORESAID</b> [1] 1/4 <b>after</b> [10] 13/5 16/13 17/12 24/7 33/19 35/1 36/18 40/17 40/22 40/25 <b>again</b> [11] 12/13 12/19 15/2 17/6 22/16 23/14 28/15 30/7 30/19 34/1 44/3 <b>against</b> [6] 6/18 6/19 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<b>\$</b> <b>\$2,000</b> [2] 19/16 44/18 <b>\$500</b> [2] 19/18 44/20 - --oo0oo [1] 46/14 -OR [2] 48/10 48/14 / /S/DONNA [2] 47/17 48/18 <b>1</b> <b>10</b> [12] 4/8 4/13 4/14 4/14 4/15 4/15 4/16 4/16 4/17 4/17 28/9 31/6 <b>11</b> [11] 4/9 23/3 23/15 24/17 25/4 25/5 25/17 26/5 26/8 26/21 37/1 <b>11309</b> [8] 23/1 23/2 25/10 28/15 29/7 29/7 33/11 39/16 <b>12</b> [3] 4/9 26/18 46/2 <b>13</b> [5] 1/15 2/1 4/10 5/1 27/2 <b>14</b> [2] 4/10 27/9 <b>15</b> [10] 4/11 9/24 10/15 10/18 11/22 23/25 24/8 27/17 37/8 45/9 <b>16</b> [4] 4/11 28/8 28/17 29/5 <b>17</b> [5] 4/12 28/17 30/17 47/15 48/18 <b>18</b> [3] 4/12 28/17 30/11 <b>19</b> [3] 4/13 28/18 29/14 <b>1998</b> [1] 36/17 <b>19CGJ007A</b> [1] 5/19 <b>19CGJ007A-B</b> [2] 1/9 48/5 <b>2</b> <b>20</b> [5] 4/13 10/24 11/4	<b>3</b> <b>30</b> [3] 4/18 42/6 43/1 <b>309</b> [6] 23/3 23/14 23/17 23/19 23/22 24/17 <b>30th</b> [4] 9/19 22/4 22/7 33/8 <b>31</b> [2] 4/5 4/5 <b>31st</b> [3] 9/19 22/9 22/16 <b>337</b> [3] 1/25 47/6 47/18 <b>364</b> [2] 19/15 44/17 <b>4</b> <b>42</b> [2] 4/18 4/18 <b>48</b> [1] 40/25 <b>4th</b> [1] 39/22 <b>5</b> <b>5th</b> [1] 39/23 <b>6</b> <b>6555</b> [1] 22/24 <b>656.250</b> [1] 48/13 <b>8</b> <b>8:25</b> [1] 1/16 <b>9</b> <b>90</b> [2] 25/21 30/25 <b>90-degree</b> [2] 43/2 43/3 <b>9:08</b> [1] 45/24 <b>9:21</b> [1] 45/25 <b>A</b> <b>A-L-V</b> [1] 8/2 <b>A-R-A-D-O</b> [1] 8/3 <b>A-R-T-U-R-O</b> [1] 8/2 <b>A.J</b> [2] 41/11 41/13 <b>a.m</b> [1] 1/16 <b>ability</b> [1] 5/7 <b>able</b> [1] 41/5 <b>about</b> [20] 6/12 7/8	<b>addition</b> [2] 19/16 44/18 <b>additional</b> [2] 19/18 44/20 <b>address</b> [5] 16/12 22/23 23/1 23/4 23/7 <b>administration</b> [1] 48/15 <b>admit</b> [2] 33/2 44/1 <b>admitted</b> [1] 40/9 <b>admonish</b> [1] 18/17 <b>admonition</b> [4] 19/14 19/20 44/16 44/22 <b>advised</b> [2] 7/15 20/18 <b>advisement</b> [2] 7/22 20/25 <b>aerial</b> [3] 11/21 12/13 37/16 <b>affiant</b> [1] 27/24 <b>affiliated</b> [1] 22/22 <b>affirm</b> [1] 48/4 <b>affirmance</b> [1] 6/3 <b>AFFIRMATION</b> [1] 48/1 <b>AFORESAID</b> [1] 1/4 <b>after</b> [10] 13/5 16/13 17/12 24/7 33/19 35/1 36/18 40/17 40/22 40/25 <b>again</b> [11] 12/13 12/19 15/2 17/6 22/16 23/14 28/15 30/7 30/19 34/1 44/3 <b>against</b> [6] 6/18 6/19 32/14 32/15 32/17 46/3 <b>ahead</b> [1] 18/8 <b>aka</b> [1] 1/10 <b>all</b> [18] 6/2 6/3 6/6 10/25 11/10 11/10 13/12 14/4 14/18 17/21 22/21 23/22 28/19 31/9 37/7 38/14 45/23 47/7 <b>alleged</b> [3] 9/20 22/5 33/3	<b>allowed</b> [2] 16/1 45/17 <b>alluded</b> [2] 25/12 35/14 <b>alluding</b> [1] 31/3 <b>almost</b> [2] 25/21 36/7 <b>along</b> [3] 17/8 26/19 30/3 <b>already</b> [2] 13/14 41/19 <b>also</b> [8] 2/21 6/4 6/10 6/13 18/20 21/25 30/24 38/15 <b>although</b> [1] 29/25 <b>ALVARADO</b> [4] 3/3 8/2 8/4 8/11 <b>am</b> [4] 8/18 23/24 24/2 28/8 <b>amongst</b> [1] 9/8 <b>amount</b> [1] 33/9 <b>analysts</b> [3] 26/16 30/15 30/20 <b>Anderson</b> [12] 33/17 33/18 34/13 34/15 34/19 34/24 36/4 37/5 40/4 41/2 41/8 42/11 <b>Anderson's</b> [3] 36/18 36/25 37/1 <b>ANEDA</b> [1] 2/10 <b>angle</b> [2] 14/10 27/9 <b>another</b> [11] 6/19 14/10 27/8 31/25 33/21 34/17 38/5 38/8 38/9 38/13 40/3 <b>answer</b> [3] 45/14 45/17 45/18 <b>any</b> [28] 6/24 8/16 12/24 13/4 13/14 13/15 16/12 17/23 19/3 19/9 19/10 19/12 30/14 32/15 32/15 32/21 38/4 39/9 41/13 41/23 43/7 43/13 44/7 44/11 44/12 44/14 45/20 48/8 <b>anyone</b> [2] 19/9 44/11 <b>anything</b> [4] 19/9 44/11 45/12 45/21 <b>apartment</b> [48] 23/3 23/13 23/14 23/17 23/19 23/22 24/16 24/17 25/10 27/23 28/2 28/5 28/15 28/25 29/3 29/7 29/10 29/11 29/16 30/4 30/23 31/8 32/25 33/10 33/15 34/2 34/4 34/18 35/3 35/5 35/6 35/7 35/8 36/6 36/19 36/21 37/6 39/16 39/21 40/4 40/4 40/6 40/7 40/10 40/14 43/10 43/21 44/2 <b>apartments</b> [1] 40/16 <b>apparent</b> [14] 23/20 25/22 25/25 26/16 26/17 26/24 30/9 30/15 30/21 30/24 31/2 42/2 42/13 43/3 <b>apparently</b> [2] 23/11 31/5 <b>appeared</b> [4] 5/11 15/5 32/23 34/23	<b>B</b> <b>B-R-E-C-K</b> [1] 22/15 000049

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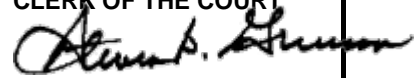
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
vs. ) GJ No. 19CGJAB&E  
 ) DC No. C346920  
JECORY ELES KEMP, aka Jecory )  
Kemp, TYESHIA EVAN JAMES, ARLEO )  
EARL DAVIS, aka Arleo Earl Davis, )  
Jr., )  
Defendants. )

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Taken at Las Vegas, Nevada

Thursday, March 19, 2020

9:53 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SUPERSEDING INDICTMENT

Reported by: Danette L. Antonacci, C.C.R. No. 222

12:00 1 GRAND JURORS PRESENT ON MARCH 19, 2020  
2  
3 JANSSEN REMBERT, Deputy Foreperson  
4 DENISE WALLACE, Secretary  
12:00 5 WENDY MOORE, Assistant Secretary  
6 GULLIVER FLYNN  
7 BELINDA MILLER  
8 JENNIFER MURRELL  
9 JOHN PLUNKETT  
12:00 10 JESSIE SAULSON  
11 SCOTT STEVENSON  
12 DEBORAH TILLEMA  
13 DANIEL WILLIAMS  
14 GLORIA WYETH  
12:00 15 Also present at the request of the Grand Jury:  
16 Marc DiGiacomo, Chief Deputy District Attorney  
17 Jory Scarborough, Deputy District Attorney  
18  
19  
20  
21  
22  
23  
24  
25

12:00

1

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2

Examined

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MACKESHIA MURPHY

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12:00

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BRECK HODSON

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12:00	1	<u>INDEX OF EXHIBITS</u>	
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	3	<u>Grand Jury Exhibits</u>	<u>Identified</u>
	4	1A - PROPOSED SUPERSEDING INDICTMENT	5
12:00	5	31 - TRANSCRIPT	6
	6	32 - PHOTOGRAPH	21
	7	33 - PHOTOGRAPH	22
	8	34 - PHOTOGRAPH	22
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12:00	10	36 - PHOTOGRAPH	22
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	12	38 - CELL SITE MAP WITH TOWER HIT	30
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12:00 1 LAS VEGAS, NEVADA, MARCH 19, 2020

2 \* \* \* \* \*

3

4 DANETTE L. ANTONACCI,

12:00 5 having been first duly sworn to faithfully  
6 and accurately transcribe the following  
7 proceedings to the best of her ability.  
8

9 MR. DIGIACOMO: Good morning ladies and  
09:53 10 gentlemen. My name is Marc DiGiacomo. I'm here with  
11 Jory Scarborough and we are deputy district attorneys  
12 here in Clark County. We're here to present a  
13 superseding Indictment. You have previously heard  
14 testimony related to this case against a Jecory Kemp and  
09:53 15 a Tyeshia James. At the end of this testimony I'm going  
16 to ask you to revote as it relates to those two and now  
17 there is an additional person on what's been marked as  
18 Grand Jury Exhibit 1A under Grand Jury case number  
19 19CGJ007AB&E. You were previously instructed on the  
09:53 20 elements of the offenses that are contained in the  
21 Indictment and Mr. Davis has been added to all four  
22 counts. I also understand that you've been previously  
23 instructed on a number of occasions related to both  
24 aiding and abetting and conspiracy liability. There is  
09:54 25 one grand juror who may not have been here previously

09:54 1 for the presentation, however the transcript has been  
2 marked as Grand Jury Exhibit Number 31. Has that grand  
3 juror had the opportunity to review the transcript?

4 A JUROR: All but three pages.

09:54 5 MR. DIGIACOMO: So before we deliberate  
6 I'll ask that question again --

7 A JUROR: Okay.

8 MR. DIGIACOMO: -- and ask you to make sure  
9 that we finish those three pages. But we'll do the  
09:54 10 testimony, then I'll give you a moment to do that.

11 Okay?

12 If there are no questions I would call my  
13 next witness.

14 THE FOREPERSON: Okay. Officer, please  
09:55 15 state your first and last name and spell both for the  
16 record.

17 OFFICER LOZANO: Officer Armando Lozano.  
18 A-R-M-A-N-D-O, last name L-O-Z-A-N-O.

19 THE FOREPERSON: Thank you.

09:55 20 DEPUTY MARSHAL WALKER: Deputy Marshal  
21 Lamons Walker. L-A-M-O-N-S, last name W-A-L-K-E-R, P  
22 number 257.

23 THE FOREPERSON: Thank you.

24 Witness, please raise your right hand.

09:55 25 You do solemnly swear the testimony you are

09:55 1 about to give upon the investigation now pending before  
2 this Grand Jury shall be the truth, the whole truth, and  
3 nothing but the truth, so help you God?

4 THE WITNESS: Yes, I do.

09:56 5 THE FOREPERSON: Okay. You are advised  
6 that you are here today to give testimony in the  
7 investigation pertaining to the offenses of conspiracy  
8 to commit robbery, murder with use of a deadly weapon,  
9 first degree kidnapping with use of a deadly weapon  
09:56 10 resulting in substantial bodily harm, robbery with use  
11 of a deadly weapon, involving Jecory Eles Kemp, Tyeshia  
12 Evan James, Arleo Earl Davis.

13 Do you understand this advisement?

14 THE WITNESS: Yeah.

09:56 15 THE FOREPERSON: Please state your first  
16 and last name, spell both for the record.

17 THE WITNESS: Mackeshia Murphy.

18 M-A-C-K-E-S-H-I-A, M-U-R-P-H-Y.

19 MACKESHIA MURPHY,

09:56 20 having been first duly sworn by the Foreperson of the  
21 Grand Jury to testify to the truth, the whole truth,  
22 and nothing but the truth, testified as follows:

23 EXAMINATION

24 BY MR. DIGIACOMO:

09:56 25 Q. Miss Murphy, the acoustics in here are a



09:57 1 little different than maybe a normal courtroom. Your  
2 voice sounds pretty good, just make sure you keep it up  
3 for us. Okay?

4 A. Okay.

09:57 5 Q. You're currently in custody?

6 A. Yeah.

7 Q. Is that a yes?

8 A. Yes.

9 Q. And what are you in custody for?

09:57 10 A. Right now I'm in custody for probation  
11 violation and open murder, conspiracy to robbery and  
12 robbery.

13 Q. Okay. Let's talk about the probation  
14 violation. When were you convicted or what crime were  
09:57 15 you convicted of?

16 A. Attempt grand larceny.

17 Q. Is that a felony or a gross?

18 A. It's a felony turned into a gross, I mean  
19 turned into a misdemeanor.

09:57 20 Q. If you successfully complete your  
21 probation?

22 A. Yes.

23 Q. You were recently arrested, when I say  
24 recently, sometime in 2020 you were arrested in  
09:57 25 California related to absconding from your probation?

09:57 1 A. Yes.

2 Q. And you're in custody on that probation  
3 hold right now?

4 A. Yes.

09:57 5 Q. You were also originally charged with  
6 counts related to what you're here to testify to here  
7 today; is that correct?

8 A. Yes.

9 Q. And this morning did you become aware that  
09:58 10 you received immunity for your testimony in order for  
11 you to come here and testify and you will not be charged  
12 with any crime associated with the events you're here to  
13 testify about?

14 A. Yes.

09:58 15 Q. Okay. Do you have a sister?

16 A. Yes.

17 Q. What's her name?

18 A. Tyeshia James.

19 Q. Did she have a boyfriend?

09:58 20 A. Yes.

21 Q. What's his name?

22 A. Jecory Kemp.

23 Q. Did you have a boyfriend?

24 A. Yes.

09:58 25 Q. And what's his name?

09:58 1 A. Davon Hickman.

2 A JUROR: What was his name?

3 THE WITNESS: Davon Hickman.

4 BY MR. DIGIACOMO:

09:58 5 Q. Davon, did -- well, first of all, did

6 Jecory Kemp have a nickname that he went by?

7 A. Yeah, Smooth Got It.

8 Q. Smooth Got It?

9 A. Uh-huh.

09:58 10 Q. And what about Davon Hickman, did he have a

11 nickname?

12 A. Yeah, he had a couple nicknames. Little BD

13 or Pay Still Got It.

14 Q. Now back in the end of 1019, were you

09:59 15 staying in the Siegel Suites down on Boulder Highway,

16 655 South Boulder Highway?

17 A. Yeah, the Siena Suites, yes.

18 Q. Siena Suites. Sorry. On Boulder Highway?

19 A. Yes.

09:59 20 Q. Who were you staying there with?

21 A. Davon Hickman, Jecory Kemp and Tyeshia

22 James.

23 Q. The four of you stayed in an apartment

24 there?

09:59 25 A. Yes.

09:59 1 Q. Now a couple days or maybe a day prior to  
2 November 26th of 2019, or sorry, December 30th of 2019,  
3 were you present for a conversation that involved a  
4 discussion about a guy named AJ?

09:59 5 A. Yes.

6 Q. Who is AJ?

7 A. He's our maintenance man.

8 Q. The maintenance man at the Siena Suites?

9 A. Yes.

09:59 10 Q. When you had this conversation about AJ,  
11 who else is in the room?

12 A. I name all -- Sayso. I name everybody?

13 Q. You name everybody. So you said Sayso?

14 A. Yeah.

10:00 15 Q. So that's S-A-Y-S-O?

16 A. Yes.

17 Q. That's different than your boyfriend who is  
18 Payso; correct?

19 A. Yeah, different than Payso, yeah.

10:00 20 Q. So Sayso's in the room?

21 A. Yeah. His brother.

22 Q. Sayso's brother?

23 A. Yeah. Davon Hickman, Jecory Kemp, Tyeshia  
24 and me.

10:00 25 Q. At some point the discussion about AJ,

10:00 1 what's the discussion about AJ?

2 A. That Sayso owed AJ \$2000 for weed I guess  
3 that AJ gave Sayso and that Sayso and Davon and them was  
4 going to rob him.

10:00 5 Q. So Sayso allegedly owed AJ \$2000 for  
6 marijuana that AJ had provided him?

7 A. Yes.

8 Q. And instead of paying him back, Sayso and  
9 Hickman and Kemp and the brother, Sayso's brother, are  
10:00 10 going to rob AJ of what?

11 A. Like what do you mean? Like what?

12 Q. What are they taking from him?

13 A. Oh, marijuana.

14 Q. Marijuana. Is there a plan formed as to  
10:01 15 how it is they're going to get the marijuana from AJ?

16 A. Yeah. They were going to call him over  
17 there and have him bring two pounds and then they was  
18 going to rob him.

19 Q. Call him over to your apartment?

10:01 20 A. Yes.

21 Q. So that plan is formed. How much later  
22 does the killing occur in this case? Do you think it's  
23 a day, two days, an hour?

24 A. It was that night. So it was the next day.

10:01 25 Q. Next day. Okay. The next day are you

10:01 1 there when AJ comes over?

2 A. I was walking down the stairs, me and  
3 Tyeshia James.

4 Q. Why do you leave the apartment before AJ  
10:01 5 shows up?

6 A. Because they said they didn't want us to  
7 tell.

8 Q. So they didn't want you and Tyeshia to tell  
9 if something happened?

10:01 10 A. Yeah.

11 Q. So who tells you that you should leave?

12 A. Davon.

13 Q. Davon tells you to leave?

14 A. Yeah.

10:02 15 Q. So you leave as AJ is going up to the  
16 apartment?

17 A. Yes.

18 Q. When you leave, who is in that apartment?

19 A. Sayso, Davon, Smooth -- I mean Davon,

10:02 20 Jecory, Star, Sayso and his brother.

21 Q. So now in the room is Sayso, Sayso's  
22 brother?

23 A. Yes.

24 Q. Your boyfriend Hickman?

10:02 25 A. Uh-huh.

10:02 1 Q. Tyeshia's boyfriend Kemp?

2 A. Uh-huh.

3 Q. And an individual named Star?

4 A. Uh-huh.

10:02 5 Q. Is that a yes?

6 A. Yes.

7 Q. Okay. Just the uh-huhs and the huh-uhs

8 don't come out really good on a transcript. Okay?

9 A. Okay.

10:02 10 Q. And the plan -- well, let me ask you this.

11 Describe what the apartment generally looks like. How

12 many rooms is it?

13 A. It's one.

14 Q. One bedroom and then a common area?

10:02 15 A. There's one bedroom, in the bedroom is a

16 bathroom and then you go out the bedroom, the living

17 room and the kitchen.

18 Q. Are there some people that are part of this

19 plan who are going to be back in the bedroom?

10:03 20 A. Yes.

21 Q. Who's going to be back in the bedroom?

22 A. Sayso and his brother.

23 Q. Sayso and his brother. So in the front

24 room is going to be Kemp, Hickman and Star?

10:03 25 A. Yeah.

10:03 1 Q. So you leave. Where do you go when you're  
2 walking down the stairs and you see AJ coming up?

3 A. We go to our friend house under us named  
4 Mariah.

10:03 5 Q. So you and Tyeshia are in Mariah's house.  
6 Is Mariah there?

7 A. Yeah, Mariah's there.

8 Q. How long are you there before something  
9 happens?

10:03 10 A. We were there 20, 15 minutes.

11 Q. What happened?

12 A. We was outside smoking a cigarette. When  
13 we come outside they're running down the stairs and my  
14 fiancé Davon Hickman says he shot AJ.

10:03 15 Q. So who is running down the stairs; all five  
16 of them?

17 A. All five of them, yes.

18 Q. And Hickman says to you I shot AJ?

19 A. Yeah.

10:03 20 Q. What happens at that point?

21 A. What do you mean?

22 Q. So these people run down, Hickman says to  
23 you I shot AJ.

24 A. Uh-huh.

10:04 25 Q. Is AJ still at the apartment at this point?



10:04 1 A. Yes.

2 Q. Was he shot in that apartment?

3 A. Yes. He said that AJ was laying on the

4 floor shot.

10:04 5 Q. Okay. Do Sayso and his brother stick

6 around?

7 A. Sayso and his brother, they leave after

8 that, and then they come back.

9 Q. Is there a discussion about what needs to

10:04 10 be done now that AJ is laying up in the apartment shot?

11 A. Yeah. They all had, Sayso, Kemp and Davon

12 and Sayso's brother, they had a discussion about what

13 they was going to do with the body.

14 Q. What about Star, does he come back or does

10:04 15 he just run and leave?

16 A. Star just gone.

17 Q. He's just gone?

18 A. Yeah.

19 Q. And you don't see Star again?

10:04 20 A. No.

21 Q. There's a conversation about what they're

22 going to do. What's the plan?

23 A. I guess they was going to take the body to

24 some Barstow or somewhere, Barstow or San Bernardino.

10:05 25 Q. Do you do anything to help like the

10:05 1 situation?

2 A. No, I never seen, I never seen the body.

3 Q. Do you do anything to help clean up the  
4 outside of the apartment?

10:05 5 A. Yeah. They told me, they asked me to clean  
6 the blood up from outside and they handed me a broom.

7 Q. What about your sister, did she help clean  
8 up?

9 A. Yes, she cleaned up the inside of the  
10:05 10 apartment.

11 Q. So she goes in the apartment to clean up,  
12 you clean up the stairs?

13 A. Yeah.

14 Q. Do you ever see them take AJ's body out of  
10:05 15 the apartment?

16 A. No, I never seen the body.

17 Q. But at some point do you become aware the  
18 body has left?

19 A. Yeah.

10:05 20 Q. And do you know how it left?

21 A. No, I don't know how it left because I  
22 never came back outside but Jecory Kemp and Davon, I  
23 guess Jecory Kemp and Ty moved the body.

24 Q. So who tells you that Jecory Kemp and Ty  
10:05 25 moved the body?

10:06 1 A. Jecory.

2 Q. Jecory told you that he moved the body?

3 A. Yeah.

4 Q. Did Jecory tell you how he moved the body?

10:06 5 A. No.

6 Q. Did you know that AJ or were you aware of

7 whether or not AJ had a vehicle?

8 A. No, I really wasn't until they said they

9 moved some car, I don't know what kind of car it is,

10:06 10 they moved it around to the building.

11 Q. So you learned that some car got moved?

12 A. Yeah.

13 Q. And then eventually you learn that the body

14 left the Siena Suites?

10:06 15 A. Yeah.

16 Q. Okay. Do you ever have a conversation with

17 Hickman about what happened inside the apartment?

18 A. Yeah. I don't really remember the

19 conversation but I do, yeah, I do remember having a

10:06 20 conversation with him because he was scared.

21 Q. Did he tell you generally, basically he

22 told you that he's the one who shot him?

23 A. Yeah.

24 Q. Did he tell you whether or not AJ showed up

10:06 25 with the two pounds of marijuana?

10:06 1 A. He told me he showed up with a half a  
2 pound.

3 Q. He only showed up with a half a pound of  
4 marijuana?

10:06 5 A. Uh-huh.

6 Q. And what happens when, well, once he comes  
7 in the room, does he tell you about what happens with  
8 Sayso and his brother?

9 A. No, not really. Sayso and his brother was  
10:07 10 in the back room and they came out and that's when I  
11 guess AJ pulled out a gun or something and then that's  
12 when Davon Hickman shot him.

13 Q. So AJ's there, he only had a half pound of  
14 weed.

10:07 15 A. Yeah.

16 Q. That causes a discussion --

17 A. Yeah.

18 Q. -- when Sayso and his brother come out?

19 A. Yeah.

10:07 20 Q. And that's when AJ tries to pull a weapon  
21 according to Mr. Hickman?

22 A. Yeah.

23 Q. And that's when Hickman shoots AJ?

24 A. Yes.

10:07 25 Q. And that's how the murder occurs?

10:07 1 A. Yes.

2 Q. Do you ever see the weed that they took off

3 of AJ?

4 A. No.

10:07 5 Q. After the apartment is cleaned up, the body

6 is gone, what do you do?

7 A. I, me and my sister, we was at Mariah's

8 house cause I was scared to go back up there.

9 Q. Do you eventually flee town with

10:07 10 Mr. Hickman?

11 A. Yes.

12 Q. Where do you go?

13 A. We went to LA.

14 Q. Do you eventually get arrested in LA?

10:08 15 A. Yes.

16 Q. Do you recall as you sit here today what

17 Mr. Hickman's cell phone number was back then?

18 A. Yes, I do.

19 Q. Can you tell us that?

10:08 20 A. (716) 341-8448.

21 Q. And you provided that to detectives as

22 well?

23 A. Yes, I did.

24 MR. DIGIACOMO: Thank you, ma'am.

10:08 25 That completes my questions for the witness

10:08 1 if the Grand Jury has any questions.

2 THE FOREPERSON: Hearing no questions.

3 By law, these proceedings are secret and  
4 you are prohibited from disclosing to anyone anything  
10:08 5 that has transpired before us, including evidence and  
6 statements presented to the Grand Jury, any event  
7 occurring or statement made in the presence of the Grand  
8 Jury, and information obtained by the Grand Jury.

9 Failure to comply with this admonition is a  
10:08 10 gross misdemeanor punishable by up to 364 days in the  
11 Clark County Detention Center and a \$2,000 fine. In  
12 addition, you may be held in contempt of court  
13 punishable by an additional \$500 fine and 25 days in the  
14 Clark County Detention Center.

10:08 15 Do you understand this admonition?

16 THE WITNESS: Yes.

17 THE FOREPERSON: Thank you. You're  
18 excused.

19 MR. DIGIACOMO: Before they take her,  
10:09 20 actually I'm going to ask her a few more questions. I  
21 forgot to have her ID some pictures. So let me just  
22 approach for just a second.

23 Q. Ma'am, do you recognize the person that's  
24 depicted in Grand Jury Exhibit Number 32?

10:09 25 A. Yes, that's me.

10:09 1 Q. Do you recognize the person that's depicted  
2 in Grand Jury Exhibit Number 33?

3 A. Yes, that's Davon.

4 Q. Do you recognize the person depicted in  
10:09 5 Grand Jury Exhibit Number 34?

6 A. Yes, that's AJ.

7 Q. Do you recognize the person that's depicted  
8 in Grand Jury Exhibit Number 35?

9 A. Yes, that's Sayso.

10:09 10 Q. Do you recognize the person depicted in  
11 Grand Jury Exhibit Number 36?

12 A. Yes, that's Sayso brother.

13 Q. And lastly, I don't think we talked about  
14 this, but the person depicted in Grand Jury Exhibit  
10:09 15 Number 37, do you recognize that person?

16 A. Yes, that's Flaco.

17 Q. Let me ask you about Flaco for a second.  
18 Flaco wasn't there during the murder; correct?

19 A. Correct.

10:10 20 Q. What is Flaco's involvement here?

21 A. Flaco came and got Davon Hickman and Jecory  
22 Kemp and he followed Jecory Kemp to Barstow and brought  
23 them back.

24 Q. Okay. And how do you know that?

10:10 25 A. Because Davon told me and I asked them

10:10 1 where they was at.

2 Q. So Davon tells you that Flaco is the one  
3 who helped them go to San Diego and then bring them  
4 back?

10:10 5 A. Yes.

6 MR. DIGIACOMO: Thank you. I apologize.  
7 No more questions. Oh, the grand juror have a question?  
8 BY A JUROR:

9 Q. One question. I just want to get the names  
10:10 10 straight. Stayso is who?

11 A. It's Sayso, S-A-Y-S-O.

12 MR. DIGIACOMO: There's another witness who  
13 will be able to tell you his real name.

14 A JUROR: Okay. Thank you.

10:10 15 MR. DIGIACOMO: Thank you. The admonition  
16 still applies, ma'am.

17 THE FOREPERSON: Yes, the admonition still  
18 applies.

19 Please raise your right hand.

10:11 20 You do solemnly swear the testimony you are  
21 about to give upon the investigation now pending before  
22 this Grand Jury shall be the truth, the whole truth, and  
23 nothing but the truth, so help you God?

24 THE WITNESS: I do.

10:11 25 THE FOREPERSON: Please be seated.



10:11 1 You are advised that you are here today to  
2 give testimony in the investigation pertaining to the  
3 offenses of conspiracy to commit robbery, murder with  
4 use of a deadly weapon, first degree kidnapping with use  
10:12 5 of a deadly weapon resulting in substantial bodily harm,  
6 robbery with use of a deadly weapon, involving Jecory  
7 Eles Kemp, Tyeshia Evan James, Arleo Earl Davis.

8 Do you understand this advisement?

9 THE WITNESS: I do.

10:12 10 THE FOREPERSON: Please state your first  
11 and last name and spell both for the record.

12 THE WITNESS: My name is Breck Hodson.  
13 It's B-R-E-C-K, H-O-D-S-O-N.

14 BRECK HODSON,  
10:12 15 having been first duly sworn by the Foreperson of the  
16 Grand Jury to testify to the truth, the whole truth,  
17 and nothing but the truth, testified as follows:

18  
19 EXAMINATION

10:12 20  
21 BY MR. DIGIACOMO:

22 Q. Detective, how are you employed?

23 A. As a detective with Las Vegas Metropolitan  
24 Police Department's homicide section.

10:12 25 Q. How long have you been with Metro?

10:12 1 A. Over 14 years.

2 Q. How long have you been in homicide?

3 A. Eighteen months.

4 Q. Sometime in early 2020 do you become

10:12 5 involved in the investigation into the death of a person

6 identified to you as Jabbar Anderson?

7 A. I do, yes.

8 Q. And during the course of that investigation

9 are you working with a partner?

10:13 10 A. Yes, I am.

11 Q. Who is your partner?

12 A. Detective Mitchell Dosch.

13 Q. Detective Dosch has previously testified in

14 this proceeding so I'm going to sort of just jump for a

10:13 15 second. I'm going to ask you if you recognize some of

16 the people that are depicted in some Grand Jury

17 exhibits. Do you recognize the woman that's depicted in

18 Grand Jury Exhibit Number 32?

19 A. Yes, that's Miss Mackeshia Murphy.

10:13 20 Q. Do you recognize the person identified in

21 Grand Jury Exhibit Number 33?

22 A. That is Mr. Davon Hickman.

23 Q. Aka Little and/or Payso?

24 A. That's correct.

10:13 25 Q. Do you recognize the person that's depicted

10:13 1 in 34?

2 A. That's the victim, Marion Jabbar Anderson.

3 Q. Also known as AJ?

4 A. That's correct.

10:13 5 Q. Do you recognize 35?

6 A. Yes, that's Arleo Earl Davis, Jr.

7 Q. Also known as Sayso?

8 A. That's correct.

9 Q. Do you recognize the person in Exhibit 36?

10:14 10 A. I do. That's Mr. Anthony Woods.

11 Q. Also --

12 A. Known as Sayso's brother.

13 Q. That's how he was known in the

14 investigation?

10:14 15 A. Yes.

16 Q. And then the person depicted in 37?

17 A. That's Preston Huteson, known as Flaco.

18 Q. During the course of your investigation did  
19 you identify a number for Davon Hickman?

10:14 20 A. We did, yes.

21 Q. How is it that you originally identified  
22 that phone number if you recall?

23 A. Originally, I would have to say that came  
24 from our initial interviews that were conducted. I  
10:14 25 don't exactly recall who initially gave up that phone.

10:14 1 Q. But after you got that phone number did you  
2 make a request for phone records associated with the  
3 phone number that was provided to you?

4 A. Yes, we did.

10:15 5 Q. And that phone number started with a 716  
6 number; is that correct?

7 A. That's correct.

8 Q. Did you identify the phone company as  
9 T-Mobile?

10:15 10 A. We did, yes.

11 Q. Eventually do you send a court order and/or  
12 pen register and/or search warrant to T-Mobile to get a  
13 copy of those records?

14 A. Yes, we did.

10:15 15 Q. Ladies and gentlemen, I've had marked here  
16 as Grand Jury Exhibit Number 40 a certified copy of the  
17 phone records received by the Las Vegas Metropolitan  
18 Police Department between November 30th of 2019 and  
19 January 7th of 2019 for target number (716)341-8447.

10:15 20 You eventually come into contact with a  
21 Mackeshia Murphy?

22 A. We do, yes.

23 Q. During the course of your conversation with  
24 Miss Murphy, does she confirm that phone number is in  
10:15 25 fact Mr. Hickman's phone number?

10:16 1 A. She does, yes.

2 Q. Were you able to locate that device?

3 A. That device, no, we were not able to locate  
4 that device.

10:16 5 Q. So the device at some point is no longer  
6 around. Do you come in contact with Mr. Hickman?

7 A. Yes.

8 Q. Does he have that device on him?

9 A. He does not.

10:16 10 Q. Eventually were you able to identify Sayso?

11 A. Yes.

12 Q. And when you identified Sayso, did he have  
13 a phone on him? Or Sayso, Arleo Davis.

14 A. He did, yes.

10:16 15 Q. And that particular phone at the time he  
16 had the device that you took off him, did it have a  
17 particular phone number?

18 A. It did.

19 Q. But is that the phone number that was  
10:16 20 assigned to that device at the time that the events  
21 happened on December 30th?

22 A. No, that number had been changed.

23 Q. Were you able to get the records associated  
24 with that device that Verizon had for the time period in  
10:16 25 question?

10:16 1 A. Yes.

2 Q. And ladies and gentlemen, I have a copy of  
3 those records marked as Grand Jury Exhibit 41 which is a  
4 certified copy of the phone records from Verizon related  
10:17 5 to the 28 files provided to you by Verizon related to  
6 the number associated with the device in Sayso's  
7 possession at the time of the crime.

8 A. That's correct.

9 Q. When you talked to Sayso, where is it you  
10:17 10 come in contact with Arleo Davis?

11 A. So Arleo Davis was taken into custody by  
12 our fugitive apprehension people at the intersection of  
13 Bonanza and Nellis at the welfare office parking lot.

14 Q. And at some point do you talk to him?

10:17 15 A. We do. We took him, he was transported to  
16 LVMPD headquarters where he was interviewed by myself  
17 and Detective Dosch.

18 Q. Prior to interviewing him did you give him  
19 Miranda warning?

10:17 20 A. We did, yes.

21 Q. When you gave him Miranda warnings did he  
22 additionally agree to speak with you?

23 A. He did, yes.

24 Q. During the course of your conversation with  
10:17 25 him did you ask him about various individuals associated

10:17 1 with this case?

2 A. Yes, we did.

3 Q. And who is it that he indicated that he  
4 knew?

10:18 5 A. He indicated that he knew not only the  
6 victim Mr. Anderson, Mr. Hickman, also Mr. Kemp,  
7 Miss Murphy and Miss James.

8 Q. And when you talked to him did he also  
9 indicate to you that he was in possession of that device  
10:18 10 at the time that the crime occurred?

11 A. He did, yes.

12 Q. Did he confirm to you the switch of the  
13 phone numbers?

14 A. He did, yes.

10:18 15 Q. Now did you have an opportunity to then  
16 find out the location information associated with that  
17 device during the day and time of December 30th?

18 A. I did, yes.

19 Q. And I'm going to start with first  
10:18 20 Mr. Hickman's. I'm going to show you Grand Jury Exhibit  
21 Number 38 which is representative of a tower hit on  
22 Mr. Hickman's phone. Do you recognize that?

23 A. I do recognize it, yes.

24 Q. What is it?

10:19 25 A. So this is described as the H plane of the

10:19 1 cell site which when it's mapped out in this form it  
2 doesn't, it gives you the best area coverage of that  
3 phone connection at the time which places our scene  
4 right in the middle of that coverage.

10:19 5 Q. If you can hold it up, we don't have the  
6 overhead working today. But generally that yellow dot  
7 in the middle, and we'll pass the exhibit around, is  
8 directly in the middle of the cell site coverage  
9 associated with Mr. Hickman's phone let's say sometime  
10:19 10 between 11:00 a.m. and 2:00 p.m. on December 30th of  
11 2019?

12 A. That's correct.

13 Q. In speaking to Miss Murphy, did  
14 Mr. Hickman's phone records confirm to you -- well, you  
10:19 15 did speak to Miss Murphy; correct?

16 A. That's correct.

17 Q. She provided you a version of events that  
18 occurred?

19 A. Yes.

10:20 20 Q. Did looking at Mr. Hickman's records, did  
21 that confirm or corroborate her story that Mr. Hickman  
22 was the one, was present at the apartment at the time  
23 your crime occurred?

24 A. It did.

10:20 25 Q. Ultimately do you determine that the crime



10:20 1 occurred sometime around afternoon to 2:00 p.m.-ish on  
2 December 19th -- or December 30th of 2019?

3 A. That's correct.

4 Q. Now were the records associated with  
10:20 5 Mr. Sayso, Arleo Davis, did they have different  
6 information than T-Mobile had provided?

7 A. Yes.

8 Q. And I'm showing you now Grand Jury Exhibit  
9 Number 39 which is representative of one record at 1:52  
10:20 10 in the afternoon on December 30th of 2019; is that  
11 correct?

12 A. That's correct.

13 Q. And what's the difference in the T-Mobile  
14 information that you received and the Verizon  
10:20 15 information you received?

16 A. So the main difference is on, when you  
17 graph this version, so Verizon provided us what's called  
18 a measurement from the actual device that connected to  
19 whatever cell site it was. And what that does is that  
10:21 20 allows us, it gives us an arc here and we can look at  
21 that and it gives us a measurement from the tower, what  
22 they figure out mathematically, that that device is  
23 communicating with that tower along that arc.

24 Q. And is there a period of time between noon  
10:21 25 and 2:00 p.m.-ish that the arc of the device goes

10:21 1 generally right through the apartment itself of the  
2 crime scene?

3 A. That's correct.

4 Q. And that's between noon and 2:00 p.m.

10:21 5 generally speaking on December 30th of 2019?

6 A. That's correct.

7 Q. And so does the information from Mr.

8 Davis's cell phone records corroborate what Miss Murphy  
9 told you about him being present at the time of the

10:21 10 murder?

11 A. Yes, it does.

12 MR. DIGIACOMO: That completes my questions  
13 for the witness if the Grand Jury has any questions.

14 THE FOREPERSON: No questions.

10:22 15 By law, these proceedings are secret and  
16 you are prohibited from disclosing to anyone anything  
17 that has transpired before us, including evidence and  
18 statements presented to the Grand Jury, any event  
19 occurring or statement made in the presence of the Grand  
10:22 20 Jury, and information obtained by the Grand Jury.

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

10:22 25 punishable by an additional \$500 fine and 25 days in the

10:22 1 Clark County Detention Center.

2 Do you understand this admonition?

3 THE WITNESS: I go.

4 THE FOREPERSON: Thank you. You're

10:23 5 excused.

6 THE WITNESS: Thank you.

7 MR. DIGIACOMO: Mr. Grand Juror, have you

8 had the opportunity to finish the last three pages?

9 A JUROR: No, I haven't.

10:23 10 MR. DIGIACOMO: I'll pass this around while

11 you read the last three pages.

12 MR. SCARBOROUGH: He's done, Marc.

13 MR. DIGIACOMO: Ladies and gentlemen, that

14 completes the presentation of the evidence on this case.

10:24 15 I'd ask you to vote each count as to all three

16 defendants even though you've done two of the defendants

17 previously. If there are no other questions I'd ask you

18 to deliberate.

19 (At this time, all persons, other than

10:24 20 members of the Grand Jury, exit the room at 10:24 a.m.

21 and return at 10:29 a.m.)

22 THE FOREPERSON: Mr. District Attorney, by

23 a vote of 12 or more grand jurors a true bill has been

24 returned against defendants Jecory Eles Kemp, Tyeshia

10:29 25 Evan James, Arleo Earl Davis, charging the crimes of

10:29 1 conspiracy to commit robbery, murder with use of a  
2 deadly weapon, first degree kidnapping with use of a  
3 deadly weapon resulting in substantial bodily harm, and  
4 robbery with use of a deadly weapon, in Grand Jury case  
10:30 5 number 19CGJ007AB&E. We instruct you to prepare an  
6 Indictment in conformance with the proposed Indictment  
7 previously submitted to us.

8 MR. DIGIACOMO: Thank you. I will.

9 THE FOREPERSON: Thank you.

10:30 10 (Proceedings concluded.)

11 --oo0oo--

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**REPORTER'S CERTIFICATE**

**STATE OF NEVADA**       )  
                                  :   ss  
**COUNTY OF CLARK**       )

I, Danette L. Antonacci, C.C.R. 222, do  
hereby certify that I took down in Shorthand (Stenotype)  
all of the proceedings had in the before-entitled matter  
at the time and place indicated and thereafter said  
shorthand notes were transcribed at and under my  
direction and supervision and that the foregoing  
transcript constitutes a full, true, and accurate record  
of the proceedings had.

Dated at Las Vegas, Nevada,  
March 20, 2020.

/s/ Danette L. Antonacci

\_\_\_\_\_  
Danette L. Antonacci, C.C.R. 222

10:30

1

## AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the  
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER  
19CGJ007AB&E:

10:30

5

6

7

8

X Does not contain the social security number of any  
person,

9

10:30

10

-OR-

11

\_\_\_ Contains the social security number of a person as  
required by:

12

13

A. A specific state or federal law, to-  
wit: NRS 656.250.

14

-OR-

10:30

15

16

B. For the administration of a public program  
or for an application for a federal or  
state grant.

17

18

/s/ Danette L. Antonacci

19

Signature

3-20-20

Date

10:30

20

21

Danette L. Antonacci

Print Name

22

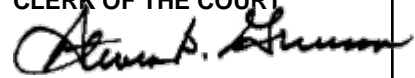
23

Official Court Reporter

Title

24

25



**HOFLAND & TOMSHECK**

Joshua Tomsheck, Esq.  
Nevada State Bar No. 9210  
josht@hoflandlaw.com  
228 South Fourth Street, 1<sup>st</sup> Floor  
Las Vegas, Nevada 89101  
Telephone: (702) 895-6760  
Facsimile: (702) 731-6910  
Attorney for Petitioner

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA

Plaintiff,

v.

ARLEO EARL DAVIS, aka  
ARLEO EARL DAVIS, JR. #7058423

Defendant.

) Case Number: C-20-346920-3

) Department: XVII

) \*\*\*\*HEARING REQUESTED\*\*\*\*

**PETITION FOR WRIT OF HABEAS CORPUS**

TO: The Honorable Judge of the Eighth Judicial District Court of  
The State of Nevada, in and for the County of Clark

The Petition of Arleo Earl Davis submitted by Joshua Tomsheck, Esq., of the law firm  
of Hofland & Tomsheck, as attorney for the above-captioned individual, respectfully affirms:

1. That he is a duly qualified, practicing and licensed attorney in the City of Las Vegas,  
County of Clark, State of Nevada.
2. That Petitioner makes application for a Writ of Habeas Corpus; that the place where  
the Petitioner is imprisoned actually or constructively imprisoned and restrained of  
his liberty is the Clark County Detention Center; that the officer by whom he is  
imprisoned and restrained is Joe Lombardo, Sheriff.
3. That the imprisonment and restraint of said Petitioner is unlawful in that there is  
insufficient evidence to support Count 1, 2, 3, and 4 of the Indictment against him.  
Therefore, Counts 1, 2, 3, and 4 of the Indictment must be dismissed.

- 1 4. That Petitioner waives his right to a Trial within 60 days;  
2 5. That Petitioner was arraigned at his first District Court appearance on the instant  
3 matter on April 14, 2020.  
4 6. That Petitioner consents that if this Petition is not decided within 15 days before the  
5 date set for trial, the Court may, without notice of hearing, continue the trial  
6 indefinitely to a date designated by the Court.  
7 7. That Petitioner personally authorized his aforementioned attorney to commence this  
8 action.  
9

10 WHEREFORE, Petitioner prays that this Honorable Court make an order directing  
11 the County of Clark to issue a Writ of Habeas Corpus directed to the said Joe Lombardo,  
12 Sheriff, commanding him to bring the Petitioner before your Honor, and return the cause of  
13 her imprisonment.  
14

15 DATED this 5<sup>th</sup> day of May, 2020.  
16

17 HOF LAND & TOMSHECK

18  
19 By: /s/ J. Tomsheck  
20 Joshua Tomsheck, Esq.  
21 Nevada Bar No. 9210  
22 228 S. Fourth Street, 1st Floor  
23 Las Vegas, Nevada 89101  
24 (702) 895-6760  
25 Attorney for Petitioner  
26  
27  
28



1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**  
2                                    **IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

3                    COMES NOW Petitioner, ARLEO EARL DAVIS, by and through his counsel, Joshua  
4 Tomsheck, Esq., of the law firm of Hofland & Tomsheck, and submits the following Points  
5 and Authorities in Support of Defendant's Petition for a pre-trial Writ of Habeas Corpus.

6                                    **STATEMENT OF FACTS**

7  
8                    a.        Grand Jury Presentation No. 1: *The following facts are taken from the transcripts*  
9 *of the Grand Jury Hearing(s) held on February 13, 2020.*

10  
11                    ***Testimony of Arturo Alvarado (p. 8-18)***

12                    Arturo Alvarado is employed as a detective in San Bernardino County, California. (p.  
13 8). He is currently assigned to the homicide division and has been for the last three years. (p.  
14 8). A vast majority of the homicide scenes include the use of a potential firearm. (p. 9). He  
15 has also responded to scenes where there is a fire component involved. (p. 9).

16  
17                    On December 30, and December 31, 2019, he was called out to the scene of an alleged  
18 homicide located off the I-15 freeway between Baker and Barstow, California. (p. 9). The  
19 nature of the call was for a death investigation, and that a vehicle was on fire, and a deceased  
20 victim had been on fire. (p. 10). He was the on-call team for the week and responded to the  
21 scene. (p. 10). From the I-15, he exited Field Road, where there is nothing other than desert.  
22 (p. 10). The area of the scene was on the west side of the freeway in an open dirt area. (p. 10).  
23 The scene was located westbound of the freeway. (p. 12).

24  
25                    The vehicle was fully burned to the ground. (p. 13). Everything was burned to a crisp.  
26 (p. 13). The vehicle was charred, and the rubber and plastic were burned away. (p. 13). The  
27  
28

1 vehicle was a Lexus vehicle. (p. 13). There was damage to the interior and exterior of the  
2 vehicle. (p. 14).

3 When he arrived on scene, a deceased body was found in the trunk area of the car. (p.  
4 15). The victim was not breathing when he arrived and was obviously deceased. (p. 15). The  
5 body was burned, more toward the legs as opposed to the upper body. (p. 15). He did not  
6 touch or manipulate the body, as in California only the coroner's division is allowed to touch  
7 the body. (p. 15-16). When the coroner division responds, a body roll is conducted. (p. 16).  
8 The body roll consists of rolling the person to the other side to assess any injuries or address  
9 the victim. (p. 16).  
10

11  
12 After the body roll, information was gathered which led him to contact Las Vegas  
13 homicide detectives. (p. 16). The body roll revealed a key card on a lanyard around the  
14 victim's neck. (p. 16-17). Information related to the actual vehicle involved, along with the  
15 key card information, led him to contact Las Vegas homicide detectives, specifically  
16 Detective Mitch Dosch. (p. 17).  
17

18 The bombs and arson expert arrived later and determined an accelerant was used in  
19 the fire. (p. 18). The detective was not part of that investigation. (p. 18).  
20

21 ***Testimony of Mitchell Dosch (pages 21-44)***

22 Mitchell Dosch is employed as a homicide detective with the Las Vegas Metropolitan  
23 Police Department and has been for the last seven years. (p. 21). He has responded and  
24 investigated many scenes involving the possible use of a firearm, as well as many scenes  
25 with a fire or arson component. (p. 21-22). His involvement with the homicide investigation  
26 began on December 31, 2019 after being contacted by the San Bernardino County Sheriff's  
27 Department. (p. 22). His partner, Breck Hodson, received contact from the San Bernardino  
28

1 County Sheriff's Department homicide section requesting information on an active death  
2 investigation they had. (p. 22).

3 Based on the contact from San Bernardino, he directed his attention to 6555 Boulder  
4 Highway, building 11, apartment 309. (p. 22-23). This address ended up being the primary  
5 crime scene. (p. 23). He responded to that physical scene after being directed to that address.  
6 (p. 23).

7  
8 This apartment in building 11 is located on the third floor, which is the top floor. (p.  
9 23). Building 11 is in the northwest corner. (p. 23). To get to apartment 309, a person must go  
10 up one of two stairwells. (p. 23). There is a stairwell immediately outside of 309. (p. 23).  
11 Around building 11 there was an apparent blood trail that appeared to initiate just outside  
12 of apartment 309, went all the way down to the ground floor, around the building, and into  
13 the parking lot. (p. 23). The apartment building is located in Las Vegas, Clark County,  
14 Nevada. (p. 24).

15  
16  
17 Apparent blood splatter or a blood trail was located in a parking space, near where  
18 the trunk of a vehicle would be if parked. (p. 25-26). Apparent blood was found on the stairs,  
19 as well. (p. 26). Based on the blood trail, he drafted and obtained a search warrant for the  
20 apartment. (p. 27). Detective Hodson was the affiant in the search warrant. (p. 27). He then  
21 executed the search warrant on the apartment. (p. 28).

22  
23 Immediately upon making entry into the apartment, a lot of factors and physical  
24 evidence became relevant to the investigation. (p. 28). The apartment is very small and  
25 consists of a living room, a kitchen, a bedroom, and a bathroom. (p. 29). The front door to  
26 the apartment faces west. (p. 29). When standing in the living room, there is carpet, and when  
27 it switches to tile, that is where the kitchen is. (p. 29).  
28

1 The floor was very clean, and some white residue could be seen. (p. 30). When he  
2 made entry into the apartment, he was hit with the overwhelming stench of cleaning  
3 material. (p. 30). The tile floor was also very clean with the same white residue. (p. 30). There  
4 was apparent blood on the far side where the appliances are located. (p. 30). Blood was also  
5 found on a light fixture in the kitchen. (p. 30-31). Cleaning materials were found inside the  
6 apartment. (p. 31).

8 Two suspects were developed as a result of the apartment search and the  
9 investigation. (p. 31). They were Jecory Kemp and Tyeshia James. (p. 31). The two were  
10 apprehended, read Miranda, acknowledged their rights, and spoke with detectives. (p. 32).  
11 Jecory Kemp told detectives that the victim was killed inside the apartment. (p. 32). The plan  
12 was to rob the victim. (p. 33).

14 The murder occurred on December 30, 2019. (p. 33). A plan was developed a day or  
15 two earlier to purchase or request a large amount of marijuana which would then be sold to  
16 the occupants of apartment 11-309. (p. 33). When the victim arrived with the marijuana, it  
17 was their intent to rob him of the marijuana and not make payment for the marijuana. (p.  
18 33).

21 On the day of the murder, the victim came to the door and was let in. (p. 33). The door  
22 was closed behind the victim. (p. 33). The victim moved to the kitchen area after dropping  
23 his backpack, which contained one of the two pounds of marijuana that was sought in the  
24 drug deal. (p. 33). Another individual within the apartment opened up the backpack,  
25 examined, and noticed a pound of marijuana was missing. (p. 33). They discussed that the  
26 other pound would be made available as the money was paid. (p. 33). Some individuals were  
27 hidden in the bedroom, and they came out at one point and the robbery was then underway.  
28

1 (p. 33-34). When the victim saw the individuals suddenly emerge from the bedroom, the  
2 victim pulled out a firearm and kept it by his side, pointed downward. (p. 34). Another  
3 individual within the apartment produced a firearm and pointed it at the victim, and that is  
4 when the shooting occurred. (p. 34). At least one round was fired, which appeared to strike  
5 the victim. (p. 34).  
6

7       There were multiple people inside the apartment at the particular time, and some of  
8 the individuals had gone through the victim's pockets and left the apartment. (p. 35). Jecory  
9 Kemp and Tyeshia James left the apartment and returned when they initiated the process of  
10 cleaning up the apartment and removing the victim's body. (p. 35). A great deal of effort to  
11 clean the tile had occurred, but the cleaning had missed a lot of the walls and the ceiling. (p.  
12 35).  
13

14       Jecory Kemp told the detective about attempts to move and relocate the victim's body.  
15 (p. 35). The body was placed in trash bags. (p. 36). The victim was of fairly large stature, and  
16 they planned to break off his legs and carry the body out in a gurney-like fashion. (p. 36).  
17 They did not end up doing that, and instead attached the body to a small shopping cart  
18 which was used to bring the body down the stairs and into the parking lot of a waiting  
19 vehicle. (p. 36).  
20  
21

22       The victim's vehicle was a 1998 Lexus four-door sedan. (p. 36). The car was moved to  
23 a different location outside of the apartment complex but was then brought back to utilize  
24 disposing the body. (p. 36-37). The victim's body was loaded into the trunk of his car. (p. 37).  
25 Kemp then drove the victim's car from the apartment complex to I-15 and Field Road in San  
26 Bernardino County. (p. 37). As he was driving the car down, Jecory Kemp was following  
27 another vehicle where another individual involved was driving. (p. 38). That vehicle had to  
28

1 leave, and Kemp summoned another vehicle to pick them up and bring them back to Las  
2 Vegas. (p. 38).

3 Tyeshia James initially lied to detectives about having any role and about being on  
4 the property grounds the day of the murder. (p. 39). Her story changed and she recounted a  
5 very similar story to Jecory Kemp's. (p. 39). She did not discuss the movement of the body  
6 to California that her boyfriend, Jecory Kemp, had told detectives. (p. 39). Tyeshia James was  
7 the renter of the 11-309 apartment and had the lease for it. (p. 39). She moved into the  
8 apartment in November and the lease was set to expire in early January. (p. 39).

9  
10  
11 Tyeshia James told detectives about the robbery being planned a day or two before  
12 the murder. (p. 40). At the time of the murder, she and another female were asked to leave  
13 the apartment before the victim arrived. (p. 40). Later, they heard about what had happened  
14 and developed a plan to clean up the apartment and help move the body from the apartment  
15 into a vehicle. (p. 40). She did not take part in the transportation of the body to California,  
16 but she did have a role in taking the body out of the apartment, down the stairs, and into the  
17 waiting vehicle. (p. 40).

18  
19  
20 The autopsy did not take place until January 21, 2020, and the detective attended. (p.  
21 40-41). The victim was identified as Marion B. Jabbar Anderson. (p. 41). He was colloquially  
22 referred to as A.J. (p. 41). The body had an apparent gunshot wound to his upper left chest  
23 and there was thermal damage to the lower half of his body. (p. 42).

24  
25 At the Grand Jury Hearing on February 13, 2020, the Grand Jurors returned a true bill  
26 against Mr. Davis's co-defendants.

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28 ///

1           b.       **Grand Jury Presentation No. 2:** *The following facts are taken from the transcripts*  
2 *of the Grand Jury Hearing(s) held on March 19, 2020.*

3           ***Testimony of Mackeshia Murphy (pages 7-22)***

4           Mackeshia Murphy, at the time of her testimony, was in custody for open murder,  
5 conspiracy to commit robbery, robbery, and a probation violation. (p. 8). She was on  
6 probation for an attempt grand larceny conviction. (p. 8). If she successfully completes  
7 probation, the felony charge will be reduced to a misdemeanor. (p. 8). She was arrested in  
8 California in 2020 for absconding from probation. (p. 8-9). She was also originally charged  
9 with counts related to what she is testifying about. (p. 9). In exchange for her testimony, she  
10 has received immunity and will not be charged with any crime associated with her  
11 testimony. (p. 9).

12           Tyeshia James is Mackeshia's sister. (p. 9). Tyeshia's boyfriend is Jecory Kemp. (p. 9).  
13 Mackeshia was dating Davon Hickman. (p. 10). Jecory Kemp's nickname was Smooth Got It.  
14 (p. 10). Davon Hickman's nicknames were Little BD, Payso, or Pay Still Got It. (p. 10-11).

15           In the end of 2019, Mackeshia was staying at the Siena Suites at 6555 South Boulder  
16 Highway. (p. 10). She stayed there in an apartment with Davon Hickman, Jecory Kemp, and  
17 Tyeshia James. (p. 10).

18           On December 30, 2019, she was present for a conversation that involved a discussion  
19 about a man named AJ, who was the apartment complex's maintenance man. (p. 11).  
20 Mackeshia, Davon Hickman, Jecory Kemp, Tyeshia James, Sayso, and Sayso's brother were  
21 all present. (p. 11). Sayso owed A.J. \$2,000.00 for marijuana. (p. 12). Sayso, Davon Hickman,  
22 Jecory Kemp, and Sayso's brother were going to rob A.J. instead of paying him back. (p. 12).  
23 The plan was to call A.J., have him bring two pounds of marijuana to the apartment, and rob  
24  
25  
26  
27  
28

1 him. (p. 12).

2 The murder then happened the next day. (p. 12). She was walking down the stairs  
3 with Tyeshia James when A.J. showed up. (p. 12-13). She left the apartment before A.J.  
4 showed up because they didn't want her to tell if something happened. (p. 13). Davon told  
5 her to leave the apartment. (p. 13). As she was leaving, A.J. was going up to the apartment.  
6 (p. 13). Jecory Kemp, Sayso, Star, Davon Hickman, and Sayso's brother, remained in the  
7 apartment. (p. 13).

8  
9 The apartment was a one-bedroom. (p. 14). In the bedroom is a bathroom, and then  
10 when you go out of the bedroom, there is a living room and the kitchen. (p. 14). Sayso and  
11 Sayso's brother were going to be back in the bedroom. (p. 14). In the front room it was going  
12 to be Jecory Kemp, Davon Hickman, and Star. (p. 14).

13  
14 Mackeshia and Tyeshia went to their friend Mariah's apartment. (p. 15). They were at  
15 Mariah's apartment for fifteen or twenty minutes before something happens. (p. 15). They  
16 were outside smoking cigarettes when the men came running down the stairs and Davon  
17 said he shot A.J. (p. 15). A.J. was still in the apartment. (p. 15-16). Davon said A.J. was laying  
18 on the floor, shot. (p. 16). Sayso and his brother leave, but later come back. (p. 16).

19  
20 There is a discussion between Sayso, Sayso's brother, Davon Hickman, and Jecory  
21 Kemp about what to do with the body. (p. 16). Star left and wasn't seen again. (p. 16). The  
22 plan was to take the body to Barstow or San Bernardino. (p. 16). She never saw the body. (p.  
23 17).

24  
25 She helped her sister clean up the outside of the apartment where the blood was. (p.  
26 17). Her sister cleaned up the inside, while Mackeshia cleaned up the stairs. (p. 17). She  
27 doesn't know how the body left the apartment but was told by Jecory Kemp that he and Ty  
28



1 moved the body. (p. 17-18). She didn't know whether or not A.J. had a car until they moved  
2 it around the building. (p. 18).

3 Davon Hickman expressed to her he was scared because he was the one who shot A.J.  
4 (p. 18). Davon told Mackeshia that AJ showed up with only half a pound of marijuana. (p.  
5 19). Sayso and his brother were in the bedroom and when they came out, AJ pulled out a  
6 gun. (p. 19). After AJ pulled out a gun, Davon Hickman shot him. (p. 19). She never saw the  
7 marijuana they took from AJ. (p. 20).

8  
9 After the murder, she and Davon Hickman go to Los Angeles, California where she  
10 was arrested. (p. 20). Davon Hickman's phone number was 716-361-8448. (p. 20).

11  
12 An individual named Flaco picked up Davon Hickman and Jecory Kemp. (p. 22). He  
13 followed Jecory Kemp to Barstow, California and brought them back. (p. 22).

14 *Testimony of Breck Hodson (p. 24-34)*

15  
16 Breck Hodson is employed as a homicide detective with the Las Vegas Metropolitan  
17 Police Department. (p. 24). He has been with Metro for fourteen years and has been in  
18 homicide for eighteen months. (p. 25). In early 2020, he became involved in the investigation  
19 of Jabbar Anderson's death. (p. 25). His partner is Detective Mitchell Dosch. (p. 25).

20  
21 Davon Hickman goes by Little and/or Payso. (p. 25). Marion Jabbar Anderson went  
22 by AJ. (p. 26). Arleo Earl Davis Junior went by the name Sayso. (p. 26). Anthony Woods was  
23 known as Sayso's brother. (p. 26). Preston Huteson is known as Flaco. (p. 26).

24  
25 The investigation identified a phone number for Davon Hickman. (p. 26). A request  
26 was made for the phone records associated with his phone number. (p. 27). Davon  
27 Hickman's phone number began with a 716 number and was owned by the T-Mobile phone  
28 company. (p. 27). A court order and/or pen register and/or search warrant was sent to T-

1 Mobile to obtain a copy of Davon Hickman's phone records. (p. 27). He came in contact with  
2 Mackeshia Murphy, who confirmed 716-341-8447 was Davon Hickman's phone number. (p.  
3 27-28). They were not able to locate the actual phone. (p. 28).

4 When he came into contact with Davon Hickman, he did not have the phone on him.  
5 (p. 28). Arleo Davis had a phone on him when he made contact with police. (p. 28). The  
6 phone number assigned to the phone had changed since the events that happened on  
7 December 20. (p. 28). He was able to get the records associated with the phone number for  
8 the time period in December. (p. 28-29).

9  
10  
11 Arleo Davis was taken into custody by the fugitive apprehension team at the welfare  
12 office parking lot at the intersection of Bonanza and Nellis. (p. 29). Arleo Davis was  
13 transported to LVMPD headquarters where he was interviewed by detectives. (p. 29). He  
14 was read his Miranda rights and agreed to speak with detectives. (p. 29). Arleo Davis told  
15 detectives he knew Marion Jabbar Anderson, Davon Hickman, Jecory Kemp, Mackeshia  
16 Murphy, and Tyeshia James. (p. 30). He told detectives he had his cell phone on him at the  
17 time the crime occurred, and that his phone number had changed since. (p. 30).

18  
19  
20 Davon Hickman's cell phone hit on a cell phone tower. (p. 30-31). Davon Hickman's  
21 cell phone records corroborated Mackeshia Murphy's story that Davon Hickman was  
22 present at the apartment at the time the crime occurred. (p. 31). The crime occurred sometime  
23 around 2:00 p.m. on December 30, 2019. (p. 32).

24  
25 The T-Mobile information provided was different than the Verizon information. (p.  
26 32). Verizon provided a measurement from the actual device that connected to the cell site.  
27 (p. 32). It gives an arc and a measurement from the tower, so it tells that the device is  
28 communicating with that tower along the arc. (p. 32). There is a period of time between 12:00

1 p.m. and 2:00 p.m. on December 30, 2019 where the arc of the cell phone goes generally right  
2 through the apartment itself. (p. 32-33). The information provided from Arleo Davis's cell  
3 phone records corroborated what Mackeshia Murphy told detectives about him being  
4 present at the time of the crime. (p. 33).

5  
6 At the Grand Jury Hearing on March 19, 2020 the Grand Jurors returned a true bill  
7 against Arleo Davis.

### 8 LEGAL STANDARD

9 As this Court is well aware, "[t]he finding of probable cause may be based on slight,  
10 even 'marginal,' evidence because it does not involve a determination of the guilt or  
11 innocence of an accused." Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178 (1980); *see also*  
12 Sheriff v. Shade, 109 Nev. 826, 828, 858 P.2d 840 (1993); Sheriff v. Simpson, 109 Nev. 430, 435,  
13 851 P.2d 428 (1993); Sheriff v. Crockett, 102 Nev. 359, 361, 724 P.2d 203 (1986). Moreover,  
14 "The grand jury can receive none but legal evidence, and best evidence in degree, to the  
15 exclusion of hearsay or secondary evidence." NRS 172.135(2); Sheriff v. Frank, 103 Nev. 160,  
16 165 (1987). A probable cause finding, however, must be based solely on admissible evidence.  
17 Only where there is sufficient *legal* evidence to support the charge can an Indictment be  
18 sustained. Robertson v. State, 84 Nev. 559, 561-562 (1968).

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## ARGUMENT

### I. THE STATE INTRODUCED NO SLIGHT OR MARGINAL LEGALLY SUFFICIENT EVIDENCE THAT ARLEO EARL DAVIS COMMITTED THE CRIMES OF CONSPIRACY, MURDER, KIDNAPPING, ROBBERY OR DEADLY WEAPON ENHANCEMENTS AS ALLEGED IN THE SUPERSEDING INDICTMENT.

In this instant case, the transcript of the Grand Jury Proceedings is completely void of evidence connecting the Petitioner to the charge of Conspiracy to Commit Robbery, as alleged in Count 1 of the Indictment.

NRS 200.380(1) states:

Robbery is the unlawful taking of personal property from the person of another, or in the person's presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person or property, or the person or property of a member of his or her family, or of anyone in his or her company at the time of the robbery. A taking is by means of force or fear if force or fear is used to

- (a) Obtain or retain possession of the property;
- (b) Prevent or overcome resistance to the taking; or
- (c) Facilitate escape.

Count 1, in a blanketed statement, simply alleges that:

Mr. Davis did willfully, unlawfully, and feloniously conspire with each other and/or unknown individuals to commit a robbery, by the Defendants committing the acts as set forth in Counts 2 through 4, said acts incorporated by this reference as though fully set forth herein.

There is a lack of specificity within Count 1. An indictment, standing alone, must contain each and every element of the crime charged and the facts showing how defendant allegedly committed each element of the crime charged. State v. Hancock, 114 Nev. 161, 164 (1998). Count 1 does not provide any details at which Mr. Davis must be prepared to face. An indictment is deficient unless it sufficiently apprises the defendant of what he must be prepared to meet. Id. at 165. The accusation must include a characterization of the crime and

1 such description of the particular act alleged to have been committed by the accused. Id. The  
2 description of the offense must be full and complete to accord to the accused his  
3 constitutional right to due process of law. Id. This indictment is fatally flawed due to the lack  
4 of details provided within Count 1. As a result, Count 1 of the Indictment must be dismissed.  
5

6 Moreover, and more importantly to the instant case, the transcript of the Grand Jury  
7 Proceedings is completely void of evidence connecting the Petitioner to the charge of Murder  
8 with Use of a Deadly Weapon, as alleged in Count 2 of the Indictment.

9 NRS 200.010 defines Murder as follows:  
10

11 The unlawful killing of a human being with malice aforethought, either express  
12 or implied; Caused by a controlled substance which was sold, given, traded or  
13 otherwise made available to a person in violation of Chapter 453 of NRS; or  
caused by a violation of NRS 172.144.

14 Count 2 states that Mr. Davis:

15 Did willfully, unlawfully, feloniously and with malice aforethought, kill  
16 Marion B. Jabbar Anderson, a human being, with use of a deadly weapon, to  
17 wit: a firearm, by shooting at and into the body of the said Marion B. Jabbar  
18 Anderson, the said killing having been 1) willful, deliberate and premeditated  
and/or 2) committed during the perpetration or attempted perpetration of a  
19 kidnapping and/or robbery, the Defendant(s) being criminally liable under  
one or more of the following principles of criminal liability, to wit: (1) by  
20 directly committing this crime, and/or (2) by aiding or abetting in the  
commission of this crime, with the intent that this crime be committed, by  
21 counseling, encouraging, hiring, commanding, inducing and/or otherwise  
procuring the other to commit the crime; and/or (3) pursuant to a conspiracy  
22 to commit this crime, with the intent that this crime be committed, Defendants  
23 and/or others yet unknown to the conspiracy acting in concert throughout.

24 The State has failed to prove that Mr. Davis was involved with the willful, deliberate,  
25 and premeditated murder of Mr. Anderson. The State also failed to prove by a scintilla of  
26 evidence that the murder was committed during the perpetration of a robbery that Mr. Davis  
27 was involved in. The only testimony elicited that ties Mr. Davis to the crime scene is that of  
28

1 an un-indicted co-conspirator, who was granted immunity, and who has every motive to lie  
2 and point the blame at other individuals. Before an out-of-court statement by an alleged co-  
3 conspirator may be admitted into evidence against a defendant, the existence of a conspiracy  
4 must be established by independent evidence, and the statement must have been made  
5 during the course of and in furtherance of the conspiracy. Wood v. State, 115 Nev. 334, 349  
6 (1999) *quoting* Carr v. State, 95 Nev. 238, 239 (1980). In the instant case, the State's barebones  
7 presentation of evidence to the Grand Jury establishes that a deceased, burned body was  
8 discovered in California and that a location for the alleged crime(s) is discovered in Las  
9 Vegas.  
10

11  
12 The State has zero independent evidence that Mr. Davis planned or participated in a  
13 robbery or committed a murder. Here, the only evidence of a conspiracy involving Mr. Davis  
14 is the uncorroborated testimony of an unindicted participant testifying for personal gain. As  
15 this Court will quickly recognize when reading the Grand Jury Transcripts, the only  
16 evidence that implicated Mr. Davis in a conspiracy and/or robbery and/or murder is the  
17 testimony of Mackeshia Murphy. Mr. Davis never lived in the apartment where the crime  
18 took place. The Grand Jury heard zero testimony about physical evidence, forensics or  
19 ballistics that tie Mr. Davis to the murder. There was no evidence presented to the Grand  
20 Jury that Mr. Davis used force, violence, had a weapon or had knowledge that a weapon was  
21 present or would be used in any event involving the decedent in this case. No one, other  
22 than Ms. Murphy, identifies Mr. Davis as being present at the time of a murder or robbery  
23 in any way. Therefore, there is no independent evidence that a conspiracy existed in this  
24 case, *other than* the testimony of alleged accomplice Ms. Murphy. This is important because,  
25 as this Court well knows, NRS 175.291 provides that the testimony of an accomplice must be  
26  
27  
28

1 corroborated and defines the requisite sufficiency of corroboration. It states:

2       **1. A conviction shall not be had on the testimony of an accomplice unless**  
3       **the accomplice is corroborated by other evidence which in itself, and**  
4       **without the aid of the testimony of the accomplice, tends to connect the**  
5       **defendant with the commission of the offense; and the corroboration shall**  
6       **not be sufficient if it merely shows the commission of the offense or the**  
7       **circumstances thereof.**

8       **2. An accomplice is hereby defined as one who is liable to prosecution, for**  
9       **the identical offense charged against the defendant on trial in the cause in**  
10       **which the testimony of the accomplice is given.**

11       The introduction of the accomplice testimony of Murphy is precisely the type of  
12       testimony this statute was designed to address. Clearly Ms. Murphy is seen as an accomplice  
13       by the State, given that she was facing charges. An accomplice is one who is liable to  
14       prosecution for the identical offense charged against the defendant, or who is culpably  
15       implicated in, or unlawfully cooperates, aids or abets in the commission of the crime  
16       charged. Potter v. State, 96 Nev. 875, 619 P.2d 1222, (1980). The reasoning behind this  
17       requirement is mandated by the Nevada Legislature by reasoning that an individual who  
18       has “participated criminally in a given criminal venture shall be deemed to have such  
19       character, and such motives, that his testimony alone shall not rise to the dignity of proof  
20       beyond a reasonable doubt.” Austin v. State, 87 Nev. 578, 491 P.2d 724, (1971). The purpose  
21       behind this statutory requirement of corroborative evidence is to prevent false accusations  
22       and false convictions. State v. Wyatt, 84 Nev. 731, 448 P.2d 827, (1968), Eckert v. State, 91  
23       Nev. 183, 533 P.2d 468, (1975). The Nevada Supreme Court addressed this issue in  
24       Heglemeier v. State, 111 Nev. 1244, 903 P.2d 799, (1995), where the Court made clear the  
25       standard for reviewing evidence of corroboration to the testimony of an accomplice. In that  
26       case, the Court held that corroborating evidence must independently connect the defendant

1 with the offense; evidence does not suffice as corroborative if it merely supports the  
2 accomplice's testimony and that if there is no independent, inculpatory evidence, evidence  
3 tending to connect the defendant with the offense, there is no corroboration. Id. When  
4 analyzing the facts of Heglemeier, the Nevada Supreme Court held, consistent with the plain  
5 language of NRS 175.291, that "[i]n order for a defendant to be convicted on the testimony  
6 of an accomplice, the state must present other independent evidence that tends to connect  
7 the defendant with the crime." Moreover, the Court held that corroborating evidence *must*  
8 *independently connect the defendant with the offense; evidence does not suffice as*  
9 *corroborative if it merely supports the accomplice's testimony.* Id., *emphasis added.* The  
10 Court clearly mandated that "if there is no independent, inculpatory evidence -- evidence  
11 tending to connect the defendant with the offense, there is no corroboration, though the  
12 accomplice may be corroborated in regard to any number of facts sworn to him." Id., *citing*  
13 Austin v. State, 87 Nev. 578, 585, 491 P.2d 724, 728-29 (1971) (*quoting* People v. Shaw, 17 Cal.  
14 2d 778, 112 P.2d 241, 255 (Cal. 1941)). In emphasizing this point, the Court held that "[w]here  
15 the connecting evidence shows no more than an opportunity to commit a crime, simply  
16 proves suspicion, or is equally consonant with a reasonable explanation pointing toward  
17 innocent conduct on the part of the defendant, the evidence is to be deemed insufficient."  
18 Id., *citing* State v. Dannels, 226 Mont. 80, 734 P.2d 188, 194 (Mont. 1987) (*quoting* State v.  
19 Mitchell, 192 Mont. 16, 625 P.2d 1155, 1158 (Mont. 1980)).

20  
21  
22 In Heglemeier, the Court identified positive, independent corroborative evidence  
23 introduced at trial related to 1) cartridge cases recovered from the crime scene; (2)  
24 Heglemeier's close relationship with people involved (the owner of the gun used); 3)  
25 Heglemeier knew where the Murder weapon was usually kept; 4) Independent witnesses  
26  
27  
28



1 believed that Heglemeier may have accompanied the owner of the gun to the place of  
2 purchase; 5) Heglemeier was acquainted with Becker for several years and was on his list of  
3 persons who could visit him in prison; 6) the relative height of the suspects and that of the  
4 witness (Becker) and Heglemeier.

5  
6 The Heglemeier Court found that “[a]lthough the state did introduce some evidence  
7 that might be construed as tending to connect Heglemeier with the crime” – the evidence  
8 was “insufficient, as a matter of law, to corroborate Becker's testimony.” Id. The Court  
9 further held that the relationship of Heglemeier with his alleged accomplice Becker was  
10 insufficient to establish corroborative evidence. LaPena v. Sheriff, 91 Nev. 692, 695, 541 P.2d  
11 907, 909 (1975). The Court even stated that although an eyewitness to the crime gave a  
12 description of the gunmen's heights as approximating the heights of Becker and Heglemeier,  
13 this was not sufficient.  
14

15  
16 In sum, the Court found that the connection of Heglemeier and Elizabeth and her gun,  
17 Heglemeier’s association with Becker, and the eyewitness testimony regarding the height of  
18 the suspects do not, *when considered independently from Becker's testimony*, sufficiently  
19 connect Heglemeier to the crime. The Court succinctly stated that “this evidence does not  
20 constitute adequate corroboration.” Id.  
21

22 In the end, the Court in Heglemeier concluded that this lack of corroboration fell short  
23 of the requirement of NRS 175.291 and **reversed the conviction of Heglemeier**. The Court  
24 found particularly instructive the case of Eckert v. State, 91 Nev. 183, 533 P.2d 468 (1975). In  
25 that case, the defendant, Eckert, was charged with the murder of a man who had been shot  
26 in Las Vegas by three different weapons, including a nine-millimeter handgun and a .38  
27 caliber handgun. An accomplice, Hilt, had previously given Eckert money for both a nine-  
28

1 millimeter and a .38 handgun, and Eckert had signed the required federal forms for these  
2 guns. After purchasing the guns, Eckert, Hilt, and another accomplice, Overton, decided to  
3 drive from Kansas to Las Vegas; the car, however, broke down along the way in New Mexico.

4         At trial, Overton testified against Eckert and stated that after the car broke down, all  
5 three of them continued on to Las Vegas and picked up the victim, who had just left the bar.  
6 According to Overton, Eckert shot the victim for no apparent reason and then ordered the  
7 others to shoot the victim. Eckert, however, testified that he stayed with the broken car while  
8 the others went to Las Vegas. Id. at 184-85, 533 P.2d at 469-70. The only evidence connecting  
9 Eckert to the murder was that Eckert had signed the federal form for one of the guns  
10 identified as a murder weapon and that Eckert was associated with Overton, who admitted  
11 that they had shot the victim. This court concluded that the evidence was not sufficient to  
12 corroborate the accomplice's testimony. Id. at 186, 533 P.2d at 471. The Nevada Supreme  
13 Court in Heglemeier echoed the holding previously issued in the Eckert decision, concluding  
14 "the dangers are too great in view of the self-purposes to be served by [Becker] to suggest  
15 that the contents of this record supply the needed corroboration to uphold conviction." Id.  
16

17         In the instant case, the testimony and evidence is no different. While the State may  
18 believe that simply placing an accomplice on the witness stand to testify as to their version  
19 of events, the law in Nevada requires more, namely corroboration. Here, the testimony of  
20 these accomplices cannot be corroborated and therefore, must be excluded. Without the  
21 testimony of Ms. Murphy, there is simply no corroborating evidence sufficient to allow this  
22 matter to proceed to trial and the Superseding Indictment must be dismissed.  
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1  
2 **II. THE STATE INTRODUCED NO SLIGHT OR marginally LEGALLY**  
3 **SUFFICIENT EVIDENCE THAT ARLEO EARL DAVIS COMMITTED THE**  
4 **CRIME OF FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON**  
5 **RESULTING IN SUBSTANTIAL BODILY HARM AS ALLEGED IN COUNT 3 OF**  
6 **THE INDICTMENT**

7 NRS 200.310(1) states, in pertinent part:

8 A person who willfully seizes, confines, inveigles, entices, decoys, abducts,  
9 conceals, kidnaps or carries away a person by any means whatsoever with the  
10 intent to hold or detain, or who holds or detains, the person for ransom, or  
11 reward, or for the purpose of committing a sexual assault, extortion or robbery  
12 upon or from the person, or for the purpose of killing the person or inflicting  
substantial bodily harm upon the person, or to exact from relatives, friends, or  
any other person any money or valuable thing for the return or disposition of  
the kidnapped person ... is guilty of kidnapping in the first degree which is a  
Category A Felony.

13 Count 3 of the Indictment alleges that Mr. Davis:

14 Did willfully, unlawfully, and feloniously, seize, confine, inveigle, entice,  
15 decoy, abduct, conceal, kidnap or carry away Marion B. Jabbar Anderson, a  
16 human being, with the intent to hold or detain the said Marion B. Jabbar  
17 Anderson against his will, and without his consent, for the purpose of  
18 committing a robbery, with use of a deadly weapon, to wit: a firearm(s),  
19 resulting in substantial bodily harm to Marion B. Jabbar Anderson, the  
20 Defendant(s) being criminally liable under one or more of the following  
21 principles of criminal liability, to wit: (1) by directly committing this crime;  
22 and/or (2) by aiding or abetting in the commission of this crime, with the intent  
23 that this crime be committed, by counseling, by encouraging, hiring,  
24 commanding, inducing and/or otherwise procuring the other to commit the  
25 crime, whereby one of their number lured and/or enticed the said victim to  
the crime scene under the guise of a drug deal with the intent to rob him,  
thereafter during the course of the robbery and/or attempted robbery, one of  
their number shot at and into the body of the said victim; and/or (3) pursuant  
to a conspiracy to commit this crime, with the intent that this crime be  
committed Defendants and/or others yet unknown to the conspiracy acting in  
concert throughout.

26 The transcript is entirely void of any evidence Mr. Davis committed the crime of  
27 Kidnapping with use of a Deadly Weapon Resulting in Substantial Bodily Harm. *Even if* this  
28

1 Court were legally permitted to consider the testimony of Ms. Murphy as it relates to any  
2 kidnapping, (for reasons outlined herein, this Court should not), the testimony provided to  
3 the Grand Jury is not legally sufficient to sustain the dual charges of robbery and  
4 kidnapping. The Nevada Supreme Court has repeatedly held that to sustain convictions for  
5 both robbery and kidnapping arising from the same course of conduct, any movement or  
6 restraint must stand alone with independent significance from the act of robbery itself, create  
7 a risk of danger to the victim substantially exceeding that necessarily present in the crime of  
8 robbery, or involve movement, seizure or restraint substantially in excess of that necessary  
9 to its completion. Mendoza v. State, 122 Nev. 267, 275 (2006). As a general matter, movement  
10 or restraint incidental to an underlying offense will not expose the defendant to dual criminal  
11 liability under the kidnapping statutes. Id. at 274.

12 Moving a victim from one room inside a house to another room in search of valuables  
13 during the commission of a robbery is insufficient, by itself, to sustain convictions for both  
14 kidnapping and robbery. Gonzalez v. State, 131 Nev. 481, 498 (2015) (*citing* Wright v. State,  
15 94 Nev. 415, 417-18 (1978)).

16 According to the testimony adduced at the Grand Jury, 6555 Boulder Highway,  
17 building 11, apartment 309 is a very small apartment and consists of just a living room, a  
18 kitchen, a bedroom, and a bathroom. (GJT Vol 1., page 29). The testimony, if believed and  
19 legally sufficient, was that Mr. Anderson showed up to the apartment on his own volition,  
20 to sell marijuana to the group. The victim brought one pound of marijuana to sell and said  
21 the group would receive the other pound of marijuana when he was paid for the first pound.  
22 There is simply no evidence that Mr. Anderson was never carried away, confined, seized,  
23 enticed, concealed or that any independently significant event above that required for a  
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28

1 robbery occurred. Even accepting all of the State's elicited testimony in the light most  
2 favorable to the State, there is simply no evidence that there was any restriction of movement  
3 or movement which was not incidental to the Robbery, occurring within the confines of this  
4 very small apartment. As such, the State has failed to meet their burden and Count 3 of the  
5 Indictment must be dismissed.  
6

7 **IV. THE STATE INTRODUCED NO SLIGHT OR marginally LEGALLY**  
8 **SUFFICIENT EVIDENCE THAT ARLEO EARL DAVIS COMMITTED THE**  
9 **CRIME OF ROBBERY WITH USE OF A DEADLY WEAPON AS ALLEGED IN**  
10 **COUNT 4 OF THE INDICTMENT.**

11 In this instant case, the transcript of the Grand Jury Proceedings is completely void of  
12 evidence connecting the Petitioner to the charge of Robbery with Use of a Deadly Weapon ,  
13 as alleged in Count 4 of the Indictment.

14 NRS 200.380(1) states:

15 Robbery is the unlawful taking of personal property from the person of  
16 another, or in the person's presence, against his or her will, by means of force  
17 or violence or fear of injury, immediate or future, to his or her person or  
18 property, or the person or property of a member of his or her family, or of  
19 anyone in his or her company at the time of the robbery. A taking is by means  
20 of force or fear if force or fear is used to

- 21 (a) Obtain or retain possession of the property;  
22 (b) Prevent or overcome resistance to the taking; or  
23 (c) Facilitate escape.

24 Count 4 of the Indictment alleges that Mr. Davis:

25 Did willfully, unlawfully, and feloniously take personal property, to wit:  
26 Marijuana and/or US Currency and/or vehicle and/or vehicle keys, from the  
27 person of Marion B. Jabbar Anderson, or in his presence, without the consent  
28 and against the will of Marion B. Jabbar Anderson, by means of force or  
violence or fear of injury, immediate or future, to his person, the person of a  
member of his family, or of anyone in his company at the time of the robbery,  
defendant using force or fear to obtain or retain possession of the property, to  
prevent or overcome resistance to the taking of the property, and/or to  
facilitate escape, with use of a deadly weapon, to wit: a firearm; the  
Defendant(s) being criminally liable under one or more of the following

1 principles of criminal liability, to wit: (1) by directly committing this crime;  
2 and/or (2) by aiding or abetting in the commission of this crime, with the intent  
3 that this crime be committed, by counseling, encouraging, hiring,  
4 commanding, inducing and/or otherwise procuring the other to commit the  
5 crime, and/or (3) pursuant to a conspiracy to commit this crime, with the intent  
6 that this crime be committed, Defendants and/or unknown individuals acting  
7 in a concert throughout.

8 There is no scintilla of evidence that connects Mr. Davis to the crime of Robbery with  
9 Use of a Deadly Weapon. The State's star only witness connecting Mr. Davis to the crimes in  
10 this case, the un-indicted co-conspirator who was granted immunity, testified she never saw  
11 any marijuana. There was no testimony that any marijuana or US currency was taken as  
12 alleged in the Superseding Indictment. The testimony regarding the victim's car was that  
13 Jecory Kemp and Davon Hickman took the victim's car - not Mr. Davis. As it relates to the  
14 specific allegations of Count 4, there is an overwhelming lack of evidence implicating Mr.  
15 Davis in any criminal activity as alleged in Count 4. As such, Count 4 of the Indictment must  
16 be dismissed.

### 17 CONCLUSION

18 Based on the foregoing, the instant Petition should be granted and Indictment as to  
19 Arleo Earl Davis should be dismissed in its entirety.  
20

21 DATED this 5th day of May, 2020.  
22

23 **HOFLAND & TOMSHECK**

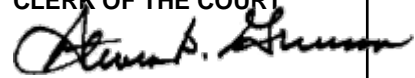
24 By:     /s/ J. Tomsheck      
25 Joshua Tomsheck, Esq.  
26 Nevada Bar No. 9210  
27 228 South Fourth Street, 1<sup>st</sup> Floor  
28 Las Vegas, Nevada 89101  
(702) 895-6760  
Attorney for Petitioner

CERTIFICATE OF SERVICE

On this 5th day of May, 2020 of a true and correct copy of the foregoing PETITION  
FOR WRIT OF HABEAS CORPUS was made via electronic service system to the following:

MARC.DIGIACOMO@CLARKCOUNTYDA.COM  
JORY.SCARBOROUGH@CLARKCOUNTYDA.COM  
DEPT17LC@CLARKCOUNTYCOURTS.US

/s/ Olivia Campbell  
An Employee of Hofland & Tomsheck



**RET**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
MARC DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006955  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
State of Nevada

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of Application,

of

ARLEO EARL DAVIS, aka,  
Arleo Earl Davis, Jr.,  
#7054823

CASE NO: C-20-346920-3

DEPT NO: XVII

for a Writ of Habeas Corpus.

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

DATE OF HEARING: 5/29/2020  
TIME OF HEARING: 10:15 A.M.

COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent, through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney, in obedience to a writ of habeas corpus issued out of and under the seal of the above-entitled Court on the 5th day of May, 2020, and made returnable on the 29th day of May, 2020, at the hour of 10:15 A.M., before the above-entitled Court, and states as follows:

1. Respondent admits the allegations of Paragraph(s) 1, 2 and 7 of the Petitioner's Petition for Writ of Habeas Corpus.
2. Respondent denies the allegations of Paragraph(s) 3 and 5 (Defendant was arraigned on April 2, 2020) of the Petitioner's Petition for Writ of Habeas Corpus.
3. Paragraph(s) 6 and 7 do not require admission or denial.



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

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

6           DATED this 19th day of May, 2020.

7                               Respectfully submitted,

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

10                              BY /s/ Marc DiGiacomo  
11                              MARC DIGIACOMO  
12                              Chief Deputy District Attorney  
                              Nevada Bar #006955

13  
14   **PROCEDURAL HISTORY**

15           On March 19, 2020, Defendant was indicted for the instant charges. The very next day,  
16 the transcripts of the grand jury proceedings were filed. The first appearance of Defendant in  
17 district court took place on March 27<sup>th</sup>, 2020. *See Exhibit 2 attached hereto.* At that hearing,  
18 the arraignment was continued to April 2, 2020. On April 2, 2020, Defendant was arraigned,  
19 pled not guilty and invoked the 60-day rule. *See Exhibit 3 attached hereto.* On April 14, 2020,  
20 Attorney Joshua Tomsheck appeared and confirmed as counsel on the case. The minutes show  
21 the Defendant was arraigned for a second time, pleading not guilty, and invoking the 60-day  
22 rule. The trial date was set for July 6, 2020.

23           A review of the Court's electronic filing system shows that Defendant never sought any  
24 extension of time for the filing of the petition, either *ex parte* or otherwise. Defendant filed a  
25 Pre-Trial Writ of Habeas Corpus on May 5, 2020, well past the deadline statutory,  
26 jurisdictional time period. This opposition follows.

27           ///

28           ///

1 **STATEMENT OF FACTS**

2 **I. OVERVIEW**

3 Shortly prior to December 30, 2019, Defendant Arleo Davis owed money to the victim,  
4 Marion Jabbar Anderson, over a drug transaction. Defendant enlisted the help of Jacory Kemp  
5 and Davon Hickman to help him rob Anderson of Marijuana. Kemp and Hickman were dating  
6 Tyesha James and Mackeshia Murphy and sharing an apartment on Boulder Highway. The  
7 five (5) people were present when Anderson, Kemp and Hickman discussed robbing Anderson  
8 of two (2) pounds of marijuana.<sup>1</sup> Anderson was lured to the apartment and James and Murphy  
9 were ordered to leave. When he arrived, the group tried to rob Anderson and during that effort,  
10 Anderson was shot and killed. Anderson's body was loaded into Anderson's vehicle and taken  
11 to California, where it was burned. During this time, James assisted in the clean-up of the  
12 apartment, and Murphy helped clean the outside of the apartment.

13 **GRAND JURY PRESENTMENTS**

14 **I. GRAND JURY PRESENTATION 1:**

15 On the evening of December 30, and December 31, 2019, San Bernardino County  
16 Sheriff's Department (SBCSD) Homicide Detective Arturo Alvarado was called out to a  
17 homicide investigation at Interstate 15 (I-15) between Baker and Barstow California. Grand  
18 Jury Presentation 1 ("GJ1"), at p. 9. Once on scene, Detective Alvarado discovered a vehicle  
19 with significant fire damage. Id. at 12. The vehicle was charred, the rubber and plastic were  
20 already burned away, and the car was basically just metal. Id. at 13. The vehicle was  
21 determined to be a Lexus. Id. at 13.

22 Once the fire was extinguished, Detective Alvarado discovered a deceased body outside  
23 of the vehicle next to the vehicle's trunk. Id. at 15. The victim's body was face down and the  
24 body was burned. Id. Under California law the coroner is the only entity allowed to touch or  
25 manipulate the body. Id. When the coroner responded to the scene, the coroner conducted what  
26 is referred to as a "body roll." Id. at 16.

27 ///

28 \_\_\_\_\_  
<sup>1</sup> Defendant's brother, Antonio Woods, was present as well, but has yet to be arrested.

1 The body roll revealed a key card on a lanyard around the victim's neck. Id. at 16. The  
2 information learned from the key card, along with the information about the vehicle involved,  
3 lead SBCSD Homicide Detectives to conclude that the victim had potential ties to Las Vegas.  
4 Id. at 17. Based on that information, SBCSD Homicide Detectives contacted LVMPD  
5 Homicide Detectives Hodson and Dosch for assistance. Id.

6 Once Hodson and Dosch became involved, they developed the address of 6555 S.  
7 Boulder Highway, building 11, apartment 309 as the murder scene. Id. Apartment 309 is  
8 located on the top floor of building 11. Id. To get to apartment 309, one has to walk up two  
9 flights of stairs. Id.

10 When detectives responded to the apartment complex, Dosch discovered a blood trail  
11 on the ground. Id. at 23. The trail started on the third floor of building 11, right near the front  
12 door of apartment 309. Id. The blood trail continued down the stairs to the ground floor and  
13 ended in the parking lot. Id. The blood trail ended near a parking space where the trunk of a  
14 vehicle would be located if a vehicle parked in the space facing forward. Id. p 25-26.

15 Based on the blood trail, Detectives obtained a search warrant for the residence. Id. at  
16 27. Upon entry, the apartment was unoccupied. Id. Once inside, Detective Dosch immediately  
17 noticed a strong odor of cleaning chemicals. Id. at 30. Dosch also noticed a white residue on  
18 the tile kitchen floor. Id. Not only was there apparent blood spatter along the bottom edge of  
19 the kitchen cabinets, there was also apparent blood spatter on the overhead kitchen light and  
20 the dishwasher. Id. at 30. Cleaning materials were found inside the apartment as well. Id. at  
21 31.

22 Initially, the first two suspects who were developed as a result of the investigation were  
23 Jecory Kemp and Tyeshia James. Id. James and Kemp were apprehended and interviewed in  
24 connection with the murder. Id. Those interviews lead to the identification of Davon Hickman  
25 and Mackeshia Murphy as well as a suspect named "Sayso," later identified as Defendant  
26 Arleo Davis.

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1 **II. GRAND JURY PRESENTATION 2:**

2 Mackeshia Murphy received immunity for her testimony in this matter. Grand Jury  
3 Presentation 2 (“GJP 2”) at p. 9.<sup>2</sup>

4 Mackeshia is Tyeshia James’ sister. Id. Mackeshia testified that Jecory Kemp is  
5 Tyeshia’s boyfriend and that she was dating a man named Davon Hickman. Id. at 10.  
6 Mackeshia knows Jecory by the nickname “Smooth Got It”, and also knows Davon by the  
7 nickname “Payso.” Id. Mackeshia was living with Davon Hickman, Jecory Kemp and Tyeshia  
8 James at the Sienna Suites at 6555 South Boulder Highway near the end of 2019. Id.

9 Mackeshia testified to a conversation that she overheard on December 30, 2019  
10 discussing the victim. Id. at 11. Mackeshia, Hickman, Kemp, James, a man who goes by the  
11 nickname “Sayso,” and Sayso’s brother were all present during this conversation. Id. Through  
12 that conversation it was learned that “Sayso” owed the victim \$2000 for marijuana. Id. at 12.  
13 Instead of paying the victim back, “Sayso,” Hickman, Kemp and Sayso’s brother were going  
14 to rob the victim. Id.

15 The plan was to call the victim, have him bring two pounds of marijuana, and to rob  
16 him once he arrived. Id. The next day, Mackeshia saw the victim show up at the apartment. Id.  
17 at 12-13. Mackeshia left the apartment with James before the planned robbery because she was  
18 told to leave by the conspirators. Id. As she was leaving, the victim was walking towards the  
19 apartment. Id. The last people in the apartment before she left was Kemp, “Sayso”, Hickman,  
20 “Star”, and Sayso’s brother. Id.

21 When Mackeshia and Tyeshia left the apartment, they went to a friend’s apartment  
22 nearby. Id. at 15. After 15-20 minutes, the two were outside smoking a cigarette when  
23 Hickman came running down the stairs saying he shot the victim. Id. The victim was still in  
24 the apartment. Id. Hickman, Kemp, “Sayso,” and Sayso’s brother discussed what to do with  
25 the victim’s body. Id. at 16. The plan was to take the body to Barstow or San Bernardino. Id.  
26 at 17. Mackeshia helped her sister clean up the outside stairs where the blood was. Id.  
27 Mackeshia never saw the body. Id. Mackeshia indicated that Kemp told her that he and James

28 <sup>2</sup> During her testimony, while she admitted to knowing about the plan to rob before, her only admission to criminal liability was to accessory after the fact for cleaning up the blood from the stairs.

1 moved the body. Id. at 17-18. When transporting the body, a man referred to as “Flaco”  
2 followed Kemp and Hickman to Barstow and drove the two back to Las Vegas. Id. at 19.

3 Mackeshia testified that Hickman expressed to her that he was scared because he was  
4 the one who shot the victim. Id. at 18. Hickman told her that the victim showed up with less  
5 marijuana than discussed and that he was confronted by “Sayso” and his brother. Id. at 19.  
6 Once that happened, the victim pulled out a gun and Hickman shot him. Id.

7 After the murder, Mackeshia and Hickman fled to Los Angeles where she was  
8 ultimately arrested. Detective Hodson learned of a phone number associated with Hickman  
9 that was confirmed by Mackeshia Murphy after her arrest. Id. at 27. Murphy confirmed that  
10 that Hickman’s phone number was (716)-361-8448. After Detectives requested the phone  
11 records associated with that 716 number, cell cite coverage details were able to confirm and  
12 corroborate Murphy’s story that Hickman was present at the apartment during the homicide.  
13 Id. at 31.<sup>3</sup>

14 Ultimately, all the of the remaining suspects associated were identified by Detectives  
15 during the investigation. Sayso’s brother was identified as Anthony Woods. The man named  
16 “Flaco” was identified as Preston Huteson and the man named “Sayso” was identified as  
17 Defendant Arleo Davis Junior. Id. at 26.

18 Defendant Davis was taken into custody by a fugitive apprehension team at the  
19 intersection of Bonanza and Nellis at the welfare parking lot. Id. at 29. Davis had a phone on  
20 his person when he was taken into custody. Id. at 28. However, the phone number associated  
21 with the device at the time of his arrest was not the number assigned to that same device during  
22 the time of the homicide on December 30<sup>th</sup>, 2019. Id.

23 While in custody, Davis was interviewed about the homicide. During his interview,  
24 Davis indicated that he knew the victim, Hickman, Kemp, Murphy and James. Id. at 30. Davis  
25 also admitted that he was in possession of the phone at the time of the homicide, and also  
26 confirmed the subsequent switch of the phone numbers associated with that device. Id.

27 ///

28 \_\_\_\_\_  
<sup>3</sup> Both Tyesha James and Jacory Kemp provided similar custodial statements as Murphy Grand Jury testimony.

1 Detectives obtained the records associated with the actual device possessed by Davis  
2 and were able to confirm and corroborate Davis's presence at the apartment during the time of  
3 the murder. Id. at 33.<sup>4</sup> Unlike Davon Hickman's phone records which provided general  
4 location information, Defendant's phone records were from Verizon. Those records had a  
5 measurement of how far Defendant's device was from the cellular tower during specific times.  
6 Id. at 32. That allowed detectives to draw an arc on a map to display the exact location of  
7 Defendant at specific times. During the time of the crime, that arc ran directly through the  
8 apartment where the murder occurred at the time the murder occurred. Id. at 33. Thus, the  
9 electronic evidence not only corroborated Murphy, but established independent of Murphy  
10 that Defendant was present at the time of the murder.

## 11 **POINTS AND AUTHORITIES**

### 12 **I. DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS IS** 13 **PROCEDURALLY BARRED**

14 Defendant has failed to properly file his petition for writ of habeas corpus. As such,  
15 the Court lacks jurisdiction to consider the petition. NRS 34.700 is mandatory and states:

16 1. Except as provided in subsection 3, a pretrial petition for a writ  
17 of habeas corpus based on alleged lack of probable cause or  
18 otherwise challenging the court's right or jurisdiction to proceed to  
the trial of a criminal charge may not be considered unless:

19 (a) **The petition and all supporting documents are filed within**  
20 **21 days after the first appearance of the accused in the district**  
21 **court;** and

22 (b) The petition contains a statement that the accused:(1) Waives  
23 the 60-day limitation for bringing an accused to trial; or

24 (2) If the petition is not decided within 15 days before the date set  
25 for trial, consents that the court may, without notice or hearing,  
26 continue the trial indefinitely or to a date designated by the court.

27 2. The arraignment and entry of a plea by the accused must not be  
28 continued to avoid the requirement that a pretrial petition be filed  
within the period specified in subsection 1.

3. The court may extend, for good cause, the time to file a petition.  
Good cause shall be deemed to exist if the transcript of the  
preliminary hearing or of the proceedings before the grand jury is  
not available within 14 days after the accused's initial appearance

---

<sup>4</sup> Defendant's records were admitted as Exhibit 41 at the grand jury presentment.

1 and the court shall grant an ex parte application to extend the time  
2 for filing a petition. All other applications may be made only after  
appropriate notice has been given to the prosecuting attorney.

3 (Emphasis Added). Any petition which is not filed in conformance with NRS 34.700 is not  
4 cognizable and cannot be considered by the Court. NRS 34,710. *See also* Sheriff of Washoe  
5 County v. Chumphol, 95 Nev. 818, 603 P.2d 690, 1979 Nev. LEXIS 668 (Nev. 1979); Gatlin  
6 v. State, 96 Nev. 303, 608 P.2d 1100, 1980 Nev. LEXIS 576 (Nev. 1980); Sheriff, Clark  
7 County v. Marshall, 96 Nev. 304, 608 P.2d 1101, 1980 Nev. LEXIS 577 (Nev. 1980). As  
8 such, the petition must be dismissed. Sheriff, Clark County v. Jensen, 95 Nev. 595, 600 P.2d  
9 222, 1979 Nev. LEXIS 690 (Nev. 1979).

10 The first appearance of Defendant in district court took place on March 27<sup>th</sup>, 2020. *See*  
11 Exhibit 2 attached hereto. At that hearing, the arraignment was continued to April 2, 2020.  
12 On April 2, 2020, Defendant was arraigned, pled not guilty and invoked the 60-day rule. *See*  
13 Exhibit 3 attached hereto. On April 14, 2020, Attorney Joshua Tomsheck appeared and  
14 confirmed as counsel on the case. The minutes show the Defendant was arraigned for a second  
15 time, pleading not guilty, and invoking the 60-day rule. The trial date was set for July 6, 2020.

16 A review of the Court's electronic filing system shows that Defendant never sought  
17 any extension of time for the filing of the petition, either ex parte or otherwise. Since  
18 Defendant's first appearance was on March 27, 2020, his writ was procedurally barred at of  
19 April 17, 2020. The statute specifically notes that the fact that Defendant wasn't arraigned on  
20 this date does not affect the time for filing. However, if the Court were to extend the statute  
21 to arraignment instead of first appearance, Defendant was arraigned on April 2, 2020 and his  
22 time for filing the petition ran on April 23, 2020. Certainly, the fact that he was rearraigned  
23 on April 14, 2020, does not start a new clock on his time for filing of a writ. Since no request  
24 was filed, and no extension was granted, the writ is procedurally barred.

25  
26 **II. MORE THAN SUFFICIENT EVIDENCE WAS PRESENTED TO HOLD**  
27 **DEFENDANT TO ANSWER TO THE CHARGES**

28 Defendant's claims lack merit and fail under the law should the court decide to  
adjudicate the motion on its merits. In his Petition for Writ of Habeas Corpus, Defendant

1 asserts that the State did not present sufficient legal evidence to sustain the charges. Defendant  
2 contends that the testimony of Mackeshia Murphy is insufficiently corroborated accomplice  
3 testimony under NRS 175.291, and that the State has “zero independent evidence” that  
4 Defendant participated in a robbery or committed a murder. Defendant also claims that the  
5 first-degree kidnapping charge must be dismissed pursuant to the Mendoza decision because  
6 the kidnapping was incidental to the robbery charge. Lastly, Defendant claims the State failed  
7 to introduce sufficient evidence of the robbery with deadly weapon charge. Each of these  
8 arguments fail and the writ must be denied.

9 It is well settled that a district court's function in reviewing a pretrial writ of habeas  
10 corpus challenging the sufficiency of probable cause is to determine whether enough  
11 competent evidence was presented to establish a reasonable inference that the accused  
12 committed the offenses. State v. Fuchs, 78 Nev. 63 (1962). The finding of probable cause to  
13 support a criminal charge may be based on “slight, even ‘marginal’ evidence . . . because it  
14 does not involve a determination of the guilt or innocence of the accused.” Sheriff v. Hodes,  
15 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). “To commit an accused for trial, the State is not  
16 required to negate all inferences which might explain his conduct, but only to present enough  
17 evidence to support a reasonable inference that the accused committed the offense.” Kinsey v.  
18 Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971). Sheriff v. Miley, 99 Nev. 377 (1983).  
19 Thus, the court need not consider whether the evidence presented to a Grand Jury, or presented  
20 at a preliminary hearing, may, by itself, sustain a conviction, because the State need not  
21 produce the quantum of proof required to establish the guilt of the accused beyond a reasonable  
22 doubt. See Hodes, 96 Nev. at 186, 606 P.2d at 180; Miller v. Sheriff, 95 Nev. 255, 592 P.2d  
23 952 (1979); McDonald v. Sheriff, 87 Nev. 361, 487 P.2d 340, (1971).

24 The Nevada Supreme Court has explicitly held that a probable cause determination is  
25 "not a substitute for trial," and that the "full and complete exploration of all facets of the case"  
26 should be reserved for trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969);  
27 Robertson v. Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969). If the evidence produced  
28 establishes a reasonable inference that the defendant committed the crime, the probable cause



1 to order the defendant to answer in the district court has been established. Morgan v. Sheriff,  
2 86 Nev. 23, 467 P.2d 600 (1970). Accordingly, the issue of guilt or innocence is not involved  
3 and “the evidence need not be sufficient to support a conviction.” Kinsey, 87 Nev. at 363  
4 (citing Masklay v. State, 85 Nev. 111, 450 P.2d 790 (1969)); Hodes, 96 Nev. at 184, 606 P.2d  
5 at 180.

#### 6 **A. ACCOMPLICE TESTIMONY AND NRS 175.291.**

7  
8 Accomplice testimony is governed by NRS 175.291. NRS 175.291 states:

9 1. A conviction shall not be had on the testimony of an accomplice unless  
10 the accomplice is corroborated by other evidence which in itself, and without the  
11 aid of the testimony of the accomplice, tends to connect the defendant with the  
12 commission of the offense; and the corroboration shall not be sufficient if it  
merely shows the commission of the offense or the circumstances thereof.

13 2. An accomplice is hereby defined as one who is liable to prosecution, for  
14 the identical offense charged against the defendant on trial in the cause in which  
15 the testimony of the accomplice is given.

16 While a reading of the statute appears to only apply to trial, the Nevada Supreme Court has  
17 ruled that the corroboration rule applies to preliminary hearings. See Lamb v. Bennett, 87  
18 Nev. 89, 482 P.2d 298 (1971). By extension, the corroboration rule would seem to apply to  
19 grand juries. However, by that same extension, the corroboration requirement must be slight,  
20 even marginal.

21 Under 175.291, an accomplice is defined as a person who is liable to prosecution for  
22 the identical offense charged against the defendant. If, from the testimony of the witness’  
23 alone, there is no doubt the witness is liable for the charged crimes, he is an accomplice as a  
24 matter of law. See Rowland v. State, 118 Nev. 31, 39 P.3d 114 (2002). However, if the  
25 testimony of the witness leaves doubt whether he is liable for the charged crime, then the  
26 question of whether or not he is an accomplice is a matter of fact. See id (citing Austin v.  
27 State 87 Nev. 578, 588-89, 491 P.2d 724, 730-31 (1971)). Matters of fact are determinations  
28 for a jury. See Ford v. State, 99 Nev. 209, 660 P.2d 992 (1983).

1 With respect to Murphy as an accomplice, simply “facing charges” does not render  
2 Murphy an accomplice under the law. See Def. Mot. At 17. In her testimony, Murphy claimed  
3 knowledge of the conspiracy to commit robbery, but never agreed to partake in the robbery  
4 and wasn’t present at the time of the crime. As such, as a matter of law, Murphy is not an  
5 accomplice. *See Bolden v. State*, 124 P.3d 191 (Nev. 2005)( “[A]bsent an agreement to  
6 cooperate in achieving the purpose of a conspiracy, mere knowledge of, acquiescence in, or  
7 approval of that purpose does not make one a party to conspiracy.” *quoting Garner v. State*,  
8 116 Nev. 770, 780, 6 P.3d 1013, 1020 (2000), *overruled in part by Sharma v. State*, 118 Nev.  
9 648, 56 P.3d 868 (2002)). Murphy’s only admission during her testimony was that upon  
10 learning of the crime, she tried to clean up blood on the stairs. At most, that would make  
11 Murphy an accessory to the crimes after the fact. As Murphy’s testimony did not implicate  
12 her in the crimes for which Davis is charged, she is not an accomplice as a matter of law. Once  
13 it is determined that she is not an accomplice, Murphy did not need to be corroborated and her  
14 testimony alone was sufficient evidence to hold Defendant to answer for all the charged.

15 In the instant case, the facts and circumstances are substantially similar and warrant the  
16 same decision previously rendered by the Nevada Supreme Court in *Fish v. Sheriff of Clark*  
17 *County*, 1973, 510 P.2d 1370, 89 Nev. 250. In that case, the Defendant was charged Murder.  
18 A grand jury returned an indictment against Defendant and he sought pretrial habeas relief. In  
19 the grand jury presentation, the state introduced testimony from David Boyd Miller (“Miller”) and  
20 Constance Baker (“Baker”). *Id.* Miller, an accomplice, testified to the events that took  
21 place and received immunity for his testimony in the matter. *Id.* The State offered Baker’s  
22 testimony to establish the requisite corroboration under that statute. *Id.* In his petition,  
23 Defendant argued that the grand jury improperly relied on Baker’s testimony to corroborate  
24 Miller’s testimony because she was also an accomplice. *Id.*

25 The court found that the “record was totally devoid of any testimony or other evidence  
26 that would suggest or support an inference that Baker performed any of the aforementioned  
27 activities that would make her amenable to prosecution for the offense charged.” *Id.* at 252.  
28 The court found that Baker “at most, may have known that an accomplice and others were

1 going to perform a “job” for the defendant and that sometime after completion of the “job”  
2 Baker may have become aware of its nature and consequences.” Id. Based on that reasoning  
3 the court held that those circumstances **did not render** the witness an “accomplice” so as to  
4 preclude use of her testimony to corroborate grand jury testimony given against petitioner by  
5 accomplice. Id.

6 Here, the evidence coupled with Murphy’s testimony only establishes criminal liability  
7 as an accessory after the fact for cleaning up the blood from the stairs. No testimony or  
8 evidence remotely suggests that Murphy was involved in the actual planning and execution of  
9 the robbery and subsequent homicide. All evidence points to the fact that Murphy was not  
10 actively involved in the commission of the crime. Murphy took no part in formulating the plan  
11 of luring the victim to the apartment, was not even present while the event took place, and only  
12 cleaned up blood in an attempt to hide physical evidence. Based on those facts, it would be a  
13 very far logical leap to label Murphy as an accomplice to the kidnapping, robbery and felony  
14 murder. Because Murphy is only an accessory after the fact, her testimony should not be  
15 evaluated under the corroboration requirements listed in the listed in the statute.

16 It would be misguided for the court to completely throw out the competent, relevant,  
17 and probative testimony of this witness in a homicide case by misapplying a statute in this  
18 circumstance. Murphy’s testimony is proper and must be heavily considered against Defendant  
19 to hold him to answer for the charges he faces.

20 Notwithstanding, even if Murphy had been an accomplice, her testimony is more than  
21 corroborated. Corroboration evidence is only evidence which “tends” to connect Defendant  
22 to the commission of the offense. *See* NRS 175.291(1).

23 Corroboration evidence need not be found in a single fact or circumstance and  
24 can, instead, be taken from the circumstances and evidence as a whole. LaPena  
25 v. State, 92 Nev. 1, 544 P.2d 1187 (1976). Corroboration evidence also need not  
26 in itself be sufficient to establish guilt, and it will satisfy the statute if it merely  
tends to connect the accused to the offense. *See* State v. Hilbish, Et. Al., 59 Nev.  
469, 97 P.2d 435 (1940).

27 Cheatham v. State, 104 Nev. 500, 761 P.2d 419 (1988).

1 Just Defendant's cell phone records alone tend to connect Defendant to the commission  
2 of the crime. Defendant admits to being in possession of the device and confirmed its number  
3 at the time of the crime. The cell phone records from Verizon gave the device's distance to  
4 tower and side of the tower it was on. That allowed detectives to draw an arc on that side of  
5 the tower to determine it's location. That arc passed directly through apartment 309 (the  
6 murder scene) at the time of the murder. Certainly, that evidence alone would have been  
7 sufficient to indict Defendant for the crime of murder. The standard for corroboration is way  
8 lower and obviously met by this evidence alone.

9 Defendant's statements to detectives are also independent of Murphy's testimony. In  
10 his interview, Defendant confirms his association with all the parties involved in this case,  
11 confirms that he was in possession of the cellular device that puts him in the apartment during  
12 the homicide, and confirms that he switched the phone number associated with the device after  
13 the murder. Moreover, the cell tower records from Defendant's phone at the time of the  
14 homicide introduced through Detective Hodson firmly establish Defendant's presence at the  
15 apartment during the time of the murder. Since, "Defendant has never lived in the apartment  
16 where the crime took place," a reasonable inference can be drawn from the evidence that  
17 Defendant did not just happen to be in that area during the time of a murder. See Def. Motion  
18 at 16.

19 Murphy's statements are sufficiently corroborated under the statute. The abundance of  
20 independent evidence allows the court to comfortably consider Murphy's testimony to  
21 establish probable cause to hold the defendant to answer for the crimes charged.

## 22 **B. CONSPIRACY AND CO-CONSPIRATOR TESTIMONY.**

23  
24 Defendant challenges the admission of a co-conspirator statement on the grounds that  
25 the State failed to sufficiently establish the existence of a conspiracy. Defendant contends that  
26 the *only* evidence of his involvement in a conspiracy is Murphy's uncorroborated testimony.  
27 This is patently incorrect. However, Defendant is also confusing two separate evidentiary  
28 rules. Statements of conspirators are admissible against each other once some evidence of the

1 conspiracy is admitted. Nothing precludes Murphy's testimony, whether an accomplice or  
2 not, from supplying that evidentiary basis.

3 Before an out of court statement by an alleged co-conspirator may be admitted into  
4 evidence against a defendant, the existence of a conspiracy must be established by independent  
5 evidence, and the statement must have been made during the course of and in furtherance of  
6 the conspiracy. Wood v. State, 115 Nev. 334, 349 (1999). A conspiracy is an agreement  
7 between two or more persons for an unlawful purpose. Peterson v. Sheriff, 95 Nev. 522, 598  
8 P.2d 623 (1979). "[C]onspiracy is seldom susceptible of direct proof and is usually established  
9 by inference from the conduct of the parties." Gaitor v. State, 106 Nev. 785, 790 n. 1, 801 P.2d  
10 1372, 1376 n. 1 (1990) (quoting State v. Dressel, 85 N.M. 450, 451, 513 P.2d 187, 188 (1973)).  
11 In particular, a conspiracy conviction may be supported by "a coordinated series of acts," in  
12 furtherance of the underlying offense, "sufficient to infer the existence of an agreement". Id.

13 The formation and existence of a conspiracy may be inferred from all circumstances  
14 tending to show the common intent and may be proved in the same way as any other fact may  
15 be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct  
16 and circumstantial evidence. Doyle v. State, 112 Nev. 879, 894 (1996), overruled on other  
17 grounds by Kaczmarek v. State, 120 Nev. 314 (2004).

18 Abundant physical evidence coupled with cell tower records readily demonstrates a  
19 series of coordinated acts by multiple individuals in furtherance of the kidnapping robbery and  
20 murder. As an initial starting matter, the victim was killed in an apartment, taken to the trunk  
21 of his car, and then both the victim and the car were left out in the middle of a desert. Those  
22 facts alone suggest more than one person as the perpetrator had to be driven home from the  
23 desert because he was not present when the police arrived to the burning car and body. Both  
24 Hickman's and Defendant's cell phone records are indicative of a conspiracy.<sup>5</sup>

25 The statements Murphy testified to are statements of co-conspirators during the course  
26 and furtherance of the conspiracy. Some of those statements are literally the formation of the  
27 conspiracy. On December 30, 2019, Murphy testified to a conversation that she overheard

28 <sup>5</sup> While the statements of Kemp and James were not admitted against Defendant, the fact that they admitted their own  
involvement in the crime is also suggestive of a conspiracy.

1 regarding the plan. Murphy was present when the Defendant, along with Hickman, Kemp, and  
2 Defendant's brother devised the plan to lure and rob the victim.

3 Additionally, Murphy was present for conversations after the murder the discussed the  
4 plan to cover up the crime. The Defendant, Hickman, Kemp, and Defendant's brother created  
5 a plan to take the body to Barstow or San Bernardino. Murphy also indicated that Kemp told  
6 her that he and James moved the body.

7 The State's presentation of evidence to establish a conspiracy is far from bare bones.  
8 Murphy's testimony is corroborated by independent evidence and even further supported by  
9 physical and electronic evidence. Thus, Murphy's testimony concerning statements of co-  
10 conspirators must also be considered as they are properly admitted and highly probative of  
11 defendant's involvement in the kidnapping, robbery and felony murder.

12 **C. MENDOZA FACTORS ARE QUESTIONS OF FACT TO BE DETERMINED**  
13 **BY THE TRIER OF FACT.**

14 Defendant's assertion that the testimony and evidence is not legally sufficient to sustain  
15 both kidnapping and robbery charges is misplaced under the law. The question of whether the  
16 movement of a victim is incidental to the associated offense and whether the movement  
17 increased the risk of harm to a victim **are questions of fact to be determined by a jury in all**  
18 **but the clearest of cases.** Wright v. State, 106 Nev. 647, 649, 799 P.2d 548, 549 (1990);  
19 Turner v. State, 98 Nev. 243, 245, 645 P.2d 971, 972 (1982); Curtis D. v. State, 98 Nev. 273,  
20 274, 646 P.2d 547, 548 (1982); Sheriff v. Medberry, 96 Nev. 202, 204, 606 P.2d 181, 182  
21 (1980); Langford v. State, 95 Nev. 631, 638-39. 600 P.2d 231, 236-37 (1979). Nevada case is  
22 very clear that this question is a question of fact. Essentially, should this go to trial, this issue  
23 should be decided by a jury.

24 In the instant case, the movement of the victim was both independent of the act of the  
25 robbery itself and substantially increased the risk of danger to the victim beyond that necessary  
26 to perpetrate the crime. Stating that the victim showed up to the apartment on his own volition  
27 is absurd. The victim is not a door to door marijuana salesman that just happened to be at the  
28 apartment in question. **But for** that plan to arrange a large purchase of marijuana for two

1 thousand dollars, it is quite hard to believe that the victim would have been at the apartment.  
2 This is a precise example of the inveigling theory of Kidnapping.

3 Any robbery with a deadly weapon has a high chance of success when a person walks  
4 up and points a gun in someone's face. The threat of force creates the unfair advantage  
5 necessary to force someone to part with their possessions. What takes any situation *beyond a*  
6 *robbery* is the creation of another circumstance that compounds any unfair advantage. Luring  
7 a victim to a residence where multiple individuals have the opportunity to hide in adjacent  
8 rooms in order to ambush the victim undoubtedly increases that unfair advantage beyond just  
9 sticking the gun in the victim's face. This movement was absolutely unnecessary for purposes  
10 of completing the robbery.

11 Under the law, this issue is a question of fact. Since this is not the "clearest of cases,"  
12 this court should permit this charge to go to the jury for decision.

13 **D. ROBBERY WITH USE OF A DEADLY WEAPON.**

14 Defendant asserts there is "no scintilla of evidence" that connect Mr. Davis to the crime  
15 of Robbery with Use of a Deadly Weapon. Again, the thrust of Defendant's argument concerns  
16 the testimony of Murphy and that it is improper for the court to consider. Without fully  
17 reiterating the arguments mentioned above, the State maintains that it is entirely proper for the  
18 court to heavily consider the testimony of Murphy. Moreover, sufficient evidence has been  
19 established to hold defendant to answer for the charge of Robbery with a Deadly weapon under  
20 the multiple theories of liability as alleged in the indictment. Based on the arguments above,  
21 it is clear that Defendant was involved in the planning, execution and coverup of the robbery  
22 and felony murder. As such, the Defendant must answer for said charges and the indictment  
23 must stand.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **CONCLSUION**

2 Based upon the foregoing, Defendant's Petition should be denied.

3 DATED this 19th day of May, 2020.

4 Respectfully submitted,

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

7 BY /s/ Marc DiGiacomo  
8 MARC DIGIACOMO  
9 Chief Deputy District Attorney  
Nevada Bar #006955

10  
11  
12 **CERTIFICATE OF ELECTRONIC SERVICE**

13 I hereby certify that service of the above and foregoing, was made this 19th day of May  
14 2020, by email to:

15 Joshua Tomsheck, Esq.  
16 [josh@hoflandlaw.com](mailto:josh@hoflandlaw.com)

17  
18 BY: /s/ Stephanie Johnson  
19 Employee of the District Attorney's Office  
20  
21  
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28 20F00659E/MD/saj/MVU



ORIGINAL

IND

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
MARC DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006955  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

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

MAR 19 2020

BY:   
KIM ESTALA, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JECORY ELES KEMP, aka,  
Jecory Kemp, #7066250  
TYESHIA EVAN JAMES, #8351796  
ARLEO EARL DAVIS, aka,  
Arleo Earl Davis, Jr., #7054823

Defendant(s).

CASE NO: C-20-346920-<sup>3</sup>

DEPT NO: III

SUPERSEDING  
INDICTMENT

C-20-346920-3  
SIND  
Superseding Indictment  
4905114



STATE OF NEVADA }  
COUNTY OF CLARK } ss.

The Defendant(s) above named, JECORY ELES KEMP, aka, Jecory Kemp, TYESHIA EVAN JAMES, ARLEO EARL DAVIS, aka, Arleo Earl Davis, Jr., and/or others yet unknown and/or DAVON WILLIAM HICKMAN, aka, Davon Hickman and PRESTON ALOOKHAI HUTESON to the conspiracy accused by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001); FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony - NRS 200.310, 200.320, 193.165 - NOC 50056) and ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138), committed at and within the County of Clark, State of Nevada, on or about the 30th day of December,

EXHIBIT "I"

2019, as follows:

COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

did willfully, unlawfully, and feloniously conspire with each other and/or unknown individuals to commit a robbery, by the Defendants committing the acts as set forth in Counts 2 through 4, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

did willfully, unlawfully, feloniously and with malice aforethought, kill MARION B. JABBAR ANDERSON, a human being, with use of a deadly weapon, to wit: a firearm, by shooting at and into the body of the said MARION B. JABBAR ANDERSON, the said killing having been 1) willful, deliberate and premeditated and/or 2) committed during the perpetration or attempted perpetration of a kidnapping and/or robbery, the Defendant(s) being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing ad/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendants and/or others yet unknown to the conspiracy acting in concert throughout.

COUNT 3 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON  
RESULTING IN SUBSTANTIAL BODILY HARM

did willfully, unlawfully, and feloniously, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away MARION B. JABBAR ANDERSON, a human being, with the intent to hold or detain the said MARION B. JABBAR ANDERSON against his will, and without his consent, for the purpose of committing a robbery, with use of a deadly weapon, to wit: a firearm(s), resulting in substantial bodily harm to MARION B. JABBAR ANDERSON, the Defendant(s) being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing ad/or otherwise procuring the other

1 to commit the crime, whereby one of their number lured and/or enticed the said victim to the  
2 crime scene under the guise of a drug deal with the intent to rob him, thereafter during the  
3 courtse of the robbery and/or attempted robbery, one of their number shot at and into the body  
4 of the said victim; and/or (3) pursuant to a conspiracy to commit this crime, with the intent  
5 that this crime be committed Defendants and/or others yet unknown to the conspiracy acting  
6 in concert throughout.

7 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

8 did willfully, unlawfully, and feloniously take personal property, to wit: Marijuana  
9 and/or US Currency and/or vehicle and/or vehicle keys, from the person of MARION B.  
10 JABBAR ANDERSON, or in his presence, without the consent and against the will of  
11 MARION B. JABBAR ANDERSON, by means of force or violence or fear of injury,  
12 immediate or future, to his person, the person of a member of his family, or of anyone in his  
13 company at the time of the robbery, defendant using force or fear to obtain or retain possession  
14 of the property, to prevent or overcome resistance to the taking of the property, and/or to  
15 facilitate escape, with use of a deadly weapon, to wit: a firearm; the Defendant(s) being  
16 criminally liable under one or more of the following principles of criminal liability, to wit: (1)  
17 by directly committing this crime; and/or (2) by aiding or abetting in the commission of this  
18 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,  
19 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)  
20 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,  
21 Defendants and/or unknown individuals acting in concert throughout.

22 DATED this 19<sup>th</sup> day of March, 2020.

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

25 BY

  
26 MARC DIGIACOMO  
27 Chief Deputy District Attorney  
Nevada Bar #006955

28 ENDORSEMENT: A True Bill

  
I represent, Clark County Grand Jury

Names of Witnesses and testifying before the Grand Jury:

ALVARADO, ART – SAN BERNARDINO COUNTY SHERIFF

DOSCH, MITCHELL – LVMPD #7907

HODSON, BRECK – LVMPD #9034

MURPHY, MACKESHIA – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

Additional Witnesses known to the District Attorney at time of filing the Indictment:

BOGATAY, MAUREEN – LVMPD #7782

CUSTODIAN OF RECORDS - CCDC

CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS - LVMPD RECORDS

HICKAMN, DAVON – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

JAMES, TYSHIA – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

KATOWICH, TODD – LVMPD #6360

MAGNESS JR., GARY – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

OGAZ, ERIC – SAN BERNARDINO COUNTY SHERIFF

TRAYLOR, WAYNE – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

19CGJ007A,B,E/20F00659A,B,E/ed-GJ  
LVMPD EV# 200100003412  
(TK11)

Felony/Gross Misdemeanor

COURT MINUTES

March 27, 2020

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C-20-346920-3      State of Nevada  
                                 vs  
                                 Arleo Davis

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March 27, 2020      01:45 PM      All Pending Motions

HEARD BY:      Herndon, Douglas W.      COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Schlitz, Kory

RECORDER:      Ray, Stacey

REPORTER:

PARTIES PRESENT:

Arleo Earl Davis      Defendant

Jay Maynard      Attorney for Defendant

Marc P. Di Giacomo      Attorney for Plaintiff

State of Nevada      Plaintiff

**JOURNAL ENTRIES**SUPERSEDING INDICTMENT WARRANT RETURN... INITIAL ARRAIGNMENT:  
SUPERSEDING INDICTMENT...

Mr. Maynard requested the matter be continued for them to review the Indictment and to discuss if the Defendant will retain them. COURT ORDERED, arraignment CONTINUED.

CUSTODY

4/2/2020 3:30 P.M. ARRAIGNMENT CONTINUED: SUPERSEDING INDICTMENT

EXHIBIT "2"

Felony/Gross Misdemeanor

COURT MINUTES

April 02, 2020

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C-20-346920-3      State of Nevada  
   vs  
   Arleo Davis

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April 02, 2020      03:30 PM      Arraignment Continued: Superseding Indictment

HEARD BY:      Herndon, Douglas W.      COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Schlitz, Kory

RECORDER:      Ray, Stacey

REPORTER:

PARTIES PRESENT:

Arleo Earl Davis	Defendant
Craig A Mueller	Attorney for Defendant
Marc P. Di Giacomo	Attorney for Plaintiff
State of Nevada	Plaintiff

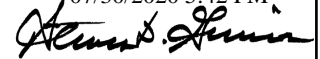
**JOURNAL ENTRIES**

Upon Court's inquiry, Mr. Mueller stated he has been in contact with the Defendant's family and can confirm as counsel of record, and requested a status check be set in a moth. COURT STATED the Co-Defendant's have been assigned to Department 17. DEFENDANT DAVIS ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for status check. Upon Court's inquiry, Mr. Di Giacomo indicated he does not know if the matter is going before the Death Review Committee. Pursuant to Administrative Order 17 -05 this COURT ORDERS the case REASSIGNED to Department 17. COURT DIRECTED Mr. Mueller to reach out to the other Defense Attorney's to discuss trial dates.

**CUSTODY**

4/7/2020 10:15 A.M. STATUS CHECK: TRIAL SETTING (DEPT 17)

EXHIBIT "3"



CLERK OF THE COURT

**ORDR**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
MARC DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006955  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

ARLEO DAVIS, aka, Arleo Earl Davis, Jr.,  
#7054823

Defendant.

CASE NO: C-20-346920-3

DEPT NO: XVII

**ORDER DENYING DEFENDANT'S PRE-TRIAL PETITION FOR WRIT OF  
HABEAS CORPUS**

THIS MATTER was taken under advisement before the above entitled Court on the 21st day of July, 2020, the Defendant not being present, represented by JOSHUA TOMSHECK, ESQ. also not present, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney.

After reviewing all arguments and pleadings, the Court renders its decision as follows:

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1 The crux of Defendant's argument is that insufficient evidence was presented to the  
2 Grand Jury because the majority of the testimony presented was from an accomplice. NRS  
3 175.292(1) provides that a conviction cannot be had based upon an accomplice testimony  
4 unless sufficient corroboration is presented. The matter before the Court is whether or not  
5 sufficient evidence was presented to establish probable cause. An Accomplice is defined in  
6 NRS 175.291 (2) as one who is liable to prosecution, for the identical offense charged against  
7 the defendant on trial. It is argued that Murphy is an accomplice for the crime charged and,  
8 therefore, her testimony standing alone was insufficient. The Court does not find as a matter  
9 of law that Murphy is an accomplice to the charges against Davis. Therefore, her testimony  
10 is considered standing alone for purposes of establishing probable cause.

11 Murphy testified that she was present when Davis told the co-defendants that he owed  
12 Anderson \$2000 from a prior drug transaction. Defendant discussed with Kemp and Hickman  
13 a plan to rob Anderson when he arrived at the apartment with the narcotics. When Anderson  
14 arrived Murphy left the apartment. Approximately 15 minutes after leaving the apartment,  
15 Murphy saw Hickman leave the apartment and at that time he told her that he had shot  
16 Anderson. Subsequently Murphy was asked to help clean up the apartment and blood trail  
17 outside of the apartment. Testimony was presented that based on cell tower analysis Davis's  
18 telephone was in the area of the scene of the crime. Upon Davis's arrest he told the detective  
19 that he knew Anderson, and that he had a different phone in his possession than he had at the  
20 time of the killing. Ultimately Anderson's burned body and vehicle were located in California.

21 To hold a defendant over to answer charges the State must present slight or marginal  
22 evidence that a crime was committed and that the defendant committed the crime. Sheriff v.  
23 Middleton, 112 Nev. 956, 961 (1996) (citing Sheriff v. Hodes, 96 Nev. 184, 186 (1980))..  
24 Evidence was presented that Davis had a motive, planned, was present and set in motion the  
25 events that lead to Anderson's death. Anderson was led to believe by the Defendant that he  
26 was delivering the narcotics to the apartment when actually it was Defendant's intent to rob  
27 him and take the narcotics without paying for them.

28 ///



1 Therefore, COURT ORDERED, Petition DENIED.

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3 DATED this \_\_\_\_\_ day of July, 2020.

Dated this 30th day of July, 2020

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5

DISTRICT JUDGE

6

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

C09 9C1 5B73 52DF  
Michael Villani  
District Court Judge

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9

BY /s/ Marc DiGiacomo  
MARC DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006955

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20F00659E/saj/MVU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 State of Nevada

CASE NO: C-20-346920-3

7 vs

DEPT. NO. Department 17

8 Arleo Davis  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/30/2020

15 Joshua Tomsheck joshT@hoflandlaw.com

16 Brittany Giorgione jtassistant@hoflandlaw.com

17 Cherae Muije jtlawclerk@hoflandlaw.com

18 DA Motions motions@clarkcountyda.com

19 Marc Di Giacomo Marc.DiGiacomo@clarkcountyda.com  
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