

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENZEL DORSEY,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

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Case No: C-17-323324-1
Related Case A-21-839313-W
Docket No: 83644

RECORD ON APPEAL VOLUME 2

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C-17-323324-1

State of Nevada
vs
Denzel Dorsey

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12:30PM 1 MS. DIGIACOMO: Norma Nazareno.

2 THE COURT: Good morning, ma'am. Remain

3 standing and raise your right hand for me.

4 THE CLERK: Do you solemnly swear that the

12:30PM 5 testimony that you are about to give will be the truth,

6 the whole truth and nothing but the truth, so help you

7 God?

8 THE WITNESS: Yes, I do.

9 THE CLERK: Please be seated.

12:30PM 10 Please state your first and last name and

11 spell each for the record.

12 THE WITNESS: Norma Cordero Nazareno.

13 THE COURT: Can you spell that for us.

14 THE WITNESS: N-O-R-M-A. Last name

12:31PM 15 N-A-Z-A-R-E-N-O.

16 THE COURT: Thank you. Grab a seat.

17 Go ahead, State.

18 MS. DIGIACOMO: Thank you.

19

12:31PM 20 **NORMA CORDERO NAZARENO,**

21 having been first duly sworn, did testify as follows:

22 DIRECT EXAMINATION

23 BY MS. DIGIACOMO:

24 Q. Ma'am, do you live or own 2731 Warm Rays?

12:31PM 25 A. Yes, I do. For the last 16 years.

12:31PM 1 Q. And do you own that with your husband
2 Florentino?
3 A. Yes, I do.
4 Q. Do you know the person who just left the
12:31PM 5 courtroom, Kevin?
6 A. That's my son.
7 Q. And he lives there as well?
8 A. Yes.
9 Q. And all of you lived there last
12:31PM 10 November 28th of 2016?
11 A. Yes, ma'am. Me and my husband and my son.
12 Q. Did anything happen that day that caused
13 you to go home?
14 A. Well, I was at work right around 12,
12:31PM 15 that's when he called me at work and I had to rush home
16 to see what happened.
17 Q. Who called you?
18 A. My son.
19 Q. Kevin?
12:32PM 20 A. As soon as he called 9-1-1 he called me
21 right away. Actually he find out -- my husband found
22 out so my husband called me to go home. So I went home
23 right away.
24 Q. And when you got home, did your house look
12:32PM 25 different than it had when you left for work?

12:32PM 1 A. It's just the door that's broken, the
2 glass was broke.

3 Q. What time did you leave for work that day?

4 A. As soon as I could. Like around 12:15.

12:32PM 5 Q. No. What time did you --

6 A. 12:30.

7 THE COURT: Okay. Just let her finish the
8 question and then you answer because this lady down
9 here is typing everything down. So if you guys talk
10 over each other, it doesn't get down very well.

11 So go ahead.

12 BY MS. DIGIACOMO:

13 Q. I meant what time did you leave the house
14 that day to go to work?

12:32PM 15 A. That was a Monday. Normally I leave like
16 around between six to 6:15 because I start seven
17 o'clock on a Monday.

18 Q. So you had been at work for awhile before
19 you got the call?

12:32PM 20 A. Yes, ma'am.

21 Q. And you got home at 12:30?

22 A. I left work around 12:30 maybe.

23 Q. How long did it take you to get home?

24 A. Normally about 30 minutes.

12:33PM 25 Q. When you got home, you said something was

12:33PM 1 wrong with the front door?

2 A. Yeah. Well, that's exactly what's already
3 given to me, the description of what was wrong and why
4 I had to go home.

12:33PM 5 Q. Tell me what you saw when you got home.

6 A. I saw -- because I have two sides of the
7 door. One side was broken like there's a big hole in
8 there and the hole kind of shattered but not completely
9 down but there was a big hole right there by the

12:33PM 10 doorknobs.

11 Q. And when you said there was two sides, do
12 you have two front doors?

13 A. Yeah. There's a left and a right-hand
14 side.

12:33PM 15 Q. And they're both glass?

16 A. Yes.

17 Q. And do they also have another design in
18 the glass?

19 A. Yes, there is. Like a metal in between so
12:33PM 20 they're like different design on it.

21 Q. But on one side of the glass there was a
22 hole in it?

23 A. Yes. So there's no metal so that's why
24 there was -- that's where the broken glass was.

12:33PM 25 Q. And you didn't give anyone permission to

12:34PM 1 break your door that day?

2 A. No, ma'am. We just left it the way it is
3 until later on then we needed a replacement door. So
4 they just took that door and took it to the shop and
12:34PM 5 replaced the glass.

6 Q. How much did it cost to repair the glass
7 door?

8 A. Well, first of all the first day that it
9 was broken we needed to be safe that day so I called
12:34PM 10 the insurance and they referred me to a construction
11 which is the Hopster --

12 THE COURT: I'm sorry. They referred you
13 to what?

14 THE WITNESS: To a construction company.

12:34PM 15 THE COURT: Okay.

16 THE WITNESS: So they replaced the wood
17 for the whole glass door and got the whole frame.

18 BY MS. DIGIACOMO:

19 Q. So what you mean is they put wood up until
12:34PM 20 you could get the glass fixed?

21 A. Yes.

22 Q. So nobody else could break in?

23 A. Exactly.

24 Q. How much did that cost?

12:34PM 25 A. That was about 400-something-dollars. I

12:34PM 1 have it on here.

2 Q. For the record you're referring to your
3 receipts?

4 A. Yes. I have the receipts. That cost me
12:35PM 5 \$474.41.

6 Q. And then how much did it cost to repair
7 the glass?

8 A. \$723.72. And I have the receipt.

9 Q. How long did it take to repair that glass?

12:35PM 10 A. Well, we had to order the door so we
11 waited like almost two weeks to have it replaced.

12 Q. And did your insurance cover the repair?

13 A. No, it did not because the temporary door
14 wasn't a thousand dollars. It was only 700. So they

12:35PM 15 couldn't -- because we had to pay deductible and we
16 haven't done that yet.

17 Q. So your deductible is a thousand dollars?

18 A. Yes.

19 Q. So you had to pay the \$723.72 yourself?

12:35PM 20 A. Yes.

21 Q. As well as the \$474.41 to put up the wood
22 door?

23 A. Yes, ma'am.

24 MS. DIGIACOMO: I don't have anything

12:36PM 25 further.

12:36PM 1 THE COURT: Anything, Mr. Brower?

2

3

CROSS-EXAMINATION

4

BY MR. BROWER:

12:36PM 5 Q. Ma'am, the glass on your door -- can you
6 describe the glass that was on your door? Is it
7 see-through, is it frosted?

8

9

12:36PM 10 A. It's kind of frosted but there's some area
11 where just like a clear one with like a diamond shape,
12 that's a clear, and the rest are all frosty. Like in
13 between has frost and then clear.

14

15

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Q. So when you look out your door, can you
visibly see what's on the other side?

A. Absolutely.

Q. And the door that was broke, are they two
doors side by side or just one door?

A. It's two door side by side.

Q. Which door was broke, the right or left
door?

A. If I was facing the front door from the
outside, it'll be on the left-hand side with the
doorknob is.

Q. And where would your deadbolt be?

A. On the left-hand side. It's on the same
side where the latch is.

12:36PM 1 Q. So the latch isn't in the center of the
2 two doors, it's actually on the side?
3 A. Well, actually it's on that one door on
4 the left-hand side.

12:37PM 5 Q. But there's two doors. Do they open --
6 A. Yeah. The other one is just -- there's
7 this latch up on the top and the bottom --
8 Q. And the doors --
9 A. -- to keep it staying --

12:37PM 10 THE COURT: Ma'am, let him finish because
11 we're talking over each other.
12 BY MR. BROWER:
13 Q. So the right-hand door, if I'm standing at
14 the front door, the right-hand door has a latch that's
15 at the top and bottom --
16 A. Yes.
17 Q. -- so it doesn't open with a knob?
18 A. No.
19 Q. It opens with the two latches?
12:37PM 20 A. Right.
21 Q. When the door is closed, does each door
22 hook to each other?
23 A. It's just the doorknob that has the lock.
24 That's the only thing that's there.
12:37PM 25 Q. Hooks to the other door, correct?

12:37PM 1 A. Yes.

2 Q. So from where the hole in the window was,

3 if I stick my hand through that hole --

4 A. Yeah, it's about this much --

12:38PM 5 THE COURT: Hang on. Hang on. Hang on.

6 Finish your question, Mr. Brower.

7 THE WITNESS: Go ahead.

8 BY MR. BROWER:

9 Q. So when I stick my hand through that hole,

12:38PM 10 do I reach my hand to the right or to the left to

11 unlock the door if I'm standing in front?

12 A. You would go going -- so the door is right

13 here so you would be going this way.

14 THE COURT: For the record she's using her

12:38PM 15 left arm and turning it to her right.

16 BY MR. BROWER:

17 Q. So I would reach in and go to my right?

18 A. Yeah.

19 MR. BROWER: Thank you, Judge.

12:38PM 20 THE COURT: Is that it?

21 MR. BROWER: That's it with me, Judge.

22 THE COURT: Okay. Anything else, State?

23 MS. DIGIACOMO: No.

24 THE COURT: Ma'am, you're excused.

12:38PM 25 Is this witness free to go?

12:38PM 1 MS. DIGIACOMO: Yes.

2 THE COURT: Thank you for your testimony.

3 You're free to go today.

4 Does anybody want copies of her receipts?

12:38PM 5 MS. DIGIACOMO: I have them and I made

6 copies and I'll get them to Mr. Brower.

7 THE COURT: Next witness, State.

8 MS. DIGIACOMO: State calls Officer

9 McGeahy.

12:39PM 10 THE COURT: Is it officer?

11 THE WITNESS: Sure.

12 THE COURT: What is your assignment?

13 THE WITNESS: I'm with PSU.

14 THE COURT: Come on up, remain standing

12:39PM 15 and raise your right hand.

16 THE CLERK: Do you solemnly swear that the

17 testimony that you are about to give will be the truth,

18 the whole truth and nothing but the truth, so help you

19 God?

12:39PM 20 THE WITNESS: I do.

21 THE CLERK: Please be seated.

22 Please state your first and last name and

23 spell each for the record.

24 THE WITNESS: My name is James McGeahy.

12:39PM 25 J-A-M-E-S. M-C-G-E-A-H-Y.

12:39PM

1

THE COURT: Thank you, sir.

2

Go ahead.

3

4

12:39PM

5

JAMES MCGEAHY,
having been first duly sworn, did testify as follows:

6

DIRECT EXAMINATION

7

BY MS. DIGIACOMO:

8

Q. How are you employed?

9

A. I'm a police officer with the Henderson

12:39PM

10

Police Department.

11

Q. How long have you been so employed?

12

A. Ten years and about eight months now.

13

Q. Directing your attention to November 28,

14

2016 at approximately noon were you so employed and

12:40PM

15

working?

16

A. Yes.

17

Q. What was your assignment on that date?

18

A. I'm assigned to PSU, Problem Solving Unit.

19

Q. Now, did a report come in about a home

12:40PM

20

invasion at 2731 Warm Rays Avenue in which a license

21

plate was obtained?

22

A. Yes.

23

Q. And did you get assigned that case?

24

A. Yes.

12:40PM

25

Q. What happened when you got the assignment?

12:40PM 1 A. As a squad we started immediately
2 investigating. Took our initial information which was
3 the license plate and ran that through our NCIC data
4 base, got back a hit that it was a rental car,
12:40PM 5 contacted the rental company.

6 Q. And when you contacted the rental company,
7 what information were they able to provide you?

8 A. They were able to provide us with who the
9 renter was, the type of vehicle it was and that it had
12:40PM 10 GPS.

11 Q. Now, was it rented to a Marquisha Powell?

12 A. I believe that was the name, yes.

13 Q. So it was rented to a female?

14 A. Yes.

12:41PM 15 Q. And you said that it was equipped with
16 GPS?

17 A. Yes.

18 Q. Was anybody at the car rental place able
19 to get you the location of that car right then?

12:41PM 20 A. Yes.

21 Q. Based upon giving the GPS what did you and
22 your other officers do?

23 A. At that point we had two other officers
24 head down to the Global Autos and that way they had
12:41PM 25 direct contact with the management there who was

12:41PM 1 looking at the screen and actively following the GPS.
2 And then we relayed that information over to the other
3 officers who were out in the field attempting to locate
4 the vehicle.

12:41PM 5 Q. Okay. Did you ever see the GPS or was
6 there other officers that were there seeing the
7 location of the car?

8 A. I was just being told the GPS locations
9 and then I was emailed the paperwork of the actual
10 locations.

11 Q. The GPS for this car, did it show it was
12 present on Warm Rays?

13 A. Yes, it did.

14 Q. And so that's why you followed this car?

12:42PM 15 A. Yes.

16 Q. So when you are able to find the vehicle,
17 where was it?

18 A. Once we caught up with the vehicle it was
19 at the Fashion Show Mall on Las Vegas Boulevard.

12:42PM 20 Q. And do you know approximately what time
21 that was?

22 A. It was around noon. I don't remember the
23 exact time.

24 Q. So it's within a very short time period
12:42PM 25 from the call coming in about the home invasion and

12:42PM 1 finding the car?

2 A. Correct.

3 Q. When you get to the Fashion Show, do you

4 ever actually see this vehicle?

12:42PM 5 A. I did not. The detectives on scene did.

6 Q. Who were the detectives on scene?

7 A. I believe it was Max Pilz was there and

8 actually he's the one that located it. I don't

9 remember who else was with him. But I know he's the

12:42PM 10 one that actually located the vehicle.

11 Q. And that's P-I-L-Z for the record?

12 A. Yes. P-I-L-Z.

13 Q. When the vehicle was located, was it the

14 same vehicle with the license plate number that had

12:43PM 15 been reported by the victim?

16 A. Yes.

17 Q. What happened at that point?

18 A. I believe that they observed the vehicle

19 in the parking garage and then pick up another person

12:43PM 20 and then they drove to the exit of the parking garage

21 and parked on the exterior near Dillard's. Which is

22 where they were contacted.

23 Q. And so it was Detective Pilz that stopped

24 the car?

12:43PM 25 A. Yes. It was actually Jonathan Ashcroft

12:43PM 1 that was with him. I'm sorry.

2 Q. Ashcroft?

3 A. Yes.

4 Q. So the car was stopped and then you

12:43PM 5 arrived on scene?

6 A. Yes.

7 Q. And when you arrived, had you been
8 informed whether or not the individuals had been
9 Mirandized?

12:44PM 10 A. I believe so, yes, they were Mirandized.

11 Q. So when you come on scene, what do you do?

12 A. I didn't do anything because I was advised
13 that they were not talking. So I didn't speak to any
14 of them, although I did speak to this gentleman here
15 and advised him what he was under arrest for.

12:44PM

16 Q. You said this gentleman here. Can you
17 point to the person you're referring to and describe
18 what he's wearing right now.

19 A. Denzel Dorsey wearing a black shirt and
12:44PM 20 glasses.

21 MS. DIGIACOMO: Your Honor, would the
22 record reflect identification of the defendant?

23 THE COURT: Record will reflect
24 identification.

25

12:44PM 1 BY MS. DIGIACOMO:

2 Q. All right. So Mr. Dorsey was in the car
3 that was stopped?

4 A. Yes.

12:44PM 5 MR. BROWER: Judge, calls for speculation.
6 I don't think he was there.

7 MS. DIGIACOMO: I can rephrase.

8 THE COURT: Why don't you rephrase. I
9 don't know if he's speculating, it's personal

12:44PM 10 knowledge. If he saw it, was he --

11 BY MS. DIGIACOMO:

12 Q. When you got to the scene of the car that
13 was involved in the home invasion where it was stopped,
14 were there other officers present?

12:44PM 15 A. Yes. Metro was there as well as other
16 detectives working the case.

17 Q. Were there any individuals there that were
18 not officers?

19 A. There was him and then there was another
12:45PM 20 subject that was with him. I don't recall his name.

21 Q. So when you say him, you're talking about
22 Mr. Dorsey?

23 A. Yes.

24 Q. So he was there with all these officers by
12:45PM 25 the car?

12:45PM 1 A. Yes.

2 Q. And you didn't see --

3 A. When I got there, the other subject

4 actually was under arrest and was being at that point

12:45PM 5 transported and leaving to go to jail at CCDC. He had

6 several warrants for his arrest. I don't recall.

7 Q. So the second passenger of this car is

8 gone?

9 A. Yes.

12:45PM 10 Q. And it's just Mr. Dorsey with the vehicle

11 and all the officers?

12 A. He's sitting down actually over by one of

13 our cars.

14 Q. Correct. But he's in the vicinity of this

12:45PM 15 car?

16 A. Yes.

17 Q. And everyone else there is officers

18 investigating?

19 A. Yes.

12:45PM 20 Q. So based upon what you had said earlier

21 you went over and contacted Mr. Dorsey to let him know

22 he was under arrest?

23 A. And I advised him what the charges were

24 for.

12:46PM 25 Q. What did you tell him he was under arrest

12:46PM 1 for?

2 A. Home invasion and damage to the property.

3 Q. And that was the home invasion that
4 occurred at 2731 Warm Rays?

12:46PM 5 A. Correct.

6 Q. Now, when you contacted Mr. Dorsey, did
7 you notice anything about his appearance?

8 A. Yes. He was wearing a suit jacket that on
9 his left arm had several tears in it that were pretty

12:46PM 10 fresh. And also --

11 Q. Wait. So you're pointing to the left arm,
12 your left arm, and you started kind of at the wrist and
13 went up to the elbow?

14 A. Yeah, I believe there was a few tears, one
12:46PM 15 was down here and I think there was a couple up in here
16 that were torn and they were frayed so you could tell
17 they were fresh, they weren't something that was old.
18 And the jacket was fairly new, it looked like a new
19 suit jacket.

12:46PM 20 Q. And there was only these tears and fraying
21 on the left arm?

22 A. On the left arm, correct.

23 Q. Did you notice anything else about his
24 physical appearance?

12:46PM 25 A. He had like some injuries on his right

12:46PM 1 hand. I don't recall exactly what they were, but they
2 were on his knuckle. Some dry blood.

3 Q. So on his right hand his knuckles had dry
4 blood?

12:47PM 5 A. Yes.

6 Q. But did those appear to be fresh injuries
7 or was it scabbed?

8 A. Yes. They appeared to be fresh.

9 Q. Anything else about his appearance?

12:47PM 10 A. No.

11 Q. Now, did you do a search incident to
12 arrest of him?

13 A. Yes.

14 Q. And anything found during the search?

12:47PM 15 A. The key to the vehicle.

16 Q. What vehicle are you referring to?

17 A. The vehicle that he was driving. It was a
18 Suzuki rental car.

19 MR. BROWER: Judge, this calls for
12:47PM 20 speculation. We don't know that he was driving the
21 vehicle.

22 THE COURT: Well, hang on. His testimony
23 was that he was driving it. If he can't testify that
24 he was driving it --

12:47PM 25 MS. DIGIACOMO: He testified he had the

12:47PM 1 key.

2 THE COURT: Your testimony is that he had
3 the key to the vehicle?

4 THE WITNESS: Yes. I apologize. Yes, he
12:47PM 5 had the key to the vehicle in his pocket.

6 BY MS. DIGIACOMO:

7 Q. And you said it was a Suzuki?

8 A. Yeah, I believe it was a Suzuki.

9 And he also had a glove in his pocket that
12:48PM 10 had some blood on it and then -- that was it.

11 Q. So he had one glove in his pocket?

12 A. One glove in his pocket and the car key.

13 Q. And did you ever find the other glove?

14 A. Yeah. We found the other glove in the
12:48PM 15 vehicle.

16 Q. And in the vehicle you're talking about is
17 the Suzuki?

18 A. Yes.

19 Q. And that's the one with the license plate
12:48PM 20 953LGM that was reported we've been talking about the
21 whole time?

22 A. Correct.

23 MS. DIGIACOMO: I have nothing further.

24 THE COURT: Mr. Brower.

12:48PM 25

CROSS-EXAMINATION

BY MR. BROWER:

Q. Officer, did you impound the jacket that you just talked about?

A. Yes, we did.

Q. And you have that in evidence?

A. Yes.

Q. Okay. And did you impound the gloves?

A. Yes.

Q. What kind of gloves were they?

A. They looked almost like mittens. They were cotton gloves.

Q. So were they gloves or mittens?

A. I don't know. Is there a difference?

Q. One has fingers and one has --

A. It had fingers, so sure. They were like cotton gloves.

Q. Sorry. I run a ski team. Big difference.

But you didn't see Mr. Dorsey driving the vehicle?

A. No, I did not.

Q. What race was the other person in the vehicle?

A. African American as well.

Q. Do you know how tall they were?

12:49PM 1 A. If I remember I want to say he was like
2 6-foot.
3 Q. Do you remember his weight?
4 A. He was thin.
12:49PM 5 Q. Thin like Mr. Dorsey or thinner?
6 A. I want to say thinner. But my interaction
7 with him was limited so I don't recall too much.
8 Q. Did you do any showups or lineups with
9 Kevin Nazareno?
12:50PM 10 A. No.
11 Q. You've never shown personally Kevin any
12 pictures of the other individual?
13 A. I don't understand your question.
14 Q. You singled out Mr. Dorsey as the person
12:50PM 15 you believe committed this crime. I'm trying to figure
16 out what you did with the other individual to show that
17 they didn't commit this crime?
18 A. We didn't do anything with him because we
19 saw him get picked up at the mall.
12:50PM 20 Q. But that was after the fact, correct?
21 A. Yes.
22 THE COURT: I'm confused. Picked up by
23 officers or picked up --
24 THE WITNESS: No. He was picked up by
12:50PM 25 Denzel in the parking garage.

12:50PM 1 MS. DIGIACOMO: And by Denzel you mean the
2 defendant?

3 THE WITNESS: Yes.

4 BY MR. BROWER:

12:50PM 5 Q. So you say that you saw the car pull into
6 the parking lot, never stop or do anything else and go
7 pick up the other individual?

8 A. The other detective did, Max Pilz. He saw
9 him pick up -- I believe pick him up inside the parking
10 garage.

12:51PM 11 Q. Did you guys call out any forensic
12 examination to the Warm Rays house?

13 A. Yes.

14 MR. BROWER: Judge, I'll pass the witness.

12:51PM 15 THE COURT: Anything else, Miss DiGiacomo?

16 MS. DIGIACOMO: No, Your Honor.

17 THE COURT: All right. Is this witness
18 free to go?

19 MS. DIGIACOMO: Yes.

12:51PM 20 THE COURT: Thank you so much, officer.

21 THE WITNESS: Thank you.

22 MS. DIGIACOMO: With that the State rests.

23 THE COURT: Any motion on anything
24 regarding the complaint?

12:52PM 25 MS. DIGIACOMO: Oh, yeah, I'm sorry.

12:52PM 1 Thank you. I need to move to amend lines 17 and 22 to
2 reflect Florentino and/or Norma Nazareno as the owners.

3 MR. BROWER: Submit it, Judge.

4 THE COURT: Is that it?

12:52PM 5 Mr. Brower.

6 MR. BROWER: Judge, my client is aware of
7 his right to testify at a preliminary hearing. I
8 believe he is going to follow my advice and not testify
9 before your Honor, but I know you have to canvas him.

12:52PM 10 THE COURT: Is that correct, Mr. Denzel
11 Dorsey? You have the right to testify at your own
12 preliminary hearing. However, it can't be held against
13 you if you don't testify. Are you taking your
14 attorney's advice and not testifying at this time?

12:52PM 15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you have any witnesses
17 otherwise you'd like to call?

18 MR. BROWER: We don't, Judge.

19 THE COURT: Waive and reserve, State?

12:52PM 20 MS. DIGIACOMO: Yes.

21 THE COURT: Mr. Brower.

22 MR. BROWER: Judge, I am going to submit
23 it on what you've already heard.

24 THE COURT: All right. The testimony was
12:53PM 25 that the arm went through the door, broke through the

12:53PM 1 door, attempted to open the door and that Kevin saw an
2 African American male, watched him go out to the car
3 with that particular license plate. That license plate
4 was on the vehicle ultimately a short time later found

12:53PM 5 by the officers. And while we didn't have direct
6 testimony, the key was in Mr. Dorsey's pocket a short
7 time later. So to the extent there's any issues with
8 the identification, the circumstantial evidence
9 suggests that probable cause was met and that Denzel

12:53PM 10 Dorsey committed the crimes of attempt invasion of the
11 home and malicious destruction of private property. I
12 think the testimony on the malicious destruction of
13 property was 1097.

14 So, Mr. Dorsey, I find probable cause has
12:53PM 15 been met at this time on Count 1 and Count 2 so I am
16 going to bind you over to District Court to answer
17 those two charges.

18 I granted the motion to add Florentino to
19 line 17 and line 21 to include an and/or with Norma
12:54PM 20 Nazareno.

21 So do we have a date for District Court.

22 MR. BROWER: Judge, I know that she's
23 going to give me the 11th but I am asking for the
24 15th.

12:54PM 25 THE CLERK: I remember. May 15,

12:54PM 1 10:00 a.m. lower level.

2 THE COURT: We were operating off of an
3 amended. Are you aware of that?

4 MR. BROWER: I am, Judge.

12:55PM 5 THE COURT: I just wanted to make sure
6 that we were clear that we were binding him over on the
7 Amended Criminal Complaint of invasion of the home, not
8 attempt invasion of the home. Thank you.

9

12:55PM 10 (The proceedings concluded.)

11

12 * * * * *

13

14 ATTEST: Full, true and accurate

12:55PM 15 transcript of proceedings.

16

17 /S/Lisa Brenske

18

LISA BRENSKE, CSR No. 186

19

20

21

22

23

24

25

EXHIBIT “D”

1 DENZEL DORSEY

2 # ~~784~~ 5569, CCDC, NVC

3 330 S. Casino Center Blvd District Court
4 Las Vegas, Nevada 89101 Clark County, Nevada

5 THE STATE OF NEVADA

6 Plaintiff,

7 vs.

Case No.: C-17-323324-1

8 Dept. No.: XXII (22)

9 Docket No.: _____

10 DENZEL DORSEY

11 Defendant

12
13 Motion To Withdraw plea

14
15 Comes now, defendant, Denzel Dorsey, in Pro Se,
16 moves this Honorable Court for A Motion To withdraw
17 plea,

18 This motion is made and based upon all papers,
19 pleadings, and document on file with the Clerk of the
20 Court, The Points and Authorities, and the Argument
21 contained therein,

22 Dated this _____ Day of MAY 2018

23 Respectfully Submitted
24 Denzel Dorsey #2845569

25 1212

26 In Pro Se, CCDC
27 330 S. Casino Center Blvd
28 Las Vegas, Nevada 89101

Points And Authorities Argument

In this case, defendant, was appointed counsel and counsel ignored defendants requests to reasonably investigate and therefore now the defendant asserts that his guilty plea was not knowingly, voluntarily, and intelligently entered because counsel led him to believe his case was indefensible.

Strickland v. Washington

Defendant has explained his favorable facts in which counsel ignored defendants request to investigate wherein counsel told defendant that he was surely to lose in his trial and become habituated under the habitual criminal act because of the defendants extensive criminal history, and at the fact that there was drugs in the vehicle, the jury would put shame upon him, regardless of defendants favorable facts, and that the defendant was advised by his counsel that if he don't take the states only offer to him he would lose in trial and become habituated under a 5-20 years sentence.

Cripps v. State.

Defendant was also expecting his first child to be born at the he had entered the guilty plea wherein counsel has told the defendant that the only way to get rid of this to move on with life and to be able get out to witness his first child be born was to sign and enter the states plea offer with the

1 Stipulation that the defendant was to get his bail
2 reinstated in Case NO. C-17-323324-1 and A.O.R. in
3 Case NO. 17F21598X for dismissal after rendition
4 of sentence, where as the defendant was to re-
5 main out of custody until sentencing. The defendant
6 told his counsel that he may have a fugitive debiner
7 in the state of California and counsel stated to the
8 defendant that he would be released from Nevada's
9 custody within 30 days upon entering the guilty plea.
10 The defendant has not seen this relief in his release from
11 custody, wherein the state has placed a informal hold on
12 the defendant to hold him until his sentencing, where
13 as the defendant had entered his plea with the knowledge
14 of promise to remain out of custody until sentencing
15 as told by counsel. **Crawford v. State**

16 Therefore, the defendant's counsel was ineffective for failing
17 to reasonably investigate, failing to explain the strengths
18 and weaknesses of the evidence, failing to inform him of
19 the consequences of the plea, failing to provide an adequate
20 defense, and failing to ensure defendant understood the
21 sentencing scheme.

22 Wherefore, there is new evidence that could relieve the
23 defendant of guilt and persecution in this case, and
24 with the defendant's belief that he had no viable defense
25 and therefore no choice than to accept the state's plea bargain,
26 the defendant moves to submit his declarations and to
27 withdraw his plea addressing NRS 176.165

28 Dated this Day of MAY 2018

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1 9.) That defendant is submitting his declar-
2 ations in Pro Se.

14 DATED THIS ____ day of MAY, 2018.

15 I Denzel Dorsey, do

16 solemnly swear, under the penalty of perjury, that

17 the above Declarations is accurate,

18 correct, and true to the best of my knowledge.

19 NRS 171.102 and NRS 208.165.

21 Respectfully submitted,

22 Denzel Dorsey

23 Defendant

24 DP

25 NRS 208.165 A prisoner may execute any instrument by signing his name immediately
26 following a declaration "under penalty of perjury" with the same legal effect as if he had
27 acknowledged it or sworn to its truth before a person authorized to administer oaths. As used in
28 this section, "prisoner" means a person confined in any jail or prison, or any facility for the
detention of juvenile offenders in this state.

Certificate of Service By Mailing

I, Denzel Dorsey, do declare pursuant to N.R.C.P 5(b) that on the ____ day of MAY 2018 I sent A copy of Motion TO Withdraw Plea, and notice of motion to:

The Clerk of The Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

Steven Wolfson
District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101

Caitlyn McAamis
Attorney at Law (Court appointed)
550 E. Charleston Blvd suite A
Las Vegas, Nevada 89104

Dated this ____ day of MAY 2018

Respectfully Submitted
Denzel Dorsey #2845569



In Pro Se, CCDC
330 S. Casino Center Blvd
Las Vegas, Nevada 89101

(6)



1 **NOTC**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 SANDRA K. DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006204
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13
14 Plaintiff,

15 -vs-

16 DENZEL DORSEY,
17 #2845569

18 Defendant.

CASE NO: C-17-323324-1

DEPT NO: XV

19 **STATE'S NOTICE OF INTENT TO SEEK PUNISHMENT**
20 **AS A HABITUAL CRIMINAL AND NOTICE OF PRIOR BURGLARY**
21 **AND/OR HOME INVASION CONVICTONS**

22 TO: DENZEL DORSEY, Defendant; and

23 TO: GARY MODAFFERI, ESQ., Counsel of Record:

24 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that pursuant to NRS
25 207.010, the STATE OF NEVADA will seek punishment of Defendant DENZEL DORSEY,
26 as a habitual criminal in the event of a felony conviction in the above-entitled action.

27 That in the event of a felony conviction in the above-entitled action, the STATE OF
28 NEVADA will ask the court to sentence Defendant DENZEL DORSEY as a habitual criminal
based upon the following felony convictions, to-wit:

- 29 1. That on or about May 8, 2012, the Defendant was convicted in the State
30 of Nevada, for the crime of ATTEMPT BURGLARY (felony) in Case No. C-12-279732-1.
- 31 2. That on or about December 10, 2012, the Defendant was convicted
32 in the State of Nevada, for the crime of INVASION OF HOME (felony) in Case No.
33 C-12-284308-1.

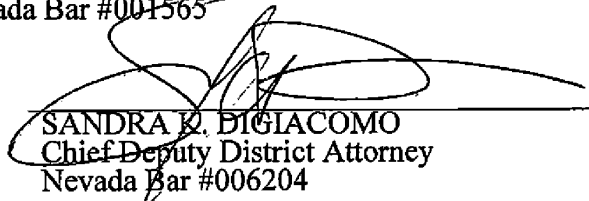
1 3. That on or about December 14, 2015, the Defendant was convicted in the
2 State of California, for the crime of BURGLARY FIRST DEGREE (felony) in Case No.
3 XNOMA058464-01.

4 4. That on or about August 19, 2015, the Defendant was convicted in the
5 State of California, for the crime of BURGLARY FIRST DEGREE (felony) in Case
6 No. XNOMA066766-01.

7 The State of Nevada hereby places Defendant DENZEL DORSEY on notice that in the
8 event of a Burglary pursuant to NRS 205.060 and/or a Home Invasion conviction pursuant to
9 NRS 205.067 in the above-entitled action, he will not be eligible for probation as Defendant
10 DENZEL DORSEY has already suffered three (3) prior Burglary and/or Home Invasion
11 conviction(s), as set forth in the above "Notice of Intent to Seek Punishment as a Habitual
12 Criminal," said notice being incorporated by this reference as though fully set forth herein.

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

16 BY

17 
18 SANDRA R. BIGIACOMO
19 Chief Deputy District Attorney
20 Nevada Bar #006204

21 **CERTIFICATE OF FACSIMILE TRANSMISSION**

22 I hereby certify that service of the above and foregoing was made this 21st day of
23 February, 2019 by facsimile transmission to:

24 GARY MODAFFERI, ESQ.
25 (702) 474-1320

26 BY /s/ E. Goddard

27 E. Goddard
28 Secretary for the District Attorney's Office

16FH2022X/erg/L-5

Sent Successfully To: GARY MODAFFERI, ESQ. at 702-474-1320

02/21/2019 08:50AM * Pg 1/3

User ID: GODDARE

=====

TO: Name: GARY MODAFFERI, ESQ.

Company:

Fax Phone Number: 702-474-1320

Contact Phone Number:

Info Code 1: C323324

Info Code 2: DENZEL DORSEY

Sent to remote ID:

Sent at: Thu Feb 21 08:50:35 2019

Sent on channel 4

Elapsed Time: 1 minute, 20 seconds

Transmission Status (0/339;0/0): Successful Send

Page Record: 1 - 2.



1 **SUPP**
2 GARY A. MODAFFERI, ESQ. (12450)
3 LAW OFFICE OF GARY A. MODAFFERI, LLC
4 815 S. Casino Center Boulevard
5 Las Vegas, NV 89101
6 Telephone: (702) 474-4222
7 Fax: (702) 474-1320
8 *Attorney for Defendant Denzel Dorsey*

9 **DISTRICT COURT**
10 **CLARK COUNTY, STATE OF NEVADA**

11 THE STATE OF NEVADA

12 Plaintiff

13 vs

14 DENZEL DORSEY

15 Defendant

Case No. C-17-323324-1
Dept No. XV

16 **SUPPLEMENTAL EXHIBIT IN SUPPORT OF DEFENDANT'S MOTION TO**
17 **WITHDRAW GUILTY PLEA**

18 COMES NOW the Defendant DENZEL DORSEY by and through his counsel, GARY A.
19 MODAFFERI, ESQ. of THE LAW OFFICE OF GARY A. MODAFFERI, LLC, and
20 respectfully tenders the following Supplemental Exhibit in support of Defendant's Motion to
21 Withdraw Guilty Plea.¹

22 DATED this 19th day of February, 2019.

23
24 By: /s/ Gary A. Modafferi Esq.
25 GARY A. MODAFFERI, ESQ.
26 Nevada Bar No. 12450
27 815 S. Casino Center Boulevard
28 Las Vegas, NV 89101
Counsel for Defendant

¹ Sworn Declaration of Davey Dorsey.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 21st day of February, 2019, I served a true
copy of **SUPPLEMENTAL EXHIBIT IN SUPPORT OF DEFENDANT’S MOTION**
TO WITHDRAW GUILTY PLEA upon the following:

Richard Scow, Esq.
Chief Deputy District Attorney
richard.scow@clarkcountyda.com

/s/ Erika W. Magana

Erika W. Magana, An Employee of
Gary A. Modafferi, LLC

EXHIBIT “A”

1 **GARY MODAFFERI, ESQ.**
2 Nevada Bar No. 012450
3 **LAW OFFICE OF GARY MODAFFERI**
4 815 S. Casino Center Blvd.,
5 Las Vegas, Nevada 89101
6 (702) 474-4222
7 **Attorney for Defendant**
8 **DENZEL DORSEY**

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

9 THE STATE OF NEVADA,)
10 Plaintiff,)
11 -vs-)
12 DENZEL DORSEY,)
13 ID# 02845569)
Defendant.)

CASE NO.: C-17-323324-1

DEPT. NO.: 22

14 **DECLARATION**

15 **DAVEY DORSEY** makes the following declaration:

- 16
- 17 1. That I have full knowledge of all matters contained
- 18 herein and am competent to testify thereto.
- 19
- 20 2. That my date of birth is: 06/27/1999
- 21 3. That I reside at ~~2137 East St. Louis, Las Vegas, Nevada 89104.~~ *5325 E. Tropicana Ave # 2082* *8/9/22*
- 22 4. That I will make himself available to the lawyer of Denzel Dorsey *D.D.*
- 23 and the prosecutor.
- 24
- 25 5. That, on or about 11/28/2016, I was 17 years old.
- 26 6. That I am the younger biological brother of Denzel Dorsey.
- 27 7. That, on or about 11/25/2016, I asked Denzel Dorsey if I could

1 please borrow Denzel Dorsey's car rental.

2
3 8. That I received the keys to the car rental on 11/27/2016 in the
4 afternoon hours.

5 9. That I was supposed to have the vehicle to go hangout with a female
6 friend.

7 10. That my brother, Denzel Dorsey, had no knowledge about me
8 planning to rob a house.

9 11. That, on 11/28/2016, I did drive to the 2731 Warm Rays Ave. and
10 tried to break into the house.

12 12. That I was the one who broke the window and tried to OPEN the front
13 door of the house.

14 13. That, after the incident, I ended up driving to where my brother,
15 Denzel Dorsey, was at.

16 14. That I never told my brother, Denzel Dorsey, that I had just
17 tried to rob a house.

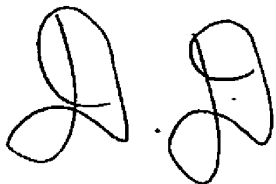
18 15. That, after I picked up Denzel Dorsey, Denzel Dorsey and I
19 drove to Lindell Street.

20 16. That I got out of the car at my sister's house.

21 17. That I am referring to Ramika's house.

22 18. That Ramika's house was somewhere on Teneya.

23 19. That I am more than willing to take responsibility for this attempt
24 home invasion.

A handwritten signature in black ink, consisting of stylized, overlapping loops and curves.

1 20. That I am more than willing to sign a legal document if necessary to
2 clear Denzel Dorsey's name of this crime.
3

4 21. That Denzel Dorsey had NOTHING to do with both the preplanning and
5 the actual attempted home invasion.

6 22. That I am specifically talking about the house located at 2731 Warm
7 Rays Ave., Henderson, Nevada 89052.

8 23. That I am very sorry for what I did.

9 24. That I am coming forward to report the truth regarding 11/28/2016
10 under HNPd Police Event #16-21448-001.
11

12 25. That Denzel Dorsey is innocent of these criminal charges.

13 26. That I tried to reach out to Denzel Dorsey's female attorney.

14 27. That I actually went to the courthouse.

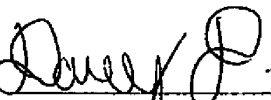
15 28. That Denzel Dorsey's female attorney was very rude to me and she
16 kept telling me that she did not have time for me.

17 29. That I wanted to inform the female lawyer that I was the one
18 that committed the attempt home invasion on 11/28/2016.
19

20 30. That the female attorney would not give me 2 minutes of her time.

21 **I DECLARE UNDER PENALTY OF PERJURY THAT THE**
22 **FOREGOING IS TRUE AND CORRECT. (NRS 53.045).**

23 EXECUTED this 2-18-19 day of FEBRUARY, 2019.
24

25 

26 **DAVEY DORSEY**
27 **Tel. #(323) 915-3638**
28



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 SANDRA K. DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006204
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

10 THE STATE OF NEVADA,
11
12 Plaintiff,

13 -vs-

14 **DENZEL DORSEY,**
15 **#2845569**

16 Defendant.

CASE NO: C-17-323324-1

DEPT NO: XV

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION**
17 **TO WITHDRAW GUILTY PLEA**

18 DATE OF HEARING: MARCH 26, 2019
19 TIME OF HEARING: 8:30 A.M.

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
21 through SANDRA K. DIGIACOMO, Chief Deputy District Attorney, and hereby submits the
22 attached Points and Authorities in State's Opposition to Defendant's Motion to Withdraw
23 Guilty Plea.

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

27 ///

28 ///

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¹ The defense presented no witnesses, i.e. neither Davey Dorsey nor Takiya Clemons testified.

1 On January 9, 2018, private counsel was still unable to confirm and the State moved to
2 remand Defendant without bail for committing new crimes while out of custody in this case.
3 The court remanded Defendant with no bail and set a status check to appoint counsel for
4 January 16, 2018. On that date, new appointed counsel confirmed for Defendant and a trial
5 date was scheduled for April 23, 2018.

6 On March 13, 2018, Defendant pleaded guilty to Invasion of the Home pursuant to a
7 guilty plea agreement which stated, in part:

8
9 The State will retain the right to argue. Additionally, the State agrees not to
10 seek habitual criminal treatment. Further, the State will not oppose dismissal of
11 Count 2 and Case No. 17F21598X after rendition of sentence. The State will not
12 oppose standard bail after entry of plea. However, if I fail to go to the Division of
13 Parole & Probation, fail to appear at any future court date or am arrested for any
14 new offenses, I will stipulate to habitual criminal treatment, to the fact that I have
the requisite priors and to a sentence of sixty (60) to one hundred twenty (120)
months in the Nevada Department of Corrections. Additionally I agree to pay full
restitution including for cases and counts dismissed.

* * *

15 I understand and agree that, if I fail to interview with the Department of
16 Parole and Probation, fail to appear at any subsequent hearings in this case, or an
17 independent magistrate, by affidavit review, confirms probable cause against me for
18 new criminal charges including reckless driving or DUI, but excluding minor traffic
19 violations, the State will have the unqualified right to argue for any legal sentence
20 and term of confinement allowable for the crime(s) to which I am pleading guilty,
21 including the use of any prior convictions I may have to increase my sentence as an
habitual criminal to five (5) to twenty (20) years, life without the possibility of
parole, life with the possibility of parole after ten (10) years, or a definite twenty-
five (25) year term with the possibility of parole after ten (10) years.

22 Guilty Plea Agreement Filed in Open Court on March 9, 2018, pp. 1-2.² See Guilty Plea
23 Agreement attached as Exhibit 1. Defendant also stated during the plea canvass that he is
24 pleading guilty of his own free will and that he committed the instant offense. See Reporter's
25 Transcript of Hearing Re State's Request for Entry of Plea Filed June 14, 2018 (RTH), pp. 5-

26
27 ² Per the court minutes from March 13, 2018, the Guilty Plea Agreement was actually filed in open court on
28 March 13, 2018. Also, there was a typographical error in the Guilty Plea Agreement which no one realized;
page 1, lines 26-27 were supposed to reflect a sentence of 60 – 240 months if adjudicated guilty of habitual
criminal; instead page 1, lines 26-27 stated a sentence of 60 – 120 months, which is an illegal sentence as it
violates the 40% rule---the minimum sentence for a small habitual criminal is 60 – 150 months.

1 6, attached as Exhibit 2. Pursuant of the terms of the agreement, Defendant was released on
2 his own recognizance due to his prior bail not having been exonerated. Exhibit 2, pp. 6-7.
3 The court also cautioned Defendant that if he failed to go to the Division of Parole and
4 Probation, to appear at any future court date, or was arrested on any new offenses, he would
5 serve as a habitual criminal. Exhibit 2, p. 7. A sentencing date was scheduled for July 17,
6 2018.

7 On April 26, 2018, Defendant filed a Motion to Place on Calendar to Address Custody
8 Status and Hold. Defendant was on parole in California at the time he committed the crimes
9 in this case and 17F21598x; therefore, a hold was placed on him when he was arrested on the
10 latter case. In the motion, Defendant asked to be remanded and for his sentencing date to be
11 moved to a sooner date. The motion was heard on May 8, 2018, at which time the court did
12 reschedule the sentencing to June 5, 2018; however, per the minutes, Defendant was not
13 remanded on this case.

14 On June 5, 2018, defense counsel stated that sentencing could not proceed as Defendant
15 wanted to withdraw his guilty plea and to dismiss her as counsel. Defendant stated he had
16 filed the motions previously but the court indicated it had not received them. The matter was
17 continued to June 12, 2018 for a status check regarding the motions and a new sentencing date.
18 On June 6, 2018, Defendant filed in pro per a Motion to Dismiss Counsel and a Motion to
19 Withdraw Plea. On June 12, 2018, the court granted Defendant's Motion to Dismiss Counsel
20 and set another status check for confirmation of counsel for June 28, 2018. On June 28, 2018,
21 all matters were continued to July 17, 2018. On July 3, 2018, the State filed an Opposition to
22 Defendant's Pro Per Motion to Withdraw Plea.

23 On July 11, 2018, Defendant was arrested just after midnight in California for
24 Receiving Stolen Property, as Defendant was in possession of property stolen from a
25 residential burglary which occurred earlier on July 10, 2018 in the morning hours. During a
26 car stop for traffic violations, Defendant (the driver) lied about his identity to the police and
27 the ownership of the stolen property, claiming the over \$22,000 in cash belonged to him and
28 the multiple items of jewelry belonged to his girlfriend, Takiya Clemons (the passenger).

1 After further investigation, all of the items in Defendant's possession were stolen from the
2 residential burglary so the detective submitted to the district attorney to charge Defendant with
3 the residential burglary as well. See California Police Reports attached as Exhibit 3.

4 On July 17, 2018, Defendant failed to appear for court and a bench warrant issued in
5 this case; Defendant's Motion to Withdraw Plea was also taken off calendar. On July 24,
6 2018, a Motion to Quash Bench Warrant was filed by newly retained counsel; the motion
7 stated that Defendant was presently incarcerated in California but would make all future court
8 dates. On July 31, 2018, defense counsel asked for the bench warrant to be quashed because
9 Defendant could not post bail in his California case with the hold from this case; the court
10 denied the motion.

11 On November 8, 2018, Defendant appeared in custody on the bench warrant return and
12 his counsel requested thirty (30) days to determine the status of Defendant's cases in California
13 but the State objected. The court set a sentencing date for November 27, 2018. On November
14 27, 2018, new retained counsel substituted in as counsel and the matter was continued until
15 December 3, 2018.

16 On December 3, 2018, defense counsel requested a continuance and filed a Motion for
17 Expert Services (Investigator) Pursuant to Widdis on December 5, 2018. The motion was
18 granted by this Court on January 9, 2019 in a signed order. On January 17, 2019, it was
19 confirmed the investigator would only be working on information related to a motion to
20 withdraw guilty plea and the sentencing date was rescheduled for February 19, 2019.

21 On February 15, 2019, Defendant filed a Motion to Withdraw Guilty Plea. On February
22 19, 2019, the sentencing date was continued to allow the State time to file an opposition to the
23 defense's motion; it was rescheduled for March 28, 2019. That date was later changed by the
24 parties and this Court to March 26, 2019. On February 21, 2019, the State filed a Notice of
25 Intent to Seek Punishment as a Habitual Criminal and Notice of Prior Burglary and/or Home
26 Invasion Convictions adding Defendant's two (2) convictions from California for Burglary,
27 1st Degree in case number MA058464-01 and Burglary, 1st Degree in case number MA066766-
28

01; also on this date, Defendant filed a Supplemental Exhibit in Support of Defendant's Motion to Withdraw Guilty Plea.

The State's opposition to Defendant's Motion to Withdraw Guilty Plea is as follows.

STATEMENT OF FACTS

On November 28, 2016, Kevin Nazareno lived at 2731 Warm Rays in Henderson, Clark County, Nevada with his parents, Florentino and Norma Nazareno, who are the owners of the residence. *See* Preliminary Hearing Transcript (PHT) attached as Exhibit C to Defendant's Motion to Withdraw Guilty Plea, pp. 4, 20-21. On that date, Kevin was asleep in his bed when he was awoken by the sound of the front doorbell ringing constantly, as someone kept pushing the doorbell multiple times, would stop and then would press the button again multiple times. PHT, pp. 5-6. Annoyed someone was ringing the doorbell that much, Kevin got out of bed and went to the front door. PHT, p. 6. The front doors were glass and as Kevin looked over the stair railing from upstairs, Kevin could see a single black male standing outside the front door punching the glass with his fist; Kevin could hear banging on the door itself. PHT, pp. 7. Kevin saw the glass on the front door break, which left a round hole with jagged edges. PHT, pp. 7-8. The black male reached through the hole in the glass to unlock the deadbolt with his left hand; Kevin stated that the black male was wearing a jacket or clothing on his arm. PHT, pp. 7-9, 16, 19. Kevin rushed forward to the door, grabbed the deadbolt and kept it locked. PHT, p. 9. The black male then took his arm out of the glass and ran away. PHT, pp. 9-10.

Kevin went outside of the house and chased after the black male. PHT, p. 10. Kevin saw the black male get into a blue Suzuki, four (4) door, on the driver's side; Kevin got the license plate, 953LGM, before the black male drove away. PHT, pp. 10-11, 17. Kevin did not see anyone else in the vehicle. PHT, p. 11. The black male had the keys to the car and started the ignition. PHT, p. 18. Kevin then called the police and gave them the license plate number. PHT, p. 10. In court, Kevin was eighty-five (85) percent sure that Defendant, without glasses, was the black male that was at his house on November 28, 2016. PHT, p. 13. Kevin

1 stated that he did not know Defendant or give him permission to come into his house on
2 November 28, 2016. PHT, pp 13-14.

3 Norma Nazareno was at work on November 28, 2016 when she received a call from
4 her husband around noon, so she rushed home. PHT, p. 21. When she arrived, she saw that
5 the glass on her front door was broken, and that there was a big hole right by the doorknobs.
6 PHT, pp. 22-23. First, Norma had to pay \$474.41 to have the door boarded up until the glass
7 could be replaced. PHT, pp. 24-25. Next, Norma paid \$723.72 to have the glass replaced in
8 the door. PHT, p. 25.

9 Officer J. McGeahy of the Henderson Police Department, Problem Solving Unit, was
10 assigned this residential burglary on November 28, 2016; he and his squad began investigating
11 it immediately. PHT, pp. 30-31. The plate, 953LGM, was run through their database and it
12 returned to a rental car. PHT, pp. 31, 39. The rental car company was contacted and the
13 officers learned that it was rented to a female and had a GPS equipped on it; therefore, the
14 rental car company was able to provide officers with the exact location of the car at that
15 moment. PHT, p. 31. At that point, two (2) officers went to the rental car company to have
16 direct contact with the person tracking the car with the GPS. PHT, pp. 31-32.

17 The GPS for the car showed that it was located on the street of the residential burglary,
18 so officers wanted to make contact with the car. PHT, p. 32. Within a very short time of the
19 residential burglary, officers made contact with the vehicle at the Fashion Show Mall. PHT,
20 pp. 32-33. Officers observed the vehicle in the parking garage picking up another person and
21 then it parked near Dillard's. PHT, pp. 33, 41-42. Officers contacted the vehicle and
22 Defendant was arrested. PHT, p. 34. Officer McGeahy made contact with Defendant to let
23 him know he was under arrest for the residential burglary at 2731 Warm Rays and noticed that
24 the jacket Defendant was wearing had several tears on his left arm that were fresh and frayed.
25 PHT, pp. 36-37. Defendant also had injuries on his right hand with some dried blood and
26 appeared to be fresh. PHT, pp. 37-38. During a search incident to arrest, the key to the Suzuki
27 rental car was found in Defendant's pocket, along with one glove with some blood on it. PHT,
28

1 pp. 38-39. The other matching glove was found in the vehicle. PHT, p. 39. Both the jacket
2 and gloves were booked into evidence. PHT, pp. 39-40.

3 When Officer McGeahy told Defendant what he was being arrested for, he explained
4 that the rental car had a GPS tracker which placed him at the location of the crime; Defendant
5 looked down and said “aw shit.” See Declaration of Arrest Attached as Exhibit 4, p. 3.

6 The GPS records for the vehicle shows the following:

7 11:52 a.m.: the vehicle is stopped at 2727-2729 Warm Rays in Henderson for 4 minutes

8 11:56 a.m.: the vehicle started traveling

9 12:01 p.m.: the vehicle was traveling 30 mph in the 10300-10532 block of Eastern
(north of the victim’s residence by the intersection of Coronado Center
10 and Eastern)

11 12:06 p.m.: the vehicle was traveling 67 mph on westbound I-215

12 12:11 p.m.: the vehicle was traveling 37 mph in Enterprise, NV

13 12:16 p.m.: the vehicle was traveling 54 mph near 5524-5698 S. Decatur

14 12:23 p.m.: the vehicle stopped at 3938-3980 S. Plitze Drive for 3 minutes

15 12:26 p.m.: the vehicle began traveling

16 12:31 p.m.: the vehicle stopped at 3800-3850 S. Lindell for 3 minutes

17 12:34 p.m.: the vehicle started traveling

18 12:39 p.m.: the vehicle stopped at 5801-5899 block of W. Viking for 3 minutes

19 12:43 p.m.: the vehicle started traveling

20 12:48 p.m.: the vehicle was traveling 26 mph near 5901-6099 W. Desert Inn

21 12:53 p.m.: the vehicle stopped at 3300-3498 S. Ramuda Trl for 1 minute

22 The vehicle made no other stops and was on Fashion Show Drive at 1:43 p.m. and at 3231-
23 3299 Las Vegas Boulevard South (Fashion Show Mall) at 1:44 p.m. See Vehicle Rental
24 Agreement and History Printout for November 28, 2016 attached as Exhibit 5.

25 LEGAL ARGUMENT

26 In his motion, Defendant asks this Court to allow him to withdraw his plea of guilty
27 because he is innocent of the charges. In furtherance of his assertion, Defendant offers written
28 declarations from Davey Dorsey, his younger brother, and Takiya Clemons, his girlfriend who
was with him during his last arrest in California. However, under the totality of the
circumstances test, this Court should deny Defendant’s motion as he has not provided a
credible fair and just reason to grant it.

///
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1 NRS 176.165 states in pertinent part:

2 Except as otherwise provided in the section, a motion to withdraw
3 a plea of guilty, guilty but mentally ill or nolo contendere may be
4 made only before sentencing is imposed or imposition of sentence
5 is suspended. To correct manifest injustice, the court after
6 sentence may set aside the judgment of conviction and permit the
7 defendant to withdraw his plea.

8 The law in Nevada clearly establishes that a plea of guilty is presumptively valid and
9 the burden is on the defense to show that the plea was not voluntarily entered. Wingfield v.
10 State, 91 Nev. 336 (1975). A defendant who seeks to withdraw a plea of guilty must show
11 good cause therefore, as a plea of guilty is presumptively valid. Wynn v. State, 96 Nev. 673,
12 675, 615 P.2d 946, 947 (1980). The case of Patton v. Warden, 91 Nev. 1 (1975) suggests that
13 the presence and advice of counsel is a significant factor in determining the voluntariness of a
14 plea of guilty. Furthermore, the Nevada Supreme Court makes it clear in the case of Heffley
15 v. Warden, 89 Nev. 573 (1973) that the guidelines for voluntariness of pleas of guilty "do not
16 require the articulation of talismanic phrases." It required only that the record must
17 affirmatively disclose that a defendant who pled guilty entered his plea understandingly and
18 voluntarily. Brady v. United States, 397 U.S. 742 (1970).

19 In Wilson v. State, 99 Nev. 362 (1983), the Nevada Supreme Court stated:

20 In Higby v. Sheriff, 86 Nev. 774, 476 P.2d 959 (1970), concluded
21 that certain minimum requirements must be met when a judge
22 canvasses a defendant regarding the voluntariness of a guilty plea.
23 We held that the record must affirmatively show the following: 1)
24 the defendant knowingly waived his privilege against self-
25 incrimination, the right to trial by jury, and the right to confront
26 his accusers; 2) the plea was voluntary, was not coerced, and was
27 not the result of a promise of leniency; 3) the defendant understood
28 the consequences of his plea and the range of punishment; and 4)
the defendant understood the nature of the charge, i.e., the
elements of the crime. *Id.* at 781, 476 P.2d at 963. As to this last
requirement, we subsequently held that in order for the record to
show an understanding of the nature of the charge it is necessary
that there be either a showing that the defendant has made factual
statements to the court which constitutes in admission to the
pleaded offense. Hanley v. State, Nev. 130, 135, 624, P.2d 1287,
1290 (1981). The Court reviewing the validity of a guilty plea may
look at the entire record in order to determine whether a plea was
entered knowingly and intelligently in light of all the
circumstances. The Court may determine that the guilty plea is
valid by reason of the plea canvass itself or under a 'totality of the
circumstances approach'. Bryan v. State, 102 Nev. 268 (1986).

1 The Nevada Supreme Court has held that in order to properly accept a guilty plea the
2 court must sufficiently canvass the defendant to determine if he knowingly and intelligently
3 entered into the plea. Williams v. State, 102 Nev. 268, 721 P.2d 364 (1986). A determination
4 of whether a defendant knowingly and intelligently entered into a plea must be made by using
5 a totality of the circumstances approach. Iverson v. State, 107 Nev. 94, 99, 807 P.2d 1372
6 (1991) (*citing* Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986)). The totality of
7 the circumstances approach requires that the trial court review the entire record to determine
8 whether the plea was valid. Mitchell v. State, 109 Nev. 137, 848 P.2d 1060, 1061 62 (1993).

9 In Stevenson v. State, 354 P.3d 1277, 131 Nev. Adv. Rep. 61 (2015), the Nevada
10 Supreme Court determined that district court must consider the totality of the circumstances
11 to determine whether permitting withdrawal of a guilty plea before sentencing would be fair
12 and just. In that case, the Court affirmed the judgment pursuant to a guilty plea of two counts
13 of attempt sexual assault finding the following:

14 Having determined that a district court may grant a defendant's
15 motion to withdraw his guilty plea before sentencing for any
16 reason where permitting withdrawal would be fair and just, we
17 turn now to the reasons Stevenson has given as to why withdrawal
18 was warranted. The crux of Stevenson's argument below as to why
19 he should be allowed to withdraw his plea was that the members
20 of his defense team lied about the existence of the video in order
21 to induce him to plead guilty. The district court considered this
22 contention and gave Stevenson considerable leeway to
23 demonstrate how he was lied to or misled. Stevenson struggled to
24 articulate a cohesive response, pointing instead to circumstances
25 which, viewed in context, were neither inconsistent nor
26 suspicious. After considering Stevenson's arguments, as well as
27 the testimony presented at the multiple evidentiary hearings, the
28 district court found that no one lied to Stevenson about the time it
would take to determine whether the video could be extracted or
otherwise misled him in any way. The district court also found that
Stevenson's testimony in this regard was not credible. We must
give deference to these findings so long as they are supported by
the record, *see* Little v. Warden, 117 Nev. 845, 854, 34 P.3d 540,
546 (2001) (giving deference to factual findings made by the
district court in the course of a motion to withdraw a guilty plea),
which they are. Based on these findings, withdrawal was not
warranted on this ground.

1 Id., 354 P.3d 1277 at 1281. The Court went on to state:

2 Similarly unconvincing is Stevenson's contention that he was
3 coerced into pleading guilty based on the compounded pressures
4 of the district court's "erroneous" evidentiary ruling regarding his
5 motion to suppress the video, standby counsel's pressure to
6 negotiate a plea, and time constraints. We need not consider
7 whether the lower court's ruling regarding the video was correct,
8 because even assuming it was not, undue coercion occurs when "a
9 defendant is induced by promises or threats which deprive the plea
10 of the nature of a voluntary act," Doe v. Woodford, 508 F.3d 563,
11 570 (9th Cir. 2007) (internal quotation marks omitted), not where
12 a court makes a ruling later determined to be incorrect, *see*
13 *generally* Brady v. United States, 397 U.S. 742, 757, 90 S.Ct.
14 1463, 25 L. Ed. 2d 747 (1970)("[A] voluntary plea of guilty
15 intelligently made in the light of the then applicable law does not
16 become vulnerable because later judicial decisions indicate that
17 the plea rested on a faulty premise."). **Moreover, time constraints**
18 **and pressure from interested parties exist in every criminal**
19 **case, and there is no indication in the record that their**
20 **presence here prevented Stevenson from making a voluntary**
21 **and intelligent choice among the options available. See Doe,**
22 **508 F.3d at 570 ("The test for determining whether a plea is**
23 **valid is whether the plea represents a voluntary and intelligent**
24 **choice among the alternative courses of action open to the**
25 **defendant." (internal quotation marks omitted)); Miles v.**
26 **Dorsey, 61 F.3d 1459, 1470 (10th Cir. 1995). "Although**
27 **deadlines, mental anguish, depression, and stress are**
28 **inevitable hallmarks of pretrial plea discussions, such factors**
considered individually or in aggregate do not establish that [a
defendant's] plea was involuntary."

21 Id., 354 P.3d 1277 at 1281 (emphasis added).

22 The Court concluded:

23 Finally, we reject Stevenson's implied contention that withdrawal
24 was warranted because he made an impulsive decision to plead
25 guilty without knowing, definitively, whether the video could be
26 viewed. Stevenson did not move to withdraw his plea for several
27 months, which contradicts his suggestion that he entered his plea
28 in a state of temporary confusion while in the throes of discovering
that the video was not easily accessible. *See United States v.*
Alexander, 948 F.2d 1002, 1004 (6th Cir. 1991) **(explaining that**
one of the goals of the fair and just analysis "is to allow a
hastily entered plea made with unsure heart and confused

1 mind to be undone, not to allow a defendant to make a tactical
2 decision to enter a plea, wait several weeks, and then obtain a
3 withdrawal if he believes that he made a bad choice in pleading
4 guilty" (internal quotation marks omitted)); United States v.
5 Barker, 514 F.2d 208, 222, 168 U.S. App. D.C. 312 (DC Cir.
6 1975). "A swift change of heart is itself strong indication that the
7 plea was entered in haste and confusion[.]". Most importantly,
8 Stevenson relied upon the uncertainty surrounding the video as
9 leverage to negotiate an extremely favorable plea despite the
10 apparently strong evidence against him. See United States v.
11 Ensminger, 567 F.3d 587, 593 (9th Cir. 2009) ("The guilty plea is
12 not a placeholder that reserves [a defendant's] right to our
13 criminal system's incentives for acceptance of responsibility
14 unless or until a preferable alternative later arises. Rather, it
15 is a grave and solemn act, which is accepted only with care and
16 discernment." (internal quotation marks omitted)).

17 Considering the totality of the circumstances, we have no
18 difficulty in concluding that Stevenson failed to present a
19 sufficient reason to permit withdrawal of his plea. Permitting him
20 to withdraw his plea under the circumstances would allow the
21 solemn entry of a guilty plea to "become a mere gesture, a
22 temporary and meaningless formality reversible at the
23 defendant's whim." Barker, 514, F.2d at 221. This we cannot
24 allow.

25 Id., 354 P.3d 1277 at 1281-82 (emphasis added).

26 In this case, Defendant fully understood the consequences of his guilty plea. Defendant
27 voluntarily signed a Guilty Plea Agreement on March 13, 2018. Exhibit 1. After orally
28 canvassing Defendant, the Court accepted Defendant's guilty plea as freely and voluntarily
given. Exhibit 2, p. 6. The Guilty Plea Agreement extensively lists the consequences of the
plea. See Taylor v. Warden, 96 Nev. 272, 275, 607 P.2d 587, 589 (1980) (Court held factor in
determining voluntariness of plea is whether defendant understood consequences of his plea).

In addition, the Guilty Plea Agreement states that Defendant discussed with his attorney
any possible defenses, defense strategies and circumstances which might be in his favor and
that all of the foregoing elements, consequences, rights and waiver of rights have been
thoroughly explained to him by his attorney. Defendant also fully understood the nature of

1 the charge against him. Attached to the Guilty Plea Agreement is a copy of the original
2 Information, which lists all of the elements of the crime in which Defendant pleaded guilty.

3 After a review of the transcript of the entry of plea in this matter, it does not contain
4 any information which would lead this Court to the conclusion that the Defendant did not enter
5 into his plea freely and voluntarily, and with a complete understanding of what he was doing.
6 Exhibit 2, pp. 2-6. Moreover, Defendant's counsel swore, under penalty of perjury and the
7 threat of sanctions from the State Bar Association of Nevada, that she fully explained to
8 Defendant the allegations contained in the charge to which the guilty plea is being entered.

9 The record in the instant case contains a guilty plea agreement, discussed *supra*, which
10 is signed by Defendant; and, indicates the rights waived by Defendant, as well as the
11 consequences of entering a guilty plea. The agreement in cooperation with the canvassing,
12 further provides that Defendant's plea was clearly authorized and constitutional. All of the
13 requirements for a valid plea were met when Defendant entered his plea.

14 *Now*, however, Defendant wants this Court to let him out of the negotiation claiming
15 he is factually innocent. Conveniently, his younger brother is the one who committed the
16 crime when he was a juvenile and is willing *now* to take responsibility for it. Moreover,
17 Defendant's girlfriend of several years is *now* willing to provide an alibi for him. Because
18 neither of their statements are credible, this Court should deny Defendant's motion.

19 With regard to Davey Jones, he states in his declaration that he was seventeen (17)
20 years old, i.e. a juvenile on November 28, 2016, and that he was the one who committed the
21 home invasion of the Warm Rays home *without Defendant's knowledge*. Davey goes on
22 further to state that Defendant's female attorney refused to listen to him when tried to talk to
23 her at the courthouse, although he provides no date or even which courthouse in which this
24 allegedly occurred. Davey's statement is clearly not true and done only in an effort to help
25 Defendant escape a habitual criminal sentence. The fact that Davey would commit a home
26 invasion without Defendant's knowledge seems rather ridiculous; if Davey was going to
27 commit such a crime by himself, why not ask a prolific residential burglar such as his brother
28 who has been committing such crimes since 2012. Moreover, in his declaration signed on

1 February 18, 2019, Davey claims to currently live in Las Vegas, yet on his Facebook page as
2 of March 13, 2019, he claims to live in Los Angeles, CA. *See* Davey Dorsey's Facebook
3 Printout as Exhibit 6. Also, in November of 2016, Davey would have been in high school in
4 California; per his Facebook page, Davey graduated from Pete Knight High School, which is
5 located in Palmdale, CA. Exhibit 6; *see* Knight High School Information attached as Exhibit
6 7. Davey's declaration is also devoid of any real facts and is so general that it undermines any
7 truth to the assertion that he committed the crime. Moreover, Davey's confession does not
8 explain the fresh injuries to Defendant's hand at the time of arrest, the single glove in
9 Defendant's pocket with blood on it, the tears to the left sleeve of Defendant's jacket, or
10 Defendant's statement "aw shit" when he was told the rental car had GPS.

11 With regard to Takiya Clemons, she writes in her declaration that Defendant was with
12 her at the time the crime was committed. The State submits she has zero credibility based
13 upon the fact she is Defendant's girlfriend who obviously is aware of his criminal activities.
14 When Defendant was arrested in July 2018 in California, Takiya was released at the scene
15 when Defendant was transported to jail. Later, an officer called Takiya to come to the station
16 to pick up the jewelry which was in the car and allegedly belonged to her, and Takiya stated
17 she would come down "only if you are going to release it to me." Exhibit 3, p. 13. The officer
18 stated they would release it to her if she could identify the jewelry; Takiya stated "no" and
19 immediately hung up the phone. Exhibit 3, p. 13. Later, Takiya did go to the station and spoke
20 with officers, but her story did not match Defendant's about how the money was obtained, nor
21 could she describe the jewelry that she claimed was hers. Exhibit 3, p. 17. Additionally,
22 Takiya's written declaration does not explain the fresh injuries to Defendant's hand at the time
23 of arrest, the single glove in Defendant's pocket with blood on it, the tears to the left sleeve of
24 Defendant's jacket or Defendant's statement "aw shit" when he was told the rental car had
25 GPS.

26 Because of Defendant's criminal history, the offense to which he pled is non-
27 probationable. Because Defendant violated the terms of the negotiation by failing to appear
28 for court and by being arrested for a new offense, he is stipulating to habitual criminal

1 treatment which carries a minimum of five (5) years. Herein lies the real reason for this
2 motion, Defendant simply wants to play games with the system and does not want to face the
3 consequences of the deal *he agreed* to. At the time Defendant entered into his plea, regardless
4 of whether the female attorney would listen to Davey, Defendant would have known if he was
5 not the person who committed the crime and whether he had an alibi. But Defendant, after
6 signing a Guilty Plea Agreement, stood up in open court and stated he was in truth and in fact
7 guilty of the home invasion of the Nazareno residence. Exhibit 2, p. 6.

8 Defendant *chose* to enter a plea of guilty. At the time of entry of plea, Defendant
9 seemed anxious to be released from custody and now that is Defendant's goal yet again. But
10 obviously Defendant should not be out of custody---he committed the crimes in this case and
11 17F21598x when he was on parole for his residential burglary convictions in California and
12 then he committed another residential burglary in California while awaiting sentencing in this
13 case. Defendant wants this Court to believe he pleaded guilty in this case to protect his poor
14 little brother---his poor little *juvenile* brother who would not be subjected to mandatory prison
15 if convicted. So why does Defendant no longer wish to continue with his negotiation and to
16 protect his brother? Because Defendant does not want to accept the consequences of his bad
17 behavior and the terms of the deal to which he agreed. The State should receive the benefit of
18 its bargain instead of Defendant being allowed out of the deal solely because he has changed
19 his mind, as such is not a fair and just reason especially when he enlisted his brother to lie on
20 his behalf. When the totality of the circumstances are viewed, Defendant's plea was knowingly
21 and voluntarily entered, but Defendant will tell this Court whatever it takes to get out of
22 custody, even if it means exposing his own brother to criminal charges. Defendant is selfish
23 and cares only about himself---not his victims, not the court system, not his brother. It is as
24 simple as that. This Court should not reward Defendant's bad behavior, but should instead
25 hold him to the deal he made.

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CONCLUSION

Based upon the above and foregoing, the State respectfully Defendant's Motion to Withdraw Guilty Plea be DENIED.

DATED this 19th day of March, 2019.

Respectfully submitted,

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

BY /s/ Sandra K. DiGiacomo
SANDRA K. DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006204

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 19th day of March, 2019, by electronic transmission to:

GARY MODAFFERI, ESQ.
Email Address: modafferilaw@gmail.com

BY: /s/ J. Georges
Secretary for the District Attorney's Office

jg/L5

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 09 2018

BY Keri Cromer
KERI CROMER, DEPUTY

GPA
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
SANDRA K. DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006204
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-

DENZEL DORSEY,
#2845569

Defendant.

CASE NO: C-17-323324-1

DEPT NO: XXII

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **COUNT 1 - INVASION OF THE HOME**
(Category B Felony - NRS 205.067 - NOC 50435), as more fully alleged in the charging
document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as
follows:

The State will retain the right to argue. Additionally, the State agrees not to seek
habitual criminal treatment. Further, the State will not oppose dismissal of Count 2 and Case
No. 17F21598X after rendition of sentence. The State will not oppose standard bail after entry
of plea. However, if I fail to go to the Division of Parole & Probation, fail to appear at any
future court date or am arrested for any new offenses, I will stipulate to habitual criminal
treatment, to the fact that I have the requisite priors and to a sentence of sixty (60) to one
hundred twenty (120) months in the Nevada Department of Corrections. Additionally I agree
to pay full restitution including for cases and counts dismissed.

C-17-323324-1
GPA
Guilty Plea Agreement
4728985

Exhibit "1"

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1 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
2 and/or impounded in connection with the instant case and/or any other case negotiated in
3 whole or in part in conjunction with this plea agreement.

4 I understand and agree that, if I fail to interview with the Department of Parole and
5 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,
6 by affidavit review, confirms probable cause against me for new criminal charges including
7 reckless driving or DUI, but excluding minor traffic violations, the State will have the
8 unqualified right to argue for any legal sentence and term of confinement allowable for the
9 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
10 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without
11 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite
12 twenty-five (25) year term with the possibility of parole after ten (10) years.

13 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
14 plea agreement.

15 CONSEQUENCES OF THE PLEA

16 I understand that by pleading guilty I admit the facts which support all the elements of
17 the offense(s) to which I now plead as set forth in Exhibit "1".

18 As to Count 1, I understand that as a consequence of my plea of guilty the Court must
19 sentence me to imprisonment in the Nevada Department of Corrections for a minimum term
20 of not less than ONE (1) year and a maximum term of not more than TEN (10) years. The
21 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of
22 imprisonment. I understand that I may also be fined up to \$10,000.00. I understand that the
23 law requires me to pay an Administrative Assessment Fee.

24 I understand that, if appropriate, I will be ordered to make restitution to the victim of
25 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
26 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
27 reimburse the State of Nevada for any expenses related to my extradition, if any.

28 ///

1 **As to Count 1, I understand that I am not eligible for probation for the offense to which**
2 **I am pleading guilty.**

3 **I understand that I must submit to blood and/or saliva tests under the Direction of the**
4 **Division of Parole and Probation to determine genetic markers and/or secretor status.**

5 **I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,**
6 **Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or**
7 **Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation**
8 **and may receive a higher sentencing range.**

9 **I understand that if more than one sentence of imprisonment is imposed and I am**
10 **eligible to serve the sentences concurrently, the sentencing judge has the discretion to order**
11 **the sentences served concurrently or consecutively.**

12 **I understand that information regarding charges not filed, dismissed charges, or charges**
13 **to be dismissed pursuant to this agreement may be considered by the judge at sentencing.**

14 **I have not been promised or guaranteed any particular sentence by anyone. I know that**
15 **my sentence is to be determined by the Court within the limits prescribed by statute.**

16 **I understand that if my attorney or the State of Nevada or both recommend any specific**
17 **punishment to the Court, the Court is not obligated to accept the recommendation.**

18 **I understand that if the offense(s) to which I am pleading guilty was committed while I**
19 **was incarcerated on another charge or while I was on probation or parole that I am not eligible**
20 **for credit for time served toward the instant offense(s).**

21 **I understand that if I am not a United States citizen, any criminal conviction will likely**
22 **result in serious negative immigration consequences including but not limited to:**

- 23 1. **The removal from the United States through deportation;**
- 24 2. **An inability to reenter the United States;**
- 25 3. **The inability to gain United States citizenship or legal residency;**
- 26 4. **An inability to renew and/or retain any legal residency status; and/or**
- 27 5. **An indeterminate term of confinement, with the United States Federal**
28 **Government based on my conviction and immigration status.**

///

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a legal resident.

I understand that the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the District Attorney has specifically agreed otherwise, the District Attorney may also comment on this report.

WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.
2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.
6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

III

III

1 VOLUNTARINESS OF PLEA

2 I have discussed the elements of all of the original charge(s) against me with my
3 attorney and I understand the nature of the charge(s) against me.

4 I understand that the State would have to prove each element of the charge(s) against
5 me at trial.

6 I have discussed with my attorney any possible defenses, defense strategies and
7 circumstances which might be in my favor.

8 All of the foregoing elements, consequences, rights, and waiver of rights have been
9 thoroughly explained to me by my attorney.

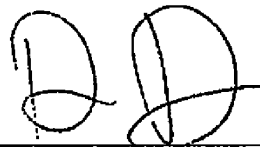
10 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
11 that a trial would be contrary to my best interest.

12 I am signing this agreement voluntarily, after consultation with my attorney, and I am
13 not acting under duress or coercion or by virtue of any promises of leniency, except for those
14 set forth in this agreement.

15 I am not now under the influence of any intoxicating liquor, a controlled substance or
16 other drug which would in any manner impair my ability to comprehend or understand this
17 agreement or the proceedings surrounding my entry of this plea.

18 My attorney has answered all my questions regarding this guilty plea agreement and its
19 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

20 DATED this 13th day of March, 2018.

21 
22 _____
23 DENZEL DORSEY
24 Defendant

25 AGREED TO BY:

26 
27 _____
28 SANDRA E. DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006204

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court
3 hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.
8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:

- 12 a. The removal from the United States through deportation;
13 b. An inability to reenter the United States;
14 c. The inability to gain United States citizenship or legal residency;
15 d. An inability to renew and/or retain any legal residency status; and/or
16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.

18 Moreover, I have explained that regardless of what Defendant may have been
19 told by any attorney, no one can promise Defendant that this conviction will not
20 result in negative immigration consequences and/or impact Defendant's ability
21 to become a United States citizen and/or legal resident.

- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
23 consistent with the facts known to me and are made with my advice to the
24 Defendant.
25 5. To the best of my knowledge and belief, the Defendant:
26 a. Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement,
28 b. Executed this agreement and will enter all guilty pleas pursuant hereto
voluntarily, and
c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

Dated: This 13th day of March, 2018.



ATTORNEY FOR DEFENDANT

erg/L-5

Steven D. Grierson

1 **INFM**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **SANDRA K. DIGIACOMO**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #006204**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

12 **I.A. 5/15/17**
13 **10:00 A.M.**
14 **K. BROWER, ESQ.**

DISTRICT COURT
CLARK COUNTY, NEVADA

15 **THE STATE OF NEVADA,**

16 **Plaintiff,**

17 **-vs-**

18 **DENZEL DORSEY,**
19 **#2845569**

20 **Defendant.**

CASE NO: C-17-323324-1

DEPT NO: XXII

INFORMATION

21 **STATE OF NEVADA** }
22 **COUNTY OF CLARK** } **ss.**

23 **STEVEN B. WOLFSON, Clark County District Attorney within and for the County of**
24 **Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the**
25 **Court:**

26 **That DENZEL DORSEY, the Defendant(s) above named, having committed the crimes**
27 **of INVASION OF THE HOME (Category B Felony - NRS 205.067 - NOC 50435) and**
28 **MALICIOUS DESTRUCTION OF PROPERTY (Gross Misdemeanor - NRS 206.310,**
193.155 - NOC 50905), on or about the 28th day of November, 2016, within the County of
Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made
and provided, and against the peace and dignity of the State of Nevada,

///

///

///

1 **COUNT 1 - INVASION OF THE HOME**

2 did willfully, unlawfully, feloniously, and forcibly enter an inhabited dwelling, to wit:
3 2731 Warm Rays, Henderson, Clark County, Nevada, without permission of the owner,
4 resident, or lawful occupant, to wit: FLORENTINO and/or NORMA NAZARENO, by
5 breaking a glass door window, putting his arm through the window and unlocking the deadbolt,
6 in an attempt to gain entry.

7 **COUNT 2 - MALICIOUS DESTRUCTION OF PROPERTY**

8 did willfully, unlawfully, or maliciously destroy and/or injure the real and/or personal
9 property of another, to wit: a glass door window, owned by FLORENTINO and/or NORMA
10 NAZARENO, located at 2731 Warm Rays, Henderson, Clark County, Nevada, by breaking
11 said glass door window at said residence, the value of said damage being \$250.00 or more and
12 less than \$5,000.00.

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

15
16 BY

SANDRA K. DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006204

17
18 Names of witnesses known to the District Attorney's Office at the time of filing this
19 information are as follows:

20 <u>NAME</u>	<u>ADDRESS</u>
21 CUSTODIAN OF RECORDS	Henderson Detention Center Communications
22 CUSTODIAN OF RECORDS	Henderson Detention Center Records
23 CUSTODIAN OF RECORDS	HPD COMMUNICATIONS
24 CUSTODIAN OF RECORDS	HPD RECORDS
25 GROSS, K.	C/O CCDA'S OFFICE
26 GUTIERREZ, C.	HPD P# 1695
27 HAYEK, GHASSAN	Global Auto, 1525 E. Sunset Rd., LV, NV

28 ///

1 MCGEAHY, J. HPD P# 1411
2 NAZARENO, KEVIN 2731 Warm Rays Ave., Henderson, NV
3 NAZARENO, NORMA 2731 Warm Rays Ave., Henderson, NV
4 WARD, R. HPD P# 1701

5 **DO NOT READ TO THE JURY**

6 **UNDER NO CIRCUMSTANCES IS THE LANGUAGE CONTAINED**
7 **HEREINAFTER TO BE READ TO A JURY HEARING THE PRIMARY OFFENSE**
8 **FOR WHICH THE DEFENDANT IS PRESENTLY CHARGED.**

8 **NOTICE OF PRIOR BURGLARY AND/OR HOME INVASION CONVICTIONS**

9 The State of Nevada hereby places Defendant DENZEL DORSEY on notice that in the
10 event of a Burglary conviction pursuant to NRS 205.060 and/or a Home Invasion conviction
11 pursuant to NRS 205.067 in the above-entitled action, he/she will not be eligible for probation
12 as Defendant DENZEL DORSEY has already suffered one (1) prior Burglary and/or Home
13 Invasion conviction(s), as set forth in the "Notice of Intent to Seek Punishment as a Habitual
14 Criminal," said notice being incorporated by this reference as though fully set forth herein.

15 **UNDER NO CIRCUMSTANCES IS THE LANGUAGE CONTAINED**
16 **HEREINAFTER TO BE READ TO A JURY HEARING THE PRIMARY OFFENSE**
17 **FOR WHICH THE DEFENDANT IS PRESENTLY CHARGED.**

17 **NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL**
18 **CRIMINAL**

19 The State of Nevada hereby places Defendant DENZEL DORSEY on notice of the
20 State's intent to seek punishment of Defendant DENZEL DORSEY pursuant to the provisions
21 of NRS 207.010 as a habitual criminal in the event of a felony conviction in the above-entitled
22 action.

23 The State will seek punishment as a habitual criminal based upon the following felony
24 convictions, to wit:

25 ///

26 ///

27 ///

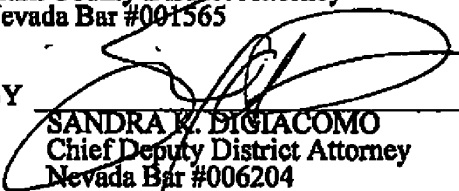
28 ///

1 1. That in 2012, the Defendant was convicted in the Eighth Judicial District
2 Court, County of Clark, State of Nevada, for the crime of Invasion of Home, in Case No.
3 C-12-284308-1.

4 2. That in 2012, the Defendant was convicted in the Eighth Judicial District
5 Court, County of Clark, State of Nevada, for the crime of Attempt Burglary, in Case No.
6 C-12-279732-1.

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

10 BY

11 
12 SANDRA K. DIGIACOMO
13 Chief Deputy District Attorney
14 Nevada Bar #006204

15 DO NOT READ TO THE JURY
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27 DA#16FH2022X/erg/L-5
28 HPD EV#1621448
 (TK)



1 TRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6
7 STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 DENZEL DORSEY,

11 Defendant.

CASE NO. C323324-1

DEPT. XXII

12
13 BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE
14 MARCH 13, 2018

15 RECORDER'S TRANSCRIPT OF HEARING RE
16 STATE'S REQUEST FOR ENTRY OF PLEA

17
18
19 APPEARANCES:

20 For the Plaintiff:

VICTORIA VILLEGAS, ESQ.
Deputy District Attorney

22
23 For the Defendant:

CAITLYN L. MCAMIS, ESQ.

24
25 RECORDED BY: NORMA RAMIREZ, COURT RECORDER

Exhibit "2"

1 TUESDAY, MARCH 13, 2018 AT 8:53:16 A.M.

2
3 THE COURT: Okay. State of Nevada versus Denzel Dorsey, case number
4 C323324-1. Would you announce your appearances for the record, please?

5 MS. MCAMIS: Good morning, Your Honor. Caitlyn McAmis, bar number
6 12616 on behalf of Denzel Dorsey who is present in custody.

7 MS. VILLEGAS: Victoria Villegas on behalf of the State.

8 THE COURT: And this is State's Request for Entry of Plea.

9 MS. MCAMIS: That's correct. Your Honor, I do have the signed guilty plea
10 agreement. I apologize that I didn't have time to file it before court. I'm asking for
11 permission to file it in open court. This matter is resolved.

12 THE COURT: Okay. Go ahead.

13 MS. MCAMIS: If I may approach.

14 THE COURT: You may approach.

15 MS. MCAMIS: Thank you. All right. Your Honor, I believe you now have the
16 filed guilty plea agreement in front of you. Today Mr. Dorsey is prepared to admit
17 and plead guilty to Count 1, Invasion of the Home, a Category B Felony which is
18 based on the plea agreement as follows. The State will retain the right to argue.
19 Additionally, the State agrees not to seek habitual criminal treatment. Further, the
20 State will not oppose dismissal of Count 2 in this case and dismissal of the Las
21 Vegas Justice Court case number 17F21598X after rendition of sentence. The
22 State will also not oppose standard bail after entry of plea, however if he fails to
23 interview with the department – or excuse me, Division of Parole and Probation or if
24 he fails to appear at any future court date or is arrested for any new offense he will
25 be stipulating to small habitual criminal treatment. That would be a stipulated

1 sentence of 60 months to 120 months in the Nevada Department of Corrections.
2 And finally, he agrees to pay full restitution for this case and counts dismissed. And
3 there's a forfeiture agreement as well to the extent there was anything seized.

4 THE COURT: Okay.

5 MS. VILLEGAS: That is correct, Your Honor.

6 THE COURT: Okay. Mr. Dorsey, I need you in front of the microphone. You
7 might need a little help from your neighbor there, all right? Okay. I need to be able
8 to hear you so please project for me, all right?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. I do have a guilty plea agreement which was filed in
11 open court just a few seconds ago indicating that you had agreed to plead guilty to
12 committing the crime of Count 1, Invasion of the Home, a Category B Felony in
13 violation of NRS 205.061. Sir, did you sign this agreement?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Prior to signing the agreement, did you have an opportunity to
16 review the agreement? Did you review it and understand the terms?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Is anyone forcing you to plead guilty?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: You're pleading guilty of your own free will?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Is Denzel Dorsey your true name?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. By the way, are you able to hear him?

25 THE COURT RECORDER: No.

1 THE COURT: Okay. Did you ever have a coach in high school?
2 THE DEFENDANT: I used to box so, yes.
3 THE COURT: Okay. Project like your coach voice, all right? Okay.
4 THE DEFENDANT: Yes, Your Honor.
5 THE COURT: Okay. Say it again.
6 THE DEFENDANT: Yes, Your Honor.
7 THE COURT: All right. Say it just like that, all right? All right. Is Denzel
8 Dorsey your true name, sir?
9 THE DEFENDANT: Yes, Your Honor.
10 THE COURT: All right. How old are you?
11 THE DEFENDANT: 24.
12 THE COURT: All right. How far did you go in school?
13 THE DEFENDANT: I graduated high school.
14 THE COURT: What high school?
15 THE DEFENDANT: In the Department of Corrections.
16 THE COURT: I'm sorry?
17 THE DEFENDANT: In the Department of Corrections.
18 THE COURT: Did you get a GED or did you actually go to high school there?
19 THE DEFENDANT: No, I just completed it High Desert.
20 THE COURT: At High Desert. Okay. Well, you speak very well. Do you
21 read, write and under the English language?
22 THE DEFENDANT: Yes, Your Honor.
23 THE COURT: All right. Are you a United States Citizen?
24 THE DEFENDANT: Yes, Your Honor.
25 THE COURT: Okay. And just so that I am clear because we couldn't hear

1 that well, sir, did you have an opportunity to review the guilty plea agreement? Did
2 you review it and understand the terms?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. Is anyone forcing you to plead guilty?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: You're pleading guilty of your own free will?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay. Sir, just so that I am clear. Do you understand the
9 penalty range for this crime?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. You understand that as a consequence of your guilty
12 plea the Court must sentence you to imprisonment in the Nevada Department of
13 Corrections for a minimum term of not less than one year and a maximum term of
14 not more than ten years?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you also understand that you could be fined up to \$10,000?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you also understand that sentencing is strictly up to the
19 Court, that one can promise you probation, leniency or other special treatment?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you also understand that no one could promise you a
22 particular sentence even though this guilty plea agreement says agreement and
23 stipulations and all that stuff that I as the Judge do not necessarily have to follow
24 this deal?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Do you also understand that you are giving up certain
2 constitutional rights which are listed in the guilty plea agreement?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: I take it that you did discuss your case and your rights with your
5 lawyer?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you have any questions regarding your rights or the
8 negotiations?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Okay. So – just so that I am clear – let me get there. You are
11 pleading guilty because in truth and in fact on or about the 28th day of November
12 2016 within the County of Clark, state of Nevada, contrary to the form, force and
13 effect of statutes in such cases made and provided and against the peace and
14 dignity of the state of Nevada that you willfully, unlawfully, feloniously and forcibly
15 entered an inhabited dwelling to wit: 2731 Warm Rays, Henderson, Clark County,
16 Nevada without permission of the owner, resident or lawful occupant to wit:
17 Florentino and/or Norma Nazareno by breaking a glass window, putting your arm
18 through the window and unlocking the deadbolt in an attempt to gain entry.

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. Is the State satisfied with that canvass?

21 MS. VILLEGAS: Yes, Your Honor.

22 THE COURT: Okay. Okay. The Court conditionally accepts your plea as
23 being freely and voluntarily given. And we need to give this gentleman a sentencing
24 date.

25 MS. MCAMIS: Your Honor, I would point out that pursuant to the negotiations

1 the State does not oppose standard bail after entry of plea. He has entered his bail
2 and I would like to direct the Court's attention. He actually posted a \$7,000 bail in
3 this case. He was out on bail and then was picked up after a new case. So, we are
4 asking for the Court to -- and I believe the \$7,000 bond bail was not exonerated, I
5 believe it's still in place. So, we are asking for him to actually be released pending
6 sentencing.

7 MS. VILLEGAS: That's fine, Your Honor.

8 THE COURT: Okay. I will go ahead and allow him to be released on this bail.
9 But, sir, I just want to caution you. Part of the deal is the State does not oppose
10 standard bail after entry of plea which I guess the standard bail is \$7,000, however,
11 if you fail to go to the Division of Parole and Probation, if you fail to appear at any
12 future court date or are arrested on any new offenses, that you have stipulated that
13 you would serve habitual criminal treatment, meaning that you are stipulating to a
14 sentence of a minimum of 60 month to a maximum of 120 months to be served in
15 the Nevada Department of Corrections. Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: That's quite a hammer. So, (1) you gotta stay out of trouble
18 and you gotta cooperate with the division, you understand?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. All right. I will go ahead and allow him to be released.
21 And let's get him a date.

22 THE COURT CLERK: July 17th, 8:30 a.m.

23 THE COURT: July 17th at 8:30 a.m. You understand?

24 [No audible response from the defendant]

25 MS. MCAMIS: Your Honor, would it be possible to go just 30 days beyond

1 that?

2 THE COURT: Why?

3 MS. MCAMIS: He actually has a new born child. He's trying to prepare
4 himself and get everything in order and take of a death in the family and then be
5 able to come back and be subject to his remand and serve his prison sentence. So,
6 he's just asking for an additional 30 days.

7 THE COURT: Any objection to that?

8 MS. VILLEGAS: Well, Your Honor, it's already like four months away so –

9 THE COURT: When is the baby due?

10 MS. MCAMIS: The baby was actually already due. The baby is already born.
11 Excuse me.

12 THE COURT: Okay.

13 MS. MCAMIS: The baby's been born so it's a brand new baby.

14 THE COURT: Okay. So, why can't we sentence in July?

15 MS. MCCAMISH: I was just asking for an additional date because for the
16 additional time to be able to prepare and go serve his prison sentence, but we would
17 submit it to the Court.

18 THE COURT: Well, additional time to serve. I'm not understand – to prepare.

19 MS. MCAMIS: Right. He has a number of things that he needs to get in order
20 including taking care of his fiancé, taking care of his baby and then taken care of the
21 recent death in the family.

22 THE DEFENDANT: I have estate issues with my family so I have to go
23 [indecipherable]

24 THE COURT: Okay. I'm having really – I'm having a tough time hearing you,
25 sir. Could you project, please?

1 THE DEFENDANT: I have estate issues, you know, that I have to go and
2 settle with my family. Property –

3 THE COURT: Who passed away?

4 THE DEFENDANT: My grandfather.

5 THE COURT: Okay. And you have to take care of this?

6 THE DEFENDANT: Well, he left me some property and some other things
7 that I'm entitled to that I have to take care of.

8 THE COURT: I see no reason why you can't get it done in four months, okay?
9 So, July 17th at 8:30.

10 MS. MCAMIS: Thank you, Your Honor.

11 THE COURT: Okay. Thank you.

12 MS. MCAMIS: Oh, and just to confirm the calendar call and jury trial dates will
13 be vacated, correct?

14 THE COURT: Thank you for reminding me.

15 MS. MCAMIS: Thank you –

16 THE COURT: The calendar –

17 MS. MCAMIS: -- so much.

18 THE COURT: -- call of April 17 will be vacated as well as the jury trial of April
19 23rd of 2018.

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MS. MCAMIS: Thank you.

[Proceedings concluded at 9:03:37 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.



NORMA RAMIREZ
Court Recorder
District Court Dept. XXII
702 671-0572

A TRADITION OF SERVICE

COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT
INCIDENT REPORT

DATE 07.10.18

PAGE 1 OF 4

ACTION: ☐ ACTIVE ☐ INACTIVE ☐ PENDING	NON-CRIMINAL ☐	# OF ADULT ARRESTS 0	# OF SUBJECT DETENTIONS 0	URN# 9 18 13675	1182	064	TAG# 247	CALL TIME 1300
CLASSIFICATION 1 / LEVEL / STAT CODE								
Burglary (residential) 459 PC / F / 064								
CLASSIFICATION 2 / LEVEL / STAT CODE								
CLASSIFICATION 3 / LEVEL / STAT CODE								
CLASSIFICATION 4 / LEVEL / STAT CODE								
ADDITIONAL STAT CODES ☐ ASAP / 83 ☐ FIREARM RELATED / 830 ☐ GANG RELATED / 850 ☐ CYBER - RELATED CRIME / 552 ☐ CYBER - RELATED INCIDENT (NON - CRIMINAL) / 559 ☐ OTHER								
DATE / TIME / DAY OF OCCURRENCE 07.10.18 B/T 1030-1230 TUESDAY								
LOCATION OF OCCURRENCE 42719 40TH ST. WEST								
☐ PRINTS REQUESTED REQUESTED BY: TIME								
☐ PRINTS COMPLETED BUSINESS NAME								

CODE: V - VICTIM • W - WITNESS • I - INFORMANT • R - REPORTING PARTY • P - PARTY

CODE # of LAST NAME FIRST NAME MIDDLE NAME SEX RACE DOB AGE DRIVER'S LICENSE / STATE ID	V 1 3 FISHER DONALD GREGORY M W 46
RESIDENCE ADDRESS CITY STATE ZIP	LANCASTER CA 93536
BUSINESS / SCHOOL (GRADE) ADDRESS CITY STATE ZIP	
ETHNIC ORIGIN EMAIL ADDRESS SOCIAL NETWORKING ACCOUNT CELL PHONE (Area Code)	
VICTIM OF OFFENSE(S) (CLASSIFICATION) # VICTIM DESIROUS OF PROSECUTION? YES VICTIM OF SEX CRIME DESIROUS OF CONFIDENTIALITY? ENGLISH SPEAKING? ☒ YES ☐ NO LANGUAGE	
CODE # of LAST NAME FIRST NAME MIDDLE NAME SEX RACE DOB AGE DRIVER'S LICENSE / STATE ID	V 2 3 FISHER DONALD ROSCOE M 83
RESIDENCE ADDRESS CITY STATE ZIP	LANCASTER CA 93536
BUSINESS / SCHOOL (GRADE) ADDRESS CITY STATE ZIP	
ETHNIC ORIGIN EMAIL ADDRESS SOCIAL NETWORKING ACCOUNT CELL PHONE (Area Code)	
VICTIM OF OFFENSE(S) (CLASSIFICATION) # VICTIM DESIROUS OF PROSECUTION? YES VICTIM OF SEX CRIME DESIROUS OF CONFIDENTIALITY? ENGLISH SPEAKING? ☒ YES ☐ NO LANGUAGE	

CODE: S - SUSPECT • SJ - SUBJECT • M - PATIENT • S/V - SUSPECT / VICTIM • SJ / V - SUBJECT / VICTIM

CODE # of LAST NAME FIRST NAME MIDDLE NAME DOB AGE DRIVER'S LICENSE / STATE ID	S 1 7 UNK
SEX RACE ETHNIC ORIGIN HAIR EYES HEIGHT WEIGHT CELL PHONE (Area Code)	
RESIDENCE ADDRESS CITY STATE ZIP	
BUSINESS / SCHOOL (GRADE) ADDRESS CITY STATE ZIP	
AKA EMAIL ADDRESS SOCIAL NETWORKING ACCOUNT ENGLISH SPEAKING? ☐ YES ☐ NO LANGUAGE	
MONIKER CHARGE BOOKING NUMBER WHERE DETAINED OR CITE NUMBER	
CODE # of LAST NAME FIRST NAME MIDDLE NAME DOB AGE DRIVER'S LICENSE / STATE ID	
SEX RACE ETHNIC ORIGIN HAIR EYES HEIGHT WEIGHT CELL PHONE (Area Code)	
RESIDENCE ADDRESS CITY STATE ZIP	
BUSINESS / SCHOOL (GRADE) ADDRESS CITY STATE ZIP	
AKA EMAIL ADDRESS SOCIAL NETWORKING ACCOUNT ENGLISH SPEAKING? ☐ YES ☐ NO LANGUAGE	
MONIKER CHARGE BOOKING NUMBER WHERE DETAINED OR CITE NUMBER	

BY DEPUTY WILSON, JARROD	EMPLOYEE # 468751	SWORN EXP IN YRS 18	DEPUTY SCHANK, TIM	EMPLOYEE # 506559	SWORN EXP IN YRS 13	VACATION DATES
STATION LANCASTER	UNIT / CAR # 113A	SHIFT D	APPROVED Sgt. M. Bryerton #437700	EMPLOYEE #	DATE / TIME 07-11-18	0906
PCO SUBMITTED? NO	VACATION DATES NONE	DATE / TIME	ASSIGNMENT LAN DTB			
HQ NOTIFICATION REQUESTED? NO	DEFUTY	DATE / TIME	SPECIAL REQUEST DISTRIBUTION			
SUSPECT / SUBJECT FIELD RELEASE APPROVED BY:	DATE / TIME	CRIME BROADCAST BY	DATE / TIME	SECRETARY		

76C300F - SH-R-49 (Rev. 4/2014)

Exhibit "3"

A TRADITION OF SERVICE

COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT
INCIDENT REPORT

URN# 918.13675.1182.064

TAG # 247

DATE 07.10.18

PAGE 2 OF 4

VEHICLE	LICENSE (STATE & NUMBER)	YEAR	MAKE	MODEL	BODY TYPE	COLOR
VEHICLE FOR VICTIM #	REGISTERED OWNER	IDENTIFYING FEATURES				
VEHICLE FOR SUSPECT #						
STATUS	CHP 189 SUBMITTED?	GARAGE NAME & PHONE				
	NO					
DESCRIPTION OF DAMAGE						

VEHICLE	LICENSE (STATE & NUMBER)	YEAR	MAKE	MODEL	BODY TYPE	COLOR
VEHICLE FOR VICTIM #	REGISTERED OWNER	IDENTIFYING FEATURES				
VEHICLE FOR SUSPECT #						
STATUS	CHP 189 SUBMITTED?	GARAGE NAME & PHONE				
DESCRIPTION OF DAMAGE						

SCREENING FACTORS

- | | | |
|---|--|--|
| ☐ 1. SUSPECT IN CUSTODY | ☐ 3. UNIQUE SUSPECT IDENTIFIERS | ☐ 5. UNIQUE VEHICLE IDENTIFIERS |
| ☐ 2. SUSPECT NAMED / KNOWN | ☐ 4. VEHICLE IN CUSTODY | ☐ 6. WRITER/REVIEWER DISCRETION |

PROPERTY CODE:

S - STOLEN • R - RECOVERED • L - LOST • F - FOUND • E - EMBEZZLED • D - DAMAGED • K - SAFEKEEPING
(Use all applicable Codes; for example, If property is both Stolen and Recovered, Code is S/R)

RELEASED TO

CODE	ITEM #	QUAN.	DESCRIPTION (Include kind of article, trade name, identifying numbers, physical description, material, color, condition, age and present market value)	SERIAL #	VALUE
S	1	1	SAFE BLK IN COLOR 2X2, WITH DIAL CONT. PAPERWORK AND UNK CURRENCY		UNK
S	2	1	SPARKLETT'S 5 GAL WATER BOTTLE CONT. MISC COIN CURRENCY		UNK
S	3	1	DISH CONT. MISC US COIN CURRENCY		UNK
S	4	1	BEST WESTERN CREDIT CARD (UNKNOWN NUMBER)		

COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT
INCIDENT REPORT CONTINUATION

URN: 918.13675.1182.064

PAGE 3 OF 4

CLASSIFICATION #	/ LEVEL / STAT CODE
CLASSIFICATION #	/ LEVEL / STAT CODE
CLASSIFICATION #	/ LEVEL / STAT CODE

VEHICLE #	SUSPECT STATUS	☐ IMPOUNDED	LICENSE (STATE & No.)	YEAR	MAKE	MODEL	BODY TYPE	COLOR
#	VICTIM	☐ STORED	☐ OUTSTANDING					
REGISTERED OWNER			IDENTIFYING FEATURES			CHP 180 SUBMITTED		GARAGE NAME & PH
						☐ YES ☐ NO		

CODE: V-VICTIM W-WITNESS I-INFORMANT R-REPORTING PARTY P-PARTY

CODE	# of	LNAME	FNAME	MNAME	SEX	RACE	ETHNIC ORIGIN	DOB	Age
V	3 OF 3	FISHER	BARBARA	LOUISE	F	W		07.01.41	77
RES. ADDR.		CITY		ZIP	VICTIM OF OFFENSE(S) (CLASSIFICATION) #			RES. PHONE (Area Code)	Day Phone
		LANCASTER		93536					X
BUS. ADDR.		CITY		ZIP	ENGLISH SPEAKING			BUS. PHONE (Area Code)	Day Phone
					☐ YES ☐ NO				
CODE	# of	LNAME	FNAME	MNAME	SEX	RACE	ETHNIC ORIGIN	DOB	Age
RES. ADDR.		CITY		ZIP	VICTIM OF OFFENSE(S) (CLASSIFICATION) #			RES. PHONE (Area Code)	Day Phone
BUS. ADDR.		CITY		ZIP	ENGLISH SPEAKING			BUS. PHONE (Area Code)	Day Phone
					☐ YES ☐ NO				
CODE	# of	LNAME	FNAME	MNAME	SEX	RACE	ETHNIC ORIGIN	DOB	Age
RES. ADDR.		CITY		ZIP	VICTIM OF OFFENSE(S) (CLASSIFICATION) #			RES. PHONE (Area Code)	Day Phone
BUS. ADDR.		CITY		ZIP	ENGLISH SPEAKING			BUS. PHONE (Area Code)	Day Phone
					☐ YES ☐ NO				

CODE: S-SUSPECT SJ-SUBJECT M-PATIENT S/V-SUSPECT/VICTIM SJ/V-SUBJECT/VICTIM

CODE	# of	LNAME	FNAME	MNAME	DRIVER'S LICENSE (STATE & No.)				
RES. ADDR.		CITY		ZIP	RES. PHONE (Area Code)				
BUS. ADDR.		CITY		ZIP	BUS. PHONE (Area Code)				
SEX	RACE	ETHNIC ORIGIN	HAIR	EYES	HGT.	WGT.	DOB	Age	
CHARGE							WHERE DETAINED OR CITE #		
AKA				MONIKER		BOOKING #			
CODE	# of	LNAME	FNAME	MNAME	DRIVER'S LICENSE (STATE & No.)				
RES. ADDR.		CITY		ZIP	RES. PHONE (Area Code)				
BUS. ADDR.		CITY		ZIP	BUS. PHONE (Area Code)				
SEX	RACE	ETHNIC ORIGIN	HAIR	EYES	HGT.	WGT.	DOB	Age	
CHARGE							WHERE DETAINED OR CITE #		
AKA				MONIKER		BOOKING #			
CODE	# of	LNAME	FNAME	MNAME	DRIVER'S LICENSE (STATE & No.)				
RES. ADDR.		CITY		ZIP	RES. PHONE (Area Code)				
BUS. ADDR.		CITY		ZIP	BUS. PHONE (Area Code)				
SEX	RACE	ETHNIC ORIGIN	HAIR	EYES	HGT.	WGT.	DOB	Age	
CHARGE							WHERE DETAINED OR CITE #		
AKA				MONIKER		BOOKING #			

COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT
INCIDENT REPORT - NARRATIVE

URN#

918.13673.118-54

TAC#

247

PAGE 4 OF

On the above date and time we responded to the indicated location to take a report of a residential burglary. The following is a summary of our investigation.

On scene we contacted victim Fisher (V/1) who told me that his home which he shares with his parents, (V/2-3) was burglarized by unknown person(s) between 1030- 1230 on 07.10.18 while he was at an appointment. He told us he noticed that the front security screen had been pried open and the front door looked to have been kicked in. The victim told us he immediately called the Sheriff's station to make a report.

The victim told us that while he waited for Deputies he noticed that there was some loose change on the living room floor of the house that was not there before. The victim stated he looked around the rest of the house and noticed that the south east bedroom (office) door was opened and it normally remained closed. The victim said he noticed the drawers of the desk were open and appeared to have been ransacked, as well as the closet door was opened. The victim said he looked in the closet and noticed that the safe (S/1) was missing from the closet.

Victim Fisher told us that he further noticed his bedroom (northern most) looked to have been ransacked also. He told me he was missing a Sparklett's five gallon water bottle (S/2) that contained an unknown amount of loose US coin currency. He went on to explain he was also missing a small glass dish that contained unknown amount of loose US currency, as well as his Best Western credit card (S/4) (unknown number) was missing also. Victim told me he already contacted the card company and turned the card off, so it could not be used.

Victim Fisher told me his parent's room (north west) was also ransacked, but was unsure what items were missing, because they were out of town and unable to determine what was missing.

I observed the front security screen to the location had been pried open with an unknown object, as well as the door jam and deadbolt looked to have been pried on and the door was forcefully opened from the outside breaking the interior door jam inward. I also observed that the office had been ransacked and the drawers were open and paper work was scattered around, and that there was no safe in the office closet and a vacant stool which it sat on. In the victim's bedroom I observed that it looked to have been ransacked. In the master bedroom I saw the room had been ransacked and the drawers were open and objects were on the floor and a chair had been knocked over. I also observed a metal brief case on the bed that had been opened.

While speaking with the victim he mentioned that he believed his cousin Raymond Dewitt () might have been responsible for the break in. He explained that Dewitt had previously resided at the location and was asked to leave, but still picks up mail at the location once a month. He went on to explain that Dewitt was known to hang around seedy individuals, and had his car stolen about three weeks ago.

While on scene we contacted the neighbors to the north and south in an effort to find a witness or video of the crime. We were unable to locate any witnesses. The house to the north had cameras on the house but were not active or recording. The house to the south had a "ring" doorbell system but did not pick up any footage of the incident.

We requested that finger prints be taken from the door knobs in the office as well as from the metal brief case located in the master bedroom.

The victim's were left a supplemental loss report to list items that were stolen.

The victim was issued a report memo.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
CRIME ANALYSIS SUPPLEMENTAL FORM -- SUSPECT / SUBJECT INFORMATION

PAGE 1 OF 2

URN 918-13675-1182-Dead

BY DEP Klusant, J

EMPLOYEE # 468757

SUSPECT # _____ NAME _____
SUBJECT # _____ NAME _____

SUSPECT # _____ NAME _____
SUBJECT # _____ NAME _____

CLOTHING DESCRIPTION	
ITEM TYPE	DESCRIPTION

ITEM TYPES
CAP / HAT
COAT / JACKET
DRESS / SKIRT
GLASSES
GLOVES
JEWELRY
PANTS
SHIRT / BLOUSE
SHOES
SHORTS
OTHER

CLOTHING DESCRIPTION	
ITEM TYPE	DESCRIPTION

L	R	UNK	BODY PART	SCARS / MARKS / TATTOOS / ODDITIES

☐ SUSPECTED GANG MEMBER NAME OF GANG _____

L	R	UNK	BODY PART	SCARS / MARKS / TATTOOS / ODDITIES

☐ SUSPECTED GANG MEMBER NAME OF GANG _____

HAIR LENGTH
☐ COLLAR
☐ LONG
☐ SHORT
☐ SHOULDER

HAIR TYPE
☐ BALD
☐ RECEDING
☐ THICK
☐ THINNING
☐ WIG

HAIR STYLE
☐ AFRO / NATURAL
☐ BRAIDED / DREADLOCKS
☐ BUSHY
☐ BUTCH
☐ COMBED BACK
☐ CURLERS
☐ CURLY
☐ FLAT TOP
☐ GREASY
☐ JHERI CURL
☐ MILITARY
☐ NETS
☐ PONY TAIL
☐ PROCESSED
☐ PUNK
☐ SHAVED
☐ STRAIGHT
☐ WAVY

COMPLEXION
☐ ACNE / POCKED
☐ ALBINO
☐ DARK
☐ FRECKLED
☐ LIGHT / FAIR
☐ MEDIUM
☐ PALE
☐ RUDDY
☐ SALLOW
☐ TANNED
☐ WEATHERED
☐ WRINKLED

FACIAL HAIR
☐ BEARD
☐ CLEAN SHAVEN
☐ FUZZ
☐ GOATEE
☐ LOWER LIP
☐ MOUSTACHE
☐ SIDE BURNS
☐ UNSHAVEN

TEETH
☐ BROKEN / CHIPPED
☐ BRACES
☐ BUCK
☐ CROOKED
☐ DECAYED
☐ FALSE
☐ GAP / SPACE
☐ GOLD CAP
☐ JEWELLED
☐ MISSING
☐ NONE
☐ SILVER CAP
☐ STAINED

SPEECH
☐ ACCENT
☐ DISGUISE
☐ LISPS
☐ MUMBLES
☐ RAPID
☐ RASPY
☐ SLOW
☐ SLURRED
☐ STUTTER

HANDED
☐ LEFT
☐ RIGHT
☐ BOTH

WEAPON
FIREARM
Style:
☐ MULTIPLE
☐ BB / PELLET
☐ HANDGUN
☐ RIFLE
☐ SAWED-OFF
☐ SHOTGUN
☐ SIMULATED
☐ ZIP GUN

Action:
☐ DERRINGER
☐ FULLY AUTO
☐ PUMP
☐ REVOLVER
☐ SEMI AUTO
☐ SINGLE SHOT
Barrel Type:
☐ SINGLE BARREL
☐ DOUBLE BARREL
☐ THREE BARREL
☐ 4 OR MORE BARREL

Color / Finish:
☐ BLUE STEEL
☐ CHROME / INCALL
☐ DULL BLACK
☐ RUSTED
☐ STAINLESS STEEL

Grip / Stock:
☐ ALTERED
☐ BONE / PEARL / IVORY
☐ COLLAPSES / FOLDS
☐ METAL / PLASTIC
☐ NO GRIP
☐ RUBBER / VINYL
☐ TAPED
☐ THUMB HOLE
☐ WOOD
☐ GAUGE
☐ CALIBER _____

KNIFE
Style:
☐ MULTIPLE
☐ BUCK
☐ BUTCHER / KITCHEN
☐ DIRK / DAGGER / STILETTO
☐ HUNTING / BOWIE
☐ SIMULATED
☐ SWITCHBLADE
☐ TOY

Blade:
☐ FIXED
☐ FOLDING

CHEMICAL
☐ CAUSTIC
☐ INFECTIOUS
☐ MACE
☐ PEPPER SPRAY
☐ SIMULATED
☐ TEAR GAS
☐ TOXIC

BLUNT INSTRUMENT
☐ BASEBALL BAT
☐ BILLY CLUB
☐ BRASS KNUCKLES
☐ BRICK / ROCK / DUTILE
☐ CLUB / BLUDGEON
☐ HAMMER / TOOL
☐ NUNCHAKUS
☐ TIRE IRON

CUT / STAB
☐ BAYONET / SWORD
☐ BOTTLE / GLASS
☐ ICE PICK
☐ MACHETE
☐ RAZOR
☐ SCREWDRIVER
☐ THROWING STARS

EXPLOSIVE / INCENDIARY
☐ FIREWORKS
☐ MOLOTOV COCKTAIL

OTHER WEAPON
☐ BODILY FORCE
☐ LIGATURE
☐ SLING SHOT
☐ SYRINGE
☐ TASER / STUN GUN

RELATIONSHIP OF VICTIM TO SUSPECT:

VS _____ VS _____ ACQUAINTANCE
VS _____ VS _____ BABYSITTER
(PERSONS WATCHED / BABY)
VS _____ VS _____ BOYFRIEND / GIRLFRIEND
VS _____ VS _____ CHILD
VS _____ VS _____ CHILD OF BOYFRIEND
OR GIRLFRIEND
VS _____ VS _____ COMMON - LAW SPOUSE
VS _____ VS _____ EMPLOYEE
VS _____ VS _____ EMPLOYER
VS _____ VS _____ EX - SPOUSE
VS _____ VS _____ FRIEND
VS _____ VS _____ GRANDCHILD
VS _____ VS _____ GRANDPARENT
VS _____ VS _____ HOMOSEXUAL RELATIONSHIP
VS _____ VS _____ IN - LAW
VS _____ VS _____ NEIGHBOR
VS _____ VS _____ OTHER FAMILY MEMBER
VS _____ VS _____ OTHERWISE KNOWN
VS _____ VS _____ PARENT
VS _____ VS _____ RELATIONSHIP UNKNOWN
VS _____ VS _____ SIBLING (BROTHER OR SISTER)
VS _____ VS _____ SPOUSE
VS _____ VS _____ STEPCCHILD
VS _____ VS _____ STEPPARENT
VS _____ VS _____ STEPSIBLING
(STEBBROTHER OR STEPSISTER)
VS _____ VS _____ VICTIM WAS OFFENDER
VS _____ VS _____ VICTIM WAS STRANGER

Report Date: 07/12/18

INCIDENT HISTORY REPORT
LANCASTER

Page 1 of 1

Station: LAN Incident Date: 07/10/18 Tag #: 247 Incident #: LAN18191-0247
/1258 ENTRY (625936) INCIDENT, [REDACTED] LAN X 40W/L,,459R,,,,,GREG,, [REDACTED]
[REDACTED], UNKN DP BROKE INTO LOC THROU, GH FRONT DOOR AND TOOK ITEMS, OC, CD BTWN 1030-1230HRS
IAD 2-3H, RS,,, LAN,,,, LAN05
/1258 ASSIGN/D (513022) 113A/D #468751 WILSON #506559 SCHANK JR
/1300* ACK (468751) 113A/D <000>
/1401* ENR (468751) 113A/D <000>
/1411* 10/97 (468751) 113A/D <000>
/1435* URN REQUEST (468751) X, 1182, 064, CR, V, FISHER, DONALD,,, M, W, 247,, <000>
/1435 URN () 918-13675-1182-064
/1535* 10/98 (468751) 113A/D <000>
/1535* CLEAR (468751) 113A/D,,, 064,,,,,, C/ MR FISHER MW/A RE 459 RPT,, 18-13675-
11,,,, 1182, 01,,,,, <000>
/1601 OKI (503666)

C O U N T Y O F L O S A N G E L E S D E P A R T M E N T S U P P L E M E N T A R Y L O S S R E P O R T

DATE 7/10/18

FILE # 98-13675-1182-064

CRIME 99A PC Burglary

ADDITIONAL PROPERTY LOSS

CTIM - Fisher KB
(Name and address)

LIST ADDITIONAL PROPERTY

QTY.	ARTICLE	MODEL NO.	DESCRIPTION (E.G. COLOR, SIZE, INSCRIPTION, CALIBER, REVOLVER, ETC.)	DOLLAR VALUE
100	100 dollar Bills		Cash	50,000
100	20 dollar Bills		Cash	4,000
50	10 dollar Bills		Cash	500
100	5 dollar Bills		Cash	500
1000	quarters Rolled		Cash	3000.00
30	Series E Bonds		purchased @ \$100 each	3,000.00
7	Pink slips	2009	FrLN	
		2009	FrLN	
		1996	INT.	
		2005	Liberty	
		2012	Chevy	Pickup
		1948	F1	Ford
		2004	Red	Home major ALLEGRO
3	social cards		med-care	Donald R Fisher
			med care	Barbara L Fisher

FOR DEPARTMENTAL USE ONLY

TYPE OF PROPERTY	QTY.	VALUE	REMARKS
OTHERS/FURS			
USABLE GOODS			
WEAPONS/NOTES			
WEAPONS			
HOUSEHOLD GOODS			

TOTAL ADDITIONAL LOSS \$ _____

PERSON REPORTING (SIGNATURE)
ON BEHALF OF U/FISHER
Markman 53506

DAYTIME PHONE NO. _____

MAIL OR BRING COMPLETED REPORT TO:

FEDERAL BUREAU OF INVESTIGATION
SUPPLEMENTARY LOSS REPORT

DATE 7/10/18

FILE # 98-13675-1182-064

TIME 9:59 PM Burglary

LOCATION

ADDITIONAL PROPERTY LOSS

CTIM - Fisher x3
(Name and Address)

LIST ADDITIONAL PROPERTY

Do not include items already listed on the main report before completing this form.

LIST ADDITIONAL PROPERTY		ITEMS WITH SERIAL NUMBERS, OTHER ITEMS.	
IAN.	ARTICLE	DESCRIPTION	DOLLAR VALUE
1	Passport	Donald G. Fisher	
1	Barial Neptune	Donald R Fisher	
5	Visa Card	Papers	
		South West	
		South West	
		South West	
		South West	
		South West	
		South West	
1	Garmen	Truck Style	300.-
2	APPLE Watch	Gifts men & women	800.-
6	Wedding Ring	1969 Gold + Diamond	5200.-
1	Ring	Emerald + Diamond	525.-
1	Ring	Blue Stone + Diamond	315.-
1	Ring	3 Stones	200.-
1	RING	Black Diamond	300.-

COUNTY OF LOS ANGELES - POLICE DEPARTMENT - SUPPLEMENTARY LOSS REPORT

DATE 7/10/18

FILE 98-13675-1182-064

CRIME 999 PC Burglary

Action Taken

/ADDITIONAL PROPERTY LOSS

VICTIM - Fisher KB
(Name and Address)

Please read instructions on reverse before completing this form.

LIST ADDITIONAL PROPERTY LOSSES IN THIS UNDER STOLEN US CURRENCY, GUNS, ITEMS WITH SERIAL NUMBERS, OTHER ITEMS.						
QUAN.	ARTICLE	REMARKS	BRAND	MODEL NO.	DESC. DESCRIPTION (EG. COLOR, SIZE, INSCRIPTION, CALIBER, REVOLVER, ETC.)	DOLLAR VALUE
1	Necklace					
	Earrings	Set			Diamond	1200-
1	Necklace				Gold "diamond"	500-
10	Bracelets				Various shapes	
	Earrings	Sets			Various colors	400-
1	Necklace		Purchased	1965	Pearls	350-
1	Watch	Women's			Gold & Diamond	175-
1	Watch	Antique		1923	Gold pocket	??
1	mans Ring				Gold & Black Stone	225-
2	necklaces				Rope & chain gold	250
1	COIN				ANTIQUE GOLD	500
1	sparklette	Bottle	Plastic		filled with COIN	
					2.00 bills	2500-

FOR DEPARTMENTAL USE ONLY

PROPERTY LOSS INFORMATION					
TYPE OF PROPERTY	PROPERTY	STOLEN	RECOVERED	RECOVERED	RECOVERED
CLOTHING/FURS					
CONSUMABLE GOODS					
CURRENCY/NOTES					
FIREARMS					
HOUSEHOLD GOODS					

TOTAL
ADDITIONAL
LOSS \$

PERSON REPORTING (SIGNATURE)
ON BEHALF OF VICTIM
Markman 535063

DAYTIME PHONE NO.:

MAIL OR BRING COMPLETED REPORT TO:

4

FILE 918.13675.1182.064

Action Taken

/ADDITIONAL PROPERTY LOSS

(Name and Address)

LIST ADDITIONAL PROPERTY LOST IN THIS GROWN STOLEN U.S. CURRENCY, GUNS, ITEMS WITH SERIAL NUMBERS, OTHER ITEMS

FOR OFFICIAL USE ONLY

TOTAL
ADDITIONAL
LOSS \$ _____

PERSON REPORTING (SIGNATURE)
ON BEHALF OF V/FBI/BA
x MARKMAN 535063

DAYTIME PHONE NO.:

MAIL OR BRING COMPLETED REPORT TO:

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT

SUPPLEMENTAL REPORT

DATE: 07.11.18 FILE: 918.13675.1182.064 ACTION: Additional information
C: Burglary (residential) 459 PC /F/ 064
V: Fisher, Donald Gregory M/W 02.02.71
V: Fisher, Donald Roscoe M/W 08.22.35
V: Fisher, Barbara F/W 07.01.41

NARRATIVE

The purpose of this supplemental report is to document the contact and information relayed to me by LAPD officer Smith.

On 07.11.18 at 0650 I was contacted by LAPD Merto Division Officer Smith, Dana #38409, who informed me he had arrested a person (S/Dorsey, Denzel M/B 09.24.93) who was in possession of an animal identification tag with the name of Donald Fisher (V/1) and a contact phone number.

Officer Smith informed me he had called the victim and the victim informed him of the burglary that occurred 07.10.18. The officer informed me the animal tag, along with a sock filled with coins, and approximately 22,000.00 dollars were recovered from S/Dorsey. Officer Smith told me that S/Dorsey provided him with the name and ID of Sands, Ivan 03.24.92. It should be noted that Sands has a last address of 1600 Avon Ct. Palmdale. It is possible that the ID was left in the vehicle and Sands is a possible suspect or accomplice to the burglary.

Officer Smith told me S/ Dorsey was arrested in a rental car with the license plate number CA 7VGJ703.

I informed Officer Smith I was authoring the first report of the burglary and would be his point of contact until the case was assigned to a Detective. I informed Officer Smith I was unable to provide him with a full list of the stolen items due to the fact the victims were not home at the time of the report.

I emailed Officer Smith a copy of the first report and requested he email myself and or Detective Markman any and all report, photographs, and recording if there were any.

BY: Det. Wilson, J#468751

APPROVED: ALBERT DET BARBERA 447984 7-11-18 1200 HRS

ASSIGNED: _____

SECRETARY: _____

PAGE NO. 2		TYPE OF REPORT Arrest				BOOKING NO. 5388194		DR NO. 1813	
ITEM NO.	QU AM	ARTICLE	SERIAL NO	BRAND	MODEL NO.	SUBC DESCRIPTION (EG. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC.)			DOLLAR VALUE

Suspect: Dorsey, Denzel DOB: 09/24/93 Charge: 496 PC - Receiving Stolen Property

Source of Activity:

On 07/11/16 at approximately 0005 hours, my partner Officer Smith #38409, and I, Officer Meza #38460, were assigned to Metropolitan Division, Unit R11. We were in full uniform and driving in a dual purpose blue police vehicle. We were in the area of Broadway and Slauson as we observed a vehicle in violation of 5200 (a) VC and 26708 (a) 1 VC.

Incident #180711000005

RD#1372

Investigation:

My partner (Passenger) and I (Driver) were travelling southbound Broadway approaching Slauson Avenue when we observed a silver Mercedes (2008 Mercedes CL550, silver, 2 door, VIN #WDDBJ71X58A016519 - Suspect's Vehicle - purchased 07/10/2018 by Sanders, Ivan according to the sticker in the front windshield) with paper plates (in violation of 5200 (a) VC) and tinted front windows (in violation of 26708 (a) 1 VC). I negotiated a U-turn to conduct a traffic stop on the previous mentioned violations. As I conducted our U-turn the Silver Mercedes rapidly accelerated northbound Broadway and then eastbound 55th Street. The Suspect's vehicle continued at a high rate of speed, approximately 30 miles per hour in a 35 mile per hour residential zone (in violation of 22350 VC) eastbound 55th Street until we were finally able to initiate a traffic stop at 55th Street west of Towne Avenue where Sergeant H Ramos #30916, assisted us.

I made contact with the driver (Later identified as Dorsey, Denzel) and advised him of the multiple violations that he had committed. I asked for his driver's license which he provided me with a California Drivers License (F1618728) in the name of Sanders, Ivan - date of birth: 03/24/1992. I returned to my Police Vehicle and conducted a want and warrant check via our Police Vehicle's Mobile Digital Computer (MDC). My return revealed a valid drivers license with no wants or warrants. I took a closer look at the picture on the Driver's License Dorsey provided me along with the height (603) and weight (219) and determined that the picture and descriptors did not match Dorsey (in violation of 31 VC - False information to Peace officer). I then conducted a want and warrant check on the passenger (Later identified as Clemons, Takiya - date of birth: with negative results.

I advised my partner of our current status regarding Dorsey being deceitful about his true identity and Clemons lack of a return with a California Identification. We decided to remove both occupants to continue our investigation. Dorsey and Clemons exited the vehicle without incident and were detained to obtain their true identity. I spoke with Dorsey regarding his attempt to pass himself as another person in an attempt to avoid a ticket or arrest. Dorsey then provided me with the name Dorsey, Devon - date of birth: 10/11/1994. I conducted a want and warrant check with the name Dorsey, Devon and utilizing department resources obtained a photograph as well. Again, Dorsey provided me with identity belonging to another person. I advised Dorsey that he was going to be placed under arrest for 529 PC - False Personation of Another. At that point Dorsey finally gave me his true identity, Dorsey, Denzel - date of birth: 09/24/1993. I conducted a want and warrant check on Dorsey, Denzel which returned on Parole for 459 PC with search conditions, a Misdemeanor Warrant (warrant # MVI17009137) and a

PAGE NO. 3		TYPE OF REPORT Arrest				BOOKING NO. 5383194	DR NO. 1813
ITEM NO.	QUAN	ARTICLE	SERIAL NO	BRAND	MODEL NO.	MISC DESCRIPTION (EG. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC)	DOLLAR VALUE

suspended or revoked driver's license. Utilizing department resources, I was able to obtain a photograph of Denzel which confirmed his identity.

I conducted a parole compliance search and incident to arrest search (Misdemeanor Warrant) of the vehicle. During my search, I discovered a Nevada State Driver's License in the name of Clemons, Takiya - date of birth . I conducted a want and warrant check with that information and was able to identify Clemons. I continued searching the vehicle and discovered in the back rear passenger seat directly behind the driver's seat a black, gray, and red backpack (ITEM # 6). Inside the backpack contained multiple items. United States Currency including a white sock filled with coins (pennies, nickels, dimes, quarters, and silver dollars) (ITEMS # 1 - 5 - totaling in \$22,583.04), multiple pieces of jewelry (rings, necklaces, bracelet, and earrings) (ITEMS #9 - 45, 48, 57), a dog collar tag with phone number (discovered at Newton Station inside the white sock containing the coins during itemized search) (ITEM # 3), and other miscellaneous items (including a receipt from 7-Eleven at 07/10/2018 at 9:39pm) (ITEMS # 7, 46, 47, 49 - 56, 58). Dorsey stated that the bag belonged to him and that he earned all the money while working as a barber and that the Jewelry belonged to his girlfriend.

Believing Dorsey was in possession of stolen property, lied multiple times about his identity and providing me with another's driver license, and with his outstanding Misdemeanor Warrant we decided to place Dorsey under arrest and transport him back to Newton Police station for further investigation.

I asked Dorsey who the Mercedes belonged to so we could determine if we needed to impound it or release it to someone of his choosing. Dorsey told me his cousin, Ivan Sanders purchased it for him and Takiya from CarMax and that he wanted Takiya to take it, however the vehicle was last registered to Hayward Mitsubishi in Hayward, California as of 03/09/2017. We released the Mercedes to Clemons, Takiya.

Before being transported, Dorsey removed a key from his left front pants pocket. The key belonged to a 2017 Mazda 6 sedan, white license plate #7VGJ703 (rental car). Dorsey stated the vehicle was Clemons' that they rented and both occupied throughout the course of the rental. Clemons took possession of the rental car key as well.

We then transported Dorsey to Newton Station for booking approval. While at Newton Station Dorsey was mirandized at per LAPD Form 15.03 by Detective II Hernandez #26182. When asked about the amount of money in his possession, Dorsey stated that the money belonged to both him and his girlfriend (Clemons, Takiya). Dorsey said he has collected the money over time by being a Barber, but does not have any receipts or documentation proving the money belonging to him. See attached Statement Form.

While at Newton Station my partner contacted Clemons and asked her if she could respond to Newton to pick up her jewelry. Clemons stated, "Only if you are going to release it to me." My partner said we would if she could identify the jewelry that Dorsey claimed was hers. Clemons stated, "No." and immediately hung up the phone.

PAGE NO. 4		TYPE OF REPORT Arrest				BOOKING NO. 5363194	DR NO. 1813
ITEM NO.	QU AN	ARTICLE	SERIAL NO	BRAND	MODEL NO.	MISC DESCRIPTION (EG. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC)	DOLLAR VALUE

Detective Hernandez contacted the Los Angeles Sheriff's Department – Palmdale Station and requested the watch commander to have a Deputy conduct a follow up to Ivan Sanders' residence in an effort to find out if he purchased the Mercedes on 07/10/2018.

During an itemization of the coins that were recovered from the backpack, my partner discovered a blue dog tag with the name RINGO and a phone number. My partner contacted the phone number from the dog tag, Donald Fisher (Victim of a 459 in LASD-Lancaster area on 07/10/2018 at approximately 1030-1230) answered the phone. During a conversation with my partner, Fisher confirmed his house was burglarized, a safe containing US Currency, and bonds were taken, an empty sparkletts water jug filled with coins (US Currency), and jewelry was also taken.

I contacted Parole and spoke with agent Ayala. I advised Agent Ayala of the circumstances regarding his parolee. Agent Ayala placed a no bail hold on Dorsey.

Deputy Terrell #609114, responded to Ivan Sanders' residence and met with a roommate (Johnson, Will). Johnson stated Sanders has not been at home since early morning on 07/10/2018.

My partner contacted Detective Wilson from Los Angeles County Sheriff's Department – Lancaster Station and advised him off the items we recovered from Dorsey. Detective Wilson stated he was going to continue his investigation and contact us at a later time.

Unit 13A75-W3, Officers Sloan #31080, and Mayoral #43225, transported Dorsey to the Metropolitan Detention Center for Booking.

Arrest:

Dorsey was arrested for 496 PC – Receiving Stolen Property and booked at Metropolitan Detention Center.

Booking:

Dorsey was booked at Metropolitan Detention Center on the advice from Detective II Hernandez #26182 and Sergeant II Marquez #32875, Newton Division Watch Commander

Injuries/Medical:

None

Photographs, Recordings, Videos, DICVS, and Digital Imaging:

Officer Smith took Digital Photographs of the items recovered.

My partner and I were equipped with body worn video which was activated during the incident.

This incident was captured on BWV by the interviewing officers. All statements in this investigation are paraphrased by the investigating officers. Paraphrased statements do not contain the entire statements and are the officer's interpretation of the statements. If there is any doubt about the content of the paraphrased statement, reviewers are encouraged to review the video recording of the investigation.

PAGE NO. 5		TYPE OF REPORT Arrest				BOOKING NO. 5363194	DR NO. 1813
ITEM NO.	QU AN	ARTICLE	SERIAL NO	BRAND	MODEL NO.	MISC DESCRIPTION (EG. COLOR, SIZE, INSCRIPTIONS, CALIBER, REVOLVER, ETC)	DOLLAR VALUE

Evidence:

All items recovered were booked at Metropolitan Detention Center Property. See Property Report.

Court Information:

My partner and I can testify to all contents of this report.

**LOS ANGELES POLICE DEPARTMENT
FOLLOW-UP INVESTIGATION**

CORONER CASE NUMBER

☐ MULTIPLE

DATE THIS REPORT 7/12/2018	DATE ORIGINAL 7/11/2018	SPECIFIC TYPE OF ORIGINAL RPT. (ADW, TFV, EVID., T/BURG., ETC.) Receiving Stolen property	RD 1372	DR NO. 18-1315291
VICTIM BOOKED TO / ARRESTEE (AS ON ORIGINAL REPORT) Dorsey, Denzel		IF RECLASSIFYING TO HOMICIDE SEX / DESCENT / AGE VICT'S	BKG NO. (SUPPL. TO ARREST)	WORK FOLDER PERIOD ORIG. RPT. INDEX NO.

CASE STATUS 1 ☐ CLEARED BY ARREST 2 ☐ CLEARED OTHER 3 ☐ REPORT UNFOUNDED 4 ☒ INVESTIGATION CONTINUED

Use this section only to add or correct info - do not repeat info from previous reports. Exception: Complete entire suspect info if making final disposition.

DATE OCCURRED	CHANGE TO - ON OR BETWEEN MO DAY YEAR TIME	&	MO DAY YEAR TIME	TYPE ORIGINAL REPORT - CHANGE TO	RD- CHG. TO	DR NO. CHG. TO	INV DIV CHG TO
PROPERTY VALUE:	ADDITIONAL LOSS	PARTIAL RECOVERY	TOTAL RECOVERY	DELETED FROM ORIG. RPT.	DESCRIPTION CHANGE ☐	ITEM NOS. RECOVERED/DELETED (ON MULTI. RPTS. USE NARRATIVE)	

S-	SEX	DESC	HAIR	EYES	HEIGHT	WEIGHT	DOB	AGE	NAME & ADDRESS (OR NAME & CHARGE, IF ARRESTED)	ACTION TAKEN	☐ MNU# ☐ CII# ☒ BKG#
1	M	BLK	BLK	BRO	602	165	9/24/1993	24	Dorsey, Denzel 496 (A) Rec. Stolen property Filed with D.A.		536194
2											5362295
3											

NARRATIVE (USE BELOW COLUMNS FOR MULTIPLE REPORTS ONLY)

P/T/D	MULTIPLE RPT: DR NOS.	TYPE OF CRIME	RD	VICTIM'S NAME	DATE ORIG. RPT.	VALUE
-------	-----------------------	---------------	----	---------------	-----------------	-------

CASE SUMMARY:

Officers obs'd suspect-Dorsey commit several traffic violations. Officers conducted a traffic stop. During the traffic investigation, Dorsey gave (2) false identifications to officers when they asked for his identity. 1st false identity he used was a California Driver's license **F1618728** with the information of **Sanders, Ivan DOB 03/24/1992**. Officers discovered that the picture and descriptors on the Cal-op were different that the descriptors of Dorsey. Dorsey was confronted regarding the false identification. He proceeded to give a second false identification with the name and information of **Dorsey, Devon DOB of 10/11/94**. Officers conducted a want and warrant check and pulled a picture using department resources and once again discovered that Dorsey was attempting to provide a false identification. At this point Dorsey finally provided Officers with his identity. Officers discovered that Dorsey was on active parole and search conditions for 459 P.C. (Burglary), driving with a suspended or revoked driver's license and an outstanding misdemeanor warrant

Officers conducted an incident to arrest and parole search of the vehicle Dorsey was driving. Officers obs'd a red, gray and black back pack in the rear passenger seat. Inside the backpack was several items containing large amounts of U.S Currency totaling up to \$22,583.04. Dorsey stated that he saved that money cutting hair. There were also several pieces of jewelry. Dorsey stated that the jewelry belonged to his girlfriend Clemons, Takiya, who was the passenger in the vehicle.

Dorsey informed the officers that the vehicle he was driving belonged to his cousin Ivan Sanders. Dorsey stated that his cousin bought the car for him and his girlfriend.

Officers believing that Dorsey was in possession of stolen property, they arrested him for the misdemeanor warrant and providing false information to police officers. He was transported to Newton Station. Once at Newton Station, Officers discovered dog tag mixed in with some of the U.S. currency (coins) belonging to Donald Fisher. Officers called the number on the dog tag and discovered that Donald Fisher was the victim of a 459 P.C. Burglary in Lancaster on 07/10/18 between the hours of 1030 a.m. - 1230 a.m.

Officers contacted Det. Wilson from Los Angeles County Sheriff's Department. Officers advised him of the

WAS PROPERTY BOOKED IN CONJUNCTION WITH THIS REPORT OR INCIDENT? ☐ NO ☐ YES		IF YES, HAS 10.06.00 BEEN COMPLETED? ☐ NO ☐ YES	
SUPERVISOR APPROVING	SERIAL NO.	REPORTING OFFICER(S) DIAZ-IBARRA	SERIAL NO. 34696
DATE & TIME REPRODUCED	DIVISION	REPORTING OFFICER(S)	DIVISION NEWTON

09.14.00 (10/13)...

FOLLOW-UP INVESTIGATION

INC# 180711000005

arrest of Dorsey and some of the items in his possession. Det Wilson advised officers that he would continue with the investigation.

Officers arrested Wilson for receiving stolen property. Dorsey asked that the jewelry be released to his girlfriend Takiya Clemons because it was her jewelry. Officers called Clemons via phone and advised her that she can pick up her jewelry if she could identify it. Clemons stated "No" and immediately hung up the phone.

FOLLOW-UP INVESTIGATIONS:

On 07/11/18, at approx. 3:30 P.M I spoke to Clemons. She came to the station and stated that the money was hers and some of the jewelry was hers also. I asked her to identify the jewelry and all she can say was that the rings were round and made of gold and some had stones on them. But she couldn't tell me specifics like colors of the stones and markings. I read her Miranda rights per LAPD form. I advised her that she was not being arrested and free to go at any time.

The Following information is her statements after I para phrased it.

She stated that Dorsey went to her house at 1557 W. 145th Street in Gardena on 07/10/18. It was some time in the morning but she wasn't sure of the time. Dorsey brought diapers for their baby. Dorsey stayed for a couple of hours. Dorsey went to the store and bought a bottle of alcohol for them to drink. Dorsey and Clemons went to a 7-11 by her house around 3 pm to buy some blunts to smoke weed. They came back to her house and smoked weed for a few hours. After smoking they went to Clemons sister's house and that's when they were pulled over by the police. Clemons informed me that she had approx. \$15,000.00 in the backpack. She saved that money selling hair and dancing. She can provided tax returns for the money earned. She also informed me that approx. \$7,000.00 belonged to Dorsey. She did not know where he got the money from. Clemons stated that they were going to get a motel room and go to city of Burbank in the morning to see about buying a house with the money.

Officer Meza informed me that the vehicle Dorsey was driving had paperwork from CARMAX. It was under the name of Ivan Sanders and the vehicle was purchased on 07/10/18. I called CarMax in Burbank and in Los Angeles. A representative from CARMAX advised me that the vehicle was last sold in Las Vegas in 2014. Then a different representative from CARMAX advised me that the vehicle was in their possession in 2016 for approx. (1) day but it was returned to the owner. They were unable to provide additional information at this time.

Clemons advised me that Dorsey had the vehicle since early this morning.

On 07/12/18 at approx. 730 a.m. I spoke to Det. Markman from LASD. He informed me that he received some photos from Officer Smith. These were photos of the property that Dorsey had in his possession. Det. Markman advised me that the victim positively identified a coin and a ring as being theirs.

I sent additional photos to Det. Markman. He informed me that he will show these pics to the victim and see if the positively identify additional items.

CRIMINAL HISTORY:

Suspect Dorsey id on parole for 459 P.C. burglary. Dorsey has several arrests for burglary and theft. He also lives or has been arrested in Lancaster.

Pending D.A review.

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT

SUPPLEMENTAL REPORT

DATE: 07-12-2018 FILE: 918-13675-1182-064 ACTION: active/additional
C: Burglary (residential) 459 P.C/F/064
V: Fisher, Donald [REDACTED]
V: Fisher, Barbara [REDACTED]
S: Dorsey, Denzel [REDACTED]

NARRATIVE

The purpose of this supplemental report is to provide additional information regarding V/Barbara identifying her stolen property (during a burglary) that S/Dorsey had in his possession.

On 07-12-2018 at approximately 0600 hours, I received photographs from LAPD officer Dana Smith #38409 via email. The pictures were items they recovered from a backpack in vehicle S/Dorsey was driving. Also found inside the backpack was approximately 22,448.78 dollars in miscellaneous U.S currency. It should be noted approximately 58,000.00 dollars of miscellaneous U.S currency was taken from the residence during the burglary. The LAPD officer's found a dog tag (belonging to a dog named RINGO) that depicted the phone number of Donald Fisher. They called Donald and confirmed he was a victim of a residential burglary on 07-10-2018. They arrested S/Dorsey for 496 P.C. For further information refer to their attached report.

On 07-12-2018 at approximately 1000 hours, I contacted V/Barbara at Lancaster Sheriff Station. I asked her to look at 23 photographs of items depicting miscellaneous jewelry items and coins and other items (recovered from the suspect).

V/Barbara looked at all the photographs. She positively identified all items as her and her families belongings, that were taken from her residence during the burglary. See attached pictures.

Based on the fact the suspect was pulled over and detained by LAPD approximately 14 hours after the burglary (with approximately 22,448.78 in miscellaneous U.S currency), coupled with the fact V/Barbara positively identified 23 photographs of property recovered from S/Dorsey, I formed the opinion S/Dorsey is responsible for the residential burglary under the above file number. Due to the above I'm naming S/Dorsey as the suspect.

BY: Det. Michael Markman #535063

APPROVED: ASGT. PICO #478237 07/12/18, 1123 HRS

ASSIGNED: Lancaster DE

SECRETARY:

Henderson Police Department

223 Lead St. Henderson, NV 89015

Declaration of Arrest

Page 1 of 4

CR# 1621448

FBI 16

Arrestee's Name: DORSEY, DENZEL

Date of Arrest: 11/23/2016

Time of Arrest: 1404

Charge	Dagres	NRSWING
HOME INVASION, (2nd)	Palony	205.057.2
DESTROY PROP OF ANOTHER, \$250-\$5K	Gross Misdemeanor	205.310

THE UNDERSIGNED MAKE THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I, James McGeahy am a peace officer with the Henderson PD, Clark County, Nevada, being so employed since 08/28/2006. That I learned the following facts and circumstances which led me to believe that the above named subject committed (or was committing) the above offense/offenses at the location of 2731 Warm Rays Avenue Henderson Nevada 89052, and that the offense occurred at approximately hours on .

Details of Probable Cause

On 11/23/16, PSU Detectives were notified of a home invasion that had occurred at 2731 Warm Rays Avenue at approximately 1155 hours. Officer T. Roundy was the responding officer who contacted the victim Kevin M. Nazareno . Kevin resides at the address with his parents. Kevin's mother is Norma Nazareno . Norma was later contacted and advised that she wanted to press charges if a suspect is caught.

Kevin advised the following to Officer Roundy:

Kevin stated he was upstairs in his bedroom when he heard his doorbell ringing at approximately 1155 hours.

Kevin stated the doorbell was continuously ringing, until he came downstairs and saw a black male standing beyond the front door, through the large glass window. Kevin stated he then saw the black male punch his fist through glass door window, making a fist size hole.

Kevin stated the black male reached his arm (possibly left arm) through the hole and unlock the front door dead bolt from the inside.

Kevin stated he immediately ran to the front door and locked the dead bolt, at which time the black male realized someone was home, and fled to the street.

Kevin then unlocked the dead bolt, ran out to the front of his house, and watched the black male get into a blue Suzuki sedan, which was parked in front of the house, facing southbound. Kevin stood behind the vehicle, and read the Nevada license plate of, "953LGM."

Kevin stated the black male sped away, southbound, then made a U-turn, and sped back down Warm Rays Avenue, northbound, past Kevin who was still standing on the curb.

Kevin stated he could see into the vehicle, and the black male appeared to be the only occupant.

Detective Gutierrez responded to 2731 Warm Rays Avenue where he spoke with Kevin. Kevin was not able to give a very good description other than the suspect was a black male with short hair. Kevin stated that he was able to look at the suspect directly in the eye through the broken glass, which lead Detective Gutierrez to determine that the suspect was approximately 5'8" to 5'9" tall. Kevin could not recall if the suspect was wearing gloves or his clothing.

James McGeahy

Declarant's Name

Exhibit "4"

Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 2 of 4

Declaration of Arrest Continuation Page

DR# 1621448

FH# 16

Arrestee's Name: DORSEY, DENZEL

Details of Probable Cause (Continued)

I conducted a records check of NV 953LGM and it showed it was a 2010 Suzuki 4 door sedan registered to Global Auto car rental in Las Vegas (1525 E Sunset Road). I contacted Global Auto and spoke with Manager Ghassan Hayek (12/18/70) who advised the vehicle was rented on 11/21/16 to Marquisha Powell (03/02/1993). An address of 5101 E Twain was provided and a phone number of 702-902-9931. While speaking with Hayek, he advised the vehicle had a GPS Tracker on the vehicle and would provide me with the information.

I asked if they were able to provide information from a previous time/location, specifically where the vehicle was located at approximately 1200 hours.

Detectives responded to Global Autos and met with Hayek. The following information was provided:

At 1138 hours, the vehicle was located at the 2577-2699 block of W. Horizon Ridge Pkwy

At 1148 hours, the vehicle was located at the 2700 block of Thomasville Ave and driving approximately 15 mph (2 blocks away from where the incident occurred)

at 1152 hours, the vehicle stopped at the 2727 Warm Rays Ave (next to the victims house)

At 1156 hours, the vehicle started again at the same location

At 1201 hours the vehicle was traveling 30 mph at the 10300 block of Eastern (north of victims residence, intersection of Coronado Center and Eastern)

At 1206 hours the vehicle was traveling 67 mph on westbound I-215.

At 1216 hours the vehicle was traveling 54 mph on northbound Decatur.

The vehicle made a stop in a neighborhood near Decatur and Flamingo (Spitz Drive) for 3 minutes. Another Stop near the 3800 block of Lindell for 3 minutes.

The entire travel history of the Suzuki sedan for the date of 11/28 was provided and is attached to this report.

While at Global Autos, Detective Chen was advised by Hayek that the vehicle was supposed to be turned in by noon on 11/28/16. They contacted Marquisha who advised that she was at work and would return it by 3 PM. Detectives were given a rental contract showing the vehicle was rented on 11/21 and due back by noon on 11/28/16. The cost was \$600.00 and paid with cash. Global Autos requested that if the subjects were contacted, the vehicle be towed back to their location.

PSU Detectives were able to locate the vehicle as it entered the rear parking lot of the Fashion Show Mall. While there, the vehicle was observed with a single occupant who matched the description of the suspect that was given by the victim. The vehicle parked and the suspect exited the vehicle where he met another male. They both re-entered the vehicle and drove to the back side of Dillards where they parked. Upon exiting the vehicle, both subjects were contacted by HPD Detectives and LVMPD Officers.

James McGeahy

Declarant's Name

Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 3 of 4

Declaration of Arrest Continuation Page

DR# 1621448

FH# 16

Arrestee's Name: DORSEY, DENZEL

Details of Probable Cause (Continued)

They were identified as driver Denzel Dorsey (09/24/1993) and passenger Joel Velasco (09/20/87). Both were extremely uncooperative and denied being in the car although detectives observed them exit the vehicle. Both gave bogus names before being identified. Velasco had warrants out of LVMPD Jurisdiction and was ultimately arrested by LVMPD.

Detectives attempted to talk with Dorsey, but again was uncooperative. At 1404 hours, Det. Pilz advised Dorsey of his Miranda Rights of which he stated he understood. After being asked a couple of questions, Dorsey requested a lawyer and the interview was over.

I arrived on scene and advised Dorsey that I was going to charge him with Home Invasion and Damage to Property at which time Dorsey asked how. I explained to Dorsey that amongst the evidence, we had GPS locations of the vehicle placing him at the location of the crime. Dorsey simply looked down and stated "Ah shit".

Dorsey was wearing a dress coat that had fresh tears on the left sleeve. Dorsey's hands were dirty and had fresh cuts on his right hand. Dorsey did not have an explanation for the tears or cuts only stating that they were old.

During search incident to arrest, I located the key to the Suzuki in his right pocket. Also in the right pocket was a gray and white striped glove that had blood on the knuckle. The blood was fresh and was for the right hand. I retained the glove as evidence and it was later booked under this DR#.

I also retained Dorsey's jacket and booked it under this DR#.

Photographs were taken of Dorsey and his injuries and booked under this DR#.

A records check of Dorsey revealed an extensive criminal history including burglary, home invasion, narcotic arrests, traffic, larceny, burglary tools and obstruct. In 2012, Dorsey was convicted of Home Invasion (Case #12FN0210A).

A tow truck was requested prior to being towed back to Global Auto (per their request). An inventory of the vehicle was conducted by myself and the following was located and retained as evidence:

1. Three (3) loose white pills with 114 and H imprinted on them; later identified as methocarbamol 500mg (prescription only) muscle relaxer.
2. Package of unused ziplock baggies commonly used for illegal drug sales
3. Prescription bottle for Oxycodone made out to Kyle Russell
4. Several pieces of antique jewelry including a mismatched earrings, necklace pendants and a silver ring with clear stone.
5. Gray glove with white stripes (match to glove found on Dorsey's person).

The prescription bottle was filled on 11/23/16 for 8 pills. The bottle contained 1/4 pill.

Contact was made with Kyle Russell's mother who lives near Las Palmas Entrada and Gibson, in the City of Henderson. As of this report, it has not been determined how Dorsey came into possession of the prescription bottle.

James McGeahy

Declarant's Name

Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 4 of 4

Declaration of Arrest Continuation Page

DR# 1621448

FH# 16

Arrestee's Name: DORSEY, DENZEL

Details of Probable Cause (Continued)

All the aforementioned items were retained and booked as evidence under this DR#.

Based on the aforementioned investigation, I determined the following facts:

1. That on 11/28/16 at approximately 1155 hours, a black male punched a hole through the window of a front double door at 2731 Warm Rays Avenue.
2. That the same male placed his left arm through the fist sized hole, into the residence and unlocked the double door in an attempt to get inside.
3. That the occupant/victim ran and locked the door again after the suspect unlocked it causing the suspect to pull his arm from inside the house and run back to his vehicle, a dark blue Suzuki sedan (NV 953LGM).
4. That Upon a records check, I learned that the vehicle was registered to Global Autos and after contact with Global Auto, learned it had a GPS tracker on it placed by the rental company.
5. That the GPS tracker history of the vehicle showed that it was parked next door to 2731 Warm Rays Avenue for approximately 4 minutes between the times of 1152 and 1156 hours on 11/28/16.
6. That detectives were able to track the vehicle to the Fashion Show Mall after making 2 stops in separate neighborhoods in Las Vegas for approximately 3 minutes each.
7. That upon contact, the subject driving the vehicle was identified as Denzel Dorsey and that prior to picking up a second subject in the parking garage at the Fashion Show Mall, was the only occupant of the vehicle.
8. That upon a records check, I learned that Dorsey has an extensive criminal history including a prior conviction from 2012 for Home Invasion (Case #12FN0210A).
9. That Dorsey was wearing a jacket that had fresh tears on the left sleeve that was consistent with what the victim described occurred.
10. That Dorsey had fresh cuts on his right knuckle which was consistent with punching a hard object such as glass.
12. That Dorsey had a glove in his right pocket with fresh blood on the knuckle.
11. That Dorsey had a short haircut and is 5'9" tall, fitting the description given by the victim.

That based on the aforementioned facts, I determined that probable cause existed to charge Dorsey with Home Invasion 2+ F (NRS 205.067.2) and Destroy Property of Another GM (NRS 206.310).

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

James McGeahy

Declarant's Name

Received Successfully

To: at

12/11/2016 11:13AM * 10/29

7022675051

11:14:48 a.m. 12-01-2016

10/29



Global Autos
1525 E. Sunset Rd. Suite 1
Las Vegas 89119
PH# 702-799-9664 Fax# 702 579 9663
Tax #

RENTER INFO

Marquisha Powell

5101 E. Twain ave.

las vegas NV

Store Hours Mon-Friday: 09:00-18:00
Saturday: 09:00-14:00
Sunday: Closed

89122 PH# 702-902-9931

DL# F2735974
DOB 3/2/1993

CA

ADDITIONAL AUTHORIZED DRIVER(S)**UNIT DETAILS**

Unit #: 225
Model : SX4
LIC # : 953LGM
VIN # : JS2YC5A27A6302963

Odometer Out: 95932

Odometer In:

TOTAL MILES ALLOWED: 700
FUEL OUT: 1/8

BILL TO: None
Payment Type:
AUTH:

NOTE: BY PRESENTING A CREDIT CARD FOR PAYMENT, ALL CHARGES INCLUDING PARKING TICKET EXPENSES, TRAFFIC VIOLATIONS AND COSTS, INCLUDING 407 ETR AND ANY VEHICLE DAMAGE FOR WHICH I AM RESPONSIBLE MAY BE BILLED TO THE CARD AND SIGNATURE BELOW WILL BE CONSIDERED TO HAVE BEEN MADE ON THE APPLICABLE CREDIT CARD VOUCHER.

VEHICLE DEEMED TO BE STOLEN IF NOT RETURNED WHEN DUE ON DEMAND

LDW _____ XX \$0.00

T & W.D.W. _____ XX

Rental Out
RA #: K16052

REPAIR ORDER:
CLAIM:

Date/Time Out: 11/21/2016 2:46 PM
Date/Time Due In: 11/26/2016 12:00 PM

CHARGES SUMMERY

			Total
Daily	7	\$26.99	\$188.93
Miles Allowed	700		
Total T&M			\$188.93
LDW \$750 DED.	7	\$19.89	\$139.93
Weekend	1	\$35.00	\$35.00
Options Total			\$174.93
Sub Total			\$363.86
Clark County Fee	1	2%	\$7.28
EPF	7	\$3.75	\$26.25
Facility Charge	7	\$4.75	\$33.25
Govt. Service Fee	1	10%	\$18.89
Sales Tax	1	8.15%	\$15.40
Total			\$464.93
Total Payments			\$800.00
Balance			(\$135.07)

Renter's Signature

I understand I am responsible for payment of all tolls, fines, violations and hereby authorize Global Autos to release my rental and charge/debit card information for exclusive purpose of processing, billing and/or payment for tolls, parking or traffic fines, fees, and/or penalties, plus an administrative fee up to \$40 for EACH infraction or toll incurred during the term of this rental. I authorize the lessor or his agent to process a credit card voucher, if any for charges incurred hereunder. I have read the terms and conditions of all pages on this agreement and agree thereto and also to return vehicle to lessor or his agent or before due back date and a place specified.

Additional Driver #1

Additional Driver #2

Total Payments
Cash

Checkout RA#K16052

\$600.00

Exhibit "5"

I HAVE READ THE TERMS AND CONDITIONS OF PAGE 1 (NEXT PAGE) AND PAGE 1 OF THIS AGREEMENT AND AGREE THERETO

XX

7022675051

16-21440

Vehicle History

10 BLUE SX4 963LGM

Date & Time	Event	Location	Speed	Duration
01:57 PM 11/28/2016	Response: Locate		0	
01:57 PM 11/28/2016	Attempt: Locate	3286-3448 Industrial Rd, Paradise, NV, 89109	11	
01:51 PM 11/28/2016	Travel Start	3286-3448 Industrial Rd, Paradise, NV, 89109	11	
01:50 PM 11/28/2016	Stop	Dio Dr, Paradise, NV	0	1 Minute
01:49 PM 11/28/2016	Drive	Dio Dr, Paradise, NV	0	
01:46 PM 11/28/2016	Response: Locate	Fashion la, Paradise, NV	7	
01:46 PM 11/28/2016	Attempt: Locate	3231-3299 Las Vegas Blvd S, Paradise, NV, 89109	0	
01:44 PM 11/28/2016	Drive	3231-3299 Las Vegas Blvd S, Paradise, NV, 89109	0	
01:43 PM 11/28/2016	Response: Locate	Fashion Show Dr, Paradise, NV, 89109	16	
01:42 PM 11/28/2016	Attempt: Locate	W Twain Ave, Paradise, NV	33	
01:39 PM 11/28/2016	Drive	W Twain Ave, Paradise, NV	33	
01:38 PM 11/28/2016	Response: Locate		0	
01:38 PM 11/28/2016	Attempt: Locate	38003911 W Twain Ave, Paradise, NV, 89103	33	
01:37 PM 11/28/2016	Response: Locate	38003911 W Twain Ave, Paradise, NV, 89103	33	
01:37 PM 11/28/2016	Attempt: Locate	43264361 W Twain Ave, Paradise, NV, 89103	27	
01:36 PM 11/28/2016	Response: Locate	43264361 W Twain Ave, Paradise, NV, 89103	27	
01:35 PM 11/28/2016	Attempt: Locate	5001-5125 Cantano Dr, Spring Valley, NV, 89103	13	
01:29 PM 11/28/2016	Drive	5001-5125 Cantano Dr, Spring Valley, NV, 89103	13	
01:24 PM 11/28/2016	Drive	3700-3746 S Greenwood Dr, Spring Valley, NV, 89103	3	
01:21 PM 11/28/2016	Response: Locate		12	
01:21 PM 11/28/2016	Attempt: Locate	3700-3746 S Greenwood Dr, Spring Valley, NV, 89103	23	
01:19 PM 11/28/2016	Drive	3700-3746 S Greenwood Dr, Spring Valley, NV, 89103	23	
01:14 PM 11/28/2016	Drive	7261-7309 W Sequoia Springs Dr, Spring Valley, NV, 89147	15	
01:09 PM 11/28/2016	Drive	7100-7288 Spring Mountain Rd, Spring Valley, NV, 89117	27	
01:04 PM 11/28/2016	Drive	3500-3688 S Moraga Dr, Spring Valley, NV, 89103	0	
12:59 PM 11/28/2016	Drive	6801-6899 Patsyon Rd, Spring Valley, NV, 89146	22	

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11:15:44 a.m. 12-01-2016

12/29

16-21448

12:54 PM 11/28/2016	Travel Start	6435-6499 W Desert Inn Rd, Spring Valley, NV, 89146	37	
12:53 PM 11/28/2016	Stop	3900-3498 S Ramada Trl, Spring Valley, NV, 89146	0	1 Minute
12:53 PM 11/28/2016	Drive	3900-3498 S Ramada Trl, Spring Valley, NV, 89146	0	
12:48 PM 11/28/2016	Drive	5901-6099 W Desert Inn Rd, Spring Valley, NV, 89146	25	
12:43 PM 11/28/2016	Travel Start	3868-3898 Red Rock St, Spring Valley, NV, 89103	17	
12:39 PM 11/28/2016	Stop	5901-5899 W Viking Rd, Spring Valley, NV, 89103	0	3 Minutes
12:39 PM 11/28/2016	Drive	5901-5899 W Viking Rd, Spring Valley, NV, 89103	0	
12:34 PM 11/28/2016	Travel Start	6501-6579 W Maple Ave, Spring Valley, NV, 89103	19	
12:31 PM 11/28/2016	Stop	3900-3850 S Lindell Rd, Spring Valley, NV, 89103	0	3 Minutes
12:28 PM 11/28/2016	Travel Start	3888-3835 S Spitzer Dr, Spring Valley, NV, 89103	18	
12:23 PM 11/28/2016	Stop	3938-3980 S Spitzer Dr, Spring Valley, NV, 89103	0	3 Minutes
12:21 PM 11/28/2016	Drive	3888-3980 S Spitzer Dr, Spring Valley, NV, 89103	0	
12:16 PM 11/28/2016	Drive	6524-6598 S Decatur Blvd, Paradise, NV, 89118	54	
12:11 PM 11/28/2016	Drive	Enterprise, NV	37	
12:06 PM 11/28/2016	Drive	I-216, Paradise, NV	67	
12:01 PM 11/28/2016	Drive	10500-10532 S Eastern Ave, Henderson, NV, 89052	30	
11:56 AM 11/28/2016	Travel Start	2718-2700 Wynn Rays Ave, Henderson, NV, 89052	13	
11:52 AM 11/28/2016	Stop	2727-2799 Wynn Rays Ave, Henderson, NV, 89052	0	4 Minutes
11:48 AM 11/28/2016	Drive	2708-2700 Thomasville Ave, Henderson, NV, 89052	15	
11:43 AM 11/28/2016	Drive	Henderson, NV	7	
11:38 AM 11/28/2016	Travel Start	2577-2639 W Horizon Ridge Pkwy, Henderson, NV, 89052	18	
11:29 AM 11/28/2016	Stop	2577-2639 W Horizon Ridge Pkwy, Henderson, NV, 89052	0	9 Minutes
11:28 AM 11/28/2016	Drive	10534-10598 S Eastern Ave, Henderson, NV, 89052	21	
11:21 AM 11/28/2016	Drive	2505-2599 St Rose Pkwy, Henderson, NV, 89074	0	
11:16 AM 11/28/2016	Drive	10500-10532 S Eastern Ave, Henderson, NV, 89052	6	
11:11 AM 11/28/2016	Travel Start	11244-12078 Sundridge Heights Pkwy, Henderson, NV, 89052	33	
11:10 AM 11/28/2016	Stop	Henderson, NV	0	
11:07 AM 11/28/2016	Drive	Sundridge Heights Pkwy, Henderson, NV	31	
11:02 AM 11/28/2016	Drive	10534-10598 S Eastern Ave, Henderson, NV, 89052	41	
10:57 AM 11/28/2016	Drive	2505-2599 St Rose Pkwy, Henderson, NV, 89074	0	
10:52 AM 11/28/2016	Drive	5948-5176 I-216, Henderson, NV, 89014	51	

7022675051

16-21448

10:47 AM 11/28/2016	Drive	I-515, Henderson, NV	71	
10:42 AM 11/28/2016	Drive	3983-3901 Boulder Hwy, Sunrise Manor, NV, 89121	0	
10:37 AM 11/28/2016	Drive	I-515, Paradise, NV	70	
10:32 AM 11/28/2016	Drive	601-793 Maria St, Henderson, NV, 89014	20	
10:27 AM 11/28/2016	Drive	I-515, Paradise, NV	62	
10:22 AM 11/28/2016	Travel Start	I-515, Paradise, NV, 89121	10	
10:20 AM 11/28/2016	Stop	4006-4088 S Nellis Blvd, Sunrise Manor, NV, 89121	0	1 Minute
10:19 AM 11/28/2016	Drive	4006-4088 S Nellis Blvd, Sunrise Manor, NV, 89121	0	
10:14 AM 11/28/2016	Drive	4518-4598 E Flamingo Rd, Paradise, NV, 89121	0	
10:09 AM 11/28/2016	Drive	I-515, Sunrise Manor, NV	1	
10:04 AM 11/28/2016	Drive	4610-3630 E Flamingo Rd, Paradise, NV, 89121	0	
09:59 AM 11/28/2016	Travel Start	I-515, Boulder Hwy, Paradise, NV, 89121	13	
09:58 AM 11/28/2016	Stop	4006-4088 S Nellis Blvd, Sunrise Manor, NV, 89121	0	3 Minutes
09:53 AM 11/28/2016	Drive	I-515, Boulder Hwy, Paradise, NV, 89121	10	
09:48 AM 11/28/2016	Travel Start	6389-5301 Tradition, Sunrise Manor, NV, 89121	6	
09:44 AM 11/28/2016	Drive	5389-5301 Tradition, Sunrise Manor, NV, 89121	17	
09:39 AM 11/28/2016	Drive	4134-4298 Camel St, Sunrise Manor, NV, 89122	1	
09:34 AM 11/28/2016	Drive	4249-4201 Camille St, Sunrise Manor, NV, 89122	14	
09:29 AM 11/28/2016	Drive	5880-5924 Marjorie Dr, Whitney, NV, 89122	14	
09:24 AM 11/28/2016	Drive	8196-8988 E Trojane Ave, Whitney, NV, 89122	23	
09:19 AM 11/28/2016	Drive	4081-4599 Stephanie St, Whitney, NV, 89122	19	
09:14 AM 11/28/2016	Drive	5530-5698 E Flamingo Rd, Sunrise Manor, NV, 89122	33	
09:09 AM 11/28/2016	Drive	4932-4998 E Palisade Dr, Paradise, NV, 89121	1	
09:04 AM 11/28/2016	Drive	4178-4198 E Flamingo Rd, Paradise, NV, 89121	48	
08:59 AM 11/28/2016	Travel Start	2838-2998 E Flamingo Rd, Paradise, NV, 89121	41	
08:58 AM 11/28/2016	Stop	2660-2798 E Flamingo Rd, Paradise, NV, 89121	0	1 Minute
08:54 AM 11/28/2016	Drive	2400-2498 E Flamingo Rd, Paradise, NV, 89121	32	
08:44 AM 11/28/2016	Drive	Las Vegas, NV	65	
08:39 AM 11/28/2016	Travel Start	1201-1283 S Charnest Ln, Las Vegas, NV, 89102	22	
08:37 AM 11/28/2016	Stop	1201-1283 S Charnest Ln, Las Vegas, NV, 89102	0	2 Minutes
08:35 AM 11/28/2016	Drive	1201-1283 S Charnest Ln, Las Vegas, NV, 89102	0	

Received Successfully

To: at

12/14/2016 11:13AM * 14/29

7022675051

11:16:51 a.m. 12-01-2016

14/29

16-21448

08:30 AM 11/28/2016	Drive	281-499 Shadow Ln, Las Vegas, NV, 89108	28	
08:35 AM 11/28/2016	Travel Start	2031-2088 Center St, Las Vegas, NV, 89108	11	
08:35 AM 11/28/2016	Stop	401-499 S Toropah Dr, Las Vegas, NV, 89108	0	
08:41 AM 11/28/2016	Drive	98-188 S Florida Dr, Las Vegas, NV, 89106	38	
08:46 AM 11/28/2016	Drive	N Oran K Gregson Expwy, Las Vegas, NV	61	
08:41 AM 11/28/2016	Travel Start	Las Vegas, NV	11	
12:15 AM 11/28/2016	Stop	Las Vegas, NV	0	7 Hours, 56 Minutes
12:11 AM 11/28/2016	Travel Start	3201-3299 N Tenaya Way, Las Vegas, NV, 89129	21	
12:05 AM 11/28/2016	Stop	3201-3299 N Tenaya Way, Las Vegas, NV, 89129	0	5 Minutes
12:05 AM 11/28/2016	Drive	3201-3299 N Tenaya Way, Las Vegas, NV, 89129	1	
12:00 AM 11/28/2016	Drive	2301-2389 N Buffalo Dr, Las Vegas, NV, 89128	22	

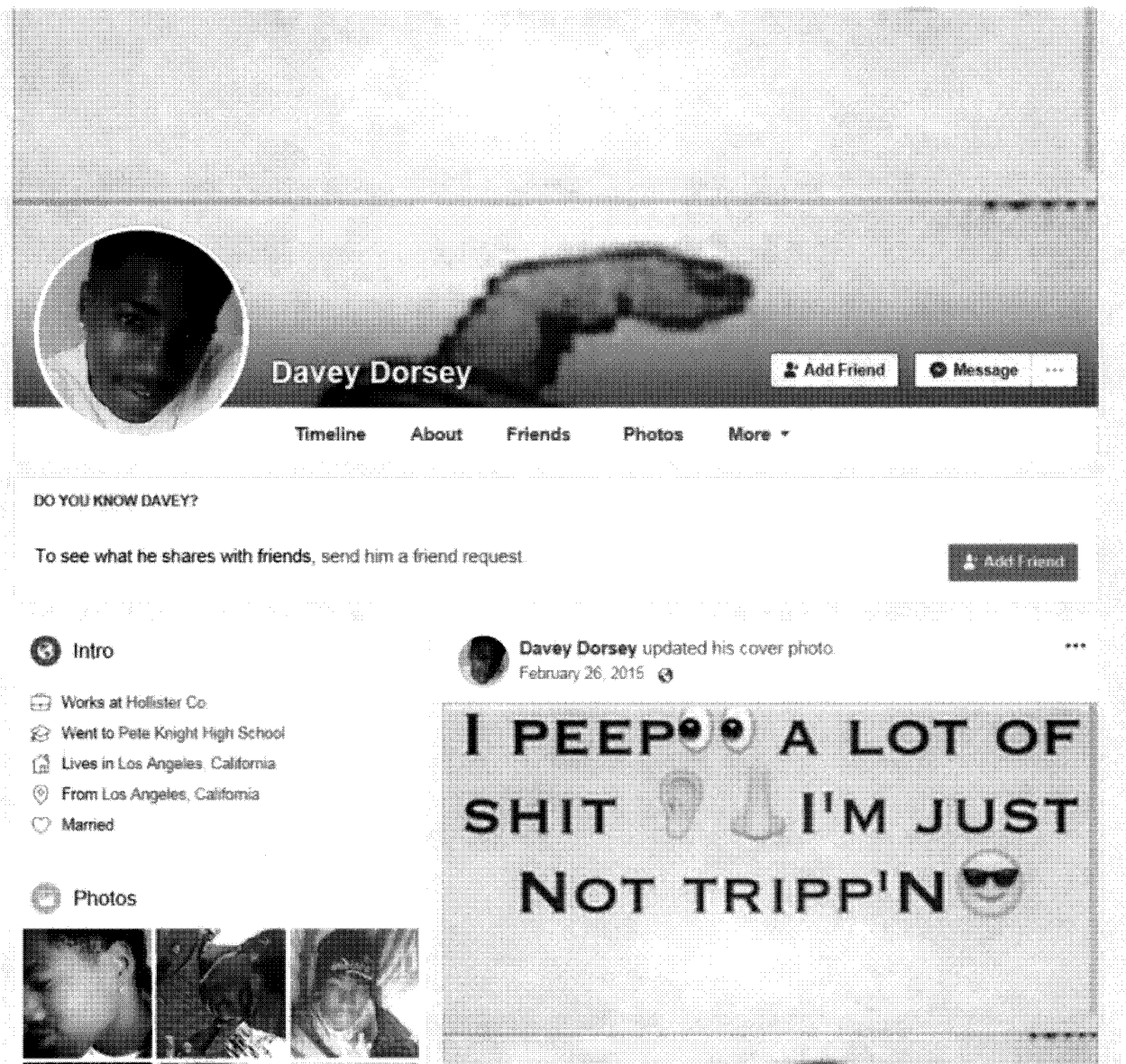


Exhibit "6"

Home
About
Principal's Message
Mission and Vision
CAASPP
Calendar
Administration
Staff Directory
Contact Us
Safety Message
School Safety Plan
News
School Accountability Report Card
Student Learning Outcomes (SLOs)
Tip Line

ABOUT

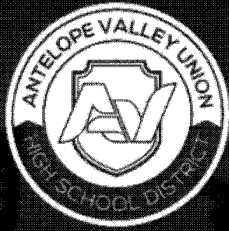
William J. "Pete" Knight High School is located in Palmdale, California and is part of the Antelope Valley Union High School District. We opened our doors to freshmen in August 2003 and our first senior class graduation on May 31, 2007. We are named after test pilot and politician William J. "Pete" Knight.

SCHOOL PLAN FOR STUDENT ACHIEVEMENT (SPSA)

WILLIAM JOHN "PETE" KNIGHT



Exhibit "7"



KNIGHT HIGH SCHOOL
37423 70TH ST. EAST
PALMDALE, CA 93552
PHONE: (661) 533-9000

AV UNION HIGH SCHOOL DISTRICT
44811 NORTH SIERRA HWY
LANCASTER, CA 93534
PHONE: (661) 948-7655



HIGH SCHOOLS

ANTELOPE VALLEY HIGH SCHOOL
EASTSIDE HIGH SCHOOL
HIGHLAND HIGH SCHOOL
KNIGHT HIGH SCHOOL
LANCASTER HIGH SCHOOL
LITTLE ROCK HIGH SCHOOL
PALMDALE HIGH SCHOOL
QUARTZ HILL HIGH SCHOOL
SOAR HIGH SCHOOL

ALTERNATIVE HIGH SCHOOLS

VIRTUAL ONLINE SCHOOL
DESERT WINDS HIGH SCHOOL
R. REX PARRIS HIGH SCHOOL

JUNIOR HIGH SCHOOLS

SOAR CAMPUS
KNIGHT CAMPUS
PALMDALE CAMPUS

ADULT EDUCATION

AV ADULT EDUCATION

EXPLORE OUR SITE

ACCESSIBILITY
POLICIES / NOTICES
EMPLOYMENT
CONTACT US



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Powered by Edmodo



RPLY

GARY A. MODAFFERI, ESQ. (12450)
LAW OFFICE OF GARY A. MODAFFERI, LLC
815 S. Casino Center Boulevard
Las Vegas, NV 89101
Telephone: (702) 474-4222
Fax: (702) 474-1320
Attorney for Defendant Denzel Dorsey

**DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA**

THE STATE OF NEVADA

Plaintiff

vs

DENZEL DORSEY

Defendant

Case No. C-17-323324-1
Dept No. XV

**REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO
WITHDRAW GUILTY PLEA**

COMES NOW the Defendant DENZEL DORSEY by and through his counsel, GARY A. MODAFFERI, ESQ. of THE LAW OFFICE OF GARY A. MODAFFERI, LLC, and respectfully submits the following Reply to State's Opposition to Defendant's Motion to Withdraw Guilty Plea. This Reply is grounded in the attached Points and Authorities, the attached exhibits, and any evidence and/or argument adduced at a hearing on this matter.

DATED this 28th day of March, 2019.

By: /s/ Gary A. Modafferi Esq.
GARY A. MODAFFERI, ESQ.
Nevada Bar No. 12450
815 S. Casino Center Boulevard
Las Vegas, NV 89101
Counsel for Defendant
Denzel Dorsey

REPLY

The Defense and State agree that the applicable law to determine this Motion is set forth in Stevenson.¹ The holding of Stevenson permits a defendant to withdraw his previously entered guilty plea “before sentencing for any reason where permitting withdrawal would be fair and just.”² The State in its Opposition does not suggest that actual innocence is not a fair and just reason permitting withdrawal under Stevenson rather; the State argues at length that circumstances exist to dispute the Defendant’s claim of innocence.³

The State instead argues that the declarations tendered by the Defense from Davey Dorsey and Takiya Clemons are not “credible” and therefore are not be fair and just.⁴ While the Defense appreciates the State’s continued advocacy, the determination of whether David Dorsey and Takiya Clemon’s testimonies are “credible” is a jury determination and should not guide this Honorable Court in deciding this motion. The truth of the two witnesses’ statements should be presumed for purposes of deciding this motion.

The State repeatedly questions why these two witnesses have come forward “now” as opposed to closer in time to the plea.⁵ In fact, the Defendant constructed a *pro se* Motion to Withdraw Plea almost immediately after his plea was entered.⁶ In his handwritten Motion, the Defendant in his declaration states that he wanted his lawyer to investigate his brother’s involvement in this crime and the misidentification of the Defendant for his brother at the

¹ Stevenson v. State, 354 P.3d 1277, 131 Nev. 61 (2015)

² Id. at 1281.

³ See e.g. Opposition at pp. 6-8.

⁴ Id. at pp. 8, and 13-15.

⁵ Id. at p.13.

⁶ See attached Exhibit A.

1 preliminary hearing.⁷ The Defendant further explains that given that his counsel failed to
2 properly investigate his brother's culpability, coupled with the desire to see his child's birth, that
3 he accepted the plea agreement when he was not guilty.⁸ Both the Motion to Withdraw Guilty
4 Plea and the Motion to Dismiss Counsel were filed almost immediately after the plea was
5 entered. The Defendant's change of heart was almost immediate.

6
7 In Stevenson, the Court cited with approval the holding in Barker explaining that "A
8 swift change of heart is a strong indication that the plea was entered in haste and confusion."⁹
9 The Defendant changed his mind almost immediately; the initial decision was substantially based
10 on the Defendant's belief that his Counsel was not going to investigate his claims of actual
11 innocence.

12 13 CONCLUSION

14
15 It is respectfully argued that fair and just reasons have been presented to permit the
16 Defendant to withdraw his plea.

17
18 DATED this 28th day of March, 2019.

19
20 By: /s/ Gary A. Modafferi Esq.

21 GARY A. MODAFFERI, ESQ. (12450)
22 LAW OFFICE OF GARY A. MODAFFERI,
23 LLC
24 815 S. Casino Center Boulevard
25 Las Vegas, NV 89101
26 Counsel for Defendant
27 *Denzel Dorsey*

28

27 ⁷ Id at p.4.

⁸ See attached Exhibit B, Motion to Dismiss Counsel.

⁹ Stevenson, supra, at 1281-82, citing United States v. Barker, 514 F.2d 208, 222 168 U.S. App. D.C. 312 (D.C. Cir. 1975)

CERT

GARY A. MODAFFERI, ESQ. (12450)
LAW OFFICE OF GARY A. MODAFFERI, LLC
815 S. Casino Center Boulevard
Las Vegas, NV 89101
Telephone: (702) 474-4222
Fax: (702) 474-1320

Attorney for Defendant Denzel Dorsey

**DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA**

THE STATE OF NEVADA

Plaintiff

vs

DENZEL DORSEY

Defendant

Case No. C-17-323324-1
Dept No. XV

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 28th day of March, 2019, I served a true
copy of **REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO
WITHDRAW GUILTY PLEA** upon the following:

Richard Scow, Esq.
Chief Deputy District Attorney
richard.scow@clarkcountynyda.com

/s/ Erika W. Magana

Erika W. Magana, An Employee of
Gary A. Modafferi, LLC

EXHIBIT “A”

1 DENZEL DORSEY

2 # ~~784~~ 5569, CCDC, NVC

3 330 S. Casino Center Blvd District Court
4 Las Vegas, Nevada 89101 Clark County, Nevada

5 THE STATE OF NEVADA

6 Plaintiff,

7 vs.

Case No.: C-17-323324-1

8 Dept. No.: XXII (22)

9 Docket No.: _____

10 DENZEL DORSEY

11 Defendant

12
13 Motion To Withdraw plea

14
15 Comes now, defendant, Denzel Dorsey, in Pro Se,
16 moves this Honorable Court for A Motion To withdraw
17 plea,

18 This motion is made and based upon all papers,
19 pleadings, and document on file with the Clerk of the
20 Court, The Points and Authorities, and the Argument
21 contained therein,

22 Dated this _____ Day of MAY 2018

23 Respectfully Submitted
24 Denzel Dorsey #2845569

25 [Signature]

26 In Pro Se, CCDC
27 330 S. Casino Center Blvd
28 Las Vegas, Nevada 89101

Points And Authorities Argument

In this case, defendant, was appointed counsel and counsel ignored defendants requests to reasonably investigate and therefore now the defendant asserts that his guilty plea was not knowingly, voluntarily, and intelligently entered because counsel led him to believe his case was indefensible.

Strickland v. Washington

Defendant has explained his favorable facts in which counsel ignored defendants request to investigate wherein counsel told defendant that he was surely to lose in his trial and become habituated under the habitual criminal act because of the defendants extensive criminal history, and at the fact that there was drugs in the vehicle, the jury would put shame upon him, regardless of defendants favorable facts, and that the defendant was advised by his counsel that if he don't take the states only offer to him he would lose in trial and become habituated under a 5-20 years sentence.

Cripps v. State.

Defendant was also expecting his first child to be born at the he had entered the guilty plea wherein counsel has told the defendant that the only way to get rid of this to move on with life and to be able get out to witness his first child be born was to sign and enter the states plea offer with the

1 stipulation that the defendant was to get his bail
2 reinstated in Case NO. C-17-323324-1 and A.O.R. in
3 Case NO. 17F21598X for dismissal after rendition
4 of sentence, where as the defendant was to re-
5 main out of custody until sentencing. The defendant
6 told his counsel that he may have a fugitive debiner
7 in the state of California and counsel stated to the
8 defendant that he would be released from Nevada's
9 custody within 30 days upon entering the guilty plea.
10 The defendant has not seen this relief in his release from
11 custody, wherein the state has placed a informal hold on
12 the defendant to hold him until his sentencing, where
13 as the defendant had entered his plea with the knowledge
14 of promise to remain out of custody until sentencing
15 as told by counsel. **Crawford v. State**

16 Therefore, the defendant's counsel was ineffective for failing
17 to reasonably investigate, failing to explain the strengths
18 and weaknesses of the evidence, failing to inform him of
19 the consequences of the plea, failing to provide an adequate
20 defense, and failing to ensure defendant understood the
21 sentencing scheme.

22 wherefore, there is new evidence that could relieve the
23 defendant of guilt and persecution in this case, and
24 with the defendant's belief that he had no viable defense
25 and therefore no choice than to accept the state's plea bargain,
26 the defendant moves to submit his declarations and to
27 withdraw his plea addressing NRS 176.165

28 Dated this Day of MAY 2018

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Q

1 9.) That defendant is submitting his declar-
2 ations in Pro Se.

14 DATED THIS ____ day of May, 2018.

15 I Denzel Dorsey, do

16 solemnly swear, under the penalty of perjury, that

17 the above Declarations is accurate,

18 correct, and true to the best of my knowledge.

19 NRS 171.102 and NRS 208.165.

21 Respectfully submitted,

22 Denzel Dorsey

23 Defendant

24 DP

25 NRS 208.165 A prisoner may execute any instrument by signing his name immediately
26 following a declaration "under penalty of perjury" with the same legal effect as if he had
27 acknowledged it or sworn to its truth before a person authorized to administer oaths. As used in
28 this section, "prisoner" means a person confined in any jail or prison, or any facility for the
detention of juvenile offenders in this state.

Certificate of Service By Mailing

I, Denzel Dorsey, do declare pursuant to N.R.C.P 5(b) that on the ____ day of MAY 2018 I sent A copy of Motion TO Withdraw Plea, and notice of motion to:

The Clerk of The Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

Steven Wolfson
District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101

Caitlyn McAamis
Attorney at Law (Court appointed)
550 E. Charleston Blvd suite A
Las Vegas, Nevada 89104

Dated this ____ day of MAY 2018

Respectfully Submitted
Denzel Dorsey #2845569

[Signature]

In Pro Se, CCDC
330 S. Casino Center Blvd
Las Vegas, Nevada 89101

(6)

EXHIBIT “B”

191

Steven D. Grierson

MC
DA
PP
AOR-
Caitlyn
McAmis

DENZEL DORSEY
#2845569, CCDC, NVC
330 S. Casino Center Blvd.
LAS Vegas, Nevada 89101

District Court
Clark County, Nevada

The State of Nevada
Plaintiff

-VS-

#2845569

Case No. # C-¹⁷323324-1
Dept. No. # 22 ~~XXII~~

Denzel Dorsey
Defendant

Date: 06/28/18 Time: 9:00 AM

Motion To Dismiss Counsel

Comes now, defendant, Denzel Dorsey, in Pro Se, moves
this Honorable Court for a Motion To Dismiss Counsel.
This motion is made and based upon all papers, pleadings, and
documents on file with the clerk of the Court. The Points and
Authorities, and the argument contained therein.

Dated this 27 day of MAY 2018

Respectfully Submitted
Denzel Dorsey #2845569
DD

In Pro Se, CCDC NVC
330 S Casino Center Blvd
LAS Vegas, Nevada 89101

CLERK OF THE COURT

RECEIVED
JUN 06 2018

CLERK OF THE COURT

RECEIVED
MAY 31 2018

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Points AND Authorities Argument

Nev. Rev. Stat. 7.055 provides that:

An Attorney who has been discharged by his client,
shall, upon demand... immediately deliver to the client
all papers, documents, pleadings and items of tangible personal
property which belong to or were prepared for that client

In this case, defendant was appointed counsel, and
counsel simply not filing the requested Pre Sentence motion
to withdraw guilty plea, addressing Nev. Rev. Stat. 176.165
to where the defendant can move to withdraw his plea.
and also wherein counsel has failed to comply with Rule 401-4
under the Nevada Rules of professional conduct, by failing to
carry out defendants interest in his court proceedings whereas
counsel (1) not reasonably informing defendant about the status
of his case matters (2) failing to communicate with the
defendant as oathed by counsel (3) mis informing defendant
of various court proceedings on counsels behalf (4) by not
filing various motions that defendant has requested

wherefore, defendant has filed this motion to
Dismiss Counsel to be heard, and formally requested
that Counsel be Dismissed,

1 Certificate of Service by Mailing
2

3 I, Denzel Dorsey, do declare pursuant to N.R.C.P 5(b)
4 that on this day 27 of May 2018 I sent a
5 copy of Motion To Dismiss Counsel, and notice of
6 Motion to;
7

8 The Clerk of the Court
9 Regional Justice Center
10 200 Lewis Avenue
11 Las Vegas, Nevada 89101
12

Steven Wolfson
District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101

13 Kristina Wildeveld, Esq.
14 Attorney at Law [Court appointed]
15 550 E. Charleston Blvd Suite A
16 Las Vegas, NV 89104

17 Dated this 27 day of May 2018
18

19 Respectfully Submitted

20 Denzel Dorsey

21 

22 In Pro Se, CCDC NVC
23 330 S. Casino Center Blvd
24 Las Vegas, Nevada 89101
25
26
27
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Denzel Dorsey #2845569
CCDC, NV
330 S. Casino Center Blvd
Las Vegas, NV 89101

LAS VEGAS NV 890

29 MAY 2018 PM 4 40 REVER

Barn Swallow

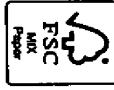
CCDC #2845569

Attn: Clerk of the Court
Dept. ~~XVII~~ (22)
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

000009-10168

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THIS ENVELOPE IS RECYCLABLE AND MADE WITH 50% POST CONSUMER CONTENT





1 **NOTM**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 SANDRA K. DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006204
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

10 THE STATE OF NEVADA,
11
12 Plaintiff,

13 -vs-

14 **DENZEL DORSEY,**
15 **#2845569**

16 Defendant.

CASE NO: C-17-323324-1

DEPT NO: XV

16 **STATE'S NOTICE OF MOTION AND MOTION TO REMAND DEFENDANT**

17 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the State of
18 Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through SANDRA K.
19 DIGIACOMO, Chief Deputy District Attorney, will bring a **Motion to Remand Defendant**
20 before the above entitled Court **on the _____ day of JUNE, 2019**, at the hour of **8:30 o'clock**
21 **A.M.**, or as soon thereafter as counsel may be heard.

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

25 ///

26 ///

27 ///

28 ///

1 **STATEMENT OF THE CASE**

2 On May 9, 2017, the State filed an Information charging Defendant DENZEL
3 DORSEY with one (1) count of INVASION OF THE HOME (Category B Felony – NRS
4 205.067) and one (1) count of MALICIOUS DESTRUCTION OF PRIVATE PROPERTY
5 (Gross Misdemeanor – NRS 206.310, 193.155). The State further noticed Defendant of its
6 intent to seek habitual criminal treatment due to his prior felony convictions. Defendant pled
7 not guilty, waived his speedy trial right, and trial was set for September 11, 2017.

8 That trial date was continued and several status checks were heard. On January 9, 2018,
9 the Court reviewed the procedural history of the case and with outstanding warrants, at the
10 State's request, the Court ordered Defendant be remanded into custody without bail.

11 On March 13, 2018, Defendant plead guilty to COUNT 1 – INVASION OF THE
12 HOME (Category B Felony – NRS 205.067). Per the Guilty Plea Agreement, the State
13 retained the right to argue at sentencing but would not seek habitual criminal treatment, and
14 agreed to dismiss Count 2 and Case No. 17F21598X after sentencing. The Defendant agreed
15 to pay restitution including for the case and count to be dismissed. Further, the State would
16 not oppose a standard bail setting after Defendant entered his plea; however, if Defendant
17 failed to go to P&P, failed to appear at any future court dates, or was arrested for any new
18 offenses, then Defendant stipulated to habitual criminal treatment, to the fact that he had the
19 requisite priors for such treatment, and to a sentence of sixty (60) months to one hundred
20 twenty (120) months in prison.¹ The Court reiterated that Defendant would serve 60 to 120
21 months should he fail to appear for future court dates, and set a sentencing date. As Defendant
22 had already posted standard bail, he was released from custody.

23 On June 5, 2018, Defendant's counsel advised that sentencing could not proceed as
24 Defendant wanted to withdraw his plea and further wanted to dismiss his counsel of record.
25 Another status check was set and Defendant remained out of custody. Several status checks
26 were heard and on July 17, 2018, Defendant failed to appear. Further, Defendant's counsel

27 ¹ The maximum sentence was typed incorrectly on the Guilty Plea Agreement as sixty (60) to one hundred twenty (120)
28 months is an illegal sentence; sixty (60) months as the minimum sentence requires a minimum of (150) months for the
top end of the sentence.

1 had no contact with Defendant. The Court issued a no bail bench warrant and took
2 Defendant's motion to withdraw plea off calendar.

3 On July 31, 2018, Carl Arnold appeared and confirmed as counsel for Defendant. Mr.
4 Arnold advised that Defendant was in custody in California and requested that his bench
5 warrant be quashed, which would allow Defendant to post bail in his California case. The court
6 denied the motion without prejudice, noting that with the bench warrant remaining in place,
7 Defendant's appearance in Nevada would be assured after the resolution of his California case.
8 The matter was taken off calendar and Defendant remained in warrant in the instant case.

9 On October 17, 2018, Defendant was involved in a traffic collision in Las Vegas. The
10 responding officer was advised of Defendant's warrants, and booked him on the outstanding
11 bench warrants on Las Vegas Justice Court case 17F21598X. The officer also booked
12 Defendant on his fugitive warrant out of California for a burglary case. Since Defendant was
13 not booked on the District Court bench warrant, the State placed the case on calendar to set a
14 sentencing date.

15 On November 8, 2018, Defendant appeared in court with Mr. Arnold. The State noted
16 that Defendant had a fugitive hold out of California and there was a possibility of other charges
17 being filed. Mr. Arnold requested a thirty day continuance to determine what was going on
18 with the case. The State continued the sentencing date for two weeks, to November 27, 2018.

19 On November 27, 2018, Gary Modafferi appeared on behalf of Defendant and again
20 requested a continuance to get up to speed on the case. The Court granted another two week
21 continuance for the sentencing, and on December 13, 2018, Mr. Modafferi appeared and asked
22 the court to appoint an investigator via a Motion for Expert Services. The Court again
23 continued the sentencing to February 5, 2019.

24 On January 3, 2019, the Court granted Defendant's motion for an investigator for the
25 purpose of investigating whether it was appropriate for Defendant to withdraw his plea. The
26 sentencing date of February 5, 2019 stood.

27 On January 17, 2019, Mr. Modafferi requested the sentencing date be continued, and
28 the Court reset the sentencing for February 19, 2019.

1 On February 15, 2019, Defendant filed a Motion to Withdraw Guilty Plea, which was
2 set for hearing on February 26, 2019. On February 19, 2019, the Court continued the hearing
3 to allow the State to file a response to the Motion to Withdraw. The State filed its Opposition
4 on March 19, 2019, and the hearing on March 26, 2019 was continued to April 4, 2019. The
5 Defendant filed his Reply on March 28, 2019. On April 4, 2019, the Court noted an
6 evidentiary hearing would be necessary, and the Evidentiary Hearing began on May 28, 2019;
7 the remainder of the hearing is currently set for July 8, 2019.

8 **ARGUMENT**

9 Defendant was not booked on the outstanding District Court bench warrant from his
10 failure to appear on July 17, 2018. Further, the Court did not order Defendant be remanded
11 on the instant case. As such, the instant case's Bench Warrant filed July 25, 2018 still remains
12 outstanding. The State requests that Defendant be remanded on that no bail Bench Warrant,
13 as this will allow him to accrue credit for time served while this case continues. Additionally,
14 since California still has a hold and Defendant has waived extradition, this will also insure
15 Defendant remains in Nevada pending the outcome of this case.

16 DATED this 11th day of June, 2019.

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

20 BY /s/ Sandra K. DiGiacomo
21 SANDRA K. DIGIACOMO
22 Chief Deputy District Attorney
23 Nevada Bar #006204
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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 11th day of June,
2019, by electronic transmission to:

GARY MODAFFERI, ESQ.
Email Address: modafferilaw@gmail.com

BY: /s/ J. Georges
Secretary for the District Attorney's Office

16FH2022X/jg/L5



**DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada
vs
Denzel Dorsey

Case No.: C-17-323324-1
Department 15

NOTICE OF HEARING

Please be advised that the State's Notice of Motion and Motion to Remand Defendant in the above-entitled matter is set for hearing as follows:

Date: June 25, 2019
Time: 8:30 AM
Location: RJC Courtroom 11D
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Joshua Raak
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Joshua Raak
Deputy Clerk of the Court



1 **RTRAN**

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

7 THE STATE OF NEVADA,)
8)
9 Plaintiff,) **CASE NO. C323324-1**
10 vs.) **DEPT. NO. 15**
11)
12 DENZEL DORSEY,)
Defendant.)

13 **BEFORE THE HONORABLE JOE HARDY, DISTRICT JUDGE**
14 **THURSDAY, JULY 11, 2019 AT 10:57 A.M.**
15

16 **RECORDER'S TRANSCRIPT RE:**
17 **EVIDENTIARY HEARING**
18 **DEFENDANT DENZEL DORSEY'S MOTION TO WITHDRAW GUILTY PLEA**

19 **APPEARANCES:**

20 **FOR THE STATE: SANDRA K. DIGIACOMO**
21 **Chief Deputy District Attorney**
22 **FOR THE DEFENDANT: GARY A. MODAFFERI, ESQ.**
23
24

25 **Recorded by: MATT YARBROUGH, COURT RECORDER**

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INDEX OF WITNESSES

<u>STATE'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
James McGeahy	4	16	19, 22	21

INDEX OF EXHIBITS

<u>STATE'S EXHIBITS</u>	<u>IDENTIFIED</u>	<u>ADMITTED</u>
1	3	4

1 (THURSDAY, JULY 11, 2019 AT 10:57 A.M.)
2 THE CLERK: The State of Nevada versus Denzel Dorsey.
3 MS. DIGIACOMO: Good morning, Your Honor. Sandra DiGiacomo
4 on behalf of the State.
5 MR. MODAFFERI: Good morning, Judge. Gary Modafferi on behalf
6 of Mr. Dorsey. He's present in custody.
7 THE COURT: Good morning. Okay. Are we ready today?
8 MS. DIGIACOMO: Yes, Your Honor.
9 THE COURT: All right.
10 MR. MODAFFERI: Yes.
11 MS. DIGIACOMO: At this point I believe the State is proceeding
12 with a witness.
13 THE COURT: Okay.
14 MS. DIGIACOMO: And the State would call Detective James
15 McGeahy.
16 THE COURT: All right.
17 MS. DIGIACOMO: And before he takes the stand, Your Honor, I
18 also have marked as State's Exhibit, I believe, 1 -- Proposed 1. It is all of the jail
19 calls that were made by the Defendant from November 28th, 20 -- and what year
20 was this -- 16 until his release I believe it was December 3rd, 2016, and I'll
21 address that after but I'd move for admission. Mr. Modafferi said I did not need
22 to bring in the custodian of records and I did provide a copy to him previously.
23 MR. MODAFFERI: That's correct, Judge.
24 THE COURT: Okay. So the State's Proposed Exhibit 1 is admitted,
25 and let's go ahead with the --

1 (Whereupon, State's Exhibit Number 1 was admitted into evidence.)

2 THE CLERK: Sir, please raise your right hand.

3 JAMES McGEAHY,

4 having been called as a witness, was duly sworn and testified as follows:

5 THE CLERK: For the record, please state and spell your first and
6 last name.

7 THE WITNESS: James McGeahy, first name, J-a-m-e-s, last name,
8 M-c-G-e-a-h-y.

9 MS. DIGIACOMO: May I, Your Honor?

10 THE COURT: Sure. Thank you.

11 DIRECT EXAMINATION

12 BY MS. DIGIACOMO:

13 Q Sir, how are you employed?

14 A I'm a Detective with Henderson Police Department.

15 Q How long have you been so employed?

16 A I've been a Detective for one year right now.

17 Q And how long have you been with Henderson Police Department?

18 A Thirteen years.

19 Q All right. Now, directing your attention back to November of 2016

20 were you with the Henderson Police Department?

21 A Yes.

22 Q What was your assignment at that time?

23 A I was in the Problem Solving Unit at that time.

24 Q And can you just explain to the Court briefly what the Problem

25 Solving Unit is, please?

1 A We assisted with patrol in responding to active incidents such as
2 burglaries, robberies, narcotics related offenses, things like that.

3 Q Is it fair to say that the Problem Solving Unit is a hybrid between
4 you're actually a patrol officer, however, you do detective stuff?

5 A Correct.

6 Q Okay. So on November 28, 2016 did you become aware of a home
7 invasion that had – or a burglary, however the call came out, that occurred at
8 2731 Warm Rays Avenue at approximately 11:55 in the morning?

9 A Yes.

10 Q And how was it that you first got notified of that?

11 A We actually heard it occurring on the radio because we would
12 monitor our radios while we were in the office.

13 Q Okay. So you're in the office?

14 A Correct.

15 Q And you said we. Who else – who were you working with that day?

16 A We had in our – in that specific office, because we were West Side
17 PSU, we had myself, I believe Detective Gutierrez and possibly Detective Ward
18 and Detective Chen.

19 Q Okay. What about an Officer Max Pilz at that time?

20 A Yes. He was also working that day but he's East Side PSU, so he
21 was in a different office.

22 Q Okay. All right. So you are monitoring the radio and you heard this
23 call. Do you know did patrol officers respond?

24 A Yes, they did.

25 Q Okay. And what did you guys do when you heard the call go out?

1 A We contacted patrol to find out exactly what was going on, and when
2 we learned about the vehicle information in the call we started researching that in
3 the office.

4 Q Okay. So you call from the office to the officer at the scene?

5 A Yes.

6 Q And he provided you what information about the vehicle?

7 A He gave us the plate of the vehicle and that it was a Suzuki. I forget
8 what – it was a blue Suzuki. I don't recall which –

9 Q All right. But you actually had the license plate number?

10 A Yes. We had the license plate number which was provided by the
11 victim who was home at the time.

12 Q All right. So you're in the office, you run the license plate number?

13 A Yes.

14 Q And what do you find out?

15 A It comes back to Global Autos which is a cash rental car rental place
16 located off of Sunset Road.

17 Q All right. So what's the next step?

18 A We contacted them.

19 Q And is this all pretty immediate even while patrol is still at the scene?

20 A Yes. Yes.

21 Q And when you contacted Global Auto what did you learn?

22 A Learned – talked to the manager there. We learned that the vehicle
23 had a GPS locator on the car.

24 Q And did that interest you?

25 A Very much so.

1 Q Okay. And then what did you request when you learned that
2 information?

3 A The past GPS locations as well as the current locations of where the
4 vehicle was at that time.

5 Q Now, did Global Auto give you that over the phone?

6 A Yes. And then shortly as we were – as I was on the phone Detective
7 Chen responded to Global Auto and was there with them relaying that
8 information once he got there.

9 Q So when Detective Chen got to Global Auto is he like watching the
10 screen –

11 A Yes.

12 Q -- or as – and seeing where the car is going as it's going?

13 A Yes.

14 Q And is he relaying that information back to you and your other
15 officers?

16 A Yes.

17 Q Okay. And based upon the information you were learning what did
18 you do?

19 A We attempted to locate the vehicle as it was traveling around from
20 Henderson through Las Vegas.

21 Q Okay. Now, when you talked to Global Auto was it confirmed that
22 that car had been at the location on Warm Rays Avenue?

23 A Yes. It was stopped there between 11:52 and 11:56 a.m.

24 Q Okay. And then about what time is it when Detective Chen gets
25 there and you're trying to track the car through the GPS?

1 A Probably – when Detective Chen gets there it's probably closer to
2 like between 12:30 and 1:00 o'clock.

3 Q Okay. And you're trying to find the car. As you're given locations
4 what do you guys do?

5 A We respond to those locations trying to locate the vehicle.

6 Q All right. Were you able to do that?

7 A Eventually, yes.

8 Q Okay. The – and do you recall how many stops the vehicle made
9 before it was initially – or first contacted by police?

10 A If I recall there was two stops and I think they were only for like three
11 minutes each.

12 Q Okay. So pretty quick?

13 A Yes.

14 Q So by the time you get to that location the car had moved on?

15 A Yes.

16 Q And you're getting updated information from Detective Chen as to
17 where to go next?

18 A Yes.

19 Q All right. Where was it that officers finally came into contact with the
20 vehicle?

21 A It was located in the lower garage at the Fashion Show Mall.

22 Q And what officer was the one that initially located it?

23 A Max Pilz.

24 Q Okay. Now, when he initially located the car was anybody in it?

25

1 A He observed one male who matched the description from the – from
2 the victim.

3 Q Okay. And so there was one male in it. Was he driving? Was he
4 parked?

5 A He was in the driver's seat. I believe he was driving, yes, and then I
6 think he parked and exited the vehicle.

7 Q All right. And after the person parked the vehicle and exited is that
8 when Officer Pilz contacted him?

9 A Not at that time. At that time the driver met with another subject,
10 they both got back into the car and then exited the garage and parked in the back
11 side by Dillard's which is where they were contacted.

12 Q Okay. So did Officer Pilz contact them inside the vehicle or as they
13 were walking into the mall?

14 A As they were walking – as they exited the vehicle and walking
15 towards the mall.

16 Q Okay. And Detective Pilz, when he contacted the individuals did you
17 eventually respond?

18 A Yes.

19 Q Okay. And did Officer Pilz show you or point out to you who the
20 driver was?

21 A Yes.

22 Q Okay. Do you see that person in the courtroom here today?

23 A Yes. He's sitting right there.

24 Q Okay. And the person you just pointed to, if you can describe what
25 he's wearing so that the Court knows who you're talking about, please.

1 A Blue jumpsuit.

2 MS. DIGIACOMO: Your Honor, would the record reflect

3 identification of the Defendant?

4 THE COURT: The record will reflect the identification of the

5 Defendant.

6 MS. DIGIACOMO: Thank you.

7 Q (By Ms. DiGiacomo) When Officer Pilz first contacted the Defendant

8 did Officer Pilz, I guess, ask him about the car he had just come from?

9 A Yeah, I believe so. And he denied that he was driving that car.

10 Q The Defendant denied he was driving the Suzuki –

11 A Yes.

12 Q -- that was rented from Global Auto?

13 A Yes.

14 Q And that car – when you get to the scene, the car with the same

15 license plate that you had been tracking that the victim had given you that license

16 plate, it was at the Fashion Show?

17 A Yes. It was parked in a parking spot.

18 Q All right. When you contacted – got there and contacted the

19 Defendant where was he?

20 A He was sitting on the curb.

21 Q Okay. Was he next to the car or was he by a police car?

22 A He was sitting on the curb near the entrance of the mall at that time.

23 Q When you contacted him did you speak with him?

24 A Yes.

25 Q Okay. And did you advise him of why you were there?

1 A I just explained to him why he was under arrest.
2 Q Okay. So he was under arrest at that time?
3 A Yes.
4 Q And what did you tell the Defendant?
5 A I explained to him that he was under arrest for home invasion.
6 Q Okay. And what was the Defendant's response when you said that?
7 A He asked how.
8 Q And what did you say?
9 A I explained to him that we had GPS locations of the vehicle that
10 placed him at the location of the home invasion.
11 Q And then what was the Defendant's reaction?
12 A He just put his head down and I believe he said something to the
13 effect of like, ah, shit or oh, shit or something like that.
14 Q Okay. Did you search his person incident to arrest?
15 A Yes.
16 Q All right. Now, before you searched this person do you recall
17 specifically what he was wearing?
18 A He had – he was actually dressed fairly nice. He had a sport coat
19 on. I don't recall what type of pants but nice shoes.
20 Q Did you notice any – so the sport coat or the jacket he had on, was it
21 long sleeve or short sleeve?
22 A It was long sleeve.
23 Q All right. Did you notice anything about the sports coat or the jacket
24 that he was wearing?
25 A The sleeve, the right sleeve was torn.

1 Q Was it the right sleeve?

2 A I believe it was the right sleeve.

3 Q If I was to show you your Declaration of Arrest, would that refresh

4 your recollection as to if it was the right or the left sleeve?

5 A Yes.

6 Q All right.

7 MS. DIGIACOMO: May I approach, Your Honor?

8 THE COURT: Sure.

9 Q (By Ms. DiGiacomo) Were you the one that actually authored the

10 Declaration of Arrest in this case?

11 A Yes, I was.

12 Q I am going to show you Page 3 of your Declaration of Arrest. Does

13 that look familiar?

14 A Uh-huh.

15 Q I'm going to ask you to read the third full paragraph, the fourth full

16 paragraph and the fifth full paragraph to yourself and then let me know when

17 you're done, please.

18 A Okay.

19 Q Okay. So after reading those paragraphs does that refresh your

20 recollection as to the specific sleeve that –

21 A Yes, it does.

22 Q -- you notated was – had some –

23 A Yeah.

24 Q -- sort of issue with it? Okay. So which sleeve was it?

25 A It was the left sleeve.

1 Q It was the left sleeve. And what did you notice about the left sleeve?
2 A It was – had fresh tears in it.
3 Q Okay. Now, you say fresh tears, and you pointed to the area above
4 where a watch would be on the forearm.
5 A Yeah. It was on the forearm.
6 Q Okay. So it was close to the edge of the sleeve?
7 A Yeah.
8 Q And you said fresh tears. What made you think they were fresh?
9 A Because like older tears start to fray a lot more, and based – kind of
10 based on how he was dressed he was dressed nice, and I can't imagine that
11 someone dressed as nice as he was is going to put on a jacket, a sport coat that
12 is all torn up.
13 Q Okay. So it had tears but they didn't look frayed with strings coming
14 off?
15 A Correct, yeah.
16 Q Okay. Did you notice anything else about his physical appearance,
17 specifically his hands?
18 A He had some cuts on his right hand.
19 Q On his right hand?
20 A Yes.
21 Q And when you say cuts, like were they old and scabbed? Did they
22 appear newer?
23 A They were newer. They were – they weren't – they were starting to
24 scab but they weren't like – like – like an old wound. They were pretty fresh.
25

1 Q And when you did a search incident to arrest of his person, did you
2 locate anything else of interest on him?

3 A A glove in his pocket.

4 Q A glove in his pants pocket?

5 A Yes.

6 Q And what was notable about the glove that you found?

7 A It had blood on it as well.

8 Q Okay. And do you know was that for the right hand or left-handed
9 glove?

10 A It was for the right hand.

11 Q Did it appear that the injuries on his hand matched up to where you
12 saw the blood on the glove?

13 A I believe it did.

14 Q Do you also remember – you said he was dressed really nicely, but
15 do you remember whether or not his hands were dirty?

16 A Yeah, they were dirty.

17 Q Did you locate any car keys on him?

18 A Yes. He had a set of car keys for the Suzuki in his pocket.

19 Q For the same car he had denied being in?

20 A We were able to confirm that it was from the same car, yes.

21 Q Okay. And the glove that you said that had some blood on it, did it
22 appear that that blood was fresh or old based upon the color?

23 A I don't recall.

24 Q Would it refresh your recollection to look at your report –

25 A Yes.

1 Q -- to see if you notated that?

2 A Yes.

3 MS. DIGIACOMO: Page 3, counsel. May I approach, Your Honor?

4 THE COURT: Sure.

5 Q (By Ms. DiGiacomo) Page 3, the fifth full paragraph, please. Read

6 that to yourself and let me know when you're done.

7 A Okay.

8 Q All right. So do you recall whether or not the blood that was on the

9 glove appeared newer or was old?

10 A It appeared fresh, new.

11 Q Now, after he was arrested where was he taken?

12 A Henderson Detention Center.

13 Q And when somebody is booked into the Henderson Detention

14 Center, are the jail calls recorded?

15 A Yes.

16 Q Okay. Did you actually pull and – well, let me ask you do you have

17 the ability to pull and listen to those jail calls?

18 A Yes.

19 Q And where do you do that at?

20 A I can do it from my desk computer.

21 Q Do you recall listening to the jail calls for the Defendant in this case?

22 A Yes.

23 Q Okay. Did the Defendant ever talk about why he was in jail on those

24 calls?

25 A Yes.

1 Q What did he say?

2 A His reason according to the jail call for being there was that he was
3 arrested for a battery or assisting in a battery or something to that effect.

4 Q Okay. Did he say something about going to – taking his friend to his
5 girl's house to get something out of it?

6 A Yes.

7 Q Okay. And do you recall whether or not they – he talked about the
8 malicious destruction was for destroying a TV or hitting --

9 A Yes.

10 Q When you arrested the Defendant and told him he was under arrest
11 for home invasion did – did you tell him like the specific facts of what the crime
12 were or did you just tell him, you're under arrest for home invasion?

13 A The only thing I mentioned to him was that we had the GPS data and
14 that he was under arrest for home invasion.

15 MS. DIGIACOMO: I have nothing further.

16 MR. MODAFFERI: Thank you.

17 CROSS-EXAMINATION

18 BY MR. MODAFFERI:

19 Q Detective, good morning.

20 A Good morning.

21 Q Detective, during the course of your investigation did you present the
22 complaining witness, Mr. Nazareno, with a six-pack identification lineup?

23 A We did not.

24 Q So is it fair to say that during the course of your investigation you
25 never got a positive identification from the person who was at the house?

1 A Just a description.

2 Q Just a description. Now, after you went to to court at the Preliminary
3 Hearing -- and you were at that hearing, right, the Preliminary Hearing in this
4 matter?

5 A I believe so.

6 Q And did you hear that -- that there had been problems with the
7 identification?

8 A I don't recall that.

9 Q You weren't told what happened at the Preliminary Hearing with the
10 witness?

11 A No.

12 Q And you didn't --

13 A I may have not have been at the Prelim on that one.

14 Q I -- if I showed you a copy of the Preliminary Hearing transcript would
15 it refresh your recollection on that matter?

16 MS. DIGIACOMO: And just to kind of cut to the chase, Your Honor,
17 if I may, the exclusionary rule was invoked, so he would have been outside since
18 he did testify. He would not have heard the other witnesses.

19 THE WITNESS: Okay.

20 THE COURT: Do you recall testifying at the Prelim?

21 THE WITNESS: I -- I'm not sure.

22 THE COURT: Okay.

23 Q (By Mr. Modafferi) Would showing you a copy of the Preliminary
24 Hearing transcript possibly refresh your recollection?

25 A Yes, it would.

1 MR. MODAFFERI: May I approach, Judge?

2 THE COURT: Sure. Thank you.

3 THE WITNESS: Okay.

4 Q (By Mr. Modafferi) Having reviewed that does it refresh your
5 recollection as to whether or not you testified at the Preliminary Hearing in this
6 matter?

7 A Yes.

8 Q Okay. And after the hearing was over were you asked to do any
9 follow-up about the identification process or anything regarding this case?

10 A That I don't recall.

11 Q Now, you said that – in your testimony that there were fresh cuts on
12 the Defendant's hand but there was some scabbing over?

13 A Well, it was just dry. It wasn't scabbing. It was just dry. It wasn't like
14 actively bleeding but it was dry.

15 Q And did the Defendant tell you that he had gotten those cuts
16 because he worked as a mechanic?

17 A No.

18 Q He didn't tell you that they were old?

19 A No. He did not tell me any of that. He told me they were old but he
20 did not tell me it was because he was a mechanic, and he didn't tell me
21 specifically. My understanding was he told that to Max Pilz.

22 Q Have you, since you've been assigned to this case, done any
23 investigation about whether Davey Dorsey was involved in this robbery?

24 A No.

25 Q Had you had the opportunity to ever interview Takiya Clemons?

1 A No.

2 MR. MODAFFERI: Okay. I have nothing further, Judge.

3 MS. DIGIACOMO: May I?

4 THE COURT: Sure.

5 REDIRECT EXAMINATION

6 BY MS. DIGIACOMO:

7 Q Okay. So the tears on his left sleeve the Defendant had no
8 explanation for either; correct?

9 A No.

10 Q I mean he just said they were old?

11 A He just said they were old.

12 Q And did you -- in the course of your investigation of being at the
13 scene with the Defendant and Max -- excuse me, Officer Pilz talking to him, was
14 there any information that you didn't have the wrong -- excuse me -- that you did
15 not have the correct person that committed the burglary?

16 A No. Nothing was ever mentioned.

17 MR. MODAFFERI: Well, that calls for speculation. I'm sorry.

18 MS. DIGIACOMO: No. I asked if he ever had any information from
19 the scene. It's not speculation.

20 THE COURT: No. Just -- and I actually did not hear the question, I
21 got a little distracted, so you can repeat that question or rephrase it.

22 MS. DIGIACOMO: Thank you.

23 Q (By Ms. DiGiacomo) When you're at the scene and you're getting
24 the information from other officers, was there ever any information that you
25

1 learned that somebody else may have done the home invasion, that you had the
2 wrong person?

3 A No.

4 Q As the case went on did you ever learn that information?

5 A No.

6 Q While you were at the scene and speaking to the Defendant and
7 getting information from other officers, did you learn that the Defendant may have
8 had an alibi and was – for the time of the home invasion?

9 A No.

10 Q During the course of the case going through the system did you ever
11 learn that?

12 A No.

13 Q So you were never given any information like that?

14 A No.

15 Q If you had been given that information what would you have done
16 with it?

17 A I would have investigated it.

18 Q And, in fact, you listened to the Defendant's jail calls, correct –

19 A Yes.

20 Q -- at the time back in 2016?

21 A Yes.

22 Q And was there ever any indication that somebody else had done the
23 home invasion?

24 A No. Nothing was ever mentioned.

25

1 Q And was there ever any information about he couldn't have done it
2 because he was with his girlfriend?

3 A No.

4 Q And the person that he was talking to on those calls, who was it?

5 A I believe it was his sister.

6 Q Okay. But you're not sure?

7 A I'm not sure. I can't recall her name, Marquisha or something like
8 that.

9 MS. DIGIACOMO: Okay. Nothing further.

10 RECROSS-EXAMINATION

11 BY MR. MODAFFERI:

12 Q So, Detective, there was a court filing in this case made pro se by
13 the Defendant in his motion to withdraw the guilty plea back in May of 2018 and
14 in that points and authorities he said that Davey Dorsey, his brother, had given a
15 full confession which relieves the Defendant of guilt in this case. Even though
16 this was a filed court pleading you didn't either know of it or act on it?

17 A Initially, no, I didn't know. I didn't know until I was subpoenaed to
18 come to here.

19 Q Okay. Given the fact that a man has taken – Davey Dorsey has
20 taken the stand in this matter and under oath claimed sole responsibility for the
21 burglary at issue, the home invasion at issue, have you done anything since
22 then?

23 A No. I assisted with having him arrested back in October when Metro
24 was getting him arrested and I investigated another case that involved him since
25 2016.

1 Q Regarding this specific case there's been no further investigation –

2 A No.

3 Q -- since he's said under oath that he's the person?

4 A No.

5 MR. MODAFFERI: Thank you, Judge. I have nothing further.

6 FURTHER REDIRECT EXAMINATION

7 BY MS. DIGIACOMO:

8 Q And, I'm sorry, I was confused when you were saying you assisted
9 with his arrest and you had other cases with him. Are you talking about the
10 Defendant or are you talking about Davey Dorsey?

11 A The Defendant. I apologize.

12 Q Okay. So do you even know who Davey Dorsey is?

13 A No. I've never even heard the name until this came up.

14 Q And in the other home invasions or cases that you've investigated
15 against the Defendant, Davey Dorsey never came up?

16 A No.

17 MS. DIGIACOMO: Nothing further.

18 MR. MODAFFERI: Thank you, Judge.

19 THE COURT: Thank you.

20 THE WITNESS: Thank you.

21 MS. DIGIACOMO: Your Honor, at this time that concludes the
22 testimony by the State but I would like to address State's Exhibit 1 –

23 THE COURT: Sure.

24 MS. DIGIACOMO: -- which are the jail calls. Instead of opting to
25 play them in court, Your Honor, there's 49, I would like to just give them to the

1 Court and then explain to you why I've submitted them and give you a couple of
2 specific calls to reference if that is okay.

3 THE COURT: Any objection to that?

4 MR. MODAFFERI: No, Judge.

5 THE COURT: Okay.

6 MS. DIGIACOMO: First of all, the reason, Your Honor, I had to
7 provide you with all of the jail calls versus just playing a few in court is because if
8 you recall when we were here last time Davey Dorsey testified that he told his
9 brother on a jail call that – that he was the one that committed the burglary. He
10 said that the Defendant called his mom, he took the phone from his mom and he
11 spoke to him.

12 So the reason why I provided you all calls is that call does not
13 exist anywhere, and, in fact, in support of that is with a call – and because there's
14 no date and time stamp on these, Your Honor, I'm going to go by the size, the
15 kilobyte size, so it's the ninth call on the disc and it's kilobytes 14,338 is the size
16 of the file.

17 Sorry, wrong one. I'm looking – okay. I'm sorry.

18 THE COURT: That's okay.

19 MS. DIGIACOMO: I'll get back to that call in a minute. Call 20 on
20 this disc, it is 11,226 kilobytes. The Defendant on all of these calls is either
21 talking to a bonds person or talking to Takiya, who is the other person who
22 testified, and that's evident from the calls. He is upset with Takiya because
23 Takiya told him that she had told his mom, and Defendant gets upset because he
24 didn't want his mom to know about it, he didn't want anybody in his family to
25

1 know what happened, so that also supports the fact that Mr. Davey Dorsey was
2 not truthful when he testified on the stand.

3 The other calls that the State would submit that are important
4 to look at, Call 9, as I just mentioned which is 14,338 kilobytes, Takiya on there –
5 because remember she testified that the Defendant was with her the entire time
6 – Takiya states on there that if he would have just chilled with her he wouldn't be
7 in jail. She refers specifically that she prays for him every night but didn't pray for
8 him last night because she was mad at him which obviously indicates they are
9 not together.

10 Call 30, which is 10,206 kilobytes –

11 THE COURT: Say that – bear with me one second.

12 MS. DIGIACOMO: Sure. No problem. It's call Number –

13 THE COURT: Hold on – I'm still writing on the ninth –

14 MS. DIGIACOMO: Oh, I'm sorry.

15 THE COURT: That's okay. Okay. So Call 30, how big is that one?

16 MS. DIGIACOMO: That one is 10,206 kilobytes.

17 THE COURT: Okay.

18 MS. DIGIACOMO: And in that call she also tells him – because
19 throughout all of these calls, Your Honor, all he cares about is getting out of
20 custody because he's afraid his parole hold from California will catch up to him
21 and so he's constantly calling trying to see when he's going to get out, and in this
22 Call 30 she tells him that he's not getting out right now so he can just sit there
23 and think about what he did, and he's going to – and how he needs to change it,
24 and the Defendant's response is something like yeah or eh, which, again,
25

1 indicates he knows he did something wrong which is contrary to what the
2 evidence was that you heard.

3 The other call that I would ask the Court to reference is the first
4 call. It is 13,577 kilobytes. That very first call Takila – excuse me, not Takila,
5 Takiya asks him what happened and he says the story about how he went to a
6 friend's house to get – took a friend to his girl's house to get his stuff, she got
7 mad and she told him, you know – and she said home invasion and the TV got
8 damaged, so that's where the malicious destruction is. And he also references
9 that that same kind of thing happened in Call 16, and, pardon me, I forgot to write
10 down the size of that one. Court's indulgence.

11 THE COURT: Sure.

12 MS. DIGIACOMO: Call 16 I am not sure, but it's the sixteenth call
13 on the disc. He's talking to the bonds person and he – and he's talking about
14 what the destruction charge is for kicking a TV and – but nowhere, again, on
15 these calls, Your Honor, does he talk about, I didn't do anything wrong, why am I
16 in here. Also I'd refer the Court to Call 22. That one is 3,997 kilobytes.

17 THE COURT: What number was it again?

18 MS. DIGIACOMO: Call – it's the twenty-second call on the disc,
19 and, again, on that call he's telling the bond girl at the bondmen's office about
20 how he's in jail for home invasion because he went with a friend to get his stuff
21 out of a girl's house and she called and he broke the TV and shit, so the State
22 would submit that all of the calls taken together show that he did – he had a guilty
23 conscience and what Mr. Davie Jones and Takiya Clemons testified to, it's all
24 belied by the jail calls.
25

1 And also – those are the ones that I would ask the Court to
2 reference specifically, but, as I said, when you look at all of them there's no
3 indication that he didn't do the crime, especially with his reaction with the officer,
4 and also there's no indication he himself had an alibi, so with that that will close
5 the State's evidence.

6 THE COURT: Okay. Thank you. So are we done with all the
7 evidence other than Exhibit 1, I guess?

8 MR. MODAFFERI: I'm sorry, Judge?

9 THE COURT: Are we done –

10 MR. MODAFFERI: Oh, yes.

11 THE COURT: -- except for all this? In total how long are the calls?

12 MS. DIGIACOMO: A long time.

13 THE COURT: Okay.

14 MS. DIGIACOMO: A long time. I don't know if the defense just
15 wants to stipulate that nowhere on those jail calls does he talk to his brother, but
16 it took me – because, you know, a lot of the calls are quick or it's not even him
17 because somebody else was using his ID, but most of the calls that do go
18 through are anywhere from 5 to 10 minutes and I believe there's 49 on the disc,
19 something – somewhere around 50.

20 MR. MODAFFERI: And, Judge, I think it's important that the Court
21 understands that he's also in jail on another charge, so when she talks about him
22 talking about the charge there's an overlap in circumstances.

23 MS. DIGIACOMO: Actually at the time he was arrested on this one
24 he wasn't – he hadn't been arrested on – he was arrested just on this case. He
25 had other active charges, but –

1 MR. MODAFFERI: My understanding he was being held on a home
2 invasion that involved a broken TV with his girlfriend. He went into her apartment
3 and –

4 MS. DIGIACOMO: And I have no –

5 MR. MODAFFERI: -- broke the television.

6 MS. DIGIACOMO: No. I have no evidence of that. I don't know if
7 the defense has something more to – to –

8 MR. MODAFFERI: Well, he references that on the phone call
9 specifically.

10 THE COURT: I think you're both in agreement that he talks about
11 the TV in the –

12 MS. DIGIACOMO: Correct. But so at the time that he was arrested
13 here, Your Honor, this Case Number 16FH2022X, at the time of this arrest he
14 had no other pending charges in Nevada. The other cases, especially the ones
15 that I agreed to dismiss as part of this deal, were 17 case numbers, so at the
16 time -- when you listen to all the jail calls he's worried about his parole hold from
17 California catching up to him, but when she's asking what happened it's clearly
18 referencing why he's in jail that day.

19 THE COURT: Does the defense have any particular calls you want
20 me to focus on?

21 MR. MODAFFERI: No, Judge. It's not – I did listen to them. I didn't
22 really find any of them –

23 THE COURT: Okay. That's fair.

24 MR. MODAFFERI: -- very remarkable.

25

1 THE COURT: So how do you all suggest we proceed? I was
2 anticipating ruling today, but I don't –

3 MR. MODAFFERI: I'm ready to argue, Judge, and I would defer to
4 the Court on however it wanted to schedule a decision in the matter.

5 MS. DIGIACOMO: Yeah. I know I kind of threw in a loop with all of
6 these jail calls.

7 THE COURT: Well, so if you want maybe this might make the most
8 sense is to argue right now –

9 MS. DIGIACOMO: That's fine. And then –

10 THE COURT: -- and then can I – would there be any objection to
11 me issuing a decision via minute order?

12 MS. DIGIACOMO: Not by the State.

13 MR. MODAFFERI: Not at all, Judge.

14 THE COURT: Okay. Yeah. Let's go ahead and argue now, then.

15 MR. MODAFFERI: Thanks, Judge. Judge, the basis – the general
16 parameter of why we brought this motion is best summarized in the reply brief,
17 and it encapsulates the law that the Nevada Supreme Court set forth in
18 *Stevenson*, so as the Court's well aware there's two different standards. There's
19 a fair and just standard, a more lenient, permissive standard which is applied by
20 the courts before sentencing, and then there's the correct manifest injustice
21 standard which is the much more demanding standard which is applied after
22 sentencing, so because of that and the fact that this motion was brought well
23 before sentence has been thought of or imposed we're asking the Court to
24 consider these factors.

25

1 Number one, one of the things in *Stevenson* that the Nevada
2 Supreme Court said was important was how quickly did the person have a
3 change of mind or change of heart about wanting to withdraw his plea, and in this
4 case because of – because it's indicated by the pleadings that were filed pro se it
5 was less than a couple of weeks, maybe a month or two when the Defendant is
6 specifically indicating that he tried to get in touch with his defense attorney at the
7 time to do proper and due diligence to research his brother as a culprit, and given
8 the fact that his attorney was present at the Preliminary Hearing where the
9 alleged victim or the homeowner, the resident was – was, how should I say this,
10 unable at first to identify the person and then later did so after some prompting
11 and a Cross-Examination occurred, there was significant doubt and there should
12 have been doubt in his mind that what he was being told by his client was – had
13 merit and should have been investigated.

14 You know, out of all of the reasons that could constitute what's
15 fair and just, Judge, having not done it is probably the most important of fair and
16 just reasons. I mean all of the cases that I've tried both as a prosecutor and as a
17 defense attorney that have dealt with withdrawal of guilty pleas they mostly focus
18 on the canvass, they focus on whether a person understood the nature and
19 consequences of the charges, understood the deportation consequences,
20 understood the fact that maybe they were under the influence of something at the
21 time although that's less rare.

22 But out of all of those things the one thing that should stand
23 out and carry the most weight I would argue to the Court is the fact that the
24 person didn't do it and that someone has come forth under oath and said, you
25 know, they did get the wrong person, I'm willing to take responsibility, and that

1 didn't happen in a vacuum in this case, and I'll talk about the vacuum because I
2 think that's another important concept, the concept that the whole record need
3 not – need be considered and shouldn't be considered in a vacuum, but neither
4 did the evidence in this case because Ms. Clemons came up and she said that
5 11:55 he was with me, at the time that this crime was happening he had an alibi,
6 he was there, so it's not only Davey Dorsey saying, I did it, he didn't, he didn't
7 have anything to do with it, she's saying he was with me.

8 So I understand the prosecutor believes in her case and
9 believes that she's got the right man and you would hope that that's true, you
10 would hope that the prosecutor would believe that, but that's not really for the
11 Court to decide at this point. At this point the Court does not need to make a
12 determination of whether or not there's proof beyond a reasonable doubt, that's a
13 determination for the jury to make, and I would argue that given the state of
14 evidence in this case that between Davey Dorsey's testimony and Ms. Clemons'
15 testimony and the fact that there was no pre-investigation lineup or identification
16 of the Defendant that there is good cause, there is substantial reason, there is
17 fair and just reason under *Stevenson* to allow him to withdraw the plea.

18 THE COURT: Thank you.

19 MS. DIGIACOMO: Your Honor, obviously the State disagrees.

20 THE COURT: I'm shocked.

21 MS. DIGIACOMO: I know. So when you look at the history of this
22 case, and I don't know how far you've gone back, there is a long history to this
23 case, and the reason why the Defendant either probably took a deal in this case
24 was just to get out of custody and – because he had come to us – a bench
25 warrant issued because he didn't show back up because he got back in trouble in

1 California, I think they sent him here, I got his bail revoked because he was, you
2 know, committing more crimes, he did multiple crimes, and if you look at his
3 history everything is home invasion or burglaries here and in California.

4 He gets out of custody, gets in trouble again, that's why we get
5 him back in custody, so for -- up until he wanted to withdraw his plea there's
6 never any information, any information whatsoever that comes up about his
7 brother may have been the one to do it other than I would submit to you it was
8 his brother's name that he gave falsely to the police when he was arrested
9 because he laughs about it on the jail call.

10 But when -- you know, he put in his motion -- and we haven't
11 heard from the Defendant in this but in their motion he put in that he felt he
12 needed to take responsibility for this crime to protect his brother. Well, I submit
13 to you there was no reason to do that because nobody even knew about his
14 brother, nobody even knew that he might have been possibly involved which
15 obviously the State denies, there was no information about him whatsoever, so
16 the State submits to you that's just false. The Defendant is just trying to get out
17 of this because now he knows he's looking at habitual treatment. There was no
18 reason for him to enter this plea to protect his brother because nobody even
19 knew about his brother.

20 And then also there's no reason to enter the plea to protect his
21 brother or do anything of the sort because he knew he had an alibi. His
22 girlfriend, he was with her all night but yet that's not referenced in any of the jail
23 calls. That's not referenced in any of the -- you know, we were preparing this for
24 trial, notice of witnesses, nothing. Defendant is the one that had all of this
25 information, Your Honor, at the time he stood up, entered his plea and said he

1 was guilty. It wasn't an *Alford* plea. He took this deal. Now, I submit it's
2 probably to get out of custody, but he did it and there has to be some finality. He
3 shouldn't just get to willy-nilly, you know, get his brother to come in here, perjure
4 himself, you know, because conveniently he is a juvenile at the time or do any of
5 this if he's not the one that actually did it.

6 And also this is very incredible too the fact not only is he
7 actually innocent but he's got an alibi, so the reasons he stated he entered the
8 plea is just not correct. He knew at the time what the circumstances were when
9 he entered the plea, and it's not fair just to now allow him to withdraw it because
10 he's changed his mind, he doesn't want to be treated as a habitual, it's non-
11 probationable because he's got the prior burglary or home invasions and he gets
12 two people to come in and lie for him because when you listen to all those jail
13 calls, Your Honor, everything that his girlfriend and brother said on the stand is
14 belied.

15 And also if you look at his brother on the stand, look at his
16 demeanor. He was kind of frustrated, didn't -- you know, was just like, I took
17 responsibility, didn't want to get into the details when I asked him about it, and if
18 you recall he talked about how, you know, he went in the backyard and then he
19 came around and then he knocked on the door and then he broke the window
20 and put his hand through. Well, if you look at the Preliminary Hearing transcript,
21 Your Honor, that's not what happened. The person who tried to break into the
22 house, the State submits the Defendant, rang the doorbell over and over and
23 over again and that's what woke up the son that came downstairs, so he doesn't
24 even know the facts.

25

1 He lied when he said that I told the Defendant in jail, hey, bro,
2 sorry, it was me. That's a lie because there's no jail call to that effect, and as I
3 stated there's another jail call where the Defendant specifically said he did not
4 want his mom to know and was upset with the girlfriend for telling her, so that
5 indicates he never called his mom again – or never called his mom and talked to
6 his brother on the phone. And the Defendant – or, excuse me, the brother also
7 testified how he came down to court and it was this courthouse and it was a
8 female attorney, well, that's incorrect too because the Preliminary Hearing was in
9 Henderson and that's where he would have gone for the initial case.

10 So he's just making it up as he goes probably to protect his
11 brother, but it's not fair and just to let him out of this plea he knowingly and
12 voluntarily entered into just because he doesn't want to do the time now, and –
13 you know, and also too you've heard, Your Honor, this Defendant is a prolific
14 residential burglar and his brother had nothing but like a petty larceny from
15 stealing a phone but yet he's the one that went off on his own and didn't talk to
16 his brother. It just doesn't make sense.

17 And then also on the jail calls you'll hear reference to the friend
18 that he was with that got him in this trouble, Your Honor, is called Slick. That's
19 what the Defendant refers to him throughout the jail calls is as Slick. I asked his
20 brother who Slick was and he's like, I don't know, so, again, they didn't get their
21 stories straight, but, you know, clearly when you listen to all the calls the
22 Defendant knows he did it. His reaction when he found out there was GPS on
23 the car, he hangs his head and he's like, oh, man or oh, shoot and – because he
24 knows he did something wrong, then when his girlfriend who's not happy he's in
25 jail again asks him what happened of course he downplays it and makes it sound

1 like it was somebody else's fault, but, again, he knew he did something wrong,
2 he knew he committed crimes, he's just trying to get out of custody before the
3 parole hold catches up with him. And when you look at the totality of the
4 circumstances, Your Honor, there is no fair and just reason to allow the
5 Defendant to withdraw this plea and to reward him for getting two people to come
6 in and lie, and with that I'll submit it.

7 THE COURT: Thank you.

8 MR. MODAFFERI: Judge, just briefly I want to –

9 THE COURT: Sure.

10 MR. MODAFFERI: It's not fair and just to have the prosecutor make
11 the –

12 THE COURT: I'm sorry I coughed. Go ahead.

13 MR. MODAFFERI: No, no problem. This is the salient point I just
14 want to underscore because *Stevenson* presents this law, and this is what's
15 necessary, I think, for the Court to keep in the back of its mind, it is not fair and
16 just to allow the prosecutor to determine who is worthy of belief, that is a jury
17 determination, so when she says he got these two people to come in here and lie
18 under oath now that's a stretch, that's a stretch that, you know, 12 people should
19 decide. If the – for Ms. –

20 THE COURT: So let me ask –

21 MR. MODAFFERI: Yes, Judge.

22 THE COURT: -- on that issue we're having an evidentiary hearing
23 to determine whether to grant or deny the motion to withdraw, so isn't it fair,
24 accurate, appropriate, however you want to call it, to say, well, for better or worse
25 on here for the motion and the hearing it's me who determines the credibility?

1 MR. MODAFFERI: A couple of things on that point. Number one,
2 you've heard about all these phone calls. Do we hear about one phone call
3 where they're conspiring to commit perjury? That did not happen. The second
4 thing, Judge, Judge, I think it's more like you present this prima facie case of
5 reasons and in this instance, I did it, he didn't, he was with me, not there, that, I
6 think – I mean understandably if there's no evidence we couldn't possibly move
7 the motion forward, all right, but at what point do we have to prove those facts
8 beyond a reasonable doubt? I say not. Preponderance? I don't know, I'm not
9 exactly sure, but I do know one thing, we've moved the ball on that point.

10 I would respectfully submit to the Court that that evidence that
11 we said we would present in our moving pleadings we did present, and I would
12 underscore again, Judge, that out of all the reasons that are encapsulated or
13 contemplated by *Stevenson* for possibly withdrawing not doing it has got to be
14 the most important one. What does the State absolutely lose? They actually
15 have to go to trial and prove their case beyond a reasonable doubt like they
16 would have had to have done before the plea was entered, so they don't really –
17 they haven't claimed any lost evidence or lost witnesses. All they're saying is we
18 like the situation status quo because we got him over a barrel and want to keep
19 him there. Thank you, Judge.

20 THE COURT: Thank you. So I may – what I'll plan on doing,
21 reviewing Exhibit 1 and issuing a decision via minute order or I might also need
22 to bring you back but I'll let you know.

23 MS. DIGIACOMO: And, Your Honor, actually we'll need to come
24 back either way because we either need a sentencing date or a trial date, so
25 should we just do a status check maybe in August for your order --

1 THE COURT: That's –
2 MS. DIGIACOMO: -- that way we don't –
3 THE COURT: -- an excellent idea because –
4 MS. DIGIACOMO: Otherwise I will lose track of this case.
5 THE COURT: And why I say it's an excellent idea is because I may
6 lose track of the case too and that gives me a deadline, so, yeah, let's – let's
7 come back for a status check in 30 days if that --
8 MS. DIGIACOMO: I'm sorry, when?
9 THE CLERK: Do this in 30 days, Judge?
10 THE COURT: Yeah. And we'll figure out what works for all of you
11 too.
12 THE CLERK: August 8th of 2019 at 8:30 a.m.
13 MS. DIGIACOMO: Thank you.
14 THE COURT: If that – does that work for you, Mr. Modafferi?
15 MR. MODAFFERI: Yes. Did you say 8:30, Judge?
16 THE CLERK: 8:30, yes.
17 MR. MODAFFERI: Thank you. Thank you, Your Honor.
18 THE COURT: Thank you, all.
19 MR. MODAFFERI: Judge, just as a matter of housekeeping – I'm
20 sorry about that –
21 THE COURT: No, that's fine.
22 MR. MODAFFERI: -- you're going to consider the exhibits that were
23 attached to the motions and the replies and stuff, you know, the pro se pleadings
24 that were filed in this matter?
25 THE COURT: That's a really good question.

1 MS. DIGIACOMO: And I would also submit like everything I
2 attached to my motion as well as –
3 THE COURT: If both parties want me –
4 MS. DIGIACOMO: Yes.
5 THE COURT: -- to consider all that I definitely will.
6 MS. DIGIACOMO: Right.
7 MR. MODAFFERI: I have no objection. I would ask the Court to do
8 so.
9 MS. DIGIACOMO: I just – I thought that's the way it was the last
10 time we were here because that's why I didn't admit like the GPS and all of that
11 because it's already attached to the pleadings.
12 THE COURT: So I will consider all of the arguments as well as all
13 the evidence, exhibits attached to the briefs.
14 MR. MODAFFERI: Thank you, Judge.
15 THE COURT: Thank you. Thank you, all.
16 MS. DIGIACOMO: Thank you.
17 (Whereupon, the proceedings concluded.)

18 * * * * *

19
20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio/visual proceedings in the above-entitled case to the best of my
22 ability.

23  —

24 LISA A. LIZOTTE
25 Court Recorder



1 **ORDR**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 THE STATE OF NEVADA,

6 Plaintiff,

7 v.

8 DENZEL DORSEY,

9 Defendant.

CASE NO.: C-17-323324-1
DEPT NO.: XV

**ORDER DENYING
DEFENDANT'S MOTION TO
WITHDRAW GUILTY PLEA**

10
11 This matter came on for an evidentiary hearing on May 28, 2019, and July 11, 2019,
12 Defendant Denzel Dorsey ("Defendant") was present in custody, represented by counsel, Gary A.
13 Modafferi. Plaintiff State of Nevada ("State") represented by Steven B. Wolfson, Clark County
14 District Attorney, through Sandra K. Digiacomio, Chief Deputy District Attorney. The Court having
15 considered Defendant's moving papers, the opposition, the transcript of Defendant's plea canvass,
16 the written Guilty Plea Agreement ("GPA"), the arguments of counsel, the jail calls, as well as the
17 sworn testimony of the witnesses hereby denies Defendant's Motion to Withdraw Guilty Plea.

18 **I. STATEMENT OF FACTS**

19 On November 28, 2016, Kevin Nazareno ("Kevin") lived at 2731 Warm Rays in Henderson,
20 Clark County, Nevada with his parents, Florentino and Norma Nazareno ("Norma"), who own the
21 residence. See Preliminary Hearing Transcript ("PHT") at 4:16-5:6. On that date, Kevin was asleep
22 in his bed when he was awoken by the sound of the front doorbell ringing constantly, as someone
23 kept pushing the doorbell multiple times, would stop and then would press the button again multiple
24 times. *Id.* at 5:12-6:10. Annoyed someone was ringing the doorbell that much; Kevin got out of bed
25 and went to the front door. *Id.* at 6:13-22. The front doors were glass and as Kevin looked over the
26 stair railing from upstairs, Kevin could see a single African American male standing outside the
27 front door punching the glass with his fist. *Id.* at 6:23-7:14. Kevin could also hear banging on the
28 door itself. *Id.* at 7:20-22. Kevin saw the glass on the front door break, which left a round hole with

1 jagged edges. *Id.* at 8:1–8:24. Kevin stated that an African American male reached through the hole
2 in the glass to unlock the deadbolt with his left hand. *Id.* at 9:3–10. He also stated that the male was
3 wearing a jacket or clothing on his arm. *Id.* at 16:10–19. Kevin rushed forward to the door, grabbed
4 the deadbolt and kept it locked. *Id.* at 9:11–19. At this time, the male realized someone was home
5 and took his arm out of the glass and ran away. *Id.* at 9:23–25.

6 Kevin went outside of the house and chased after the male. *Id.* at 10:5–6. Kevin saw the male
7 get into a blue Suzuki, four door, on the driver's side. *Id.* at 10:7–20. Kevin was able to obtain the
8 license plate, 953LGM, before the male drove away. *Id.* Kevin did not observe anyone else in the
9 vehicle. *Id.* at 11:9–10. The male had the keys to the vehicle and started the ignition. *Id.* at 18:14–15.
10 Kevin then called the police at approximately 11:55 a.m. and gave them the license plate number. *Id.*
11 at 10:21–25.

12 Norma was at work on November 28, 2016, when she received a call from her husband
13 around noon, so she rushed home. *Id.* at 21:14–16. When she arrived, she saw that the glass on her
14 front door was broken, and that there was a big hole right by the doorknobs. *Id.* at 23:6–25. First,
15 Norma had to pay \$474.41 to have the door boarded up until the glass could be replaced. *Id.* at
16 24:16–25:5. Next, Norma paid \$723.72 to have the glass replaced in the door. *Id.* at 25:6–8.

17 Officer James McGeahy ("Officer McGeahy") of the Henderson Police Department, Problem
18 Solving Unit, was assigned this residential burglary on November 28, 2016. *Id.* at 30:18–24. He and
19 his squad began investigating immediately. *Id.* at 31:1–5. The plate, 953LGM, was run through their
20 database and returned to a rental car. *Id.* The rental car company was contacted and the officers
21 learned that it was rented to a female and had a GPS equipped on it; therefore, the rental car
22 company was able to provide officers with the exact location of the vehicle at that moment. *Id.* at
23 31:6–10. At that point, two officers went to the rental car company to have direct contact with the
24 person tracking the vehicle with the GPS. *Id.* at 31:23–25.

25 The GPS for the vehicle showed that it was located on the street of the residential burglary,
26 so officers wanted to make contact with the car. *Id.* at 32:11–12. Within a very short time of the
27 residential burglary, officers made contact with the vehicle at the Fashion Show Mall. *Id.* at 32:18–
28 19. Officers observed the vehicle in the parking garage picking up another person and then parked

1 the vehicle near Dillard's. *Id.* at 33:18–22. Officers contacted the vehicle and Defendant was
2 arrested. *Id.* at 36:20–25. Officer McGeahy made contact with Defendant to let him know he was
3 under arrest for the residential burglary at 2731 Warm Rays and noticed that the jacket Defendant
4 was wearing had several tears on his left arm that were fresh and frayed. *Id.* at 37:2–22. Defendant
5 also had injuries on his right hand with some dried blood and appeared to be fresh. *Id.* at 37:23–
6 38:10. During a search incident to arrest, the key to the Suzuki rental vehicle was found in
7 Defendant's pocket, along with one glove with some blood on it. *Id.* at 38:11–39:13. The other
8 matching glove was found in the vehicle. *Id.* at 39:13–39:18. Both the jacket and gloves were
9 booked into evidence. *Id.* at 40:5–9.

10 When Officer McGeahy told Defendant what he was being arrested for, he explained that the
11 rental car had a GPS tracker which placed him at the location of the crime; Defendant looked down
12 and said "ah shit." *See* Declaration of Arrest ("DOA") at 3, attached as Exhibit "4" to State's
13 Opposition to Defendant's Motion to Withdraw Guilty Plea. The GPS records for the vehicle
14 showed the following:

15 11:52 a.m.: the vehicle is stopped at 2727-2729 Warm Rays in Henderson
16 for 4 minutes

17 11:56 a.m.: the vehicle started traveling

18 12:01 p.m.: the vehicle was traveling 30 mph in the 10300-10532 block of
19 Eastern

(north of the victim's residence by the intersection of Coronado Center
and Eastern)

12:06 p.m.: the vehicle was traveling 67 mph on westbound I-215

12:11 p.m.: the vehicle was traveling 37 mph in Enterprise, NV

12:16 p.m.: the vehicle was traveling 54 mph near 5524-5698 S. Decatur

12:23 p.m.: the vehicle stopped at 3938-3980 S. Spitze Drive for 3
minutes

12:26 p.m.: the vehicle began traveling

12:31 p.m.: the vehicle stopped at 3800-3850 S. Lindell for 3 minutes

12:34 p.m.: the vehicle started traveling

12:39 p.m.: the vehicle stopped at 5801-5899 block of W. Viking for 3
minutes

12:43 p.m.: the vehicle started traveling

12:48 p.m.: the vehicle was traveling 26 mph near 5901-6099 W. Desert
Inn

12:53 p.m.: the vehicle stopped at 3300-3498 S. Ramuda Trl for 1 minute

1 See Vehicle Rental Agreement and History Printout for November 28, 2016, attached as Exhibit "5"
2 to State's Opposition to Defendant's Motion to Withdraw Guilty Plea.

3 The vehicle made no other stops and was on Fashion Show Drive at 1:43 p.m. and at 3231-
4 3299 Las Vegas Boulevard South ("Fashion Show Mall") at 1:44 p.m. *Id.*

5 **II. PROCEDURAL HISTORY**

6 On November 28, 2016, Defendant was arrested for Attempt Invasion of the Home and
7 Malicious Destruction of Property. Defendant was released after his arrest on a \$6,000 surety bond,
8 despite having four prior felony convictions in Nevada and California. Defendant was arraigned in
9 justice court on December 19, 2016, and a preliminary hearing was scheduled for February 15, 2017.
10 Because Defendant's attorney had to withdraw due to a conflict, the preliminary hearing was
11 continued to March 30, 2017.

12 On February 22, 2017, the State filed an Amended Criminal Complaint charging Defendant
13 with Invasion of the Home and Malicious Destruction of Property. On March 30, 2017, the defense
14 moved to continue the preliminary hearing because defense counsel had had no contact with
15 Defendant and it was reset for May 2, 2017. On May 2, 2017, the preliminary hearing was
16 conducted; at its conclusion, Defendant was held to answer in district court on both charges.¹
17 Further, the State filed a Notice of Prior Burglary and/or Home Invasion Convictions and Notice of
18 Intent to Seek Punishment as a Habitual Criminal in the Information listing Defendant's two
19 convictions from Nevada for Attempt Burglary in case number C-12-279732-1 and Invasion of the
20 Home in case number C-12-284308-1.

21 On May 15, 2017, Defendant pleaded not guilty and waived his speedy trial right. The trial
22 was scheduled for September 11, 2017. On September 7, 2017, the defense moved for a continuance,
23 which was not objected to by the State as it was the first trial setting. The trial was reset for
24 December 4, 2017. On November 30, 2017, Defendant's counsel moved to withdraw due to a
25 conflict and Defendant indicated he wished to hire private counsel; a status check was set for
26 December 12, 2017, and continued to January 9, 2018, to see if counsel would confirm.

27
28 ¹ Defendant did not present any witnesses at the preliminary hearing; *i.e.*, neither Davey Dorsey nor
Takiya Clemons testified.

1 In December 2017, an arrest warrant for Defendant was issued in 17F21598x for Invasion of
2 the Home, two counts of Burglary and Possession of Stolen Property. Defendant was booked on the
3 warrant in the beginning of January 2018. On January 9, 2018, private counsel was still unable to
4 confirm and the State moved to remand Defendant without bail for committing new crimes while out
5 of custody in this case. The court remanded Defendant with no bail and set a status check to appoint
6 counsel for January 16, 2018. On that date, new appointed counsel confirmed for Defendant and a
7 trial date was scheduled for April 23, 2018.

8 On March 13, 2018, Defendant pleaded guilty to Invasion of the Home pursuant to a guilty
9 plea agreement which stated, in part:

10 The State will retain the right to argue. Additionally, the State agrees not
11 to seek habitual criminal treatment. Further, the State will not oppose
12 dismissal of Count 2 and Case No. 17F21598X after rendition of sentence.
13 The State will not oppose standard bail after entry of plea. However, if I
14 fail to go to the Division of Parole & Probation, fail to appear at any future
15 court date or am arrested for any new offenses, I will stipulate to habitual
16 criminal treatment, to the fact that I have the requisite priors and to a
sentence of sixty (60) to one hundred twenty (120) months in the Nevada
Department of Corrections. Additionally I agree to pay full restitution
including for cases and counts dismissed. *See* GPA at 1-2.

17 Defendant stated during his plea canvass that he was pleading guilty on his own free will and that he
18 committed the instant offense. *See* Reporter's Transcript of Hearing Re State's Request for Entry of
19 Plea Filed June 14, 2018 ("RTH"), at 5-6. Pursuant to the terms of the agreement, Defendant was
20 released on his own recognizance due to his prior bail not having been exonerated. *Id.* at 6-7.

21 The Court also cautioned Defendant that if he failed to go to the Division of Parole and Probation, to
22 appear at any future court date, or was arrested on any new offenses, he would serve as a habitual
23 criminal. *Id.* at 7. A sentencing date was scheduled for July 17, 2018. *Id.*

24 On April 26, 2018, Defendant filed a Motion to Place on Calendar to Address Custody Status
25 and Hold. Defendant was on parole in California at the time he committed the crimes in this case
26 and 17F21598x; therefore, a hold was placed on him when he was arrested on the latter case. In the
27 motion, Defendant asked to be remanded and for his sentencing date to be moved to a sooner date.
28 The motion was heard on May 8, 2018, at which time the Court rescheduled Defendant's sentencing
to June 5, 2018; however, Defendant was not remanded.

1 On June 5, 2018, defense counsel stated that sentencing could not proceed as Defendant
2 wanted to withdraw his guilty plea and to dismiss her as counsel. Defendant stated he had filed the
3 motions previously but the court indicated it had not received them. The matter was continued to
4 June 12, 2018, for a status check regarding the motions and a new sentencing date. On June 6, 2018,
5 Defendant filed in pro per a Motion to Dismiss Counsel and a Motion to Withdraw Plea. On June 12,
6 2018, the court granted Defendant's Motion to Dismiss Counsel and set another status check for
7 confirmation of counsel for June 28, 2018. On June 28, 2018, all matters were continued to July 17,
8 2018. On July 3, 2018, the State filed an Opposition to Defendant's Pro Per Motion to Withdraw
9 Plea.

10 On July 11, 2018, Defendant was arrested just after midnight in California for Receiving
11 Stolen Property, as Defendant was in possession of property stolen from a residential burglary which
12 occurred earlier on July 10, 2018. Thus, on July 17, 2018, Defendant failed to appear and a bench
13 warrant was issued in the instant case and Defendant's Motion to Withdraw Plea was also taken off
14 calendar. On July 24, 2018, a Motion to Quash Bench Warrant was filed by Defendant's newly
15 retained counsel. The motion stated that Defendant was presently incarcerated in California but
16 would make all future court dates. On July 31, 2018, defense counsel asked for the bench warrant to
17 be quashed because Defendant could not post bail in his California case with the hold from this case.
18 The court denied the motion finding that the bench warrant remaining in place would ensure
19 Defendant's appearance in court subsequent to the resolution of his California case.

20 On November 8, 2018, Defendant appeared in custody on the bench warrant return and his
21 counsel requested thirty days to determine the status of Defendant's cases in California but the State
22 objected. The Court set a sentencing date for November 27, 2018. On November 27, 2018, newly
23 retained counsel substituted in and the matter was continued to December 13, 2018. On December
24 13, 2018, defense counsel requested a continuance because he filed a Motion for Expert Services
25 (Investigator) Pursuant to *Widdis* on December 5, 2018. The Motion for Expert Services was granted
26 by the Court on January 9, 2019, in a signed order. On January 17, 2019, it was confirmed the
27 investigator would only be working on information related to a motion to withdraw guilty plea and
28 the sentencing date was rescheduled for February 19, 2019.

1 On February 15, 2019, Defendant filed a Motion to Withdraw Guilty Plea. On February
2 19, 2019, the sentencing date was continued to March 28, 2019, to allow the State time to file an
3 opposition to the motion. That date was later changed by the parties and this Court to April 4, 2019.
4 On February 21, 2019, the State filed a Notice of Intent to Seek Punishment as a Habitual Criminal
5 and Notice of Prior Burglary and/or Home Invasion Convictions adding Defendant's two
6 convictions from California for Burglary, 1st Degree in case number MA058464-01 and Burglary,
7 1st Degree in case number MA066766- 01. Also on this date, Defendant filed a Supplemental
8 Exhibit in Support of Defendant's Motion to Withdraw Guilty Plea. The State filed an opposition on
9 March 19, 2019.

10 On April 4, 2019, the Court noted that an evidentiary hearing would be necessary and
11 scheduled the evidentiary hearing for May 13, 2019. On May 9, 2019, the evidentiary hearing was
12 rescheduled by the Court to May 23, 2019. On May 23, 2019, Defendant was not transported. Thus,
13 the evidentiary hearing was rescheduled to May 28, 2019.

14 On May 28, 2019, the Court heard sworn testimony from Defendant's brother, Davey Dorsey
15 ("Davey"), and Defendant's girlfriend, Takiya Clemons ("Takiya"). The evidentiary hearing was
16 continued to July 8, 2019, to accommodate the State's investigator, Officer McGeahy. On July 2,
17 2019, the parties agreed to continue the matter and it was rescheduled to July 11, 2019. On July 11,
18 2019, the Court heard testimony from Officer McGeahy. The State also presented multiple recorded
19 jail calls made by Defendant for the Court to consider. The recorded calls were admitted without
20 objection by the defense. Upon request by both parties, the Court considered all evidence attached to
21 the briefs as exhibits. The Court deferred ruling and this order follows.

22 **III. ARGUMENT**

23 Defendant requests to withdraw his guilty plea by arguing that he is factually innocent of the
24 charges he pled guilty to. The crux of Defendant's argument is that he entered into the plea
25 agreement to protect his minor brother, Davey who committed the residential burglary. To support
26 his assertion, Defendant offered written declarations from both Davey and Takiya that Defendant did
27 not commit the residential burglary. In addition, Davey and Takiya testified at the evidentiary
28 hearing. After reviewing all the evidence presented and under a totality of the circumstances, the

1 Court concludes that Defendant has not met his burden of proving by a preponderance of the
2 evidence that a credible fair and just reason exists to withdraw his guilty plea.

3 Nevada Revised Statutes § 176.165 provides that a defendant who has pleaded guilty may
4 petition the court to withdraw his plea “before sentence is imposed or imposition of sentence is
5 suspended.” NRS 176.165. A “district court may grant a defendant’s motion to withdraw his guilty
6 plea before sentencing for any reason where permitting withdrawal would be fair and just.”
7 *Stevenson v. State*, 354 P.3d 1277, 1281 (2015). When making this decision, a district court “must
8 consider the totality of the circumstances.” *Id.*

9 A plea of guilty is presumptively valid. *Jeziarski v. State*, 107 Nev. 395, 397, 812 P.2d 355,
10 356 (1991). The defendant has the burden of proving that the plea was not entered knowingly or
11 voluntarily. *Wynn v. State*, 96 Nev. 673, 615 P.2d 946 (1980). Therefore, the defendant seeking to
12 withdraw a guilty plea must show good cause as to why a denial of the motion to withdraw plea
13 constitutes an injustice. *Wynn*, 96 Nev. at 675, 615 P.2d at 947 (citing *State v. Second Judicial Dist.*
14 *Court*, 85 Nev. 381, 385 (1969)).

15 In *Stevenson v. State*, the Nevada Supreme Court determined that the district court must
16 consider the totality of the circumstances to determine whether permitting withdrawal of a guilty
17 plea before sentencing would be fair and just. The court found that none of the reasons presented
18 warranted the withdrawal of Stevenson’s guilty plea, including allegations that the members of his
19 defense team lied about the existence of the video in order to induce him to plead guilty. *Stevenson*,
20 354 P.3d at 1281. The court found similarly unconvincing Stevenson’s contention that he was
21 coerced into pleading guilty based on the compounded pressures of the district court’s evidentiary
22 ruling, stand by counsel’s pressure to negotiate a plea, and time constraints. *Id.* As the court noted,
23 undue coercion occurs when a defendant is induced by promises or threats which deprive the plea of
24 a voluntary act. *Id.* (quoting *Doe v. Woodford*, 508 F.3d 563, 570 (9th Cir. 2007)).

25 The court also rejected Stevenson’s implied contention that withdrawal was warranted
26 because he made an impulsive decision to plead guilty without knowing definitively whether the
27 video could be viewed. *Id.* Stevenson did not move to withdraw his plea for several months. *Id.* The
28 court made clear that one of the goals of the fair and just analysis is to allow a hastily entered plea

1 made with unsure heart and confused mind to be undone, not to allow a defendant to make a tactical
2 decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made
3 a bad choice in pleading guilty. *Id.* at 1281–82 (quoting *United States v. Alexander*, 948 F.2d 1002,
4 1004 (6th Cir. 1991)).

5 The court found that considering the totality of the circumstances, it had no difficulty in
6 concluding that Stevenson failed to present a sufficient reason to permit withdrawal of his plea. *Id.* at
7 1282. Permitting him to withdraw his plea under the circumstances would allow the solemn entry of
8 a guilty plea to become a mere gesture, a temporary and meaningless formality reversible at the
9 defendant's whim, which the court would not allow. *Id.* (quoting *United States v. Baker*, 514 F.2d
10 208, 222 (D.C. Cir. 1975)).

11 Similar to *Stevenson*, this Court, after reviewing the evidence and circumstances, determines
12 none of the reasons presented by Defendant warrant a withdrawal of his guilty plea.

13 **A. Defendant's plea was freely and voluntarily entered.**

14 Because the guilty plea is assumed to be valid, Defendant had the burden of proving his plea
15 was not entered freely and voluntarily. After reviewing the record and the totality of circumstances,
16 the Court determines that Defendant's plea of guilty was and remains valid.

17 The evidence demonstrates that Defendant understood the terms of his guilty plea and the
18 consequences of his guilty plea. On March 13, 2018, Defendant signed the GPA which states that
19 Defendant was signing the plea agreement voluntarily, after consulting with his counsel, and was not
20 acting under duress, coercion, or by virtue of any promise of lenience except for what is outlined in
21 the agreement. *See* GPA at 5:12–14. Defendant's counsel, under penalty of perjury, signed the
22 Certificate of Counsel certifying she explained to Defendant the allegations contained in the charges,
23 the penalties for each charge and possible restitution, and certified that all pleas of guilty offered by
24 Defendant pursuant to the agreement were consistent with the known facts. *Id.* at 6:2–18.

25 In addition to making the above representations by signing the GPA, Defendant was
26 extensively and thoroughly canvassed by the district court, with Defendant's counsel present, when
27 he entered his plea on March 13, 2018. *See* RTH at 2–6. The court asked Defendant if anyone forced
28 him to plead guilty, and Defendant said "No, Your Honor." *Id.* at 5:3. Defendant affirmed he was

1 pleading guilty on his own free will. *Id.* at 5:6–7. When asked by the court, Defendant affirmed he
2 understood the consequences of his guilty plea. RTH at 5:11–15. Before the plea was accepted, the
3 court repeated the facts of the case, including the allegation of his illegal and forceful entry into
4 2731 Warm Rays Ave, and Defendant affirmed the truthfulness of those facts. *Id.* at 6:10–19.

5 After reviewing the transcript of the entry of plea in this matter, the Court finds that the
6 transcript does not contain any information showing that Defendant did not enter into his plea freely
7 and voluntarily. Defendant knowingly waived his privilege against self-incrimination, the right to
8 trial by jury, and the right to confront his accusers. The plea was voluntary, was not coerced, and
9 was not the result of a promise of leniency. Defendant understood the consequences of his plea, and
10 the range of punishment, and the nature of the charge, *i.e.*, the elements of the crime.

11 **B. Defendant’s new representations are belied by the record.**

12 In *Stevenson*, the Nevada Supreme Court noted that the district court gave Stevenson
13 considerable leeway to demonstrate how his counsel lied to or misled him, yet Stevenson struggled
14 to articulate a cohesive response. *Stevenson*, 354 P.3d at 1281. Here, the Court gave Defendant much
15 leeway to bring forth evidence demonstrating how his plea was not valid and that Davey committed
16 the residential burglary. After reviewing the record and all evidence within, the Court finds that the
17 record does not support Defendant’s new representations.

18 **1. The Court warned Defendant not to commit any other crimes.**

19 During the canvass on March 13, 2018, the court explicitly warned Defendant that he
20 stipulated to be treated as a habitual criminal if he was “arrested on any new offenses,” and
21 Defendant affirmed he understood the consequences of a new arrest. RTH at 7:11–19. On July 10,
22 2018, the County of Los Angeles Sheriff’s Department responded to a residential burglary in
23 Lancaster, CA. *See* County of Los Angeles Sheriff’s Department Incident Report at 1, 4, attached as
24 Exhibit “3” to State’s Opposition to Defendant’s Motion to Withdraw Guilty Plea. On July 11, 2018,
25 Defendant allegedly committed several traffic violations during an attempt by Los Angeles County
26 officers to commence a traffic stop. *Id.* at 12. During the traffic stop, Defendant allegedly gave
27 officers two false identifications. *Id.* at 16. The officers also discovered Defendant had an
28 outstanding misdemeanor warrant and was driving while his license was suspended or revoked. *Id.*

1 at 12-13. Defendant was arrested for possession of stolen property, providing false identification,
2 and having an outstanding misdemeanor warrant. *Id.* at 12.

3 Because Defendant did not heed the Court's warning and was arrested, he violated the
4 conditions of his plea agreement and bail release. Thus, Defendant could be sentenced as a habitual
5 criminal and possibly face a longer prison sentence. It was only after Defendant violated the terms of
6 his plea and bail release that he offered to provide evidence proving that Davey committed the
7 residential burglary.

8 **2. The record shows that Defendant committed the crime.**

9 Defendant argues that he is factually innocent and that his younger brother, Davey,
10 committed the residential burglary. The evidence, however, shows that Defendant, not Davey,
11 committed the crime. Defendant, not Davey was arrested at Fashion Show Mall. PHT at 37-39.
12 Despite detectives observing Defendant exit the vehicle, Defendant denied being in the car, was
13 uncooperative, and falsely identified himself. DOA at 3. Officer McGeahy testified that Defendant
14 had the rental car's key in his pocket, wore a jacket with fresh tears on the left sleeve, had fresh
15 injuries with dried blood on his right hand, and a glove with blood on it was found in his pocket.
16 PHT at 37-39. When Officer McGeahy explained that the car's GPS system tracked his rental car to
17 the location of the crime, Defendant looked down and stated, "ah shit." DOA at 3. Because
18 Defendant, not Davey, committed the crime, the Court concludes that Defendant has not shown
19 good cause for why his plea should be withdrawn.

20 **C. The Court does not find Davey credible.**

21 The Court does not find Davey's testimony credible. During Davey's testimony, the Court
22 observed his demeanor—he was clearly frustrated when the district attorney questioned him as to the
23 details of the crime he allegedly committed.² In addition, Davey testified that Defendant was at
24 Takiya's apartment when he asked Defendant for the rental car keys on November 27, 2016.
25 Recorder's Transcript of Hearing Evidentiary Hearing and Defendant's Motion to Withdraw Guilty
26

27 ² The Court notes that Davey struggled to give even basic descriptions of the locations he visited
28 when he supposedly had the rental car including the 2731 Warm Rays Avenue. Davey stated he
could not remember the locations because he was high on Xanax the morning of November 28,
2016, and he could not remember what happened that day. See EHT at 22-23.

1 Plea ("EHT") at 9:8–11. Davey claimed Defendant did not know his plan to burglarize a home. *See*
2 *id.* at 13–14. Using a GPS, Davey claimed he drove alone to the Nazareno home 1:00 p.m. and 2:00
3 p.m. on November 28, 2016. *Id.* at 13:10–14. However, the car GPS showed the car at that location
4 at 11:55 a.m. This is also when Kevin notified the police of the burglary. Davey also testified that he
5 knocked on the front and back doors before breaking the door. In contrast, Kevin testified that at
6 the time of the burglary he was in bed when he heard the doorbell ring multiple times, got up
7 because of the constant ringing, and witnessed the front door being punched upon walking
8 downstairs. PHT at 5–6. Thus, Davey's admissions are belied by the record.

9 Again, Defendant, not Davey, was the one arrested for the residential burglary and then
10 pleaded guilty. Further, Davey testified that he told Defendant he was the one who committed the
11 residential burglary during a jail phone call with Defendant a few days after the arrest. *See* EHT at
12 31–33. After reviewing all jail phone calls, the Court finds that there are not any phone calls
13 between Defendant and Davey. *See* Jail Phone Calls ("JPC"). In other words, the evidence does not
14 support Davey's testimony. Because the Court concludes that Davey was less than truthful, Davey is
15 not a credible witness.

16 **D. The Court does not find Takiya credible.**

17 In supporting the assertion that Davey committed the crime, Defendant also presented
18 declarations and testimony from Takiya, his girlfriend since 2014 and mother of his child, as an
19 alibi. Takiya testified that on November 28, 2016, she and Defendant were sleeping at her apartment
20 and both woke up after 11:55 a.m. EHT at 62:17–19. However, the record shows that Defendant,
21 had an injured hand with dried blood and fresh tears on his jacket sleeve, when he was arrested at
22 Fashion Show Mall for the residential burglary. PHT at 37–39. Furthermore, Takiya told Defendant
23 during a jail phone call that Defendant would not get into trouble if he remained at home and only
24 focused on her and his hustle. *See* JPC at 10.92.0.21, Aug. 28, 2017, 2:19 a.m., 13577KB. Because
25 Takiya has a young child with Defendant, her boyfriend, it is reasonable to conclude she wants to
26 prevent Defendant from serving a long prison sentence. After reviewing the record and considering
27 all circumstances, the Court concludes that Takiya was less than truthful and thereby not a credible
28 witness.

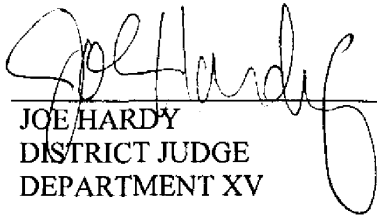
1 **IV. CONCLUSION**

2 After considering Defendant's arguments, as well as the testimony presented at the multiple
3 days of the evidentiary hearing and listening to the jail calls, the Court finds that Defendant entered
4 into his plea freely and voluntarily. In addition, the Court does not find Defendant's witnesses
5 credible because the record contradicts their testimony. Therefore, the Court having considered the
6 preponderance of the evidence and the totality of circumstances, and there being no fair and just
7 reason to permit the withdrawal of Defendant's guilty plea, Defendant's Motion to Withdraw Guilty
8 Plea is denied.

9 **ORDER**

10 **THEREFORE, IT IS HEREBY ORDERED** that Defendant's Motion to Withdraw Guilty
11 Plea is DENIED.

12 DATED this 16th day of August, 2019.

13 
14 _____
15 JOE HARDY
16 DISTRICT JUDGE
17 DEPARTMENT XV



1 NEOJ

2 DISTRICT COURT,

3 CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,

CASE NO: C-17-323324-1

DEPT NO: XV

5 Plaintiff,

7 v.

NOTICE OF ENTRY OF ORDER

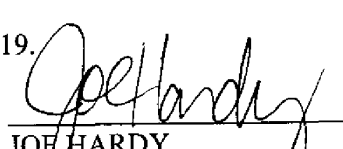
8 DENZEL DORSEY,

9 Defendant.

11 TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

12 PLEASE TAKE NOTICE that an Order has been entered on the 6th day of August, 2019, in
13 the above-captioned matter. A copy of said Order is attached hereto as Exhibit A.

14 DATED this 7th day of August, 2019.

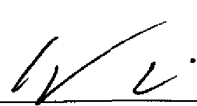
15 
16 JOE HARDY
17 DISTRICT COURT JUDGE

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on the date e-filed, a copy of the foregoing was electronically served,
20 pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court
21 Electronic Filing Program.

22 *If indicated below, a copy of the foregoing was also*

23 ☐ Mailed by the U.S. Postal Service, postage prepaid, to the proper parties listed below at their
24 last known address(es):

25 
26 Judicial Executive Assistant

27
28
Hon. Joe Hardy
District Court
Department XV

EXHIBIT “A”



1 **ORDR**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 **THE STATE OF NEVADA,**

6 **Plaintiff,**

7 **v.**

8 **DENZEL DORSEY,**

9 **Defendant.**

CASE NO.: C-17-323324-1
DEPT NO.: XV

ORDER DENYING
DEFENDANT'S MOTION TO
WITHDRAW GUILTY PLEA

10
11 This matter came on for an evidentiary hearing on May 28, 2019, and July 11, 2019,
12 Defendant Denzel Dorsey ("Defendant") was present in custody, represented by counsel, Gary A.
13 Modafferi. Plaintiff State of Nevada ("State") represented by Steven B. Wolfson, Clark County
14 District Attorney, through Sandra K. Digiacomo, Chief Deputy District Attorney. The Court having
15 considered Defendant's moving papers, the opposition, the transcript of Defendant's plea canvass,
16 the written Guilty Plea Agreement ("GPA"), the arguments of counsel, the jail calls, as well as the
17 sworn testimony of the witnesses hereby denies Defendant's Motion to Withdraw Guilty Plea.

18 **I. STATEMENT OF FACTS**

19 On November 28, 2016, Kevin Nazareno ("Kevin") lived at 2731 Warm Rays in Henderson,
20 Clark County, Nevada with his parents, Florentino and Norma Nazareno ("Norma"), who own the
21 residence. See Preliminary Hearing Transcript ("PHT") at 4:16-5:6. On that date, Kevin was asleep
22 in his bed when he was awoken by the sound of the front doorbell ringing constantly, as someone
23 kept pushing the doorbell multiple times, would stop and then would press the button again multiple
24 times. *Id.* at 5:12-6:10. Annoyed someone was ringing the doorbell that much; Kevin got out of bed
25 and went to the front door. *Id.* at 6:13-22. The front doors were glass and as Kevin looked over the
26 stair railing from upstairs, Kevin could see a single African American male standing outside the
27 front door punching the glass with his fist. *Id.* at 6:23-7:14. Kevin could also hear banging on the
28 door itself. *Id.* at 7:20-22. Kevin saw the glass on the front door break, which left a round hole with

Hon. Joe Hardy
District Court
Department XV

1 jagged edges. *Id.* at 8:1–8:24. Kevin stated that an African American male reached through the hole
2 in the glass to unlock the deadbolt with his left hand. *Id.* at 9:3–10. He also stated that the male was
3 wearing a jacket or clothing on his arm. *Id.* at 16:10–19. Kevin rushed forward to the door, grabbed
4 the deadbolt and kept it locked. *Id.* at 9:11–19. At this time, the male realized someone was home
5 and took his arm out of the glass and ran away. *Id.* at 9:23–25.

6 Kevin went outside of the house and chased after the male. *Id.* at 10:5–6. Kevin saw the male
7 get into a blue Suzuki, four door, on the driver's side. *Id.* at 10:7–20. Kevin was able to obtain the
8 license plate, 953LGM, before the male drove away. *Id.* Kevin did not observe anyone else in the
9 vehicle. *Id.* at 11:9–10. The male had the keys to the vehicle and started the ignition. *Id.* at 18:14–15.
10 Kevin then called the police at approximately 11:55 a.m. and gave them the license plate number. *Id.*
11 at 10:21–25.

12 Norma was at work on November 28, 2016, when she received a call from her husband
13 around noon, so she rushed home. *Id.* at 21:14–16. When she arrived, she saw that the glass on her
14 front door was broken, and that there was a big hole right by the doorknobs. *Id.* at 23:6–25. First,
15 Norma had to pay \$474.41 to have the door boarded up until the glass could be replaced. *Id.* at
16 24:16–25:5. Next, Norma paid \$723.72 to have the glass replaced in the door. *Id.* at 25:6–8.

17 Officer James McGeahy ("Officer McGeahy") of the Henderson Police Department, Problem
18 Solving Unit, was assigned this residential burglary on November 28, 2016. *Id.* at 30:18–24. He and
19 his squad began investigating immediately. *Id.* at 31:1–5. The plate, 953LGM, was run through their
20 database and returned to a rental car. *Id.* The rental car company was contacted and the officers
21 learned that it was rented to a female and had a GPS equipped on it; therefore, the rental car
22 company was able to provide officers with the exact location of the vehicle at that moment. *Id.* at
23 31:6–10. At that point, two officers went to the rental car company to have direct contact with the
24 person tracking the vehicle with the GPS. *Id.* at 31:23–25.

25 The GPS for the vehicle showed that it was located on the street of the residential burglary,
26 so officers wanted to make contact with the car. *Id.* at 32:11–12. Within a very short time of the
27 residential burglary, officers made contact with the vehicle at the Fashion Show Mall. *Id.* at 32:18–
28 19. Officers observed the vehicle in the parking garage picking up another person and then parked

1 the vehicle near Dillard's. *Id.* at 33:18–22. Officers contacted the vehicle and Defendant was
2 arrested. *Id.* at 36:20–25. Officer McGeahy made contact with Defendant to let him know he was
3 under arrest for the residential burglary at 2731 Warm Rays and noticed that the jacket Defendant
4 was wearing had several tears on his left arm that were fresh and frayed. *Id.* at 37:2–22. Defendant
5 also had injuries on his right hand with some dried blood and appeared to be fresh. *Id.* at 37:23–
6 38:10. During a search incident to arrest, the key to the Suzuki rental vehicle was found in
7 Defendant's pocket, along with one glove with some blood on it. *Id.* at 38:11–39:13. The other
8 matching glove was found in the vehicle. *Id.* at 39:13–39:18. Both the jacket and gloves were
9 booked into evidence. *Id.* at 40:5–9.

10 When Officer McGeahy told Defendant what he was being arrested for, he explained that the
11 rental car had a GPS tracker which placed him at the location of the crime; Defendant looked down
12 and said "ah shit." *See* Declaration of Arrest ("DOA") at 3, attached as Exhibit "4" to State's
13 Opposition to Defendant's Motion to Withdraw Guilty Plea. The GPS records for the vehicle
14 showed the following:

15 11:52 a.m.: the vehicle is stopped at 2727-2729 Warm Rays in Henderson
16 for 4 minutes

17 11:56 a.m.: the vehicle started traveling

18 12:01 p.m.: the vehicle was traveling 30 mph in the 10300-10532 block of
19 Eastern

(north of the victim's residence by the intersection of Coronado Center
and Eastern)

12:06 p.m.: the vehicle was traveling 67 mph on westbound I-215

12:11 p.m.: the vehicle was traveling 37 mph in Enterprise, NV

12:16 p.m.: the vehicle was traveling 54 mph near 5524-5698 S. Decatur

12:23 p.m.: the vehicle stopped at 3938-3980 S. Spitz Drive for 3
minutes

12:26 p.m.: the vehicle began traveling

12:31 p.m.: the vehicle stopped at 3800-3850 S. Lindell for 3 minutes

12:34 p.m.: the vehicle started traveling

12:39 p.m.: the vehicle stopped at 5801-5899 block of W. Viking for 3
minutes

12:43 p.m.: the vehicle started traveling

12:48 p.m.: the vehicle was traveling 26 mph near 5901-6099 W. Desert
Inn

12:53 p.m.: the vehicle stopped at 3300-3498 S. Ramuda Trl for 1 minute

1 See Vehicle Rental Agreement and History Printout for November 28, 2016, attached as Exhibit "5"
2 to State's Opposition to Defendant's Motion to Withdraw Guilty Plea.

3 The vehicle made no other stops and was on Fashion Show Drive at 1:43 p.m. and at 3231-
4 3299 Las Vegas Boulevard South ("Fashion Show Mall") at 1:44 p.m. *Id.*

5 **II. PROCEDURAL HISTORY**

6 On November 28, 2016, Defendant was arrested for Attempt Invasion of the Home and
7 Malicious Destruction of Property. Defendant was released after his arrest on a \$6,000 surety bond,
8 despite having four prior felony convictions in Nevada and California. Defendant was arraigned in
9 justice court on December 19, 2016, and a preliminary hearing was scheduled for February 15, 2017.
10 Because Defendant's attorney had to withdraw due to a conflict, the preliminary hearing was
11 continued to March 30, 2017.

12 On February 22, 2017, the State filed an Amended Criminal Complaint charging Defendant
13 with Invasion of the Home and Malicious Destruction of Property. On March 30, 2017, the defense
14 moved to continue the preliminary hearing because defense counsel had had no contact with
15 Defendant and it was reset for May 2, 2017. On May 2, 2017, the preliminary hearing was
16 conducted; at its conclusion, Defendant was held to answer in district court on both charges.¹
17 Further, the State filed a Notice of Prior Burglary and/or Home Invasion Convictions and Notice of
18 Intent to Seek Punishment as a Habitual Criminal in the Information listing Defendant's two
19 convictions from Nevada for Attempt Burglary in case number C-12-279732-1 and Invasion of the
20 Home in case number C-12-284308-1.

21 On May 15, 2017, Defendant pleaded not guilty and waived his speedy trial right. The trial
22 was scheduled for September 11, 2017. On September 7, 2017, the defense moved for a continuance,
23 which was not objected to by the State as it was the first trial setting. The trial was reset for
24 December 4, 2017. On November 30, 2017, Defendant's counsel moved to withdraw due to a
25 conflict and Defendant indicated he wished to hire private counsel; a status check was set for
26 December 12, 2017, and continued to January 9, 2018, to see if counsel would confirm.

27
28 ¹ Defendant did not present any witnesses at the preliminary hearing; *i.e.*, neither Davey Dorsey nor
Takiya Clemons testified.

1 In December 2017, an arrest warrant for Defendant was issued in 17F21598x for Invasion of
2 the Home, two counts of Burglary and Possession of Stolen Property. Defendant was booked on the
3 warrant in the beginning of January 2018. On January 9, 2018, private counsel was still unable to
4 confirm and the State moved to remand Defendant without bail for committing new crimes while out
5 of custody in this case. The court remanded Defendant with no bail and set a status check to appoint
6 counsel for January 16, 2018. On that date, new appointed counsel confirmed for Defendant and a
7 trial date was scheduled for April 23, 2018.

8 On March 13, 2018, Defendant pleaded guilty to Invasion of the Home pursuant to a guilty
9 plea agreement which stated, in part:

10 The State will retain the right to argue. Additionally, the State agrees not
11 to seek habitual criminal treatment. Further, the State will not oppose
12 dismissal of Count 2 and Case No. 17F21598X after rendition of sentence.
13 The State will not oppose standard bail after entry of plea. However, if I
14 fail to go to the Division of Parole & Probation, fail to appear at any future
15 court date or am arrested for any new offenses, I will stipulate to habitual
16 criminal treatment, to the fact that I have the requisite priors and to a
sentence of sixty (60) to one hundred twenty (120) months in the Nevada
Department of Corrections. Additionally I agree to pay full restitution
including for cases and counts dismissed. *See* GPA at 1–2.

17 Defendant stated during his plea canvass that he was pleading guilty on his own free will and that he
18 committed the instant offense. *See* Reporter's Transcript of Hearing Re State's Request for Entry of
19 Plea Filed June 14, 2018 ("RTH"), at 5–6. Pursuant to the terms of the agreement, Defendant was
20 released on his own recognizance due to his prior bail not having been exonerated. *Id.* at 6–7.

21 The Court also cautioned Defendant that if he failed to go to the Division of Parole and Probation, to
22 appear at any future court date, or was arrested on any new offenses, he would serve as a habitual
23 criminal. *Id.* at 7. A sentencing date was scheduled for July 17, 2018. *Id.*

24 On April 26, 2018, Defendant filed a Motion to Place on Calendar to Address Custody Status
25 and Hold. Defendant was on parole in California at the time he committed the crimes in this case
26 and 17F21598x; therefore, a hold was placed on him when he was arrested on the latter case. In the
27 motion, Defendant asked to be remanded and for his sentencing date to be moved to a sooner date.
28 The motion was heard on May 8, 2018, at which time the Court rescheduled Defendant's sentencing
to June 5, 2018; however, Defendant was not remanded.

1 On June 5, 2018, defense counsel stated that sentencing could not proceed as Defendant
2 wanted to withdraw his guilty plea and to dismiss her as counsel. Defendant stated he had filed the
3 motions previously but the court indicated it had not received them. The matter was continued to
4 June 12, 2018, for a status check regarding the motions and a new sentencing date. On June 6, 2018,
5 Defendant filed in pro per a Motion to Dismiss Counsel and a Motion to Withdraw Plea. On June 12,
6 2018, the court granted Defendant's Motion to Dismiss Counsel and set another status check for
7 confirmation of counsel for June 28, 2018. On June 28, 2018, all matters were continued to July 17,
8 2018. On July 3, 2018, the State filed an Opposition to Defendant's Pro Per Motion to Withdraw
9 Plea.

10 On July 11, 2018, Defendant was arrested just after midnight in California for Receiving
11 Stolen Property, as Defendant was in possession of property stolen from a residential burglary which
12 occurred earlier on July 10, 2018. Thus, on July 17, 2018, Defendant failed to appear and a bench
13 warrant was issued in the instant case and Defendant's Motion to Withdraw Plea was also taken off
14 calendar. On July 24, 2018, a Motion to Quash Bench Warrant was filed by Defendant's newly
15 retained counsel. The motion stated that Defendant was presently incarcerated in California but
16 would make all future court dates. On July 31, 2018, defense counsel asked for the bench warrant to
17 be quashed because Defendant could not post bail in his California case with the hold from this case.
18 The court denied the motion finding that the bench warrant remaining in place would ensure
19 Defendant's appearance in court subsequent to the resolution of his California case.

20 On November 8, 2018, Defendant appeared in custody on the bench warrant return and his
21 counsel requested thirty days to determine the status of Defendant's cases in California but the State
22 objected. The Court set a sentencing date for November 27, 2018. On November 27, 2018, newly
23 retained counsel substituted in and the matter was continued to December 13, 2018. On December
24 13, 2018, defense counsel requested a continuance because he filed a Motion for Expert Services
25 (Investigator) Pursuant to *Widdis* on December 5, 2018. The Motion for Expert Services was granted
26 by the Court on January 9, 2019, in a signed order. On January 17, 2019, it was confirmed the
27 investigator would only be working on information related to a motion to withdraw guilty plea and
28 the sentencing date was rescheduled for February 19, 2019.

1 On February 15, 2019, Defendant filed a Motion to Withdraw Guilty Plea. On February
2 19, 2019, the sentencing date was continued to March 28, 2019, to allow the State time to file an
3 opposition to the motion. That date was later changed by the parties and this Court to April 4, 2019.
4 On February 21, 2019, the State filed a Notice of Intent to Seek Punishment as a Habitual Criminal
5 and Notice of Prior Burglary and/or Home Invasion Convictions adding Defendant's two
6 convictions from California for Burglary, 1st Degree in case number MA058464-01 and Burglary,
7 1st Degree in case number MA066766- 01. Also on this date, Defendant filed a Supplemental
8 Exhibit in Support of Defendant's Motion to Withdraw Guilty Plea. The State filed an opposition on
9 March 19, 2019.

10 On April 4, 2019, the Court noted that an evidentiary hearing would be necessary and
11 scheduled the evidentiary hearing for May 13, 2019. On May 9, 2019, the evidentiary hearing was
12 rescheduled by the Court to May 23, 2019. On May 23, 2019, Defendant was not transported. Thus,
13 the evidentiary hearing was rescheduled to May 28, 2019.

14 On May 28, 2019, the Court heard sworn testimony from Defendant's brother, Davey Dorsey
15 ("Davey"), and Defendant's girlfriend, Takiya Clemons ("Takiya"). The evidentiary hearing was
16 continued to July 8, 2019, to accommodate the State's investigator, Officer McGeahy. On July 2,
17 2019, the parties agreed to continue the matter and it was rescheduled to July 11, 2019. On July 11,
18 2019, the Court heard testimony from Officer McGeahy. The State also presented multiple recorded
19 jail calls made by Defendant for the Court to consider. The recorded calls were admitted without
20 objection by the defense. Upon request by both parties, the Court considered all evidence attached to
21 the briefs as exhibits. The Court deferred ruling and this order follows.

22 **III. ARGUMENT**

23 Defendant requests to withdraw his guilty plea by arguing that he is factually innocent of the
24 charges he pled guilty to. The crux of Defendant's argument is that he entered into the plea
25 agreement to protect his minor brother, Davey who committed the residential burglary. To support
26 his assertion, Defendant offered written declarations from both Davey and Takiya that Defendant did
27 not commit the residential burglary. In addition, Davey and Takiya testified at the evidentiary
28 hearing. After reviewing all the evidence presented and under a totality of the circumstances, the

1 Court concludes that Defendant has not met his burden of proving by a preponderance of the
2 evidence that a credible fair and just reason exists to withdraw his guilty plea.

3 Nevada Revised Statutes § 176.165 provides that a defendant who has pleaded guilty may
4 petition the court to withdraw his plea “before sentence is imposed or imposition of sentence is
5 suspended.” NRS 176.165. A “district court may grant a defendant’s motion to withdraw his guilty
6 plea before sentencing for any reason where permitting withdrawal would be fair and just.”
7 *Stevenson v. State*, 354 P.3d 1277, 1281 (2015). When making this decision, a district court “must
8 consider the totality of the circumstances.” *Id.*

9 A plea of guilty is presumptively valid. *Jezierski v. State*, 107 Nev. 395, 397, 812 P.2d 355,
10 356 (1991). The defendant has the burden of proving that the plea was not entered knowingly or
11 voluntarily. *Wynn v. State*, 96 Nev. 673, 615 P.2d 946 (1980). Therefore, the defendant seeking to
12 withdraw a guilty plea must show good cause as to why a denial of the motion to withdraw plea
13 constitutes an injustice. *Wynn*, 96 Nev. at 675, 615 P.2d at 947 (citing *State v. Second Judicial Dist.*
14 *Court*, 85 Nev. 381, 385 (1969)).

15 In *Stevenson v. State*, the Nevada Supreme Court determined that the district court must
16 consider the totality of the circumstances to determine whether permitting withdrawal of a guilty
17 plea before sentencing would be fair and just. The court found that none of the reasons presented
18 warranted the withdrawal of Stevenson’s guilty plea, including allegations that the members of his
19 defense team lied about the existence of the video in order to induce him to plead guilty. *Stevenson*,
20 354 P.3d at 1281. The court found similarly unconvincing Stevenson’s contention that he was
21 coerced into pleading guilty based on the compounded pressures of the district court’s evidentiary
22 ruling, stand by counsel’s pressure to negotiate a plea, and time constraints. *Id.* As the court noted,
23 undue coercion occurs when a defendant is induced by promises or threats which deprive the plea of
24 a voluntary act. *Id.* (quoting *Doe v. Woodford*, 508 F.3d 563, 570 (9th Cir. 2007)).

25 The court also rejected Stevenson’s implied contention that withdrawal was warranted
26 because he made an impulsive decision to plead guilty without knowing definitively whether the
27 video could be viewed. *Id.* Stevenson did not move to withdraw his plea for several months. *Id.* The
28 court made clear that one of the goals of the fair and just analysis is to allow a hastily entered plea

1 made with unsure heart and confused mind to be undone, not to allow a defendant to make a tactical
2 decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made
3 a bad choice in pleading guilty. *Id.* at 1281–82 (quoting *United States v. Alexander*, 948 F.2d 1002,
4 1004 (6th Cir. 1991)).

5 The court found that considering the totality of the circumstances, it had no difficulty in
6 concluding that Stevenson failed to present a sufficient reason to permit withdrawal of his plea. *Id.* at
7 1282. Permitting him to withdraw his plea under the circumstances would allow the solemn entry of
8 a guilty plea to become a mere gesture, a temporary and meaningless formality reversible at the
9 defendant's whim, which the court would not allow. *Id.* (quoting *United States v. Baker*, 514 F.2d
10 208, 222 (D.C. Cir. 1975)).

11 Similar to *Stevenson*, this Court, after reviewing the evidence and circumstances, determines
12 none of the reasons presented by Defendant warrant a withdrawal of his guilty plea.

13 **A. Defendant's plea was freely and voluntarily entered.**

14 Because the guilty plea is assumed to be valid, Defendant had the burden of proving his plea
15 was not entered freely and voluntarily. After reviewing the record and the totality of circumstances,
16 the Court determines that Defendant's plea of guilty was and remains valid.

17 The evidence demonstrates that Defendant understood the terms of his guilty plea and the
18 consequences of his guilty plea. On March 13, 2018, Defendant signed the GPA which states that
19 Defendant was signing the plea agreement voluntarily, after consulting with his counsel, and was not
20 acting under duress, coercion, or by virtue of any promise of lenience except for what is outlined in
21 the agreement. *See* GPA at 5:12–14. Defendant's counsel, under penalty of perjury, signed the
22 Certificate of Counsel certifying she explained to Defendant the allegations contained in the charges,
23 the penalties for each charge and possible restitution, and certified that all pleas of guilty offered by
24 Defendant pursuant to the agreement were consistent with the known facts. *Id.* at 6:2–18.

25 In addition to making the above representations by signing the GPA, Defendant was
26 extensively and thoroughly canvassed by the district court, with Defendant's counsel present, when
27 he entered his plea on March 13, 2018. *See* RTH at 2–6. The court asked Defendant if anyone forced
28 him to plead guilty, and Defendant said "No, Your Honor." *Id.* at 5:3. Defendant affirmed he was

1 pleading guilty on his own free will. *Id.* at 5:6–7. When asked by the court, Defendant affirmed he
2 understood the consequences of his guilty plea. RTH at 5:11–15. Before the plea was accepted, the
3 court repeated the facts of the case, including the allegation of his illegal and forceful entry into
4 2731 Warm Rays Ave, and Defendant affirmed the truthfulness of those facts. *Id.* at 6:10–19.

5 After reviewing the transcript of the entry of plea in this matter, the Court finds that the
6 transcript does not contain any information showing that Defendant did not enter into his plea freely
7 and voluntarily. Defendant knowingly waived his privilege against self-incrimination, the right to
8 trial by jury, and the right to confront his accusers. The plea was voluntary, was not coerced, and
9 was not the result of a promise of leniency. Defendant understood the consequences of his plea, and
10 the range of punishment, and the nature of the charge, *i.e.*, the elements of the crime.

11 **B. Defendant’s new representations are belied by the record.**

12 In *Stevenson*, the Nevada Supreme Court noted that the district court gave Stevenson
13 considerable leeway to demonstrate how his counsel lied to or misled him, yet Stevenson struggled
14 to articulate a cohesive response. *Stevenson*, 354 P.3d at 1281. Here, the Court gave Defendant much
15 leeway to bring forth evidence demonstrating how his plea was not valid and that Davey committed
16 the residential burglary. After reviewing the record and all evidence within, the Court finds that the
17 record does not support Defendant’s new representations.

18 **1. The Court warned Defendant not to commit any other crimes.**

19 During the canvass on March 13, 2018, the court explicitly warned Defendant that he
20 stipulated to be treated as a habitual criminal if he was “arrested on any new offenses,” and
21 Defendant affirmed he understood the consequences of a new arrest. RTH at 7:11–19. On July 10,
22 2018, the County of Los Angeles Sheriff’s Department responded to a residential burglary in
23 Lancaster, CA. *See* County of Los Angeles Sheriff’s Department Incident Report at 1, 4, attached as
24 Exhibit “3” to State’s Opposition to Defendant’s Motion to Withdraw Guilty Plea. On July 11, 2018,
25 Defendant allegedly committed several traffic violations during an attempt by Los Angeles County
26 officers to commence a traffic stop. *Id.* at 12. During the traffic stop, Defendant allegedly gave
27 officers two false identifications. *Id.* at 16. The officers also discovered Defendant had an
28 outstanding misdemeanor warrant and was driving while his license was suspended or revoked. *Id.*

1 at 12-13. Defendant was arrested for possession of stolen property, providing false identification,
2 and having an outstanding misdemeanor warrant. *Id.* at 12.

3 Because Defendant did not heed the Court's warning and was arrested, he violated the
4 conditions of his plea agreement and bail release. Thus, Defendant could be sentenced as a habitual
5 criminal and possibly face a longer prison sentence. It was only after Defendant violated the terms of
6 his plea and bail release that he offered to provide evidence proving that Davey committed the
7 residential burglary.

8 **2. The record shows that Defendant committed the crime.**

9 Defendant argues that he is factually innocent and that his younger brother, Davey,
10 committed the residential burglary. The evidence, however, shows that Defendant, not Davey,
11 committed the crime. Defendant, not Davey was arrested at Fashion Show Mall. PHT at 37-39.
12 Despite detectives observing Defendant exit the vehicle, Defendant denied being in the car, was
13 uncooperative, and falsely identified himself. DOA at 3. Officer McGeahy testified that Defendant
14 had the rental car's key in his pocket, wore a jacket with fresh tears on the left sleeve, had fresh
15 injuries with dried blood on his right hand, and a glove with blood on it was found in his pocket.
16 PHT at 37-39. When Officer McGeahy explained that the car's GPS system tracked his rental car to
17 the location of the crime, Defendant looked down and stated, "ah shit." DOA at 3. Because
18 Defendant, not Davey, committed the crime, the Court concludes that Defendant has not shown
19 good cause for why his plea should be withdrawn.

20 **C. The Court does not find Davey credible.**

21 The Court does not find Davey's testimony credible. During Davey's testimony, the Court
22 observed his demeanor—he was clearly frustrated when the district attorney questioned him as to the
23 details of the crime he allegedly committed.² In addition, Davey testified that Defendant was at
24 Takiya's apartment when he asked Defendant for the rental car keys on November 27, 2016.
25 Recorder's Transcript of Hearing Evidentiary Hearing and Defendant's Motion to Withdraw Guilty
26

27 ² The Court notes that Davey struggled to give even basic descriptions of the locations he visited
28 when he supposedly had the rental car including the 2731 Warm Rays Avenue. Davey stated he
could not remember the locations because he was high on Xanax the morning of November 28,
2016, and he could not remember what happened that day. See EHT at 22-23.

1 Plea ("EHT") at 9:8–11. Davey claimed Defendant did not know his plan to burglarize a home. *See*
2 *id.* at 13–14. Using a GPS, Davey claimed he drove alone to the Nazareno home 1:00 p.m. and 2:00
3 p.m. on November 28, 2016. *Id.* at 13:10–14. However, the car GPS showed the car at that location
4 at 11:55 a.m. This is also when Kevin notified the police of the burglary. Davey also testified that he
5 knocked on the front and back doors before breaking the door. In contrast, Kevin testified that at
6 the time of the burglary he was in bed when he heard the doorbell ring multiple times, got up
7 because of the constant ringing, and witnessed the front door being punched upon walking
8 downstairs. PHT at 5–6. Thus, Davey's admissions are belied by the record.

9 Again, Defendant, not Davey, was the one arrested for the residential burglary and then
10 pleaded guilty. Further, Davey testified that he told Defendant he was the one who committed the
11 residential burglary during a jail phone call with Defendant a few days after the arrest. *See* EHT at
12 31–33. After reviewing all jail phone calls, the Court finds that there are not any phone calls
13 between Defendant and Davey. *See* Jail Phone Calls ("JPC"). In other words, the evidence does not
14 support Davey's testimony. Because the Court concludes that Davey was less than truthful, Davey is
15 not a credible witness.

16 **D. The Court does not find Takiya credible.**

17 In supporting the assertion that Davey committed the crime, Defendant also presented
18 declarations and testimony from Takiya, his girlfriend since 2014 and mother of his child, as an
19 alibi. Takiya testified that on November 28, 2016, she and Defendant were sleeping at her apartment
20 and both woke up after 11:55 a.m. EHT at 62:17–19. However, the record shows that Defendant,
21 had an injured hand with dried blood and fresh tears on his jacket sleeve, when he was arrested at
22 Fashion Show Mall for the residential burglary. PHT at 37–39. Furthermore, Takiya told Defendant
23 during a jail phone call that Defendant would not get into trouble if he remained at home and only
24 focused on her and his hustle. *See* JPC at 10.92.0.21, Aug. 28, 2017, 2:19 a.m., 13577KB. Because
25 Takiya has a young child with Defendant, her boyfriend, it is reasonable to conclude she wants to
26 prevent Defendant from serving a long prison sentence. After reviewing the record and considering
27 all circumstances, the Court concludes that Takiya was less than truthful and thereby not a credible
28 witness.

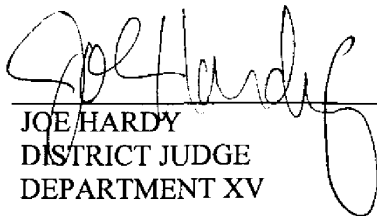
1 **IV. CONCLUSION**

2 After considering Defendant's arguments, as well as the testimony presented at the multiple
3 days of the evidentiary hearing and listening to the jail calls, the Court finds that Defendant entered
4 into his plea freely and voluntarily. In addition, the Court does not find Defendant's witnesses
5 credible because the record contradicts their testimony. Therefore, the Court having considered the
6 preponderance of the evidence and the totality of circumstances, and there being no fair and just
7 reason to permit the withdrawal of Defendant's guilty plea, Defendant's Motion to Withdraw Guilty
8 Plea is denied.

9 **ORDER**

10 **THEREFORE, IT IS HEREBY ORDERED** that Defendant's Motion to Withdraw Guilty
11 Plea is DENIED.

12 DATED this 16th day of August, 2019.

13 
14 _____
15 JOE HARDY
16 DISTRICT JUDGE
17 DEPARTMENT XV



1 GARY A. MODAFFERI, ESQ.
2 LAW OFFICES OF GARY A. MODAFFERI, LLC
3 Nevada Bar No. 12450
4 Hawaii Bar No. 3379
5 Email: modafferilaw@gmail.com
6 612 S. 3rd Street, Suite A
7 Las Vegas, Nevada 89101
8 Tel: (702) 327-3033
9 *Attorney for Defendant*

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,)
9) CASE NO: C-17-323324-1
10 Plaintiff,) DEPT NO: XV
11 vs.)
12 DENZEL DORSEY,)
13 Defendant.)
14)

15 **DEFENDANT DENZEL DORSEY'S SENTENCING MEMORANDUM**

16 COMES NOW, DENZEL DORSEY, Defendant herein, by and through his attorney
17 Gary A. Modafferi, Esq., of the Law Office of Gary A. Modafferi, LLC, and respectfully submits
18 the following Sentencing Memorandum.
19

20 This Sentencing Memorandum is offered in addition to any evidence and/or argument
21 adduced at a hearing on this matter.

22 Respectfully submitted this 23rd day of September, 2019.

23 /s/ Gary A. Modafferi

24
25 **GARY A. MODAFFERI, ESQ.**
26 **Nevada Bar No. 12450**
27 612 S. 3rd Street, Suite A
28 Las Vegas, Nevada 89101
Tel: (702) 327-3033

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1 agreed upon sentence is illegal because the minimum term must be forty percent (40%) of the
2 maximum term. If the State finds it necessary to change the agreed upon sentence so that the
3 minimum term of 120 months equals 40%, then the Defendant's minimum term should be 48
4 months not 60 months because Due Process prevents increasing the sentence agreed upon in the
5 GPA.⁶ The Nevada Supreme Court has consistently held that the rule of lenity obligates the court
6 to interpret statutes that contain ambiguity in the prescribed conduct in defining a crime or
7 imposing a penalty should be resolved in the Defendant's favor.”
8

9
10 **CONCLUSION**

11 The Defendant respectfully urges the Court to sentence the Defendant to a term of 48 to
12 120 months.

13 Respectfully submitted this 23rd day of September, 2019.

14 /s/ Gary A. Modafferi

15 **GARY A. MODAFFERI, ESQ.**

16 **Nevada Bar No. 12450**

17 815 S. Casino Center Drive

18 Las Vegas, Nevada 89101

19 Telephone 702.474.4222

20 Facsimile 702.474.1320
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28

⁶ Firestone v. State, 120 Nev. 13, 16, 83 P.3d. 279, 281 (2004); Castaneda v. State, 313 P.3d. 108 (Nev. 2016)

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10 *Attorney for Defendant*

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,)
15) CASE NO: C-17-323324-1
16 Plaintiff,) DEPT NO: XVII
17)
18 vs.)
19)
20 DENZEL DORSEY,)
21)
22 Defendant.)
23)
24)

25 **CERTIFICATE OF SERVICE**

26 I, the undersigned, hereby certify that on the 23rd day of September, 2019, I served a true
27 copy of **SENTENCING MEMORANDUM** upon the following:

28 Sandra Digiacomo, Esq,
Chief Deputy District Attorney
sandra.digiacomo@clarkcountyda.com

/s/ Erika W. Magana

Assistant to Gary A. Modafferi, Esq.

EXHIBIT “A”

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 09 2018

BY: Keri Cromer
KERI CROMER, DEPUTY

GPA
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
SANDRA K. DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006204
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-

DENZEL DORSEY,
#2845569

Defendant.

CASE NO: C-17-323324-1

DEPT NO: XXII

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **COUNT 1 - INVASION OF THE HOME**
(Category B Felony - NRS 205.067 - NOC 50435), as more fully alleged in the charging
document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as
follows:

The State will retain the right to argue. Additionally, the State agrees not to seek
habitual criminal treatment. Further, the State will not oppose dismissal of Count 2 and Case
No. 17F21598X after rendition of sentence. The State will not oppose standard bail after entry
of plea. However, if I fail to go to the Division of Parole & Probation, fail to appear at any
future court date or am arrested for any new offenses, I will stipulate to habitual criminal
treatment, to the fact that I have the requisite priors and to a sentence of sixty (60) to one
hundred twenty (120) months in the Nevada Department of Corrections. Additionally I agree
to pay full restitution including for cases and counts dismissed.

C-17-323324-1

GPA

Guilty Plea Agreement

4728986



W:\2016\2016FVH20\22\16FH2022-GPA-(DORSEY__DENZEL)-001.DOCX

1 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
2 and/or impounded in connection with the instant case and/or any other case negotiated in
3 whole or in part in conjunction with this plea agreement.

4 I understand and agree that, if I fail to interview with the Department of Parole and
5 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,
6 by affidavit review, confirms probable cause against me for new criminal charges including
7 reckless driving or DUI, but excluding minor traffic violations, the State will have the
8 unqualified right to argue for any legal sentence and term of confinement allowable for the
9 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
10 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without
11 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite
12 twenty-five (25) year term with the possibility of parole after ten (10) years.

13 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
14 plea agreement.

15 CONSEQUENCES OF THE PLEA

16 I understand that by pleading guilty I admit the facts which support all the elements of
17 the offense(s) to which I now plead as set forth in Exhibit "1".

18 **As to Count 1**, I understand that as a consequence of my plea of guilty the Court must
19 sentence me to imprisonment in the Nevada Department of Corrections for a minimum term
20 of not less than ONE (1) year and a maximum term of not more than TEN (10) years. The
21 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of
22 imprisonment. I understand that I may also be fined up to \$10,000.00. I understand that the
23 law requires me to pay an Administrative Assessment Fee.

24 I understand that, if appropriate, I will be ordered to make restitution to the victim of
25 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
26 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
27 reimburse the State of Nevada for any expenses related to my extradition, if any.

28 ///

1 **As to Count 1**, I understand that I am not eligible for probation for the offense to which
2 I am pleading guilty.

3 I understand that I must submit to blood and/or saliva tests under the Direction of the
4 Division of Parole and Probation to determine genetic markers and/or secretor status.

5 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
6 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or
7 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation
8 and may receive a higher sentencing range.

9 I understand that if more than one sentence of imprisonment is imposed and I am
10 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
11 the sentences served concurrently or consecutively.

12 I understand that information regarding charges not filed, dismissed charges, or charges
13 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

14 I have not been promised or guaranteed any particular sentence by anyone. I know that
15 my sentence is to be determined by the Court within the limits prescribed by statute.

16 I understand that if my attorney or the State of Nevada or both recommend any specific
17 punishment to the Court, the Court is not obligated to accept the recommendation.

18 I understand that if the offense(s) to which I am pleading guilty was committed while I
19 was incarcerated on another charge or while I was on probation or parole that I am not eligible
20 for credit for time served toward the instant offense(s).

21 I understand that if I am not a United States citizen, any criminal conviction will likely
22 result in serious negative immigration consequences including but not limited to:

- 23 1. The removal from the United States through deportation;
- 24 2. An inability to reenter the United States;
- 25 3. The inability to gain United States citizenship or legal residency;
- 26 4. An inability to renew and/or retain any legal residency status; and/or
- 27 5. An indeterminate term of confinement, with the United States Federal
28 Government based on my conviction and immigration status.

///

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a legal resident.

I understand that the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the District Attorney has specifically agreed otherwise, the District Attorney may also comment on this report.

WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.
2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.
6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

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///

1 VOLUNTARINESS OF PLEA

2 I have discussed the elements of all of the original charge(s) against me with my
3 attorney and I understand the nature of the charge(s) against me.

4 I understand that the State would have to prove each element of the charge(s) against
5 me at trial.

6 I have discussed with my attorney any possible defenses, defense strategies and
7 circumstances which might be in my favor.

8 All of the foregoing elements, consequences, rights, and waiver of rights have been
9 thoroughly explained to me by my attorney.

10 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
11 that a trial would be contrary to my best interest.

12 I am signing this agreement voluntarily, after consultation with my attorney, and I am
13 not acting under duress or coercion or by virtue of any promises of leniency, except for those
14 set forth in this agreement.

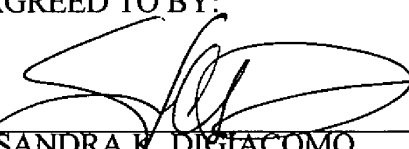
15 I am not now under the influence of any intoxicating liquor, a controlled substance or
16 other drug which would in any manner impair my ability to comprehend or understand this
17 agreement or the proceedings surrounding my entry of this plea.

18 My attorney has answered all my questions regarding this guilty plea agreement and its
19 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

20 DATED this 13th day of March, 2018.

21 
22 _____
23 DENZEL DORSEY
24 Defendant

25 AGREED TO BY:

26 
27 _____
28 SANDRA E. DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006204

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court
3 hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
- 6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.
- 8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:
 - 12 a. The removal from the United States through deportation;
 - 13 b. An inability to reenter the United States;
 - 14 c. The inability to gain United States citizenship or legal residency;
 - 15 d. An inability to renew and/or retain any legal residency status; and/or
 - 16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.
- 18 Moreover, I have explained that regardless of what Defendant may have been
19 told by any attorney, no one can promise Defendant that this conviction will not
20 result in negative immigration consequences and/or impact Defendant's ability
21 to become a United States citizen and/or legal resident.
- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
23 consistent with the facts known to me and are made with my advice to the
24 Defendant.
- 25 5. To the best of my knowledge and belief, the Defendant:
 - 26 a. Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement,
 - 28 b. Executed this agreement and will enter all guilty pleas pursuant hereto
voluntarily, and
 - c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

29 Dated: This 13th day of March, 2018.



ATTORNEY FOR DEFENDANT

30 erg/L-5

EXHIBIT “B”

421 P.3d 803 (2018)
134 Nev. Adv. Op. 50

The STATE of Nevada, Petitioner,
v.
The SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR the COUNTY
OF WASHOE; and the Honorable William A. Maddox, Respondents, and
John Thomas Kephart, Real Party in Interest.

No. 73389.

Supreme Court of Nevada.

July 19, 2018.

Original petition for a writ of mandamus in a criminal matter.

Petition granted.

Adam Paul Laxalt, Attorney General, Carson City; Christopher J. Hicks, District Attorney, and Joseph R. Plater, Deputy District Attorney, Washoe County, for Petitioner.

Jeremy T. Bosler, Public Defender, and John Reese Petty, Chief Deputy Public Defender, Washoe County, for Real Party in Interest.

804 *804 BEFORE PICKERING, GIBBONS and HARDESTY, JJ.

OPINION

By the Court, PICKERING, J.:

Nevada law imposes increasingly serious penalties on repeat domestic battery offenders. A first offense is a misdemeanor, while a third domestic battery offense within seven years of the first constitutes a felony. A jury convicted John Kephart of domestic battery, his third such offense in seven years. Kephart's second domestic battery conviction resulted from a plea bargain by which Kephart pleaded guilty to and was sentenced for a "first offense" domestic battery. The district court has ruled that it will not consider Kephart's second conviction at sentencing because it would be unfair, given the earlier plea deal, to use the second "first offense" conviction to enhance Kephart's most recent offense to a felony.

Kephart received the benefit of his earlier plea deal when he was given the shorter sentence and lower fine only available to a first-time offender. Before entering his plea, Kephart signed a written acknowledgment that, while he would be sentenced for a "first offense," the State could use that offense and any other prior offenses for enhancement purposes should he commit another domestic battery within seven years. Under these circumstances, using Kephart's two prior "first offense" convictions to enhance his third domestic battery conviction to a felony does not violate the plea bargain by which the second conviction was obtained. We therefore grant the State's petition for a writ of mandamus and direct the district court to take both of Kephart's prior convictions into account in imposing sentence and entering the judgment of conviction in this case.

I.

Kephart has three domestic battery convictions. The first conviction dates back to May 2010, when Kephart pleaded no contest to "Domestic Battery—1st Offense." Kephart was represented by counsel and signed an admonishment of rights form in which he acknowledged that "the State will use this conviction. . . to enhance the penalty for any subsequent offense." The form also set out the range of penalties for a "Second Offense within 7 years (Misdemeanor)" and a "Third Offense or any subsequent offense within 7 years (Category C felony)."

Kephart's second conviction came two months later, in July 2010. Citing the May 2010 conviction, the criminal complaint in the second case charged Kephart with "domestic battery with one prior conviction within the last seven years." A second domestic battery offense in seven years remains a misdemeanor but it carries a longer mandatory minimum term of imprisonment (ten days instead of two days), a higher minimum fine (\$500 instead of \$200), and more hours of community service (100-200 hours instead of 48-120 hours) than a "first offense" domestic battery conviction. *See* NRS 200.485(1)(a), (b) (2015).^[1]

Kephart represented himself in the second case. He did so after being advised of his constitutional rights and signing a written waiver of the right to court-appointed counsel.^[2] Initially, Kephart pleaded not guilty. Later, after the prosecutor amended the complaint by crossing out the references to the May 2010 conviction and writing in "1st" offense everywhere "2nd" offense appeared, Kephart changed his plea from not guilty to guilty. No transcript exists of the change-of-plea hearing, but the district court minutes note the district attorney "couldn't prove the prior domestic battery." The district court accepted Kephart's guilty plea and sentenced *805 him to the statutory minimums applicable to a first offense domestic battery—two days in jail with the remaining 28-day sentence suspended, a \$200 fine, and 48 hours of community service.

The plea was not memorialized in a formal plea agreement. Instead, Kephart signed and initialed an "admonishment of rights" form like the one he signed in connection with his May 2010 conviction. This form advised Kephart of the rights he waived by pleading guilty and reminded him of the increasingly severe sentences Nevada law imposes on repeat domestic battery offenders. In signing, Kephart acknowledged that:

I understand that the State will use this conviction, and any other prior conviction from this or any other state which prohibits the same or similar conduct, to enhance the penalty for any subsequent offense.

(emphasis added).

Kephart's third, and current, conviction came in January 2017, when the jury found him guilty of one count of domestic battery. In charging the offense, the State relied on Kephart's May and July 2010 domestic battery convictions to enhance the offense to a Category C felony. *See* NRS 200.485(1)(c). Kephart objected to the State using the July 2010 conviction for felony enhancement since the conviction resulted from plea negotiations which, he alleged, obligated the State to treat the conviction as a first offense for all purposes.

The district judge deferred decision on Kephart's objection until trial concluded. *See* NRS 200.485(4) (in prosecuting a repeat domestic battery offense the "facts concerning a prior offense must . . . not be read to the jury or proved at trial but must be proved at the time of sentencing"). After the jury returned its verdict, the district court conducted a hearing on Kephart's objection. At the hearing, Kephart testified that he thought pleading guilty to the second conviction as a "first offense" meant that if he reoffended the next conviction would be a second offense. On cross-examination, Kephart admitted signing the admonishment of rights form and that he "kind of" understood the acknowledgment about the State using the conviction and any other prior conviction for "future enhancement purposes. The district court did not find that the State affirmatively agreed not to use the July 2010 conviction for enhancement purposes, but nonetheless ruled in Kephart's favor. It deemed the notice to Kephart that the July 2010 conviction could be used to enhance a subsequent offense to a felony inadequate and entered an order stating that it would not consider Kephart's July 2010 conviction in sentencing him.

The district court vacated the sentencing date so the State could appeal. After this court dismissed the State's direct appeal for want of jurisdiction, *see State v. Kephart*, Docket No. 72481, ___ Nev. ___, 2017 WL 2483605 (Order Dismissing Appeal, June 6, 2017), the State filed the petition for a writ of mandamus now presented. We exercise our discretion in favor of granting extraordinary writ relief, *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991), because the State has no other adequate remedy at law, *see* NRS 34.170; NRS 177.015(3), and the district court's refusal, on this record, to take Kephart's July 2010 conviction into account at sentencing violates the statutory mandate in NRS 200.485(1)(c). *See State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011).

II.

A.

Each of Kephart's convictions has been for the crime of "domestic battery, a violation of NRS 33.018, NRS 200.481, and NRS 200.485." Though three statutes are cited, they cross-reference each other and together establish the elements of battery constituting domestic violence and its associated penalties. The cross-referenced statutory scheme dates back to 1997 when the Legislature enacted NRS 200.485 and reorganized NRS 200.481 to discourage recidivism by enhancing the penalties for repeat domestic violence offenses. See English v. State, 116 Nev. 828, 832-35, 9 P.3d 60, 62-64 (2000) (chronicling the history of NRS 200.485 and its relationship to NRS 33.018 and NRS 200.481).

806 *806 NRS 200.485 states the penalties for convictions for the crime of battery constituting domestic violence:

1. Unless a greater penalty is provided pursuant to subsection 2 or NRS 200.481, a person convicted of a battery which constitutes domestic violence pursuant to NRS 33.018:

(a) For the first offense within 7 years, is guilty of a misdemeanor and shall be sentenced to:

(1) Imprisonment in the city or county jail or detention facility for not less than 2 days, but not more than 6 months; and

(2) Perform not less than 48 hours, but not more than 120 hours, of community service.

The person shall be further punished by a fine of not less than \$200, but not more than \$1,000. . . .

(b) For the second offense within 7 years, is guilty of a misdemeanor and shall be sentenced to:

(1) Imprisonment in the city or county jail or detention facility for not less than 10 days, but not more than 6 months; and

(2) Perform not less than 100 hours, but not more than 200 hours, of community service.

The person shall be further punished by a fine of not less than \$500, but not more than \$1,000.

(c) For the third and any subsequent offense within 7 years, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

The statute further provides: "An offense that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions." NRS 200.485(4) (2015), now codified in revised form as NRS 200.485(5) (2017); see note 1, *supra*.

The 1997 Legislature modeled NRS 200.485 on Nevada's DUI enhancement statutes, now principally codified at NRS 484C.400 (2017). See English, 116 Nev. at 834, 9 P.3d at 63; compare NRS 200.485(1) & (4) (2015), with NRS 484C.400(1) & (2). In interpreting NRS 200.485 and its related statutes, this court thus looks to cases that have construed Nevada's DUI enhancement laws. English, 116 Nev. at 834, 9 P.3d at 63.

B.

A plain-text reading of NRS 200.485 undercuts the district court's decision not to count Kephart's July 2010 conviction against him because it purported to be for a "first offense." What determines felony enhancement under the statute is the defendant having committed three domestic battery offenses within seven years, two of which are evidenced by judgments of conviction—not the designation of the prior offenses as "first" and "second" offenses. Cf. Speer v. State, 116 Nev. 677, 679-80, 5 P.3d 1063, 1064-65 (2000) (holding that the DUI enhancement statute that NRS 200.485(4) copies "does not limit offenses that may be used for enhancement to those designated as a 'first offense' or a 'second offense'"). Even treating Kephart's July 2010 conviction as a "first offense" for all purposes leaves his May 2010 conviction for his first "first offense." And NRS 200.485(4) says that the sequence of the prior offenses and convictions does not matter, only how many of them there are. So, calling the July 2010 conviction a first offense still leaves Kephart with two prior offenses evidenced by convictions within seven years of his current offense, making his current offense a felony under NRS 200.485(1)(c).

Our cases construing the DUI enhancement statutes complicate this plain-text approach. Citing Santobello v. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) ("when a plea rests in any significant degree on a promise or

agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled"), and Van Buskirk v. State, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (in enforcing a plea bargain we hold the State to "the most meticulous standards of both promise and performance"), we held in State v. Smith, 105 Nev. 293, 299, 774 P.2d 1037, 1041 (1989), *abrogated on other grounds as recognized by* Byars v. State, 130 Nev. 848, 854, 336 P.3d 939, 943 (2014), that unless a defendant is told otherwise, it is reasonable to expect that, in being allowed to plead guilty to a "first offense" DUI for a known second offense, the State is agreeing to treat the conviction as a first offense for all purposes, including future enhancement. Part of the incentive to resolve a second DUI charge by pleading guilty to a first offense is "the knowledge that a first-time offense, for purposes of minimizing criminal penalties for future drunk-driving convictions, [is] preferable to a second offense." *Id.* at 298, 774 P.2d at 1041. Thus, when a defendant pleads a second DUI charge down to a first offense, "[t]he spirit of constitutional principles" require "appropriate clarification and warning" that the conviction will count as a second offense for future enhancement purposes for it to be later so used. *Id.* Because the record did not show that Smith received such clarification or warning, the court interpreted the plea bargain as an agreement to treat the offense as a first offense for both sentencing and future enhancement purposes. *Id.* at 299, 774 P.2d at 1041. Accord Perry v. State, 106 Nev. 436, 438, 794 P.2d 723, 724 (1990) (reaffirming *Smith*); see State v. Crist, 108 Nev. 1058, 1059, 843 P.2d 368, 369 (1992) (declining to reconsider *Smith* and extending it to out-of-state pleas). But see Johnson v. Arkansas, 55 Ark. App. 117, 932 S.W.2d 347, 349 (1996) (declining to follow *Crist* as inconsistent with statutory enhancement penalty scheme, which bases felony enhancement on the number of prior offenses not their designation as first, second, or third).

We returned to the issue of using a second DUI pleaded to as a first offense to enhance a third offense to a felony in Speer v. State, 116 Nev. 677, 5 P.3d 1063 (2000). The defendant in *Speer* pleaded guilty to his third DUI offense in seven years. *Id.* at 678, 5 P.3d at 1064. The first conviction was for a felony DUI as the result of three DUI convictions during the preceding seven-year period. *Id.* The second conviction was for a misdemeanor pleaded to and sentenced as a "first offense." *Id.* But unlike *Smith*, where the record was silent as to future enhancement, in entering the guilty plea in *Speer*, "the parties agreed that the conviction would not be treated as a 'first offense' for all purposes and that *Speer's* next offense could be treated as a felony." *Id.*

Speer mainly argued that the State could not use his prior felony conviction as one of three convictions within seven years, because the applicable statute only allowed use of first-offense and second-offense misdemeanor convictions, and not a prior felony conviction, for enhancement. Speer, 116 Nev. at 679, 5 P.3d at 1064. Rejecting *Speer's* argument, the court deemed the statute plain and unambiguous in providing that "any two prior offenses may be used to enhance a subsequent DUI so long as they occurred within 7 years of the principal offense and are evidenced by a conviction." *Id.* at 679-80, 5 P.3d at 1064. Thus, the DUI sentencing statute did "not limit offenses that may be used for enhancement to those designated as a 'first offense' or a 'second offense,'" and a felony DUI conviction could be used as one of the three offenses within seven years. *Id.* at 680, 5 P.3d at 1064. *Speer* distinguished *Smith*, *Perry*, and *Crist* as cases in which

this court has held a second DUI conviction may not be used to enhance a conviction for a third DUI arrest to a felony where the second conviction was obtained pursuant to a guilty plea agreement specifically permitting the defendant to enter a plea of guilty to first offense DUI and limiting the use of the conviction for enhancement purposes. . . . The rule recognized [*Smith*, *Perry*, and *Crist*] is not applicable where, as here, there is no plea agreement limiting the use of the prior conviction for enhancement purposes. Because [*Smith*, *Perry*, and *Crist*] depend on the existence of a plea agreement limiting the use of the prior conviction for enhancement purposes, they do not stand for the general proposition that only offenses designated as a "first" or "second" offense may be used for enhancement purposes.

Speer, 116 Nev. at 680, 5 P.3d at 1065.

The State quotes this language from *Speer* and urges that, because the plea agreement did not specifically limit the State's use of the conviction for felony enhancement, it may use the conviction. But *Speer* misdescribes or at least oversimplifies *Smith* and its progeny. *808 The plea agreement in *Smith* did not "specifically. . . limit[] the use of the conviction for enhancement purposes," Speer, 116 Nev. at 680, 5 P.3d at 1065; the record evidencing the plea agreement in *Smith* was silent on the subject of felony enhancement. Smith, 105 Nev. at 298, 774 P.2d at 1041 ("Nothing in the record indicates that, in 1986, the State advised Smith that after receiving treatment as a first-offender, the 1986 conviction would thereafter revert to a second offense in the event of further drunk-driving convictions."); accord Perry, 106 Nev. at 437, 794 P.2d at 724 (quoting this language from *Smith* and saying "the facts [in *Smith*] were similar to those in the instant case"). *Smith* holds that a defendant who pleads guilty to a first offense DUI originally charged as a second may reasonably expect the State to

treat the conviction as a first offense for all purposes, if the State allows the plea to be entered "without appropriate clarification and warning." 105 Nev. at 298, 774 P.2d at 1041.

It was in *Speer*, not *Smith*, that the plea deal specifically addressed enhancement: In *Speer*, "the parties agreed that the conviction would *not* be treated as a 'first offense' for all purposes and that *Speer's* next offense could be treated as a felony," 116 Nev. at 678, 5 P.3d at 1064 (emphasis added). Because the plea agreement allowed the State to use the second conviction, pleaded to as a first offense, for felony enhancement, the defendant could not reasonably expect the State to forgo that option. Having provided *Speer* the "appropriate clarification and warning" *Smith* requires, 105 Nev. at 298, 774 P.2d at 1041, the State could use *Speer's* second "first offense" to enhance his third offense in seven years to a felony. *Speer*, 116 Nev. at 681, 5 P.3d at 1065-66.

C.

Consistent with *Smith* and *Speer*, we hold that, when a plea agreement allows a defendant to plead guilty to a first offense for a second domestic battery conviction, it is reasonable for the defendant to expect first-offense treatment of the conviction for all purposes, see *Smith*, 105 Nev. at 298, 774 P.2d at 1041; *Perry*, 106 Nev. at 438, 794 P.2d at 724; *Crist*, 108 Nev. at 1059, 843 P.2d at 368-69, unless the defendant receives "appropriate clarification and warning" (*Smith*, 105 Nev. at 298, 774 P.2d at 1041)—or explicitly agrees (*Speer*, 116 Nev. at 678, 5 P.3d at 1064)—that the State may count the conviction as a second offense for future enhancement purposes.

Applying these principles to this case, we must decide whether Kephart's July 2010 plea to "first offense" domestic battery is more like *Smith*, where it was reasonable for the defendant to expect first-offense treatment for all purposes, or *Speer*, where the agreement provided for the defendant to be sentenced for a first offense but for the conviction to count as a second offense for enhancement purposes. In interpreting a plea agreement, the object is to enforce the reasonable expectations of the parties. See *State v. Crockett*, 110 Nev. 838, 842, 877 P.2d 1077, 1079 (1994); *Van Buskirk*, 102 Nev. at 244, 720 P.2d at 1217. Contract principles apply but, because plea agreements "implicate the deprivation of human freedom, the rules governing their interpretation, although having their roots in the principles of contract law, also acknowledge that 'concern for due process outweigh[s] concern for freedom of contract.'" *United States v. Mankiewicz*, 122 F.3d 399, 403 n.1 (7th Cir. 1997) (quoting *United States v. Sandles*, 80 F.3d 1145, 1148 (7th Cir. 1996)).

809 Kephart did not sign a formal plea agreement establishing the terms of his July 2010 plea. The record includes, though, Kephart's May 2010 judgment of conviction for his first "first offense" domestic battery, the written admonishment of rights Kephart signed in pleading guilty to his second "first offense" domestic battery in July of 2010, and the July 2010 judgment of conviction. In signing the July 2010 admonishment of rights form, Kephart specifically acknowledged that "I understand that the State will use this conviction, and any other prior conviction from this or any other state which prohibits the same or similar conduct, to enhance the penalty for any subsequent offense." He was also told what the penalties were for first-offense, second-offense, and third-offense domestic battery over a seven-year period. This information, combined with the reference to the *809 use of "any other prior conviction" for "same or similar conduct," provided Kephart "appropriate clarification and warning" that the July 2010 conviction, in conjunction with his prior conviction from May 2010, would be used to enhance a subsequent third offense to a felony under NRS 200.485.

Kephart testified that he "understood" the July 2010 conviction would be a first offense for all purposes, but this understanding appears entirely subjective and not based on anything the State or the district court said or did to contradict the acknowledgment Kephart signed. Compare *Rouse v. State*, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975) ("mere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea"), with *United States v. Malone*, 815 F.3d 367, 370 (7th Cir. 2016) ("we give unambiguous terms in the plea agreement their plain meaning"). Kephart received the benefit of his July 2010 plea deal when he was given the shorter sentence, lower fine, and lighter community service obligation only first offenders are eligible for. The record does not establish that, in entering into this plea deal, the State also agreed to treat Kephart's July 2010 conviction as a first offense for future enhancement purposes. Kephart's belief otherwise, in the face of the admonishment he acknowledged, was unreasonable. Under NRS 200.485(1)(c), Kephart has sustained three domestic battery convictions over a seven-year period for which the district court must now sentence him.

We therefore, grant the State's request for extraordinary relief and direct the clerk of this court to issue a writ of mandamus directing the district court to admit Kephart's July 2010 conviction for domestic battery to enhance his third conviction to a

felony.

We concur:

Gibbons, J.

Hardesty, J.

[1] The Legislature amended NRS 200.485 in 2017, *see* 2017 Nev. Stat., ch. 496, § 9, at 3183, but this opinion refers to the pre-amendment version of NRS 200.485, since the underlying offense predates the amendment.

[2] *See Koenig v. State*, 99 Nev. 780, 788, 672 P.2d 37, 42 (1983) (holding that a prior uncounseled misdemeanor conviction can be used for enhancement purposes if preceded by a valid waiver of counsel and the record establishes the proceedings were constitutionally adequate) (citing *Baldasar v. Illinois*, 446 U.S. 222, 100 S.Ct. 1585, 64 L.Ed.2d 169 (1980) (plurality opinion)). Although the Supreme Court later overruled *Baldasar* in *Nichols v. United States*, 511 U.S. 738, 748-49, 114 S.Ct. 1921, 128 L.Ed.2d 745 (1994), it did so on grounds not argued to undermine *Koenig's* application here.

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DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 DENZEL DORSEY,
13 #2845569

14 Defendant.

CASE NO: C-17-323324-1

DEPT NO: XV

15 **STATE'S RESPONSE TO DEFENDANT DENZEL DORSEY'S**
16 **SENTENCING MEMORANDUM**

17 DATE OF HEARING: OCTOBER 3 2019
18 TIME OF HEARING: 8:30 A.M.

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through SANDRA DIGIACOMO, Chief Deputy District Attorney, and
20 hereby submits the attached Points and Authorities in Response to Defendant Denzel Dorsey's
21 Sentencing Memorandum.

22 This Response is made and based upon all the papers and pleadings on file herein, the
23 attached Points and Authorities in support hereof, and oral argument at the time of hearing, if
24 deemed necessary by this Honorable Court.

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1 POINTS AND AUTHORITIES

2 With his Sentencing Memorandum, Defendant asks this Court to *not follow* the
3 negotiations contained in the Guilty Plea Agreement; Defendant requests that this Court *not*
4 sentence him as a Habitual Criminal, but instead to a term of forty-eight (48) to one hundred
5 twenty (120) months in the Nevada Department of Corrections. Such a sentence violates the
6 terms of the Guilty Plea Agreement.

7 In interpreting a plea agreement, the object is to enforce the reasonable expectations of
8 the parties. State v. Second Judicial Dist. Court in & for Cty. of Washoe, 134 Nev. 384, 391,
9 421 P.3d 803, 808 (2018) (citing State v. Crockett, 110 Nev. 838, 842, 877 P.2d 1077, 1079
10 (1994); and Van Buskirk, 102 Nev. at 244, 720 P.2d at 1217). In this case, Defendant agreed
11 that if he failed to appear at any future Court date or was arrested for any new offenses, he
12 would stipulate to the following three (3) things: (1) habitual criminal treatment; (2) to the fact
13 that he has the requisite priors to be adjudicated as a habitual criminal; and (3) to a sentence
14 of sixty (60) to one hundred twenty (120) months in the Nevada Department of Corrections.
15 Therefore, the reasonable expectation of the parties *after* Defendant failed to appear on July
16 17, 2018 and *after* Defendant was arrested on new charges in California on July 11, 2018, was
17 that Defendant would be adjudicated guilty as a Habitual Criminal and receive a sentence with
18 a minimum of sixty (60) months in prison.

19 Pursuant to NRS 207.010(1)(a), a Defendant adjudicated under the “small” habitual
20 criminal statute “...shall be punished for a category B felony by imprisonment in the state
21 prison for a minimum term of not less than 5 years and a maximum term of not more than 20
22 years.” With these negotiations, Defendant agreed to adjudication as a habitual criminal and
23 to a minimum sentence of five (5) years or sixty (60) months in prison if he violated the
24 conditions of the Guilty Plea Agreement. Defendant *did violate* the terms of the agreement
25 and does not contest that fact in his Sentencing Memorandum. Instead, Defendant asserts that

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1 because there was a typographical error in the Guilty Plea Agreement regarding the maximum
2 sentence stipulated to by the parties,¹ that he should receive the benefit of that typographical
3 error, even if it is contrary to the expectations of the parties.

4 Defendant cites to Santobello v. New York, 404 U.S. 257, 262 (1971) for the
5 proposition that “when a plea rests in any significant degree on a promise or agreement of the
6 prosecutor, so that it can be said to be part of the inducement or consideration, such promise
7 must be fulfilled.” In Santobello, a prosecutor promised to make no recommendation at
8 sentencing in exchange for the Defendant’s guilty plea. Id. at 259. At the time of sentencing,
9 the Defendant’s case was handled by a different prosecutor, who recommended the maximum
10 sentence. Id. The Judge, who claimed to not be influenced by the prosecutor’s
11 recommendation, imposed the maximum sentence. Id. The United States Supreme Court
12 vacated the sentence and remanded it back to the state Court to determine whether specific
13 performance was appropriate, or whether the Defendant was entitled to withdraw his guilty
14 plea. Id. at 262-263.

15 Unlike in Santobello, here the State is not willfully violating the terms of the Guilty
16 Plea Agreement. This Court is simply barred from imposing the sentence stipulated to in the
17 Guilty Plea Agreement by both parties as it would be an illegal sentence per NRS 193.130.²
18 The State is only requesting that this Court enforce the terms of the Guilty Plea Agreement
19 that are enforceable, i.e. adjudicating Defendant as a habitual criminal and accepting that he
20 has the requisite priors. The parties’ expectations were that Defendant would be adjudicated
21 as a habitual criminal and receive (60) months as the minimum sentence. If this Court were
22 to grant Defendant’s request of sentencing him to forty-eight (48) to one hundred twenty (120)
23 months, it could not be as a habitual criminal and that is contrary to the expectations of the
24 parties.

25
26 ¹ The minimum sentence under NRS 207.010(1)(a) is a minimum of five (5) years and a maximum of twelve and one half
27 (12½) years or one hundred fifty (150) months, not minimum of five (5) years and a maximum of ten (10) years or one
28 hundred twenty (120) months.

² The actual agreement between the parties before the Guilty Plea Agreement was drafted was that Defendant would
stipulate to sixty (60) to two hundred forty (240) months under the habitual criminal statute if he violated the terms of the
Guilty Plea Agreement; therefore, Defendant is receiving a benefit from the typographical error as the State is only
requesting the minimum sentence allowed per NRS 207.010.

1 Defendant also directs this Court to Citti v. State, 107 Nev. 89, 91, 807 P.2d 724, 726
2 (1991) in which the Nevada Supreme Court has held that "...the violation of the terms or 'the
3 spirit' of the plea bargain requires reversal." Id. at 91. In Citti, the Defendant had pleaded
4 guilty to two (2) counts in exchange for the dismissal of charges and the agreement that the
5 prosecutor would argue for no more than five (5) years and two (2) years respectively on the
6 two (2) counts. Id. at 90. After the Defendant entered his plea, the prosecutor in the case did
7 not honor the terms of the agreement and argued for greater sentences for both crimes. Id. at
8 90-91. The sentencing Judge imposed the greater sentences as requested by the prosecutor.
9 Id. at 91. On appeal, the Court determined the prosecutor breached the plea agreement and
10 remanded the case for a new sentencing with specific performance of the agreement. Id. at
11 92-94.

12 Again, the facts of Citti can be easily distinguished from this case as the State is not
13 willfully violating the terms of the Guilty Plea Agreement. The Guilty Plea Agreement
14 contains three (3) terms in which the parties agreed would be imposed if Defendant violated
15 the agreement and *only* the third term is unenforceable due to a typographical error.³
16 Defendant should not be allowed to violate **ALL** of the terms in the Guilty Plea Agreement
17 due to a typographical error in one section as long as the expectations of the parties can be
18 determined and Defendant's due process rights are not violated. Therefore, the State is
19 requesting that this Court enforce the terms in the agreement which are enforceable.

20 Defendant also cites to Firestone v. State, 120 Nev. 13, 16, 83 P.3d. 279, 281 (2004)
21 and Castaneda v. State, 313 P.3d. 108 (Nev. 2016) for the proposition that "...Due Process
22 prevents increasing the sentence agreed upon in the GPA." See Defendant's Sentencing
23 Memorandum, p. 3. However, Firestone and Castaneda discuss statutory interpretation; both
24 cases are silent as to the issue of interpretation and enforcement of plea agreements.
25 Accordingly, both cases are not persuasive here.

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³ Technically only half of the third term is unenforceable, i.e. the maximum sentence.

1 While plea agreements are a matter of criminal jurisprudence, most Courts have held
2 that they are also subject to contract principles. State v. Crockett, 110 Nev. 838, 842, 877 P.2d
3 1077, 1079 (1994). *See also e.g., United States v. Kingsley*, 851 F.2d 16, 21 (1st Cir.1988)
4 (using contractual analysis to enforce plea agreement and award “benefit of the
5 bargain”); United States v. Read, 778 F.2d 1437, 1441 (9th Cir.1985) (“a plea bargain
6 is contractual in nature and is measured by contract-law standards”), *cert. denied*, 479 U.S.
7 835, 107 S.Ct. 131, 93 L.Ed.2d 75 (1986); United States v. Baldacchino, 762 F.2d 170, 179
8 (1st Cir.1985) (“plea bargains are subject to contract law principles insofar as their application
9 will insure the Defendant what is reasonably due him”); United States v. Fields, 766 F.2d
10 1161, 1168 (7th Cir.1985) (“A plea bargain is a contract.”). Viewing the Guilty Plea
11 Agreement as a contract, Nevada contract law and the Uniform Commercial Code (“UCC”)
12 are instructive on remedying an unenforceable clause. Both NRS 104.2302 and the UCC state,
13 “[i]f the Court as a matter of law finds the contract or any clause of the contract to have been
14 unconscionable at the time it was made the Court may refuse to enforce the contract, or it may
15 enforce the remainder of the contract without the unconscionable clause, or it may so limit the
16 application of any unconscionable clause as to avoid any unconscionable result.” NRS
17 104.2302; NRS 104A.2108; NRS 116.1112; NRS 116B.275; Uniform Commercial Code §
18 2-302.

19 Applying these contract principles, this Court should uphold the terms of the agreement
20 of the parties which are enforceable. Here the Guilty Plea Agreement states, in relevant part:

21 “...if I fail to go to the Division of Parole & Probation, fail to appear at any
22 future Court dates or am arrested for any new offenses, I will stipulate to habitual
23 criminal treatment, to the fact that I have the requisite priors and to a sentence
24 of sixty (60) to one hundred twenty (120) months in the Nevada Department of
Corrections.”

25 *See* Guilty Plea Agreement Filed on March 9, 2018. Because the third term of the agreement
26 is unenforceable due to it violating the forty percent (40%) rule of NRS 193.130, this Court is
27 unable to enforce that term. However, when the document is viewed as a whole, the parties’
28 expectations are clear: that Defendant was to be sentence as a habitual criminal with a

1 minimum of sixty (60) months in prison. Accordingly, this Court should enforce the
2 agreement, i.e. adjudicate Defendant as a Habitual Criminal and afford him the minimum
3 sentence allowed, which Defendant agreed to have imposed---a minimum of sixty (60)
4 months.

5 Nevada contract law and the UCC further state: “[w]hen it is claimed or appears to the
6 Court that the contract or any clause thereof may be unconscionable the parties shall be
7 afforded a reasonable opportunity to present evidence as to its...purpose and effect to aid the
8 Court in making the determination.” NRS 104.2302; NRS 104A.2108; NRS 116.1112; NRS
9 116B.275; Uniform Commercial Code § 2-302. Applying this principle, the State would note
10 that it does not make a habit of agreeing to illegal sentences and that there was a typographical
11 error in the Guilty Plea Agreement that neither the State, the defense or the Court realized at
12 the time Defendant entered into his plea. In light of the first two terms, (stipulation to habitual
13 criminal treatment and stipulation to the fact that Defendant has the requisite priors for habitual
14 criminal treatment), it becomes clear that the parties’ intent was to impose habitual criminal
15 treatment on Defendant in the event that he failed to appear for any Court date or was arrested
16 for a new crime prior to his sentencing. However, “...because plea agreements ‘implicate the
17 deprivation of human freedom, the rules governing their interpretation, although having their
18 roots in the principles of contract law, also acknowledge that concern for due process
19 outweigh[s] concern for freedom of contract.’” State v. Second Judicial Dist. Court in & for
20 Cty. of Washoe, 134 Nev. 384, 391, 421 P.3d 803, 808 (2018) (quoting United States v.
21 Mankiewicz, 122 F.3d 399, 403 n.1 (7th Cir. 1997) quoting United States v. Sandles, 80 F.3d
22 1145, 1148 (7th Cir. 1996)). The State would concede that due process and the rule of lenity
23 would preclude the State from *increasing* the sentence stipulated to in the Guilty Plea
24 Agreement; however, that is not what the State is asking from this Court. The State is asking
25 that the Court simply enforce the expectation of the parties, which is to adjudicate Defendant
26 as a habitual criminal and to impose the minimum sentence required by law under NRS
27 207.010(1)(a)---the same minimum sentence Defendant agreed to in the Guilty Plea
28 Agreement.

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CONCLUSION

For the foregoing reasons, the State respectfully requests the Court follow the terms of the Guilty Plea Agreement by adjudicating Defendant as a habitual criminal pursuant to NRS 207.010(1)(a) and sentence him to a minimum term of sixty (60) months and a maximum term of one hundred fifty (150) months in the Nevada Department of Corrections.

DATED this 1st day of October, 2019.

Respectfully submitted,

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

BY /s/ Sandra DiGiacomo
SANDRA DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006204

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing was made this 1st day of October, 2019 by facsimile transmission to:

GARY MODAFFERI, ESQ.
(702) 474-1320

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

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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 THE STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 DENZEL DORSEY,

15 Defendant.

16 CASE NO. C-17-323324-1
17 DEPT. NO. XV

18 **MOTION TO WITHDRAW AS COUNSEL**

19 GARY A. MODAFFERI, attorney of record for the above-named Defendant, hereby
20 moves this Court for an Order allowing him to withdraw as counsel for said Defendant in this
21 matter. This Motion is made and based upon the papers and pleadings on file herein.

22 DATED this 3rd day of October, 2019.

23 _____
24 GARY A. MODAFFERI, ESQ.
25 Nevada Bar No. 12450
26 Attorney for Defendant

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NOTICE OF MOTION

PLEASE TAKE NOTICE that on the _____ day of _____, 2019, at the
hour of _____ a.m., or as soon thereafter as counsel may be heard, the undersigned will
bring the foregoing Motion to Withdraw as Counsel on for hearing.

DATED this 3rd day of October, 2019.

GARY A. MODAFFERI, ESQ.
Nevada Bar No. 12450
Attorney for Defendant

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POINTS AND AUTHORITIES

Counsel had previously informed the Court that he had not been retained to draft a appeal in this matter. Accordingly, Counsel respectfully requests permission to withdraw.

CONCLUSION

Based upon the foregoing, Gary A. Modafferi should be permitted to withdraw as retained counsel for the Defendant in this action.

DATED this 3rd day of October, 2019.

GARY A. MODAFFERI, ESQ.
Nevada Bar No. 12450
Attorney for Defendant

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GARY A. MODAFFERI, ESQ.
Nevada Bar No. 12450
Law Offices of Gary A. Modafferi, LLC
612 S. 3rd Street, Suite A
Las Vegas, Nevada 89101
(702) 327-3033
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	}	CASE NO. C-17-323324-1
Plaintiff,		DEPT. NO. XV
vs.		
DENZEL DORSEY,		
Defendant.		

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee of Gary A. Modafferi, LLC, and that on the 4th day of October, 2019, I served a copy of the foregoing **MOTION TO WITHDRAW AS COUNSEL** upon the following:

Sandra Digiacomio, Esq,
Chief Deputy District Attorney
sandra.digiacomio@clarkcountynvda.com

Erika W. Magana, An Employee of
Gary A. Modafferi, LLC



**DISTRICT COURT
CLARK COUNTY, NEVADA**

State of Nevada vs Denzel Dorsey

Case Number: C-17-323324-1
Department: XV

CLERK'S NOTICE OF NONCONFORMING DOCUMENT

Pursuant to Rule 8(b)(2) of the Nevada Electronic Filing and Conversion Rules, notice is hereby provided that the following electronically filed document does not conform to the applicable filing requirements:

Title of Nonconforming Document: <Motion to Withdraw as Counsel>
Party Submitting Document for Filing: <Denzel Dorsey>
Electronic Filing Envelope Number: <E5007873>
Date and Time Submitted for Electronic Filing: <10/4/19 9:26 AM>

Reason for Nonconformity Determination:

- ☐ The document filed to commence a civil action contains multiple documents bundled together as one document
- ☐ The document filed to commence an action is not a complaint, petition, application, or other document that initiates a civil action. *See* Rule 3 of the Nevada Rules of Civil Procedure
- ☐ The document filed to commence an action does not have the proper case type designation or cover sheet as required by NRS 3.275
- ☐ The document was filed in the wrong case
- ☒ The document filed was not signed
- ☐ The document filed was a court order that did not contain the signature of a judicial officer

Dated this: October 7, 2019

By: /s/Mary Anderson
Deputy District Court Clerk

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CERTIFICATE OF SERVICE

I hereby certify that on 10/7/19, I concurrently filed and served a copy of the foregoing Clerk’s Notice of Nonconforming Document, on the party that submitted the nonconforming document, via the Eighth Judicial District Court’s Electronic Filing and Service System.

By: /s/Mary Anderson
Deputy District Court Clerk