

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR GOMEZ,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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Case No. 83690

RESPONDENT'S APPENDIX

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CERTIFICATE OF SERVICE

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LAS VEGAS, NEVADA, TUESDAY, 08/14/2016 05:57:12 PM

* * * * *

THE COURT: This is the first and only
for the preliminary hearing of Oscar Gomez, Jr.,
16F10719A. **CLERK OF THE COURT**

Is the State ready to proceed?

MR. SCHWARTZER: Yes, your Honor.

THE COURT: Is the defense ready to
proceed?

MS. LEVY: Yes, your Honor. We'd invoke
the exclusionary rule.

THE COURT: Who's your first witness?

MR. SCHWARTZER: Mr. Coleman, your Honor.

THE COURT: If you're not Mr. Coleman and
you're subpoenaed to testify in the preliminary
hearing of Mr. Gomez, please step outside until my
marshal calls your name.

MR. SCHWARTZER: I don't have any
witnesses here, your Honor, besides him.

THE COURT: We're just going forward on
Count 1 because defendant B is on Count 2 who was
continued today.

MR. SCHWARTZER: Correct, your Honor.

THE CLERK: Go ahead and have a seat.

CASE NO. C316959

DEPT. NO. 12

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

Case No. 16F10719A

OSCAR GOMEZ, JR.,

Defendant.

REPORTER'S TRANSCRIPT
OF
PRELIMINARY HEARING

BEFORE THE HONORABLE DIANA L. SULLIVAN
JUSTICE OF THE PEACE

TAKEN ON TUESDAY, AUGUST 2, 2016
AT 9:30 A.M.

APPEARANCES:

For the State: MICHAEL J. SCHWARTZER
Deputy District Attorney

For the Defendant: MONTI JORDANA LEVY

Reported by: Gerri De Lucca, C.C.R. #82
Official Court Reporter

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EXHIBITS

State's Exhibits 1 and 2:

ADMITTED

6

State your first and last name and
spell both for the record.

THE WITNESS: Jonathan Coleman,
J-o-n-a-t-h-a-n, C-o-l-e-m-a-n.

THE COURT: Thank you.

You can proceed.

J O N A T H A N C O L E M A N, having been first
duly sworn to testify to the truth, the whole truth,
and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. SCHWARTZER:

Q. Mr. Coleman, on June 24, 2016, were you
living here in Clark County, Nevada?

A. Yes.

THE COURT: You need to speak up, sir.
Miss Gerri cannot take you down if she cannot hear
you. Thank you.

THE WITNESS: Yes.

BY MR. SCHWARTZER:

Q. Were you friends with an individual by
name of Shawn Manemules, M-a-n-e-m-u-l-e-s?

THE COURT: How do you spell Shawn?

RA001

5

1 MR. SCHWARTZER: S-h-a-w-n.

2 BY MR. SCHWARTZER:

3 Q. Did you and Shawn used to work together?

4 A. Yes, we do work together.

5 Q. On June 24 of 2016 did you guys work

6 together?

7 A. Yes.

8 Q. And where were you working at?

9 A. Wendy's.

10 Q. That would be here in Clark County,

11 Nevada?

12 A. Yes.

13 Q. Now, after work on June 24, 2016, did you

14 and Shawn leave work together?

15 A. Absolutely.

16 Q. And where did you guys decide to go after

17 work?

18 A. Go to the mini-mart.

19 Q. Do you know where that mini-mart is

20 located?

21 A. Tropicana and Nellis.

22 Q. And is that -- would you recognize it if

23 I showed you a photo of it?

24 A. Yes.

25 MR. SCHWARTZER: May I approach, your

7

1 A. Yes.

2 Q. Do you feel like you were intoxicated?

3 A. A little bit.

4 Q. How about Shawn, was he drinking?

5 A. Yeah, he was drinking mine too, so . . .

6 Q. How many drinks did you have?

7 A. One.

8 Q. And that was -- was it a beer, a whiskey

9 drink; what was it?

10 A. It was a Dad's Root Beer.

11 Q. Is that a beer flavored like root beer?

12 A. Yeah.

13 Q. And how many drinks did you see Shawn

14 drink?

15 A. One.

16 Q. And what kind of drink was he drinking?

17 A. It was a 211 Purple Label.

18 Q. Is that a beer or some type of liquor?

19 A. It's liquor.

20 Q. Did he seem intoxicated?

21 A. To me, not really.

22 Q. When you went to the store, what did --

23 the store on Tropicana and Nellis, what did you

24 decide to buy?

25 A. A Four Loko that's purple.

6

1 Honor?

2 THE COURT: Yes.

3 BY MR. SCHWARTZER:

4 Q. Showing you Proposed Exhibit 1.

5 MS. LEVY: We can stipulate to the

6 admission of these two photographs.

7 MR. SCHWARTZER: Thank you.

8 THE COURT: Which ones?

9 MR. SCHWARTZER: Exhibit 1 and 2.

10 THE COURT: Exhibit 1 and 2 will be

11 admitted. Thank you.

12

13 (State's Exhibits 1 and 2

14 admitted into evidence.)

15

16 BY MR. SCHWARTZER:

17 Q. So now admitted 1, do you recognize that?

18 A. Yeah.

19 Q. Is that the store that you and Shawn

20 decided to go to after work?

21 A. Yes.

22 Q. How did you and Shawn get there?

23 A. By the bus.

24 Q. While you guys took the bus were you

25 drinking alcohol at all?

8

1 Q. That's an alcoholic drink as well?

2 A. Yes.

3 Q. Did you and Shawn both go to the store?

4 A. Absolutely, we did.

5 Q. When you were in the store did you see

6 anyone in the courtroom today?

7 A. Yes, I do.

8 Q. Can you point to the individual, point

9 and pick out a piece of his clothing?

10 A. He was wearing a tank top.

11 Q. Now, I know -- not what he was wearing

12 that day. Can you point -- is there a person in

13 court, okay? Can you identify the person you're

14 pointing to, what he's wearing right now?

15 A. Yes, I can identify him.

16 Q. What color shirt is he wearing?

17 A. Blue.

18 MR. SCHWARTZER: Let the record reflect

19 identification of the defendant.

20 THE COURT: Yes.

21 BY MR. SCHWARTZER:

22 Q. Now, you said in the store he was wearing

23 what did you say?

24 A. Tank top.

25 Q. Was there anything else you noticed about

1 him, about his appearance, any tattoos or anything?

2 A. He had a sleeve on his left arm.

3 Q. Did you notice -- did the defendant say
4 anything to you in the store?

5 A. No.

6 Q. Did he say -- did you personally see him
7 say anything to Shawn in the store?

8 A. Yes.

9 Q. Did you hear that conversation?

10 A. Yes.

11 Q. Was this in the store or outside the
12 store?

13 A. It was out of the store.

14 Q. Out of the store, okay.

15 I want to focus inside the store,
16 okay?

17 Did you see the defendant say
18 anything to Shawn inside the store?

19 A. No.

20 Q. You and Shawn purchased the Four Loko?

21 A. He did.

22 Q. Did he purchase anything else?

23 A. Ice cream.

24 Q. Did you guys then decide to leave the
25 store?

1 Q. What did he tell Shawn?

2 A. You got a nice tattoo on your face.

3 Q. Did Shawn have a tattoo on his face?

4 A. Yes.

5 Q. Can you tell the Court where the tattoos
6 on his face are?

7 A. It was an LV for Las Vegas on the left
8 and Nevada map on the right.

9 Q. Did Shawn say anything in response to
10 that?

11 A. No.

12 Q. Did the defendant say anything further to
13 Shawn?

14 A. Yeah.

15 Q. Tell the Court what he said.

16 A. Let's go fight.

17 Q. The defendant told Shawn that he wanted
18 to fight, okay.

19 Did he mention anything about
20 where Shawn was from?

21 A. No.

22 Q. Did Shawn say anything about where he was
23 from?

24 MS. LEVY: I'm going to object as to
25 hearsay, your Honor.

1 A. Yes.

2 Q. When you left the store did you see the
3 defendant --

4 A. Yes.

5 Q. -- outside the store?

6 Where was he outside the store?

7 A. By the door.

8 Q. Was anyone else with the defendant?

9 A. Yes.

10 Q. And what did he look like?

11 A. He was short and dark.

12 Q. Can you tell if he was white, Hispanic?

13 A. He was Hispanic.

14 Q. Was he shorter or taller than the
15 defendant?

16 A. Shorter.

17 Q. So we'll refer to that guy as the shorter
18 Hispanic male.

19 A. Yes.

20 Q. Now, when you went outside and so did the
21 defendant, did the defendant say anything to you
22 personally?

23 A. No.

24 Q. Did he say anything to Shawn?

25 A. Yes.

1 THE WITNESS: No.

2 THE COURT: Hold on.

3 MR. SCHWARTZER: Effect upon the
4 listener, the listener being the defendant.

5 THE COURT: Not offered for the truth of
6 the matter?

7 MR. SCHWARTZER: No. It doesn't matter
8 to me where Shawn's from.

9 THE COURT: It's not offered for the
10 truth of the matter.

11 MS. LEVY: Okay. We're getting into
12 Shawn's statement, who's not here.

13 MR. SCHWARTZER: Well, he's dead.

14 THE COURT: Objection overruled. I'm not
15 going to accept it for the truth of the matter
16 asserted in it. So I don't know the answer to the
17 question.

18 MR. SCHWARTZER: I actually think the
19 answer was he didn't say anything regarding that.

20 THE WITNESS: No.

21 BY MR. SCHWARTZER:

22 Q. Did the defendant say anything else to
23 Shawn before a fight broke out?

24 A. The other guy was fighting him.

25 Q. Did Shawn -- did the defendant say

1 anything to Shawn before the shorter Hispanic male
2 started fighting with Shawn?

3 A. He was like Sureño Punto.

4 Q. Who said that?

5 A. Shawn.

6 Q. Did either the defendant or the shorter
7 male say anything in response to that?

8 A. He was like, let's get down, homey.

9 MS. LEVY: I'm going to object as to did
10 the shorter male say anything in response to that.
11 That would be hearsay, not my client's statement. If
12 my client said something in response to that, that
13 would be admissible, but not if the shorter male said
14 something in response to that.

15 THE COURT: Yeah, and I don't know who is
16 he, so you asked did he say something. You're
17 flipping back and forth between the defendant and the
18 shorter male, so we got to be clear, so start over.

19 The last note I got was that Shawn
20 said Sureño Punto.

21 Next question.

22 BY MR. SCHWARTZER:

23 Q. Did the defendant say anything in
24 response to that?

25 A. Which one?

1 A. Yes.

2 Q. Was it a semiautomatic or was it a
3 revolver?

4 A. Semiautomatic.

5 Q. Now, we've alluded to a couple times
6 there was a fight.

7 Did a fight occur shortly after
8 the gun was pulled out?

9 A. Fight happened after.

10 Q. Was it quick in time?

11 A. No, it was a short time.

12 Q. Who fought who?

13 A. The other guy and Shawn.

14 Q. By the other guy you mean the shorter
15 Hispanic male?

16 A. Yes.

17 Q. What did the defendant do during this
18 fight?

19 A. Which one?

20 Q. The person you identified today.

21 A. They were fighting, throwing punches
22 randomly.

23 Q. I mean let me start with who was throwing
24 punches? Was Shawn throwing punches?

25 A. Yes.

1 Q. The defendant, the person you pointed out
2 today.

3 A. Yeah. He just showed us a gun, and
4 that's how it went down.

5 THE COURT: The question was did he say
6 anything in response to Shawn saying Sureño Punto?

7 THE WITNESS: No, no response.

8 BY MR. SCHWARTZER:

9 Q. But you said he showed a gun?

10 A. Yes.

11 Q. Did he do that before there was a fight
12 that broke out?

13 A. This was before.

14 Q. Can you describe where the defendant got
15 the gun from?

16 A. From his pants.

17 Q. Could you describe what the gun looked
18 like?

19 A. It was black and chrome.

20 Q. Where was the black and where was the
21 chrome?

22 A. The handle was black and the gun was like
23 silver steel.

24 Q. Was it a -- do you know the difference
25 between a semiautomatic and a revolver?

1 Q. Was the shorter Hispanic male throwing
2 punches?

3 A. Yes.

4 Q. Was the defendant throwing punches?

5 A. No.

6 Q. Were you throwing punches?

7 A. No.

8 Q. What were you and the defendant doing
9 during this fight?

10 A. We were watching.

11 Q. How long did this fight go for?

12 A. Good five minutes.

13 Q. At some point the fight ended, right?

14 A. It ended because someone said somebody
15 called 911.

16 Q. So then Shawn and the shorter Hispanic
17 male stopped fighting?

18 A. Yes.

19 Q. Where did -- do you know where the
20 shorter Hispanic male went after the fight?

21 A. I'm pretty sure the car.

22 Q. Did you see it?

23 A. No.

24 Q. So you don't know where he went?

25 That's fair. I don't know is a

perfectly acceptable answer.

A. No.

Q. Did you see where the defendant went after the fight?

A. Which one?

Q. The guy who you pointed out today.

A. Oh, he followed us.

Q. Let me ask you this. Where did you and Shawn go after the fight?

A. The dark alley.

MR. SCHWARTZER: May I approach, your Honor?

THE COURT: Yes.

BY MR. SCHWARTZER:

Q. Showing on Exhibit 1 on this photograph right here, can you -- is where roughly the area where Shawn and the shooter --

A. Right here.

Q. Let me ask the question first, Mr. Coleman.

Can you point out on this picture where Shawn and the shorter Hispanic male were fighting?

A. Here.

Q. You're pointing to the parking lot in

was following you?

A. He asked me if I gang banged.

Q. How close was he when he said that to you?

A. This close right now.

Q. Like as close as I am to you?

A. Yes.

MR. SCHWARTZER: Two feet?

THE COURT: Miss Levy?

MS. LEVY: That's fine.

THE COURT: Okay.

BY MR. SCHWARTZER:

Q. Did you respond?

A. Yes.

Q. What was your response?

A. I don't gang bang.

Q. When he said that was he holding anything?

A. Yes.

Q. What was he holding?

A. A gun.

Q. Was it the same gun you saw in the parking lot?

A. Yes.

Q. Where on the sidewalk were you when this

Exhibit 1?

THE COURT: Kind of in front, outside the front of the store?

THE WITNESS: Yes. By the parking lot right here.

THE COURT: Okay.

BY MR. SCHWARTZER:

Q. So then after the fight you and Shawn left the parking lot; is that correct?

A. Yes.

Q. And could you show the Court on the exhibit where you and Shawn went?

A. There.

Q. So you're now pointing to a sidewalk in the middle of picture?

A. Here.

Q. And then you were heading this way toward like the lamppost?

A. Yes.

Q. You said that the defendant, the guy you identified today, was following you.

How did you know that?

A. Because I looked back.

Q. Did the defendant, the person you identified today, did he say anything to you while he

happened?

A. Right in the middle.

Q. Can you point to it for the Court.

So kind of where those people are right now in the photograph?

A. Yes.

MR. SCHWARTZER: Can you see that, Ms. Levy?

MS. LEVY: Yes.

BY MR. SCHWARTZER:

Q. Now, where was Shawn when --

A. He was behind me.

Q. How far was Shawn from the defendant?

A. Another feet away.

Q. So like about this?

Okay, so three and a half feet?

A. Yes.

MR. SCHWARTZER: Is that fair?

MS. LEVY: Sure.

BY MR. SCHWARTZER:

Q. Did the defendant say anything to Shawn?

A. No.

Q. Did Shawn say anything to the defendant?

A. Yes.

Q. What did Shawn tell the defendant?

MS. LEVY: Objection; hearsay.

MR. SCHWARTZER: It's going to effect upon the listener and what the listener's going to do afterwards.

THE COURT: So it's not going to be based upon the truth of the matter asserted in it?

MR. SCHWARTZER: Correct, your Honor.

THE COURT: Objection overruled. I won't take it for the truth of the matter asserted in it, but on the effect of the listener.

BY MR. SCHWARTZER:

Q. You can say what Shawn said to the defendant.

A. You're not going to use it.

Q. And at this point the defendant's holding the gun?

A. Yes.

Q. What happened after Shawn said that?

A. He shot him.

Q. Who shot who?

A. Him.

Q. The defendant?

A. Yes.

Q. Shot Shawn?

A. Yes.

Q. Explain.

A. I grabbed his phone, trying to call 911.

Q. Did you have a cellphone?

A. No, I didn't.

Q. Shawn has a cellphone?

A. Yes.

Q. You tried calling from his phone?

A. I tried, but I couldn't.

Q. What did you do next?

A. I ran back to the store and told them to call 911.

Q. Did the police come?

A. They did.

Q. Did you end up talking to the police?

A. Yeah, cooperating.

Q. And you gave a statement?

THE COURT: What did you say after -- what did you say?

THE WITNESS: I cooperated with them.

THE COURT: Oh, okay.

BY MR. SCHWARTZER:

Q. Did they show you a photographic -- what we call a photographic lineup?

A. When?

Q. Later on, not the same night, but later?

Q. Where did he shoot Shawn?

A. In the stomach.

Q. What happened after the defendant shot Shawn?

A. He ran.

Q. Shawn ran?

A. Yes.

Q. Did you run with him?

A. Yes.

Q. How far did Shawn get?

A. To the pole by the pay phone.

Q. So the pole in the photograph right here?

A. Yes.

Q. So just a few feet?

A. Yes.

Q. What happened once he got to the pole?

A. He fell down.

Q. Did you go to him?

A. Yes.

Q. Did you try talking to him?

A. Yes.

Q. Was he able to talk to you?

A. No.

Q. Did you call 911?

A. Yes. Tried to.

A. Yeah, they did.

Q. And that's six pictures?

A. Yeah, they showed me two of them.

Q. Two separate lineups?

A. Yes.

Q. And they wanted you to identify the shorter Hispanic male that was fighting with Shawn?

A. Yes.

Q. And see if you could identify the shooter?

A. Yes.

Q. Did you believe you were able to pick those two people out of the lineups?

A. Yes.

MR. SCHWARTZER: Your Honor, may I approach again?

THE COURT: Yes.

BY MR. SCHWARTZER:

Q. Showing you admitted Exhibit 2.

This is a video still. Do you recognize what you're looking at here?

A. Yes.

Q. Is this the parking lot of that?

A. That night.

Q. And this is kind of right after the

1 fight?

2 A. Yes.

3 Q. Could you point to who everyone is for
4 the Court?

5 A. Shawn, shooter, and me.

6 Q. And by shooter, is that the person that's
7 hear in court today?

8 A. Yes.

9 MR. SCHWARTZER: I'll pass the witness.

10 THE COURT: Cross-examination.

11 MS. LEVY: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MS. LEVY:

14 Q. Mr. Coleman, I'm just going to ask you a
15 few questions. My name is Monti Levy and I represent
16 the defendant. You understand that?

17 I'm just going to ask a few
18 questions. So I understand that you don't want to be
19 here and it's going to be very quick, okay?

20 When you took the bus, you took
21 the bus from Wendy's to the mini-mart?

22 A. Yes.

23 Q. Where exactly is the bus stop? I know
24 the mini-mart is at Trop and Nellis. Where is --
25

1 Q. And you said it was some kind of liquor?

2 A. It was malt liquor.

3 Q. Malt liquor.

4 How big was that?

5 A. 24 ounce.

6 Q. And Shawn drank the whole thing before
7 getting to the mini-mart?

8 A. Yes.

9 Q. How large was your drink?

10 A. 16 ounce.

11 Q. And how often had gone out with Shawn
12 drinking?

13 A. That was the second time.

14 Q. So you didn't hang out with him all the
15 time to see what he would act like if he were
16 intoxicated?

17 He's not someone that you hung out
18 with all the time, correct?

19 A. No.

20 Q. So you -- had you ever seen Shawn
21 intoxicated before?

22 A. No.

23 Q. How long had you worked with Shawn?

24 A. Three months.

25 Q. Have you had an opportunity to look at

1 A. Right next to Little Caesar's.

2 Q. How far is that from the mini-mart?

3 A. Quarter of a mile.

4 Q. Now, you said that you and Shawn had been
5 drinking prior to getting to the mini-mart.

6 Where did you get that alcohol?

7 A. What was that again?

8 Q. You testified that you and Shawn had
9 already been drinking prior to getting to the
10 mini-mart?

11 A. Yes.

12 Q. Where did you get that alcohol that you
13 were drinking?

14 A. Right next to our job.

15 Q. So before you got on the bus?

16 A. Yes. We were drinking already.

17 Q. And you said that you drank one Dad's
18 Root Beer and you were a little intoxicated?

19 A. A little bit.

20 Q. Was that the only thing that you had
21 ingested that evening?

22 A. Yep.

23 Q. And Shawn had, I think you called it, a
24 211 Purple Label?

25 A. Yeah.

1 any of the video, the surveillance video from the
2 mini-mart?

3 A. No.

4 Q. Did you and/or Shawn have any bags with
5 you that evening?

6 A. Yes.

7 Q. What did you have?

8 A. 24 bottles of water.

9 Q. Was that in like a case, was it in a bag,
10 or how was that carried?

11 A. I had it in a bag and he had some in his
12 backpack to help me go home.

13 Q. So you had a 24 case of water, and
14 then -- so was Shawn carrying a backpack or were you
15 carrying a backpack?

16 A. I was.

17 Q. You were carrying the backpack?

18 A. Yes.

19 Q. So besides water was there anything else
20 in the backpack?

21 A. Food and the drinks we had in the store.

22 Q. And then in the store when you purchased
23 items, did you have it like in a plastic bag?

24 A. Yes.

25 Q. Who was carrying that, you or Shawn?

1 A. I was.

2 Q. And I think you said that there was the

3 alcohol and then some ice cream?

4 A. Yes.

5 Q. And you said that you purchased Four

6 Loko. Can you tell me what that is?

7 A. He bought the Purple Four Loko.

8 Q. Is that like one bottle or --

9 A. No, one can.

10 Q. A can. And how large is that?

11 A. 24 ounce.

12 Q. Was that the only alcohol that you guys

13 purchased at the mini-mart?

14 A. Yes.

15 Q. Is this a mini-mart that you went to

16 frequently?

17 A. I always go there every day.

18 Q. Every day.

19 Do you know whether or not Shawn

20 had ever been there before?

21 A. He told me that was his favorite store.

22 Q. Had you been there before with Shawn?

23 A. No.

24 Q. Had you ever seen Shawn there?

25 A. No.

1 Q. And the fight that broke out, that was

2 between Shawn and the other individual, correct?

3 It wasn't my client that was in

4 the fistfight, right?

5 A. No.

6 Q. It was the shorter guy?

7 A. Yes.

8 Q. And you testified before that inside the

9 store Mr. Gomez, my client, the gentleman next to me,

10 did not say anything to either you or Shawn; is that

11 correct?

12 A. He did say something to us.

13 Q. Inside the store?

14 A. Outside the store.

15 Q. Inside the store, before outside the

16 store, when you're inside the store, did -- my client

17 did not say anything to you or Shawn, correct?

18 A. No.

19 Q. That's not correct?

20 Did he say something inside the

21 store?

22 A. No.

23 Q. So just outside the store.

24 And you testified that the first

25 thing that was said outside the store was, let's

1 Q. Had you ever seen my client, Mr. Gomez,

2 there?

3 A. No.

4 Q. Have you ever, prior to June 24, 2015,

5 have you ever seen my client, the individual right

6 here, Mr. Gomez?

7 A. Yes.

8 Q. And where was that?

9 A. Outside the mini-mart.

10 Q. So you've seen him before outside that

11 same mini-mart?

12 A. No, only that day.

13 Q. Prior to, before that day --

14 A. No.

15 Q. -- have you ever seen --

16 A. No.

17 Q. -- in your life?

18 A. No.

19 Q. -- Mr. Gomez?

20 What about the other individual

21 that Mr. Schwartz was referring to as the shorter

22 individual?

23 A. No.

24 Q. You had never seen him before?

25 A. Never.

1 fight, or, nice tattoos. Which was first?

2 A. The nice tattoo.

3 Q. And then you testified that someone

4 stated outside the store, let's go fight, those were

5 the words that you testified to; do you remember

6 that?

7 A. Yes.

8 Q. Who said the words, let's go fight?

9 A. Shawn.

10 Q. Shawn said the words, let's go fight?

11 And who did Shawn say those words

12 to?

13 A. The shorter guy.

14 Q. So I just want to get everything really

15 clear. So this individual right here next to me

16 said, nice tattoos?

17 A. Yes.

18 Q. To Shawn?

19 A. Yes.

20 Q. Shawn didn't say anything in response to

21 the tattoos remark, and Shawn says to the other

22 individual, let's go fight; is that how it happened?

23 A. No.

24 Q. Okay. Well, did Shawn first say Sureño

25 Punto before he said, let's go fight?

1 A. No.

2 Q. Who said Sureño Punto?

3 And if I'm saying that wrong, I
4 apologize.

5 A. Shawn.

6 Q. Shawn said Sureño Punto.

7 Was that before or after he said,
8 let's go fight?

9 A. Before.

10 Q. And who did he say Sureño Punto to?

11 A. The shorter guy.

12 Q. So Shawn said Sureño Punto to the shorter
13 guy, and he said, let's go fight, to the shorter guy?

14 A. Yes.

15 Q. Was that before or after a gun was shown?

16 A. Before.

17 Q. So at that point my client, Mr. Gomez, is
18 not talking; is that correct?

19 A. Nope.

20 Q. What is my client saying then at that
21 time?

22 A. He was showing the gun.

23 Q. But first Sureño Punto and let's go fight
24 was said, and then the gun was shown?

25 A. Yes.

1 A. No.

2 Q. Can you tell from this picture whether or
3 not this is before, after, or during the fight?

4 A. This is after.

5 Q. And how can you tell that?

6 A. Because he already took off his shirt
7 trying to wipe his blood.

8 Q. So Shawn took his shirt off during the
9 fight or after the fight?

10 A. After the fight.

11 Q. So after the fight Shawn takes his shirt
12 off, and your testimony is that he did that to wipe
13 his blood?

14 A. Yes.

15 Q. And at this point you're carrying a
16 backpack, and it looks like a couple of bags and
17 possibly a bottle of water; is that correct?

18 A. Yes.

19 Q. And during the five minute fight, what
20 were you and Mr. Gomez doing?

21 A. Watching them fight.

22 Q. How close were you standing to Mr. Gomez?

23 A. Two feet away.

24 Q. So using Mr. Schwartz's prior two feet
25 measurement was approximately here?

1 Q. And then the fight breaks out?

2 A. Yes.

3 Q. And the fight breaks out between Shawn
4 and the shorter guy?

5 A. Yes.

6 Q. And you testified that the fight lasted
7 for a good five minutes, correct?

8 A. Yes.

9 Q. You and Mr. Gomez are not involved in the
10 fistfight, correct?

11 A. Yes.

12 Q. I'm going to show you, if I may approach
13 the witness, State's admitted Exhibit 2.

14 MS. LEVY: May I approach?

15 THE COURT: Mm-hmm.

16 BY MS. LEVY:

17 Q. I'm going to have you take a look at
18 this.

19 Can you tell me again who the
20 gentleman is carrying the bags?

21 A. That's me.

22 Q. And who is this individual?

23 A. Shawn.

24 Q. Okay. Is Shawn wearing a shirt in this
25 picture?

1 A. Yes.

2 Q. So you and Mr. Gomez are this close to
3 each other during this fistfight?

4 A. Yes.

5 Q. And this fistfight went on for five
6 minutes?

7 A. Yes.

8 Q. Was there any communication whatsoever
9 between you and Mr. Gomez during this five minutes?

10 A. No.

11 Q. Did Mr. Gomez have the gun out this
12 entire five minutes?

13 A. Yes.

14 Q. Did he point it at you?

15 A. No.

16 Q. So the entire five minutes he's holding a
17 gun and the other two are fistfighting and you two
18 are just standing there watching this fight?

19 A. Yes.

20 Q. Okay. Now, did you see Mr. Gomez
21 actually take the gun from somewhere?

22 A. From his pants.

23 Q. So you actually saw him take the gun out
24 of his pants?

25 A. Yes.

Q. And where in his pants?

A. By the beltline.

Q. His beltline?

Okay. What side?

A. Left side.

Q. Now, you remember you gave a statement, you testified earlier that you gave a statement to the police, correct?

A. Yes.

Q. And you cooperated with the police when you gave a statement, correct?

A. Yes.

Q. And that statement was recorded; do you remember that?

A. Yes.

Q. And the detectives told you that they were recording your statement; do you remember that?

A. Yes.

Q. And do you remember during that statement that you told the police that the gun was out of his right-side waistband?

A. Yes.

Q. So your testimony today, you said that he took it out of his left-side waistband; is that what you said?

Q. But your testimony today is that he shot him with his left hand?

A. Yes.

Q. And you testified that he shot Shawn in the stomach, correct?

A. Yes.

Q. How many shots?

A. One.

Q. Did he shoot anything else?

A. Nope.

Q. Now, you testified that the five minute fight ended because someone said that someone called 911 and police were coming?

A. Yes.

Q. Who said that?

A. Somebody from the store.

Q. Somebody that worked in the store or was it --

A. It was a customer.

Q. A customer came out and said that someone called 911?

A. Yeah.

Q. But did you see the police come before you called them?

A. No.

A. Yes.

Q. But when you gave your statement on the day of the incident, which was June 24, on the actual night, you told the police that it was the right side; is that correct?

A. Yes.

Q. Are you remembering it differently now?

A. Yes.

Q. So you sure that it was the left side?

A. Yes.

Q. And when he shot at Shawn was it the left hand or the right hand?

A. Left.

Q. Do you remember telling the police it was the right hand?

A. Yes.

Q. So are you remembering it differently now?

A. Yes.

Q. So you do remember though on June 24, right after the incident when you gave your recorded statement, you did tell the police that Mr. Gomez shot Shawn with his right hand; you remember that that, right?

A. Yes.

MS. LEVY: Court's indulgence.

BY MS. LEVY:

Q. Now, you said that you went to the store every day, correct?

A. Yes.

Q. Did you know the gentleman that worked in the store that day?

A. Yes.

Q. Did you know him by name?

A. No.

Q. Did you happen to recognize any of the other customers there?

A. Nope.

Q. Now, when you said that Shawn said Sureño Punto, what does that mean?

A. South side bitch.

Q. That means south side bitch?

Did Shawn say that in response to something?

A. No.

Q. When you testified that Shawn ran from -- Court's brief indulgence.

Approach with State's admitted 1?

THE COURT: Yes.

BY MS. LEVY:

Q. You testified that Shawn ran from right here to -- can you show me which pole it was?

A. From here to here to that pole.

Q. To the first pole right here?

A. Yes, that one right here.

Q. How long was it that it took from Shawn to run to that pole?

A. A few seconds.

Q. And then how long after that -- you said that you were trying to talk to Shawn. How long was that?

A. Two minutes.

Q. So you stayed with Shawn for two minutes, trying to talk to him?

A. Yeah.

Q. And then you took his phone?

A. Yes.

Q. Where was Shawn's phone?

A. It was in his pocket.

Q. So you took it out of his pocket, and why couldn't you dial 911?

A. He had a password.

Q. And there was no like emergency --

A. No.

Q. -- dial?

A. No.

Q. Did you tell -- do you remember telling the police that you wanted to leave, you and Shawn wanted to leave before they came?

A. We wanted to leave.

Q. Before the police came?

Do you remember telling the police that?

A. Yes.

Q. Do you remember telling the police that you -- that somebody said they went to Sonic's?

A. Yes.

Q. Did you see somebody go to Sonic?

A. No.

Q. But you told the police that someone went to Sonic?

A. Yes.

Q. So when you gave your statement to the police, were you a little bit confused about what was happening?

A. Yes.

Q. So some of what you said to the police might not be completely accurate?

A. No.

MS. LEVY: Court's indulgence.

And so how long did it take you then to go back to the store?

A. Five seconds.

Q. So from here you're at the pole. Is this is where Shawn collapsed, and then you ran back to the store in just a few seconds?

A. Yeah.

Q. How long did it take for the police to come?

A. Five minutes.

Q. So Shawn is shot and then the two of you try to run away?

A. Yes.

Q. And where did Mr. Gomez go after that?

A. Back to the parking lot.

Q. Did you see specifically where he went?

A. He just ran.

Q. Did you see if he got in any vehicles or --

A. Nope.

Q. And when the fight ended and you and Shawn went to leave, why were you leaving?

A. Because somebody said 911.

Q. Did you want to leave before the police came?

THE COURT: Mm-hmm.

MS. LEVY: Your Honor, at this time we're going to pass the witness.

THE COURT: Redirect.

MR. SCHWARTZER: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. SCHWARTZER:

Q. Did Shawn have any weapons on him that you saw?

A. No.

MS. LEVY: Objection; speculation.

THE COURT: He followed it up with that you saw.

BY MR. SCHWARTZER:

Q. Is that no?

A. No.

Q. Did you have any weapons on you?

A. No.

Q. Now, we got a little bit into that police statement that you gave.

You remember Ms. Levy going through it a little bit with you? You gave a statement there with the detectives?

And a couple of questions Ms. Levy

1 actually asked you a few times, were there any --
2 when you said Sureño, was that in response to
3 anything?

4 Do you remember when she asked you
5 about that?

6 A. Yes.

7 Q. And you were actually asked about these
8 statements by the police detectives; is that correct?

9 A. Yes.

10 Q. And you knew that was being recorded?

11 A. Yes.

12 Q. So I just want to set up the scene again.

13 You and Shawn are leaving the
14 store?

15 A. Yes.

16 Q. Defendant and the shorter Hispanic male
17 were outside the store?

18 A. Yes.

19 Q. Who says -- what group speaks first; do
20 you and Shawn say something to them first or do they
21 say anything to you first?

22 A. They said something to us first.

23 Q. And you said earlier today it was about
24 the like nice tattoos?

25 A. Yes.

1 Q. So who said, you're not from around here,
2 the defendant?

3 A. Yes.

4 Q. Who did he say that to?

5 A. Shawn.

6 Q. And then also on page 4 you say they
7 said, where you from, what city you from.

8 Who said that?

9 A. He did.

10 Q. Defendant said that?

11 THE COURT: Who is he?

12 MR. SCHWARTZER: He's pointing to the
13 defendant.

14 THE COURT: I know, but the record
15 doesn't show that.

16 MR. SCHWARTZER: I understand, your
17 Honor.

18 BY MR. SCHWARTZER:

19 Q. You're pointing to the defendant; is that
20 correct?

21 A. Yes.

22 Q. So the defendant said those words?

23 A. Yes.

24 Q. It was Shawn responded; is that correct?

25 A. Yes.

1 Q. Was it in like, oh, hey, nice tattoos, in
2 like a chummy way, or was it --

3 A. It was an instigating way.

4 Q. An instigating way. Okay.

5 Do you also recall that you said
6 that they said several other things to you right
7 outside the store, that you told the detectives that
8 the defendant and the shorter Hispanic male said
9 other things to you as well?

10 A. The other guy?

11 Q. No, both, the defendant and the shorter
12 Hispanic male?

13 A. No, they didn't say nothing to me.

14 Q. Okay. Well, they said stuff to Shawn; is
15 that correct?

16 A. Yes.

17 Q. In fact, in the statement you said that
18 they said, you guys are not from around here?

19 MS. LEVY: What page?

20 MR. SCHWARTZER: Page 4.

21 BY MR. SCHWARTZER:

22 Q. You're not from around here.

23 Do you remember telling the police
24 that?

25 A. Yes.

1 Q. And that's when you said Shawn said the
2 Sureño word?

3 A. Yes.

4 Q. You also mentioned -- I'm going to
5 page 9.

6 You also say that in the statement
7 on page 9 he was claiming Las Vegas, quote, this is
8 my town, end quote, and then, quote, you're on the
9 wrong turf, end quote.

10 Who said that? The defendant said
11 that?

12 A. Yes.

13 Q. Who did the defendant say that to?

14 A. Shawn.

15 Q. Is this before the fight?

16 A. Before.

17 Q. And then is that when Shawn said Sureño?

18 A. Yes.

19 Q. And a fight broke out between him and the
20 shorter Hispanic male?

21 A. Yes.

22 Q. The fight occurs -- after the fight
23 ended, did you hear Shawn say anything to the
24 defendant?

25 A. No.

Q. The next time you run into the defendant is when he is on that sidewalk asking if you bang?

A. That was in the alley.

Q. In the alley.

That's the next time you have any communication with the defendant?

That's unclear.

There was this exchange right outside the store that we just talked about, correct?

A. Yes.

Q. There was a fight that occurred, correct?

A. Yes.

Q. Were there words said after the fight by the defendant?

(Overlapping speakers)

A. Yes.

Q. What did the defendant say?

A. He asked me if I bang.

Q. That was when you were on the alley/sidewalk?

A. Yes.

Q. And then after that is when he shot Shawn?

Q. Do you remember Shawn telling Mr. Gomez that he was going to his mother's house, to Mr. Gomez' mother's house?

A. No.

Q. Do you remember telling the police that?

A. Yes.

Q. So you told the police that Mr. Gomez asked, where you going, and Shawn said, to your mom's house; do you remember telling the police that?

A. Yes.

Q. So now you're saying that didn't happen? I'm sorry, can you say it out loud?

A. No.

Q. It's no, it didn't happen? No?

You have to answer out loud.

A. No.

Q. So nothing was said about going to your mom's house?

Is that a no?

A. No.

Q. So the statements in the alley, and when you say the alley, does this -- is this like a dead end on State's Exhibit 1 -- may I approach?

THE COURT: Yes.

A. Yes.

MR. SCHWARTZER: Court's indulgence.

THE COURT: Mm-hmm.

MR. SCHWARTZER: Pass the witness.

THE COURT: Any recross?

MS. LEVY: Just briefly.

RECCROSS-EXAMINATION

BY MS. LEVY:

Q. So, Mr. Coleman, earlier when I asked you whether or not Mr. Gomez said anything to Shawn before the fight broke out and before Shawn said Sureño Punto you said no, and now you're going back to what your statement said to the police, correct?

A. Yes.

Q. So you said your statement to the police is inaccurate in some points, correct?

A. Yes.

Q. So you remember some things now that are different than your statement?

A. Yes.

Q. And your testimony a few minutes ago was different than what it is now about the statements that were made by Mr. Gomez?

A. Yes.

BY MS. LEVY:

Q. -- you're calling an alley?

Can you point to me and show me where you're calling the alley?

A. This.

Q. This right here is a street, correct?

A. Yes.

Q. So the alley is behind the store?

A. Yes.

Q. Right here is an alley?

A. Yeah.

Q. But this is an actual street?

A. That is a street.

Q. Do you know what street that is?

A. Nellis and Tropicana.

Q. Okay. So it's the sidewalk on --

A. Yeah.

Q. -- Nellis, or is that on Tropicana?

A. That's the Tropicana.

Q. That's the Tropicana, okay.

And do you know whether or not this is east or west, going like from here, is this going --

A. Going that way is east.

Q. That's going east.

1 So when you and Shawn were
2 walking -- can you see, guys?

3 When you and Shawn were walking,
4 you're walking east?

5 A. Yes.

6 Q. So you're calling this the alley?

7 A. Yes.

8 Q. The sidewalk here, okay.

9 So your testimony is that when you
10 guys went down the alley and Mr. Gomez followed, the
11 only statements to you were, do you bang?

12 A. Yes.

13 Q. And you said no?

14 A. Yes.

15 Q. And then what was said to Shawn?

16 A. The gun was just pointed to Shawn.

17 Q. So the gun was just pointed at Shawn and
18 he was just shot?

19 A. Shawn said, you're not going to use it.

20 Q. That's the only thing that was said?

21 A. Yes.

22 Q. Did Mr. Gomez say anything?

23 A. No.

24 Q. And how was it that Mr. Gomez held the
25 gun? Can you show me with your hand?

1 were to you, do you bang, and then Shawn just -- he
2 pointed the gun, and Shawn just said, you're not
3 going to use it, and then he shot; there was no other
4 statements made?

5 A. No.

6 MS. LEVY: Pass the witness.

7 THE COURT: Anything else?

8 MR. SCHWARTZER: Nothing further, your
9 Honor.

10 THE COURT: Thank you very much,
11 Mr. Coleman. Appreciate your time today.

12 (Witness excused)

13 MR. SCHWARTZER: Your Honor, a few
14 stipulations, but besides that the State's going to
15 rest.

16 THE COURT: So the State's not going to
17 have any further witnesses or evidence?

18 MR. SCHWARTZER: Correct.

19 THE COURT: What are the stipulations?

20 MR. SCHWARTZER: There's going to be a
21 stipulation that we should read into the record.

22 THE COURT: Yes.

23 MR. SCHWARTZER: Thank you.
24
25

1 So like this with his left hand,
2 like this --

3 A. Yes.

4 Q. -- over?

5 And you said that Shawn was hit in
6 the stomach?

7 A. Yes.

8 Q. Can you show me where on your body?

9 So on his left side?

10 And then did my client -- which
11 direction did my client go, back towards the store?

12 A. Yes.

13 Q. And then you and Shawn turned and ran
14 towards the pole?

15 A. Yes.

16 Q. Which is still going east?

17 A. Yes.

18 Q. So the opposite direction that my client
19 went?

20 A. Yes.

21 Q. So you didn't see exactly where my client
22 went?

23 A. No. He went to the parking lot.

24 Q. To the parking lot.

25 And so the only statements made

1 We have stipulated for the purpose
2 of preliminary hearing only to the cause and manner
3 of death and the identity of the individual that is
4 deceased. That would be Shawn Manemules. That's the
5 name that's been read into the record. The cause and
6 manner would be gunshot wound and homicide.

7 THE COURT: Is that correct, Miss Levy?

8 MS. LEVY: That is all correct. For
9 purposes of preliminary hearing only we are
10 stipulating to cause and manner of death and identity
11 of the decedent.

12 And if I may consult with my
13 client briefly.

14 THE COURT: Sure.

15 State rest?

16 MR. SCHWARTZER: State will rest, your
17 Honor.

18 MS. LEVY: Your Honor, at this time I've
19 consulted with Mr. Gomez. He does understand that he
20 does have a constitutional right to testify at these
21 proceedings. He is not going to. Pursuant to my
22 advice he is not going to testify at these
23 proceedings. We do not have any witnesses or
24 evidence to present at this time. We'll rest.

25 THE COURT: Argument by the State.

MR. SCHWARTZER: I'll save for rebuttal,
your Honor.

THE COURT: Argument by the defense.

MS. LEVY: We're submitting, your Honor.

THE COURT: Based upon the Complaint on
file herein and the testimony adduced at the hearing
today, I believe there is probable cause to believe
that Count 1, murder with use of a deadly weapon, has
been committed, and that the named defendant herein,
Oscar Gomez, Jr., committed said crime.

I hereby order Mr. Gomez, Jr. to
answer to this charge in the Eighth Judicial District
Court on the day my clerk gives you.

THE CLERK: August 4, 10 a.m. lower level
arraignment A.

MR. SCHWARTZER: Thank you, your Honor.

THE COURT: Thank you have a nice day.

---o0o---

ATTEST: Full, true and accurate transcript of
proceedings.

/s/GERRI DE LUCCA
GERRI DE LUCCA, C.C.R. NO. 82

---o0o---

ATTEST: I further certify that I am not interested
in the events of this action.

/s/GERRI DE LUCCA
GERRI DE LUCCA, C.C.R. NO. 82

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

OSCAR GOMEZ, JR.,

Defendant.

Case No. 16F10719A

ATTEST RE: NRS 239B.030

STATE OF NEVADA }
COUNTY OF CLARK } SS

I, Gerri De Lucca, a Certified Shorthand
Reporter within and for the County of Clark and the
State of Nevada, do hereby certify:

That REPORTER'S TRANSCRIPT OF PROCEEDINGS
was reported in open court pursuant to NRS 3.360
regarding the above proceedings in Las Vegas Justice
Court, 200 Lewis Avenue, Las Vegas, Nevada.

That said TRANSCRIPT:

 X Does not contain the Social Security
number of any person.

 Contains the Social Security number
of a person.

-	alcohol [5] 6/25 26/6 26/12 29/3 29/12	because [6] 3/22 16/14 18/23 35/6 39/12 42/23
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4	Appreciate [1] 55/11	bottle [2] 29/8 35/17
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5	approximately [1] 35/25	bought [1] 29/7
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8	area [1] 17/16	brief [1] 40/22
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9	arm [1] 9/2	broke [5] 12/23 14/12 31/1 48/19 50/12
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 17, 2017

C-16-316959-1 State of Nevada
 vs
 OSCAR GOMEZ, Jr.

October 17, 2017 9:30 AM Status Check: Trial Setting

HEARD BY: Adair, Valerie **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield
 Gail Reiger

REPORTER:

PARTIES

PRESENT:	GOMEZ, OSCAR, Jr.	Defendant
	Levy, Monti J.	Attorney for the Defendant
	Palal, Binu G.	Attorney for the State
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted there was a hearing on the Deft's Motion to Suppress that was continued to chambers for a decision. Court FINDS the Deft's statement made on page 26 of the transcript was not an invocation of his right to counsel and ORDERED motion DENIED.

As to the status check, Court advised counsel that the co-Deft's trial would be moved to the same date as Deft. Gomez. Colloquy regarding the offer extended to the Defts. Court confirmed with the Deft. that he was aware of the offer and CONTINUED the matter to allow him to go over it with his attorney.

CUSTODY

CONTINUED TO: 11/7/17 9:30 AM

PRINT DATE: 11/01/2017

Page 1 of 2

Minutes Date: October 17, 2017

RA023

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 07, 2017

C-16-316959-1 State of Nevada
 vs
 OSCAR GOMEZ, Jr.

November 07, 2017 9:30 AM All Pending Motions

HEARD BY: Adair, Valerie **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Jill Chambers

RECORDER: Susan Schofield

REPORTER:

PARTIES

PRESENT:	GOMEZ, OSCAR, Jr.	Defendant
	Levy, Monti J.	Attorney for the Defendant
	Palal, Binu G.	Attorney for the State
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT'S MOTION FOR REASONABLE BAIL SETTING...STATUS CHECK:
NEGOTIATIONS/TRIAL SETTING

Mr. Palal stated that he reached out to counsel advising them that the lead detective on the case would be out for surgery during the time set for trial. Ms. Levy and Mr. Matsuda made no objection. Court RESET trial date.

Colloquy regarding offers extended to and rejected by the Defts. Court confirmed with both Defts. that they wished to reject the offer. Deft. Delacruz stated he wanted more time to go over it with his attorney. Upon the Court's inquiry, counsel stated everything else was on track for trial.

Argument as to the Deft's motion. Court ORDERED the Court Recorder to prepare transcripts from the evidentiary hearing and advised counsel it would consider the matter further. Court SET matter for decision and continued status check for trial readiness.

PRINT DATE: 11/08/2017

Page 1 of 2

Minutes Date: November 07, 2017

RA025

CUSTODY

11/28/17 9:30 AM STATUS CHECK: DECISION

2/23/18 9:30 AM STATUS CHECK: TRIAL READINESS

4/19/18 9:30 AM CALENDAR CALL

4/23/18 9:30 AM JURY TRIAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR GOMEZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 76487
District Court Case No. C316959

FILED

JUN 20 2019

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 15th day of May, 2019.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
June 11, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Sandy Young
Deputy Clerk



C-16-316959-1
CCJA
NV Supreme Court Clerks Certificate/Judgm
4843749



CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: 6/11/19
Supreme Court Clerk, State of Nevada

By S. Young Deputy

RA028

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OSCAR GOMEZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76487-COA

FILED

MAY 15 2019

ELIZABETH A. BROWN
CLERK OF THE COURT
BY *[Signature]*
CHIEF CLERK

ORDER OF AFFIRMANCE

Oscar Gomez, Jr., appeals from a judgment of conviction entered pursuant to a guilty plea of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

First, Gomez argues the district court erred by failing to state on the record that it had considered the factors required by NRS 193.165(1) before imposing the sentence for the deadly weapon enhancement. Because Gomez did not preserve this claim of error for appellate review, he would not be entitled to relief absent demonstration of plain error. *See Mendoza-Lobos v. State*, 125 Nev. 634, 644, 218 P.3d 501, 507 (2009) (applying plain-error review to alleged sentencing errors). "An error is plain if the error is so unmistakable that it reveals itself by a casual inspection of the record. At a minimum, the error must be clear under current law, and, normally, the defendant must show that an error was prejudicial in order to establish that it affected substantial rights." *Saletta v. State*, 127 Nev. 416, 421, 254 P.3d 111, 114 (2011) (internal quotation marks, brackets, and citation omitted).

Here, the record reveals the district court failed to state on the record that it considered the information described in NRS 193.165(1) paragraphs (a) to (e) in deciding the appropriate penalty for Gomez' use of a deadly weapon. However, the record also reveals the district court was aware of the facts and circumstances of Gomez' crime, his criminal history, his mitigation evidence, and the victim-impact evidence. See NRS 193.165(1). Therefore, Gomez has not shown the error was prejudicial, see *Mendoza-Lobos*, 125 Nev. at 644, 218 P.3d at 508; *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) ("[T]he burden is on the defendant to show actual prejudice or a miscarriage of justice."), and we conclude he is not entitled to relief.

Second, Gomez argues his sentence is cruel and unusual because it is unnecessarily long and removed the meaningful possibility of rehabilitation. Gomez also asserts the district court did not consider his background and the facts of the case when imposing sentence. Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

Gomez' sentence of life with the possibility of parole in 10 years for the primary offense plus a consecutive term of 96 to 240 months for the deadly weapon enhancement is within the parameters provided by the

relevant statutes, *see* NRS 193.165(1); NRS 200.030(5)(a), and Gomez does not allege that those statutes are unconstitutional. We conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment.

Third, Gomez argues it was improper for the written plea agreement to contain a waiver of his appellate rights and that such a waiver goes against public policy. Gomez' claim lacks merit because the Nevada Supreme Court has stated that "[a] knowing and voluntary waiver of the right to appeal made pursuant to a plea bargain is valid and enforceable." *See Cruzado v. State*, 110 Nev. 745, 747, 879 P.2d 1195, 1195 (1994), *overruled on other grounds by Lee v. State*, 115 Nev. 207, 210, 985 P.2d 164, 166 (1999). Therefore, Gomez is not entitled to relief.

Fourth, Gomez argues his trial-level counsel was ineffective for failing to properly explain the consequences he faced by entering a guilty plea and for failing to ensure he understood the waiver of his rights. Claims of ineffective assistance of counsel "may not be raised on direct appeal, unless there has already been an evidentiary hearing." *Feazell v. State*, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995). Because there has not been an evidentiary hearing concerning Gomez' ineffective-assistance-of-counsel claims, they are not appropriately raised on direct appeal and we decline to consider them.

Fifth, Gomez argues his guilty plea is invalid because he did not fully understand the consequences of his plea or the rights he waived when entering his plea. A criminal defendant may not challenge the validity of a guilty plea on direct appeal, unless the error clearly appears from the record or rests purely on legal grounds. *See O'Guinn v. State*, 118 Nev. 849, 851, 59 P.3d 488, 489 (2002). The issues involved with Gomez' challenges to the

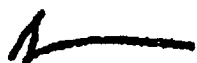
validity of his plea do not clearly appear from the record and do not rest on purely legal grounds. We therefore decline to address Gomez' claims in the first instance on direct appeal. *See id.* at 851-52, 59 P.3d at 489-90.

Sixth, Gomez argues he is entitled to relief due to cumulative error. Gomez failed to demonstrate there were multiple errors which could have been cumulated, *see United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000) ("One error is not cumulative error."). Therefore, Gomez is not entitled to relief. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Valerie Adair, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: 6/11/19
Supreme Court Clerk, State of Nevada

By S. Young Deputy

RA033

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR GOMEZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 76487
District Court Case No. C316959

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: June 11, 2019

Elizabeth A. Brown, Clerk of Court

By: Sandy Young
Deputy Clerk

cc (without enclosures):

Hon. Valerie Adair, District Judge
Attorney General/Carson City \ Aaron D. Ford, Attorney General
Clark County District Attorney \ Steven S. Owens, Chief Deputy District Attorney
Clark County District Attorney \ Jonathan VanBoskerck, Deputy District Attorney
Terrence M. Jackson

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 20 2019.

Deputy HEATHER UNGERMANN
District Court Clerk

**RECEIVED
APPEALS**

JUN 19 2019

CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Habeas Corpus

COURT MINUTES

October 13, 2020

A-20-815035-W Oscar Gomez, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

October 13, 2020 11:00 AM Decision Regarding Deft's Petition for Writ of Habeas Corpus

HEARD BY: Adair, Valerie

COURTROOM: Chambers

COURT CLERK: April Watkins

JOURNAL ENTRIES

- Defendant's Petition for Writ of Habeas Corpus will be scheduled for an evidentiary hearing on the sole issue of whether counsel failed to inform Defendant that he faced consecutive time for the deadly weapon enhancement. This matter is set for a status check to schedule the evidentiary hearing on Thursday, October 29 at 3:30. The State is directed to prepare an order to transport for Defendant's physical or remote appearance.

NDC

10/29/2020 3:30 PM STATUS CHECK RE: SETTING OF EVIDENTIARY HEARING

CLERK'S NOTE: The above minute order has been distributed to: Oscar Gomez #1200302, S.D.C.C., P.O. Box 208, Indian Springs, NV 89070. aw

NDC

3/5/2021 11:00 A.M. STATUS CHECK: CONFIRMATION OF COUNSEL... STATUS CHECK RE:
SETTING OF EVIDENTIARY HEARING..

4/7/221 11:00 A.M. PETITION FOR WRIT OF HABEAS CORPUS

CLERK'S NOTE: A copy of this Minute Order has been e-mailed to the Office of Appointed Counsel
(2-16-2021 ks)

Writ of Habeas Corpus

COURT MINUTES

March 05, 2021

A-20-815035-W Oscar Gomez, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

March 05, 2021 01:30 PM All Pending Motions

HEARD BY: Silva, Cristina D. COURTROOM: RJC Courtroom 11B

COURT CLERK: Schlitz, Kory

RECORDER: Villani, Gina

REPORTER:

PARTIES PRESENT:

Binu G. Palal Attorney for Defendant

James I. Hoffman Attorney for Plaintiff

Oscar Gomez Plaintiff

JOURNAL ENTRIES

STATUS CHECK RE: SETTING OF EVIDENTIARY HEARING... STATUS CHECK:
CONFIRMATION OF COUNSEL: JIM HOFFMAN...

Monti Levi Esq. also present.

Upon Court's inquiry, Mr. Hoffman stated he can confirm as counsel of record. COURT STATED their inclination is to set this matter for a status check in two weeks to set an evidentiary hearing. Mr. Hoffman stated that would be enough time. Mr. Palal stated he contacted Ms. Levy to be present today to expedite the process of setting the hearing. COURT ADVISED a status check will need to be set due to the matter needing to be calendared for a special setting through CCDC, and DIRECTED parties to meet and figure out dates they would be available to have the limited hearing and contact Chambers once done. Mr. Hoffman stated he reviewed the minutes, and inquired if this hearing only pertained to the first Petition the Defendant filed. COURT STATED it would be helpful and necessary to address the other pending Petitions, and suggested Mr. Hoffman look at the Petitions to see if there are grounds for them to be considered, and to meet and confer with the State. COURT ORDERED, Status Check CONTINUED.

NDC

3/19/2021 11:00 A.M. STATUS CHECK RE: SETTING OF EVIDENTIARY HEARING