

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

ARLEO EARL DAVIS

PETITIONER,

vs.

Electronically Filed
Mar 16 2021 08:45 a.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.

PETITIONER'S SUPPLEMENTAL APPENDIX

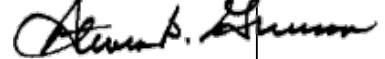
PETITION FROM THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA
DISTRICT COURT CASE NO. C-20-346920-3
THE HONORABLE MICHAEL VILLANI

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1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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6
7 THE STATE OF NEVADA,
8 Plaintiff,

CASE: C-20-346920-1
C-20-346920-3

9 vs.

DEPT. XVII

10 JECORY ELES KEMP, aka Jecory
11 Kemp, TYESHIA EVAN JAMES,
12 ARLEO EARL DAVIS, aka, Arleo Earl
13 Davis, Jr., ANTHONY CLAUDE
WOODS, JR., aka, Anthony Woods,
14 DAVON WILLIAM HICKMAN, aka,
Davon Hickman,
15 Defendants.

16 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
17 FRIDAY, JUNE 26, 2020

18 **RECORDER'S TRANSCRIPT OF HEARING:**
19 **STATUS CHECK: RESET TRIAL DATE (KEMP AND DAVIS)**
20 **DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (DAVIS)**
21 **DEFENDANT MOTION FOR SETTING OF REASONABLE BAIL**
22 **(DAVIS)**

23 APPEARANCES:

24 For the State:

MARC DiGIACOMO, ESQ.
Chief Deputy District Attorney
[Appearing via Bluejeans]
JORY SCARBOROUGH, ESQ.
Deputy District Attorney

25 APPEARANCES CONTINUED ON PAGE 2.

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For Defendant Davis:	JOSHUA TOMSHECK, ESQ.
For Defendant Kemp:	NO APPEARANCE

Recorded by: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Friday, June 26, 2020

[Hearing begins at 10:42 a.m.]

THE COURT: Arleo Davis.

MR. DIGIACOMO: Good morning, Judge. Marc DiGiacomo for the State.

[Colloquy between the Marshal and Court Clerk]

THE COURT: 37 is Jecory Kemp.

MR. TOMSHECK: Good morning, Judge.

THE COURT: Good morning.

MR. TOMSHECK: Joshua Tomsheck on behalf of Mr. Davis.

THE COURT: All right. And we have Mr. DiGiacomo on Bluejeans.

MR. SCARBOROUGH: And Jory Scarborough for the State.

THE COURT: I did review the JAVS in this matter, and on April 2nd which was in front of Judge Herndon, a not guilty plea was entered. Mr. Tomsheck, I don't know if you were aware of that. And then what happened, Judge Herndon transferred the case to my department on – and then we had a status check April 14 and there was a question whether or not the Defendant had entered a plea or not or had been arraigned. And so, I just – we went ahead and re-arraigned him and he entered a not guilty plea for a second time. So, that's one of the issues that I read in the State's response -- or return.

Mr. Tomsheck, do you want to address that?

MR. TOMSHECK: Yeah, there wasn't a question about

1 whether or not he had been –

2 THE COURT: Oh.

3 MR. TOMSHECK: -- arraigned. In fact, the first thing that Mr.
4 DiGiacomo said when I appeared, I think it was on the 14th of April, was,
5 he still needs to be arraigned. I had no idea that arraignment had taken
6 place with the previous counsel before that. Obviously, if I had, I would
7 have requested good cause, and I have no doubt the State even would
8 have stipulated to that and Your Honor would have granted that request.
9 The statute allows for a good cause extension. This is one of those
10 things that certainly qualifies. He appeared in district court on March 27th
11 with counsel that didn't confirm and then another lawyer came in and
12 said he did. And the first time I showed up, after being contacted by the
13 office of appointed counsel, the first thing out of the State's mouth was
14 he still needs to be arraigned.

15 THE COURT: All right. I think that there was a confusion
16 because obviously we wouldn't arraign someone twice, and JAVS did
17 identify that Mr. DiGiacomo said he needs to be arraigned. And so, I
18 am going to – I do find good cause of the clock starting on April 14th on
19 this particular matter and I'm assuming your writ was timely with that
20 start date. Is that correct, Mr. Tomscheck?

21 MR. TOMSHECK: It was.

22 THE COURT: Okay.

23 MR. TOMSHECK: And certainly, if I had known that was an
24 issue, I would have raised it sooner.

25 THE COURT: Well, I'm finding good cause, again, because I

1 think there's the confusion and you know obviously, I wouldn't have
2 arraigned him a second time if he was already arraigned.

3 MR. TOMSHECK: Right.

4 THE COURT: Okay, so why don't you go ahead with the
5 merits of your argument.

6 MR. TOMSHECK: I'll be relatively brief 'cause I know Your
7 Honor reads everything.

8 This is kind of an unusual circumstance in that the
9 presentation at the grand jury, as it relates to Mr. Davis specifically, only
10 elicits testimony tying him to any involvement whatsoever through the
11 testimony of Ms. Murphy. The State, I believe in their return, in their
12 position is she's not necessarily an accomplice, but she kind of has to be
13 because they gave her immunity for the very offense for which my client
14 has been charged. Certainly if there's a grant of immunity for an offense,
15 they find her to be an accomplice worthy of being granted immunity for
16 this purpose.

17 If you take her out of the equation, there is absolutely nothing
18 that ties Mr. Davis to anything related to the case. It's not his residence.
19 There's absolutely no forensics presented. There's zero evidence, as
20 required under the Brooks case, that he had any knowledge that a
21 deadly weapon would be used or that a deadly weapon was present.
22 There's no evidence absent Ms. Murphy that he was even present at the
23 time of the alleged robbery and homicide. So, to analyze it under the
24 accomplice statute you have to remove her from it and say is there
25 anything tying Mr. Davis to these alleged crimes. And the reality is there

1 isn't. All you have, absent her, is that a body is discovered out of our
2 jurisdiction and ultimately something leads them back to a location in
3 Las Vegas and then they just queue her up and press play on her
4 testimony. So, I think for that reason alone, the writ should be granted.

5 As it relates to the other specifics in the case, the testimony is
6 real clear. This is a really small apartment. There's an allegation of a
7 robbery that's supposed to take place. And there's no indication
8 whatsoever that the victim's bound, that he's moved to a different
9 location, that he is restrained in any way. There's not even a scintilla,
10 under Mendoza, that the situation is made more dangerous. And frankly,
11 I don't know that it could be given the circumstances of where this crime
12 allegedly transpired. So, for those reasons, even if you believe or allow
13 the uncorroborated accomplice testimony, there is insufficient evidence
14 this relates to the kidnapping.

15 And as it relates to the robbery, removing -- well, let me just
16 say this. Even if you include the testimony of the unin -- indicted
17 accomplice who was given immunity, she says she never saw any
18 proceeds taken during the robbery. The State has alleged that marijuana
19 and/or cash and/or other things were taken. There's no evidence of that
20 in the grand jury presentation, so for that reason the robbery fails as
21 well.

22 THE COURT: All right, thank you.

23 State, who is --

24 MR. SCARBOROUGH: Mr. DiGiacomo is going to --

25 THE COURT: Okay.

1 MR. DiGIACOMO: Thank you, Judge.

2 Mr. Tomsheck is conflating a number of issues. As the Court
3 is well aware, anybody who has any potential criminal liability has an
4 absolute Fifth Amendment right not to testify. Thus, the only way to
5 compel her to testify is to convey immunity on her. The mere fact of the
6 conveyance of immunity has nothing to do with the legal analysis as to
7 whether someone is an accomplice as a matter of law or if it gets
8 submitted to a jury later on as an accomplice as a matter of fact. If you're
9 an accomplice as a matter of fact, potentially, then the jury ultimately
10 makes that determination.

11 But we're here on a writ. And from a writ's point of view, the
12 Court looks at, is Mackeshia Murphy an accomplice as a matter of law.
13 And that is specifically defined as she is liable for the offenses to which
14 the Defendant has been charged based on her testimony and her
15 testimony alone. And when you look at Ms. Murphy's testimony, she is
16 absolutely one hundred percent clear that she is not involved in the
17 planning. She is not involved in the execution of it. It is only subsequent
18 to the crime that she helps clean up the stairs of blood of the victim
19 which is after the fact liability to which Mr. Davis is not charged. And
20 thus, as a matter of law, she does not need to be corroborated in front of
21 the grand jury.

22 That being said, she is highly corroborated in front of the
23 grand jury because Mr. Davis not only has a cell phone, but it's a cell
24 phone with a provider that gives GPS locations at regular time periods
25 as to the exact location of the phone's distance from the tower. And

1 when you draw the arc of that phone during the time period the murder
2 occurs, the arc cuts literally directly through the apartment in which the
3 killing occurred. Thus, the evidence, independent of Mackeshia Murphy,
4 is he is present inside that apartment at the time the crime was
5 committed. Thus, she is fully corroborated because corroboration isn't
6 you need to an --independent evidence of all the elements. It is evidence
7 which tends to connect the Defendant to the commission of the crime
8 and if you're inside an apartment where a robbery, kidnapping, and
9 murder is going on, that tends to connect you to the crime.

10 That being said, as he argues there's no evidence of there
11 was a robbery, well, there was evidence that there was a robbery. The
12 evidence is is that Mr. -- the victim in this case, Jabbar -- Mr. Anderson
13 was bringing over -- was supposed to bring over two pounds of
14 marijuana. He brought only over one pound of marijuana. And when that
15 one pound of marijuana -- that's when the whole thing jumps off and Mr.
16 Davis comes out of the back room and Mr. Hickman shoots Mr.
17 Anderson. That being said, the one pound of marijuana is not in that
18 apartment when the police get there. And so, obviously, there is
19 evidence that at least the marijuana was taken, not to mention his car
20 when his body -- and everything else and everything that was with his
21 body was obviously moved. So, there's evidence of a robbery.

22 As it relates to the kidnapping, Mr. Tomsheck must be
23 confused somewhat by the theory of liability as it relates to the
24 kidnapping. Mr. Anderson was out and about in the public where he was
25 very safe from people robbing him, and he was tricked. He was

1 inveigled, as the kidnapping statute says, to come over to this, as Mr.
2 Tomsheck just said, very small apartment, enclosed area where it was
3 capable of them killing him and getting rid of his body. So, he was
4 inveigled over to the apartment for the purpose of committing a robbery.
5 Obviously, when he was on the street before he got there, he was a
6 heck of a lot safer than he was in that confined apartment with four guys
7 planning to rob and then ultimately kill him.

8 And so, there is more than sufficient evidence that was
9 presented to this grand jury to hold Mr. Davis to answer, and I would
10 submit it to the Court.

11 THE COURT: All right, thank you.

12 Anything further, Mr. Tomsheck?

13 MR. TOMSHECK: Just that, as it relates to the testimony of
14 accomplice, Mr. DiGiacomo makes reference to the cell phone evidence
15 as if that somehow corroborates the testimony of Ms. Murphy. Here's
16 what the -- Heglemeier says: that...evidence must independently
17 connect the defendant with the offense; evidence does not suffice as
18 corroborative if it merely supports the accomplice's testimony. By that
19 analogy that he has a cell phone that puts him in the general area -- I
20 mean if I committed a crime right now in this courthouse and I wanted a
21 deal and the State gave me immunity, I could just say Mr. DiGiacomo
22 did it because he's across the street with his cell phone and he's in the
23 same general area as this. That's what the evidence is as its elicited in
24 this case shows. There is no corroboration. I'd invite that your court --
25 Your Honor to go back and read the grand jury transcript without Ms.

1 Murphy's testimony. There's no crime, period. I would submit it.

2 THE COURT: Well, I think the argument by the State is she's
3 not an accomplice, so I mean that's the determination this Court has to
4 make. If she is an accomplice, then the argument is there wasn't any
5 independent corroboration implicating the Defendant here. If she's not
6 an accomplice, then her testimony stands on its own. And so, I want to
7 review the case law a little bit more on that, on this issue. I'm going to
8 take this under advisement and I'll probably work on it this weekend and
9 so you'll have a decision next week on this particular matter.

10 MR. TOMSHECK: Very well. We also had a bail motion
11 pending. I think that's going to be -- ultimately the decision in the writ is
12 going to impact that so I'd ask you to hold off on that until we have a
13 decision as to the writ.

14 THE COURT: All right. And let's just --

15 MR. DiGIACOMO: Yeah, and I believe we actually had been
16 trailing that bail motion that's been out there for some time because you
17 wanted to rule on the writ and then make a determination on the bail.

18 THE COURT: Why don't we -- let's come back two weeks from
19 today, decision on the writ. I'll probably make it before that. You'll
20 probably get a minute or, if not, no later than that date. And then we can
21 deal, depending on the decision by the Court, we'll deal with setting a
22 trial date and motion for bail which may be moot or not, you know. I'm
23 going to review everything new; okay?

24 MR. TOMSHECK: So, July 10th?

25 THE COURT CLERK: July 10th.

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THE COURT: Yes.

THE COURT CLERK: 10:15.

MR. TOMSHECK: Perfect. Thank you, Judge.

THE COURT: Thank you.

THE MARSHAL: 18.

MR. TOMSHECK: I have two other ones.


MR. DiGIACOMO: Judge – Judge, I’m sorry. There’s two other co-defendants that were on this case. Is only Mr. Davis on calendar? I thought Ms. Kemp and Ms. James were on calendar. I know Ms. James is in medical quarantine. So, could we put all the co-defendants over for the 10th for setting the trial date?

THE COURT: That’s fine. Yes; thank you.

[Hearing concludes at 10:55 a.m.]

* * * * *

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


CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII