

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCUS WESLEY,

Appellant,

Vs.

THE STATE OF NEVADA,

Respondent

Case No.: 82690

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APPELLANT'S APPENDIX VOL. 5

(Appeal from Judgment of Conviction)

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DATED this 24th day of September, 2021.

/s/ BRET O. WHIPPLE, ESQ.
Bar No. 6168

1 plea agreement, the canvas, anything that pertains to
2 anything touching upon penalty, has to be redacted.
3 MR. LANDIS: Agreed.
4 THE COURT: That he understands, and other than
5 that, other than any information regarding the penalty,
6 I don't care how you do it, if it's a guilty plea
7 agreement, if it's a canvas, if it's the Information, I
8 think however we get it, it has to be the full picture.
9 MS. LUZAICH: Right.
10 But it still wouldn't happen through Niswonger.
11 THE COURT: The mechanism that occurs could just
12 be, these are official documents that are in the file,
13 they are already a matter of public record, and I think
14 we could probably just acknowledge the existence of
15 these public records as redacted, but I don't know that
16 you really even need to have somebody testify to them
17 because they are a matter of the record in this case.
18 MR. LANDIS: Fact.
19 THE COURT: So decide how you want to approach
20 it, how you want to do it, but I don't think you need to
21 have that witness come back to do this. This is
22 entirely unnecessary for that.
23 Is that how you want to approach it, you want me
24 to bring the jury back in?
25 MS. LUZAICH: Then -- But I also get to go into
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1 Delarian Wilson's statement where he tells the police,
2 yeah, I was there, yeah, I did this, but he and Narcus
3 Wesley had the gun, and he and Narcus Wesley committed
4 the sexual assault, if they are going to bring that in,
5 I get to do that as well.
6 MR. LANDIS: We are not arguing any different.
7 THE COURT: All right. We are all on the same
8 page.
9 Again, this all stems from their decision how
10 they want to handle it.
11 If they choose not to allow any of it in, that's
12 fine, but if they choose to bring it in, then that is
13 the rule, that's how we'll approach it. Okay?
14 Bring them in.
15 Who is next, and where are we as far as the
16 evidence goes?
17 MS. LUZAICH: Fingerprints.
18 MS. KOLLINS: Fingerprints.
19 THE COURT: And then who is after your
20 fingerprint?
21 MS. KOLLINS: Detective Hartshorn and Detective
22 Weske.
23 (Thereupon, the following proceedings were had in open
24 court and in the presence of the jury.):
25 THE COURT: Do the parties stipulate to the
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1 presence of the jury?
2 MR. LANDIS: Yes, Judge.
3 MS. LUZAICH: Yes, Judge.
4 THE COURT: Okay. The State's next witness.
5 MS. KOLLINS: The State calls Kent Timothy.
6
7 KENT TIMOTHY,
8
9 who, being first duly sworn to tell the truth, the whole
10 truth, and nothing but the truth, was examined and
11 testified as follows:
12 THE CLERK: Please state your full name, and
13 spell your first and last name for the record.
14 THE WITNESS: Kent Workman, W-o-r-k-m-a-n,
15 Timothy, T-i-m-o-t-h-y.
16
17 **DIRECT EXAMINATION OF KENT TIMOTHY**
18 BY MS. KOLLINS:
19 Q. Sir, how are you employed?
20 A. I'm employed as a latent print examiner for the
21 City of Henderson, Nevada.
22 Q. How long have you been employed as a latent print
23 examiner for the City of Henderson, Nevada?
24 A. Since January 5th of 2004.
25 Q. Prior to January 5th of 2004, what kind of
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1 position did you hold?
2 A. I started in law enforcement as a police officer
3 in 1980 in West Valley City, Utah. I remained there
4 working in patrol and traffic divisions and then moved
5 into their forensic unit when it was created in 1995. I
6 stayed there until 2000 and took about eleven months off
7 to deal with a health situation, and then I came back to
8 West Valley where I worked until December of 2003.
9 Q. And is that when you came to Henderson as a
10 latent print examiner?
11 A. Yes, ma'am.
12 Q. And what education qualifies you to perform your
13 function as a latent print examiner?
14 A. I have had over 400 hours in fingerprint and
15 latent print and development, processing, and comparison
16 from various instructors from the federal bureau of
17 investigations, Mississippi State Crime Lab, and the
18 international organization for identification is the
19 certifying body for this group.
20 Q. Are you still certified by that body?
21 A. Yes, I'm a certified latent print examiner.
22 Q. And how long have you been certified by that
23 board?
24 A. Since March of 2003.
25 Q. Have you testified as an expert in the Eighth
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1 Judicial district?

2 A. Yes, ma'am.

3 Q. In the field of latent print examination?

4 A. Yes, last testified I believe it was in January
5 of this year.

6 In the last six months I've testified
7 approximately four times here in District Court.

8 Q. And just to give the ladies and gentlemen a brief
9 overview of what a latent print examiner does --

10 A. All right. My job description is basically to
11 analyze and compare fingerprint and foot wear and tire
12 track evidence that comes into the crime lab.

13 I spend the vast majority of my time in the crime
14 lab.

15 I've been to only about six crime scenes here.

16 I also operate three different AFIS systems.

17 AFIS is the acronym for Automated Fingerprint
18 Identification Systems, an electronic data base for
19 finding candidate fingerprints from an electronic data
20 base.

21 Q. Can you describe for the ladies and gentlemen of
22 the jury what a latent fingerprint is?

23 A. All right. The word latent has been applied
24 generically to all fingerprint evidence, even though
25 latent in the exact vernacular of fingerprint work

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1 applies to fingerprints which are not readily visible,
2 or a fingerprint which needs to be developed in some way
3 before it can be visualized, recorded and then compared.

4 Q. Can you describe for us some of the mechanisms
5 that are used to document a latent fingerprint?

6 A. All right. Most fingerprints from crime scenes
7 are developed simply by the use applying a transient
8 powder, an oxide-based powder, or magnetic powder, to a
9 surface, so it will adhere to the fingerprint residue
10 surface by the contact of a person.

11 Fingerprints can also be captured by photography
12 with or without development.

13 Fingerprints can be developed by various chemical
14 methods on porous items such as paper or wood, causes a
15 chemical reaction and verify visible fingerprint which
16 can be photographed, scanned or compared without
17 electronic capturing.

18 Q. Are one of those chemical processes the use of
19 super glue?

20 A. Yes, ma'am.

21 Q. And could you describe that process?

22 A. All right. The super glue process is a process
23 for crystalizing or hardening the fingerprint.

24 If any of you remember the movie Beverly Hills
25 Cop, Eddie Murphy places the match book inside of a
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1 terrarium with some super glue, and his fingerprint
2 magically appears on that. It actually turned out the
3 wrong color, but the idea is for the fingerprint residue
4 which is on the surface to attract moisture in the
5 atmosphere, and then the super glue fumes adhere to that
6 residue holding that moisture and become a hard
7 crystalline-type structure on the surface.

8 Q. And once that becomes a hard crystal-like
9 structure on the surface of the fingerprint, what is
10 done in order to document that fingerprint?

11 A. Usually you can go one of two ways, either by
12 dusting it with regular transient powder and then
13 lifting that, by photographing it, or you can apply a
14 chemical stain which causes it to fluoresce, and that is
15 documented by photography.

16 Q. What causes someone to leave a fingerprint on a
17 surface?

18 A. All right. Fingerprints are residue which is
19 transferred to a surface or extracted from a surface by
20 the contact of a hand.

21 Dr. Edmond Locard (Phonetic) is the scientist who
22 gave us what is known as the Locard exchange principle,
23 a fundamental principle for all criminalistics which
24 basically says we interact with our environment, we
25 either leave something or take something away.

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1 When a person touches a surface, if their hands
2 have residue on the hands, which is either natural
3 sweat, perspiration or sebum (Phonetic), or if they have
4 some other substance on the hand, they then transfer
5 that substance to the surface, if the surface itself has
6 either a weathering patina, or dust, or some other
7 substance on it, the fingers can actually remove some of
8 that contamination on that surface, and thereby a
9 visible fingerprint is left.

10 So it can either be in addition to a surface or
11 an extraction from a surface.

12 If however both surfaces are sufficiently clean,
13 you just washed your hands, the surface is clean, there
14 is going to be no transfer, so there will be no
15 fingerprint that will be detected.

16 Q. Okay. I'm going to back up and ask you a couple
17 questions about your explanation.

18 You said you could have dirt or sweat on your
19 hands that may leave a transference on a surface, is
20 that right?

21 A. Yes, that type of a print is known as a latent
22 print, something that is visible.

23 Q. And you also mentioned something you called
24 sebum. Is that like skin oil, oil of the skin?

25 A. They are basically three different types of
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1 residues that come from the human body.

2 There is aprikan (Phonetoc), which is the very
3 watery salty secretions that come from the surfaces of
4 the hands and the palms of the feet. There are aprikan
5 solutions or excretions. Those are generally found in
6 the area of hair follicles to help keep the hair
7 follicle clean, that is also a very watery secretion.

8 And then there is sebum. Sebum is the white
9 greasy residue that is produced in a gland wherever
10 there is a hair follicle. We commonly have those in the
11 area of the face, or on the top of the head. It's that
12 white sort of gooey residue. It's a heavy oily-based
13 residue.

14 Q. Okay. Now, is every surface equally receptive to
15 having a fingerprint left on it?

16 A. No.

17 Q. Why is that?

18 A. Well, a surface may have such a highly textured
19 structure to it that when the finger or the hand
20 contacts it, that surface can actually break up or
21 interfere with good physical contact, so you don't get a
22 good record.

23 Many times on things like dashboards or leather
24 items that have a heavy grain to them, or some wood
25 grain, that structure will break up the fingerprint as
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1 it's being deposited. You don't get even contact, and
2 you don't get a good image.

3 Q. And could other things such as moisture
4 contribute to whether or not a fingerprint was
5 successfully transferred onto a surface?

6 A. Yes, it could.

7 If you have sufficient water on a surface, or
8 oil, or enough dirt or grease, you prevent that
9 sufficient contact to record a fingerprint, you can
10 interfere with what is being left behind, how it's been
11 touched, so there are actually a number of things that
12 can damage or prevent a good fingerprint from being left
13 on a surface.

14 Q. So a surface, a smooth dry surface would be based
15 on what you are telling, be more conducive to having
16 deposited a fingerprint?

17 A. Yes, it would be.

18 Q. And qualitatively fingerprint -- To fingerprint
19 there is some differentiation as to whether a
20 fingerprint is sufficient such that can be identified.
21 In other words, every time we touch something it's not
22 necessarily identifiable, is that correct?

23 A. That is correct.

24 The vast majority of the marks which we receive
25 in the laboratory are not sufficient in detail for us to
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1 make an identification. Sometimes we can use them for
2 exclusion.

3 Sometimes there isn't enough to do anything with.

4 Q. In other words, I could touch the grain of this
5 desk and perhaps the screen and that computer, and just
6 because I touched them all in front of you, those three
7 different surfaces, they might not all be of equal
8 quality, correct?

9 A. Correct.

10 Also the motion applied the dynamics of that
11 contact can affect whether or not an identifiable
12 fingerprint is left behind.

13 Q. When we are talking about these latent prints
14 that are left behind that you may want to do some
15 comparison of a print of a known print of somebody, tell
16 us how you go about that just generally in the lab?

17 A. The comparison process, there is an actual
18 methodology which has been developed called CE-V, it's a
19 process of analyzing each latent fingerprint you are
20 going to compare to try and extract the ridge detail you
21 are going to look at.

22 We'll then in the case of this case get a release
23 from a person to compare the latent prints in the case
24 to named individuals.

25 So we obtain record prints from a few different
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1 sources and then do a comparison of the detail we
2 extract to whatever record print.

3 Q. Okay. So in other words, if I'm correct, you
4 look at the lifts, or photographs that were obtained
5 from a crime scene, and you collect those, and then you
6 look at the known fingerprints of a suspect that has
7 been submitted to you?

8 A. Yes, ma'am.

9 Q. And by known prints, we're talking about
10 fingerprints that are taken in a controlled environment,
11 wherever they may have been obtained and submitted to
12 you as identified to a specific individual?

13 A. Yes, ma'am.

14 Q. Did you have occasion to run that type of
15 comparison pursuant to Henderson DR Number 0703748?

16 A. Yes, I did.

17 Q. And were known fingerprints submitted to you in
18 that case?

19 A. Yes, I was able to obtain known prints for two
20 persons.

21 Q. And for which two persons did you obtain known
22 prints?

23 A. For a Mr. Delarian K. Wilson and a Narcus Wesley.

24 Q. Okay. Now, crime scene submitted a multitude of
25 lifts to you, is that correct, in this case?

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1 A. Yes.

2 Q. And I don't know, I didn't count them in total,
3 about 64 lifts in all, is that correct?

4 A. I believe that's about right, yes.

5 Q. Is that about right?

6 A. Yes.

7 Q. Specifically I'd like to focus your attention on
8 two lifts that were obtained by crime scene analyst
9 Jennie Ayers on a lotion bottle.

10 Did you do a comparison of those fingerprints?

11 A. I did.

12 MS. KOLLINS: May I approach the witness, Your
13 Honor?

14 THE COURT: Yes.

15 BY MS. KOLLINS:

16 Q. I'm going to show you what has been admitted as
17 State's 27.

18 Do you recognize State's 27?

19 A. I do.

20 Q. And what is State's 27?

21 A. An evidence package containing two latent
22 adhesive lifts. On here are my name and the date that I
23 received it from the evidence for the analysis.

24 Q. And your signature and that date upon there help
25 you recognize that package unique from another one?

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1 A. Yes.

2 Q. Okay. There is some blue tape at the top of that
3 evidence bag.

4 What does that tell you?

5 A. This is the blue sealing tape that we use in the
6 crime lab to resell items after we have examined them.

7 My initials and the date 4/10/07 are also on
8 there.

9 Q. Okay. Does it appear to be in substantially the
10 same condition it was the last time you saw it and put
11 that blue evidence tape on the top?

12 A. Yes, ma'am.

13 Q. Okay. The latent prints that were taken from the
14 lotion bottle and preserved by analyst Ayers, are they
15 contained within State's 27?

16 A. I --

17 Q. Can I get you some scissors?

18 A. Yeah, it's a little more dignified than me
19 ripping it up.

20 Q. Oh, go ahead and rip.

21 A. Those are the lifts.

22 Q. Okay. Now, are those the lifts that you compared
23 to the known prints of Delarian Wilson, and/or Narcus
24 Wesley?

25 A. Yes, ma'am.

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1 Q. Okay. And were you able to draw a conclusion as
2 to the identity of the person that left the prints that
3 are contained within 27 and were lifted from the lotion
4 bottle?

5 A. There are a number of partial latent prints on
6 both the front and the back, and a total of four of
7 those latent prints were identified by comparison to
8 Delarian K. Wilson.

9 Q. Okay. And I believe you charted that comparison
10 for us, did you not?

11 A. I did an example chart, yes.

12 Q. Showing you what has been marked for purposes of
13 identification as State's 41, could you explain to us
14 how this documents your conclusion?

15 A. All right. This is just a very basic chart that
16 I put together just to show the comparison of three of
17 the four prints because they were so close together in
18 space.

19 What we have is a series of features which
20 correspond from the record prints to the known prints.

21 The process is to go through the evidence print
22 and extract ridge endings, bifurcations, dots, those are
23 three common features, and then to examine the structure
24 and the course of the ridges between those features, and
25 then go to the record print to see if you could find the
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1 same features.

2 In these three prints what we have is this record
3 print being identified to these two latent prints, this
4 latent print being identified to that record.

5 Q. I'm sorry.

6 And when you said, this record print, you are
7 indicating the print that is in the bottom right of
8 State's Proposed 41, and you are drawing its comparison
9 to the grouping of dots, that is in the bottom right
10 hand portion of the gray photograph, correct?

11 A. And the middle print.

12 Q. And the middle print?

13 A. These two latent prints were made by the same
14 finger.

15 Q. Okay. The two latent prints depicted in there
16 are to the right most in the picture, correct?

17 A. Yes.

18 Q. And I'm sorry to interrupt you. I'm just trying
19 to make a record.

20 What other comparison and subsequent
21 identification did you make using the same piece of
22 evidence?

23 A. This farthest right -- or farthest left print is
24 identified to this, I believe that's the number 9, the
25 ring finger, here from the record of Mr. Wilson.

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1 Q. And the record -- or the known print of Mr.
2 Wilson is depicted in the left-hand side of your
3 exhibit?

4 A. Yes, ma'am.

5 MS. KOLLINS: The State would move for the
6 admission of 41.

7 MR. LANDIS: No objection, Judge.

8 THE COURT: 41 is admitted.

9 BY MS. KOLLINS:

10 Q. You indicated that the left most print was the
11 left ring finger of Delarian Wilson, is that your
12 recollection, you said number 9?

13 A. I believe it is.

14 I'm going to check.

15 Q. Would it refresh your recollection to review your
16 conclusion?

17 A. My report, yes.

18 The ring finger and then the middle finger was
19 identified to the two prints on the right.

20 The ring finger was identified to the latent
21 print on the left.

22 Q. Okay. Now, I'd like to talk to you about the
23 other, I don't know, sixty or so prints that you
24 reviewed in this case.

25 Were they all of the same quality?

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1 A. No.

2 Q. Were you able to make any further identifications
3 out of those prints?

4 A. No, I was not.

5 Q. If you had to compare the quality of those lifts
6 to what was submitted on that lotion bottle where you
7 were able to draw a conclusion about identity, what
8 would be your comparison?

9 A. Well, it's been a while since I've seen the
10 actual lifts.

11 All I can really say is, that these were
12 sufficient for identification, and the only two record
13 prints I had to work with were those belonging to Mr.
14 Wilson and Mr. Wesley.

15 I was asked to look for the record prints for the
16 other person, the other people who were there present,
17 but I was not able to get record prints for them.

18 Q. So there could have been a multitude of reasons I
19 guess is my point why identification was not made out of
20 the rest of those lifts?

21 A. One of the shortest reasons is, that we don't
22 have a record print to compare to the latent prints,
23 regardless of their quality, if there is no record.

24 Q. But also could be insufficient quality?

25 A. Could be insufficient quality, yes.

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1 Q. Insufficient detail?

2 A. Yes.

3 Q. Not a full print, if you will, only partials?

4 A.

5 None of them are full.

6 They are all sort of partial.

7 It's just a matter of whether or not there is

8 enough for you to make a conclusion that you are
9 satisfied with about the identification.

10 MS. KOLLINS: I will pass the witness.

11 THE COURT: Cross.

12 MR. LANDIS: Thank you, Judge.

13

14

CROSS-EXAMINATION OF KENT TIMOTHY

15 BY MR. LANDIS:

16 Q. Good afternoon, sir.

17 Excuse me for the lack of sophistication on this
18 stuff, but to make sure I got this stuff straight, you
19 got sixty some prints that came to your lab from the
20 crime scene?

21 A. That's correct.

22 Q. And sometime later Henderson Police bring you two
23 individual sets of prints?

24 A. Miss Harris gave me the names, and I was able to
25 locate the prints.

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1 Q. One being Delarian Wilson?

2 A. Yes.

3 Q. The other one being Narcus Wesley?

4 A. That's right.

5 Q. You took those two individual sets of prints and
6 compared them the best you could to those sixty some you
7 got from the crime scene?

8 A. Yes.

9 Q. Some you could test, and some you couldn't test
10 because they weren't of sufficient quality?

11 A. Some there was not sufficient to make an
12 identification, that's right.

13 Q. And after testing the sixty some prints, you got
14 one match?

15 A. I matched four fingers, four latents.

16 Q. I'm sorry.

17 From one object?

18 A. Right.

19 Q. And that was the lotion bottle?

20 A. That's correct.

21 Q. And those came back to one Delarian Wilson?

22 A. Yes, sir.

23 Q. And that was the only -- I understand it's four
24 prints -- but only match you were able the make out of
25 those sixty some prints?

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1 A. That's right.
 2 Q. No matches as to Narcus Wesley?
 3 A. That's correct.
 4 MR. LANDIS: I have nothing further, Judge.
 5 MS. KOLLINS: No redirect, Judge.
 6 THE COURT: Thank you very much. I appreciate
 7 your testimony.

8
 9 BRYAN HARTSHORN,

10
 11 who, being first duly sworn to tell the truth, the whole
 12 truth, and nothing but the truth, was examined and
 13 testified as follows:

14 THE CLERK: Please be seated.

15 Please state your full name, and spell both your
 16 first and last name for the record.

17 THE WITNESS: Bryan Hartshorn, B-r-y-a-n
 18 H-a-r-t-s-h-o-r-n.
 19 - - - -

20
 21
 22
 23
 24
 25
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DIRECT EXAMINATION OF BRYAN HARTSHORN

2 BY MS. KOLLINS:

3 Q. Sir, how are you employed?

4 A. With the City of Henderson Police Department.

5 Q. What capacity with the City of Henderson Police
 6 Department?

7 A. Detective.

8 Q. And how long have you been a detective for the
 9 City of Henderson?

10 A. Almost two years.

11 Q. And prior to being a detective for HPD, where did
 12 you work?

13 A. I worked for patrol.

14 Q. How long were you a patrol officer?

15 A. For three --

16 Q. Were you employed then with Henderson Police
 17 Department in February of '07?

18 A. Yes, ma'am.

19 Q. What detail were you assigned to?

20 A. I was working with the major crimes unit.

21 Q. Calling your attention to All-star Weekend,
 22 February of 2007, did you become involved in an
 23 investigation with a robbery that occurred -- or had
 24 occurred in Henderson at 690 Great Dane Way?

25 A. Yes.

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1 Q. How did you become involved with that
 2 investigation?

3 A. I was called out early morning to the main
 4 station to assist with the crime that had been committed
 5 that night.

6 Q. And when you were called to the station, was that
 7 for the purposes of attending a briefing regarding this
 8 crime?

9 A. It was.

10 Q. And were multiple detectives present?

11 A. Yes.

12 Q. Sergeants?

13 A. Yes.

14 Q. Any patrol on site?

15 A. Not at the initial meeting.

16 Q. Okay. From the initial meeting, was everyone
 17 kind of given a task to accomplish?

18 A. Yes.

19 Q. Where were you directed to go?

20 A. I was initially directed to an apartment complex.

21 Q. Would that have been on Warm Springs Avenue?

22 A. It was.

23 Q. Did you know whether or not from your briefing
 24 had the primary crime occurred at the Warm Springs
 25 apartment?

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1 A. We knew it had occurred at a Great Dane address
 2 on Great Dane.

3 Q. Okay. Who was at Warm Springs when you arrived?

4 A. Patrol officers were -- or had arrived and were
 5 there, and then I think a couple of detectives had been
 6 arrived there before I did.

7 Q. Were you paired up with any other detective
 8 through the course of this investigation?

9 A. At the beginning I wasn't. I was just floating
 10 around helping out whoever needed help.

11 Later I was assigned with Detective Weske.

12 Q. When you arrived at the Warm Springs apartment,
 13 did you go inside?

14 A. Yes.

15 Q. Who was present inside?

16 A. The patrol officer, some detectives and the
 17 victims.

18 Q. And how many victims were there?

19 A. Six.

20 Q. Had anyone gone to the Great Dane residence yet,
 21 and by anyone I mean, had crime scene gone there, had
 22 that residence been cleared yet, did any of those things
 23 transpire by the time you reached the apartment?

24 A. Not yet, no.

25 Q. What did you do at the apartment?

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1 A. I collected some of the evidence, the cell phones
2 and the debit cards that were used.

3 I collected a nine millimeter round that was in
4 the vehicle of one of the victims.

5 And I assisted -- I was present for the interview
6 of one of the victims.

7 Q. And from whom did you collect cell phones?

8 A. All six. We were missing one of the victims,
9 Danielle's, so I guess we had five.

10 Q. And what was your purpose for collecting those
11 cell phones?

12 A. For prints.

13 Q. And you collected debit cards.

14 Do you recall from whom you collected debit
15 cards?

16 A. I don't remember, no.

17 Q. You mentioned another piece of evidence that you
18 collected while at Warm Springs.

19 From whom did you get that?

20 A. It was in the vehicle of one of the victims,
21 first name is Ryan.

22 Q. The last time be Tognotti?

23 A. Yes.

24 Q. And what was -- or what did he have in his
25 vehicle?

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1 A. It was a nine millimeter bullet round.

2 Q. Okay. And what did you learn was the
3 significance of that nine millimeter round as it had to
4 do with what happened at Great Dane?

5 A. We were advised by the --

6 MR. BANKS: Object.

7 Hearsay.

8 MS. KOLLINS: It goes to the reason why he
9 impounded it.

10 THE COURT: Overruled.

11 Go ahead.

12 THE WITNESS: It was the victim identified the
13 weapon to be a nine millimeter Glock.

14 MS. KOLLINS: May I approach, Your Honor?

15 THE COURT: Yes.

16 BY MS. KOLLINS:

17 Q. Showing you what has been previously shown to
18 Defense counsel and marked for purposes of
19 identification as State's Proposed 42 and contents, do
20 you recognize that envelope?

21 A. Yes.

22 Q. And what is that envelope?

23 A. It's the impound envelope for the nine millimeter
24 gun.

25 Q. And how is it that you recognize that to be the

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1 same envelope?

2 A. It has my signature and my initials and P. Number
3 on the evidence.

4 Q. Okay --

5 MS. KOLLINS: Move for the admission of 42 and
6 contents.

7 MR. LANDIS: No objection.

8 THE COURT: 42 is admitted.

9 BY MS. KOLLINS:

10 Q. I'm not going to have you open this, detective,
11 but you identified what is contained in here as a nine
12 millimeter round.

13 Is that something in your training and experience
14 as a police officer that you would know?

15 A. Yes.

16 Q. Is part of what identified that envelope to you
17 the DR Number, or in other words your event number?

18 A. Yes.

19 Q. Do you know what that is off the top of your
20 head, or do you need to look at the envelope again?

21 A. I do not know it.

22 Q. Okay. That was my fault, detective.

23 If you could, just read that event number,
24 please.

25 A. 07-03748.

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1 Q. Okay. That was the number assigned to the entire
2 investigation of the robbery at the Great Dane
3 residence, correct?

4 A. Yes.

5 Q. After you obtained this bullet from Ryan
6 Tognotti, did you have an assignment that involved
7 actually going to the physical address of 690 Great
8 Dane?

9 A. Yes.

10 Q. What were you supposed to do?

11 A. We were to secure the residence and make sure
12 there was no dangers or hazards in there, secure it for
13 crime scene, and also canvas the neighborhood.

14 Q. Who is, we?

15 A. Myself, Detective Weske, and Sergeant Dunway.

16 Q. When you arrived at 690 Great Dane, who was
17 there?

18 A. I don't remember anyone else being there yet.

19 Q. Was patrol there at all?

20 A. Oh, yes, actually patrol was there.

21 Q. And patrol has their residence at least closed to
22 access?

23 A. It was.

24 Q. And you said your responsibility was to clear
25 that house.

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1 What did you and Detective Weske do to clear that
2 house?

3 A. We searched the whole residence for any people.

4 Q. Did Ryan Tognotti accompany you to that residence
5 in order to walk crime scene analysts through that
6 residence?

7 A. I wasn't present at that point.

8 I don't remember Ryan coming in.

9 Q. After you were satisfied that residence was
10 clear, was the crime scene then allowed to come in?

11 A. Yes.

12 Q. Did you remain at Great Dane while crime scene
13 processed the house?

14 A. Uh-huh, yes.

15 Q. How long did that take?

16 A. It took about an hour.

17 We were canvassing the neighborhood at the same
18 time, maybe longer.

19 Q. By canvassing the neighborhood, what do you mean?

20 A. We were knocking on all the neighbors' doors to
21 see if anyone had seen anything that evening?

22 Q. Any success?

23 A. No.

24 Q. What time of day, is it now the day light, the
25 following morning?

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1 A. It's daylight.

2 Q. Through the interviews with the victims did you
3 learn the name Grant?

4 A. We did.

5 Q. What did you do with that information in terms of
6 the 690 Great Dane Court address?

7 A. We received information that a Grant was the
8 attended target of the robbery, and in order to find out
9 who Grant was I ran up the county assessor's file
10 on-line and discovered the owner also lived in Henderson
11 and was named Victor, I don't remember his last name,
12 Michlak -- or I'm not sure what his last name was.

13 Q. Is his last name contained in your report?

14 A. Yes.

15 Q. Would it refresh your recollection to review
16 that?

17 A. It would.

18 It's spelled M-i-c-h-l-a-k, Michlak.

19 Q. Michlak maybe?

20 A. Maybe.

21 Q. When you obtained this information about the true
22 owner of the Great Dane address, Victor Michlak, did you
23 make contact with him?

24 A. We did.

25 Q. Who is, we?

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1 A. Myself, Detective Weske, and Sergeant Dunway.

2 Q. Did you do that by phone, or go to his home?

3 A. We went to his home.

4 Q. What if anything did you learn about the
5 residence at 690 Great Dane from Mr. Michlak?

6 A. We learned that previously he rented it out to
7 some other people, and one of those was Brandon, and he
8 believed one of the roommates of Brandon's was Grant.

9 Q. Okay. Did you get a last name for Brandon?

10 A. Yes.

11 Q. And do you recall what that was?

12 A. If I can refer to my report.

13 Q. Would it refresh your recollection to do so?

14 A. It would.

15 Brandon Preston.

16 MR. LANDIS: Judge, may I approach to look to see
17 what he's looking at?

18 THE COURT: Sure.

19 MR. LANDIS: Thank you.

20 THE WITNESS: You bet.

21 BY MS: KOLLINS:

22 Q. Did you make contact with Brandon?

23 A. Yes.

24 Q. And did you learn that Brandon still actively had
25 a roommate named Grant, and had previously been

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1 roommates with Grant at 690 Great Dane?

2 A. Yes.

3 Q. Based on that information, did you attempt to
4 make contact with Grant?

5 A. We did.

6 Q. And by, we, you still mean yourself and Detective
7 Weske and Sergeant Dunway?

8 A. Just myself and Detective Weske went to the
9 apartment.

10 Q. Did you make contact with Grant there?

11 A. We did.

12 Q. Was Grant cooperative with you?

13 A. He was.

14 Q. Did he go to Henderson Police Department then
15 with you thereafter?

16 A. He did.

17 Q. And gave you some information?

18 A. Yes.

19 Q. About what time of day is it now?

20 A. It's probably about noon, maybe a little before.

21 Q. Noon on Monday the 19th?

22 A. Yes.

23 Q. In your conversations with Grant did you get the
24 name Delarian Wilson, or Kameron Wilson?

25 A. Yes.

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1 Q. Did Grant give you information how he knew
2 Delarian?
3 A. He did.
4 Q. Okay. And what did that cause you to do?
5 A. We immediately tried to identify who Delarian
6 Wilson was.
7 Q. Did you have any information at that time about
8 Delarian's participation in athletics at all?
9 A. We did.
10 Q. And what did you do based on that?
11 A. We were advised that he had played football for
12 UNLV, so we pulled up a roster of the football team.
13 Q. Okay. What did you do next?
14 A. At that point we were searching for a photo to
15 confirm that was Kameron, and that was Detective Weske
16 who did that.
17 Q. Were you present when that photo was shown to
18 Grant?
19 A. No.
20 Q. What was your next involvement in this
21 investigation?
22 A. At that point I basically stayed at the station
23 to assist if there was any need for my help.
24 We didn't know what direction everybody was going
25 in, so we had to -- were just sticking around.
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1 My next involvement was to respond to Circus
2 Circus.
3 Q. Okay. Did you receive some information that
4 Danielle Browning's cell phone was still active?
5 A. We did.
6 Q. And that caused you to travel to Circus Circus?
7 A. Yes.
8 Q. By the time you got to Circus Circus was Delarian
9 Wilson in custody there?
10 A. He was.
11 Q. Had the search warrant been executed on his room
12 yet?
13 A. I don't know.
14 Q. You did not participate in the drafting of the
15 search warrant at Circus Circus?
16 A. No.
17 Q. Nor the execution of that warrant?
18 A. Not on the execution, no.
19 Q. Delarian Wilson was in custody at security in
20 Circus Circus?
21 A. He was.
22 Q. And did you and Detective Weske proceed to speak
23 with him?
24 A. Yes.
25 Q. Okay. What was your next involvement in this
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1 investigation?
2 A. We transported him to Henderson Detention Center,
3 and then after all the declaration of arrest and booking
4 sheets were done, we went home for the night, and I came
5 back the next morning.
6 Q. Did you participate in somewhat of the drafting
7 of the execution of the warrant with Detective Weske at
8 a Gay Lane residence?
9 A. I was with him to confirm a vehicle parked at the
10 address that -- and then I went with him to assist him
11 in serving the search warrant.
12 Q. What information did you have about a vehicle?
13 A. I believe it was a white 300M Chrysler was at
14 that residence.
15 Q. And to whom was it your belief that that vehicle
16 belonged?
17 A. Mr. Wesley.
18 Q. Narcus Wesley?
19 A. Narcus Wesley.
20 Q. And did you go to an address to confirm that that
21 vehicle existed?
22 A. Yes.
23 Q. What was that address, do you recall?
24 A. I don't.
25 Q. Would it have been on Gay Lane in Clark County?
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1 A. Yes, it was on Gay Lane.
2 Q. After you did that confirmation, did Detective
3 Weske then draft a warrant?
4 A. Yes.
5 Q. And did you participate in the execution of that
6 warrant?
7 A. I did.
8 Q. Was it just you two detectives, or did -- was
9 there other police officers, SWAT available to help you
10 execute that warrant?
11 A. The initial clearing of the residence was done by
12 SWAT.
13 Q. And why would that have been done in the
14 circumstance?
15 A. Due to the nature of the crime involving a
16 firearm.
17 That's our policy is to have SWAT serve search
18 warrants.
19 Q. Who was present at the Gay Lane address upon
20 service of that search warrant?
21 A. Myself, Detective Weske, Detective Hutchinson
22 (Phonetic), and Detective Purdue (Phonetic).
23 Q. And in terms of residence of the Gay Lane
24 address, who was present?
25 A. Narcus Wesley, his father, and I believe it's his
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1 stepmother.
 2 Q. Okay. Do you see Narcus Wesley in court today?
 3 A. Yes.
 4 Q. Where is he seated, and what is he wearing
 5 today?
 6 A. Sitting right here with the tan blazer and a red
 7 tie.
 8 Q. Do you see Narcus' father here in court today?
 9 A. Yes, ma'am.
 10 Q. And where is he seated today, and what is he
 11 wearing?
 12 A. He is sat behind them with -- wearing all blue.
 13 MS. KOLLINS: May the record reflect
 14 identification of Mr. Wesley, Sr.?
 15 THE COURT: That's correct, the record will so
 16 show.
 17 BY MS. KOLLINS:
 18 Q. You said you seen someone who you believe to be
 19 be his stepmother.
 20 Do you see her present in court today?
 21 A. I don't.
 22 Q. What time of day or evening was it when you
 23 actually executed this warrant?
 24 A. It was night, about seven or eight at night, may
 25 have been later than that.

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1 Q. Was Narcus Wesley placed under arrest at that
 2 time?
 3 A. Yes, he was detained.
 4 Q. And I won't go through all the details with you
 5 at this point, but was he read his Miranda rights and
 6 interviewed by Detective Weske at the time?
 7 A. He was.
 8 Q. And the biggest portion of that interview was
 9 done in your presence, is that correct?
 10 A. Uh-huh, yes.
 11 Q. When that interview concluded, was Narcus
 12 Wesley transported to Henderson Police Department?
 13 A. He was.
 14 MS. KOLLINS: I'll pass the witness, Your Honor.
 15 THE COURT: Cross?
 16 MR. LANDIS: Thank you, Judge.
 17

CROSS-EXAMINATION OF BRYAN HARTSHORN

18 BY MR. LANDIS:
 19 Q. That bullet you found in the car?
 20 A. Yes, sir --
 21 MS. KOLLINS: I'm going to object.
 22 That mischaracterizes the testimony.
 23 He didn't say he found it.
 24 It was turned over to him.
 25

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1 BY MR. LANDIS:
 2 Q. The bullet in the car when you arrived at the
 3 Warm Springs address that you later took into custody?
 4 A. Yes.
 5 Q. -- you said based on your training and experience
 6 you knew that to be a nine millimeter bullet?
 7 A. I did I don't know much about guns.
 8 If I looked at that bullet, would I be able to
 9 determine what kind of bullet it was?
 10 A. Yes.
 11 Q. How would I do that?
 12 A. If you read on the back of the casing, it says,
 13 9mm.
 14 Q. Okay. Who was in charge of the interrogation of
 15 Mr. Wesley at the Gay Lane address, you or Mr. -- or
 16 Detective Weske?
 17 A. Detective Weske.
 18 Q. You were present when the search warrant was
 19 executed?
 20 A. I was.
 21 Q. Narcus Wesley was brought out in cuffs?
 22 A. Yes.
 23 Q. When Henderson SWAT executes a search warrant,
 24 they don't give pre-warning, right?
 25 A. I don't know their procedures.

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1 Q. Do they tend to call about the search?
 2 A. They generally will announce.
 3 Q. Knock at the door when they are there?
 4 A. Sometimes they do it on the bullhorn, depends on
 5 their tactics.
 6 I'm not completely familiar with them.
 7 Q. If people don't readily answer the door, what do
 8 they then do?
 9 MS. KOLLINS: Objection.
 10 Calls for speculation.
 11 If he's not there for every warrant that is
 12 executed, he doesn't know.
 13 THE COURT: Don't speculate, but if you know, you
 14 can answer.
 15 THE WITNESS: They open the door.
 16 BY MR. LANDIS:
 17 Q. And they go in?
 18 A. Yes.
 19 Q. And they take everybody there in custody?
 20 A. Yes.
 21 Q. And bring them outside of the house?
 22 A. Not every time.
 23 They do detain them, they exercise some kind of
 24 control over them?
 25 A. Yes.

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- 1 Q. That happened in this case?
 2 A. Yes.
 3 Q. And Narcus Wesley was brought outside?
 4 A. He was.
 5 Q. And soon thereafter you took custody of him,
 6 along with Detective Weske?
 7 A. I did.
 8 Q. And who read him his what we call Miranda rights?
 9 A. It was Detective Weske, and I don't believe he
 10 read them.
 11 Q. He told them to him?
 12 A. Told him, yeah.
 13 Q. And you have to do that before you question
 14 somebody?
 15 A. Yes, sir.
 16 Q. You have to do that before you question somebody
 17 in custody?
 18 A. Yes.
 19 Q. And one of those rights that you tell an
 20 individual you want to question is that they have the
 21 right to remain silent?
 22 A. Yes.
 23 Q. Which means, they don't have to talk to you?
 24 A. Yes.
 25 Q. You tell them they have a right for a lawyer to

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- 1 be present?
 2 A. Yes.
 3 Q. And if they can't afford a lawyer, they can still
 4 have a lawyer present, correct?
 5 A. Yes.
 6 Q. You tell them that anything they say can and will
 7 be used against them in a Court of law?
 8 A. Yes.
 9 Q. And you -- all these things are said to Narcus?
 10 A. Yes.
 11 Q. And you were there for that?
 12 A. I was.
 13 Q. And you tell them that if they want to stop
 14 answering questions at any time, they are allowed to do
 15 so?
 16 A. Yes.
 17 Q. And Narcus chose to talk to you?
 18 A. He did.
 19 Q. A lot of questions were asked to him?
 20 A. Yes.
 21 Q. He answered all of them?
 22 A. Yes.
 23 MR. LANDIS: Thank you, detective.
 24 I'll pass the witness.
 25 THE COURT: Redirect?

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1 MS. LUZAICH: Very briefly, Judge.

2

3 **REDIRECT EXAMINATION OF BRYAN HARTSHORN**

- 4 BY MS. KOLLINS:
 5 Q. One of the reasons, Detective Hartshorn, that
 6 SWAT was involved in this is because of the nature of
 7 this offense that had occurred, correct?
 8 A. Yes.
 9 Q. It was known that two weapons were used?
 10 A. Yes.
 11 Q. Those weapons had not been located yet?
 12 A. No.
 13 MR. BANKS: Can we approach, Your Honor?
 14 THE COURT: Sure.
 15 (Thereupon, a discussion was had between Court and
 16 Counsel at sidebar.)
 17 BY MS. KOLLINS:
 18 Q. Detective, would it be fair to say that up to
 19 until the point you get into a residence, and you
 20 separate everyone, you don't know whose involved in the
 21 crime you are investigating, and who is not?
 22 A. Yes.
 23 Q. Would that be part of the decision that goes into
 24 detaining everyone in the home, at least temporarily?
 25 A. Yes.

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- 1 Q. As soon as in this case you were able to figure
 2 out that stepmom wasn't involved, and the father of
 3 Narcus Wesley wasn't involved, you had them stay in a
 4 room, you didn't keep them cuffed, did you, you took
 5 everybody out of cuffs at some point, right?
 6 A. Yes.
 7 Q. And you detained your suspect, Narcus Wesley,
 8 correct?
 9 A. Yes.
 10 Q. But when he was first cuffed, he just had the
 11 plastic zip tie handcuffs, correct?
 12 A. Yes.
 13 Q. And at some point you even let him out of those
 14 to speak to him, didn't you?
 15 A. Yes.
 16 Q. And is that at a point in the investigation and
 17 execution of the search warrant where officers' safety
 18 has been preserved, if you will, I mean, there is no
 19 danger to anyone then?
 20 A. Yes.
 21 Q. So up until the point you are satisfied that
 22 there is no weapons accessible within the house, you do
 23 detain everyone for officers' safety?
 24 A. Yes.
 25 Q. And also for the safety of the residence,

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1 correct?
 2 A. Yes.
 3 MS. KOLLINS: No more questions, Judge.
 4 THE COURT: Anything else?
 5 MR. LANDIS: Very briefly.
 6 -----

RECROSS-EXAMINATION OF BRYAN HARTSHORN

8 BY MR. LANDIS:
 9 Q. Did SWAT put those plastic handcuffs on them?
 10 A. They did.
 11 Q. And when you and Detective Weske took custody of
 12 Narcus, it was clear they were painful to him?
 13 A. Yes.
 14 Q. They were cutting off the circulation?
 15 A. They were very tight.
 16 Q. And that's why you removed them?
 17 A. Yes.
 18 Q. Even though you did remove them, he was still in
 19 your custody, not free to leave?
 20 A. Yes.
 21 MR. LANDIS: Nothing further, Judge.
 22 MS. KOLLINS: No redirect.
 23 THE COURT: You can go ahead and step down.
 24 Thank you very much. I appreciate it.
 25 THE COURT: Detective Weske is going to be a few

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1 minutes.
 2 Do you want to do direct and take a break and
 3 have them do cross?
 4 MS. LUZAICH: That's fine.
 5 We're going to play that tape as well.
 6 THE COURT: Okay.
 7 MR. BANKS: Judge, I think there may be some
 8 people that could use a restroom break at this time.
 9 Let's take a ten minute break before we start.
 10 (Jury admonished by the Court.)
 11 THE COURT: You got ten minutes.
 12 It's 25 till. Come back at quarter till.
 13 (Thereupon, the following proceedings were had
 14 out of the presence of the jury.):
 15 THE COURT: Do you guys think an hour?
 16 MS. KOLLINS: At least, because the statements
 17 probably 40 --
 18 THE COURT: An hour and ten?
 19 (Thereupon, a discussion was had off the record.)
 20 (Thereupon, a recess was had.)
 21
 22
 23
 24
 25

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1 (Thereupon, the following proceedings were had out of
 2 the presence of the jury.):
 3 THE COURT: Anything we need to address before we
 4 bring in the jury?
 5 MR. LANDIS: Not from us.
 6 MS. KOLLINS: I guess before you bring the jury
 7 in, everything the State has marked has been admitted.
 8 MS. LUZAICH: No, there is a photo I marked, but
 9 I don't need --
 10 THE CLERK: Except for 22 and 29.
 11 MS. LUZAICH: Everything else has been admitted.
 12 (Thereupon, a discussion was had off the record.)
 13 THE COURT: Okay. We are ready.
 14 Bring them in.
 15 (Thereupon, the following proceedings were had in open
 16 court and in the presence of the jury.):
 17 THE COURT: Do the parties stipulate to the
 18 presence of jury?
 19 MR. LANDIS: Yes, Judge.
 20 MS. LUZAICH: Yes, Judge.
 21 THE COURT: All right. The next witness for the
 22 State.
 23 MS. LUZAICH: Detective Weske.
 24 THE COURT: This is your last witness, is that
 25 right?

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1 MS. LUZAICH: Yes, sir, unless I change my mind.
 2
 3 CURTIS WESKE,
 4
 5 who, being first duly sworn to tell the truth, the whole
 6 truth, and nothing but the truth, was examined and
 7 testified as follows:
 8 THE CLERK: Please be seated.
 9 Please state your full name, and spell your first
 10 and last name for the record.
 11 THE WITNESS: My name is Curtis Allen Weske.
 12 My first name is C-u-r-t-i-s, middle name
 13 A-l-l-e-n, last name W-e-s-k-e.
 14 THE COURT: Go ahead.
 15 -----

DIRECT EXAMINATION OF CURTIS WESKE

17 BY MS. LUZAICH:
 18 Q. Sir, what do you do for a living?
 19 A. I work for the Henderson Police Department.
 20 Q. As?
 21 A. As a detective.
 22 Q. Does that mean you are also a police officer?
 23 A. Yes, ma'am.
 24 Q. How long have you been a police officer with the
 25 City of Henderson?

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- 1 A. Since August 30th of 1999.
- 2 Q. Prior to being a police officer with the City of
- 3 Henderson, did you have any other law enforcement
- 4 experience?
- 5 A. Yes, I did.
- 6 Q. What was that?
- 7 A. In Juno, Alaska, I was police officer up there.
- 8 Q. For how long in June, Alaska?
- 9 A. Not quite five years.
- 10 Q. Okay. And after Juno, Alaska, did you come down
- 11 here and get on with the City of Henderson?
- 12 A. Yes, I did.
- 13 Q. While you were in Alaska, what were your duties?
- 14 A. A smaller community, so I was a patrol officer,
- 15 but basically dual, your investigations up there as a
- 16 patrol officer up there, except for homicide and arson.
- 17 Q. When you came down for the City of Henderson,
- 18 began to become a police officer there, where did you
- 19 start there?
- 20 A. I was a patrol officer.
- 21 Q. And at some point did you become a detective?
- 22 A. Yes, I did.
- 23 Q. When was that about?
- 24 A. About four years ago.
- 25 Q. Okay. Now, is it different here in Henderson

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- 1 than it was in Juno, Alaska, in that patrol officers
- 2 respond to calls, kind of figure out if a crime had
- 3 occurred, and then call detectives in to do
- 4 investigation?
- 5 A. Yes.
- 6 Q. And since you have been a detective, what areas
- 7 have you worked in?
- 8 A. A little bit of everything.
- 9 I first started out as with the ATF violent crime
- 10 task force.
- 11 Q. What is ATF?
- 12 A. Alcohol, Tobacco and Firearms, that is a federal
- 13 agency.
- 14 Then from there I came back and went to property.
- 15 I then from there went to robbery.
- 16 And then it kind of changed to a general
- 17 assignment.
- 18 And then major crimes.
- 19 And right now I'm in the Intel/ROP team, which is
- 20 repeat offenders program, target repeat offenders.
- 21 Q. Okay. Taking you back to February of 2007, where
- 22 were you assigned at that point?
- 23 A. Major crimes.
- 24 Q. As a major crimes detective, what were your
- 25 responsibilities?

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- 1 A. Any crime basically less than homicide, attempt
- 2 murder.
- 3 We go out, if something happened on patrol,
- 4 something of a big magnitude, they call our sergeant,
- 5 and then from there he assigned detectives, and if those
- 6 detectives need more assistance, then we come out.
- 7 Q. Okay. And so on February -- Sunday night,
- 8 February 18th, into Monday morning, February 19th of
- 9 2007, were you called to at least participate in an
- 10 investigation regarding something that occurred at 690
- 11 Great Dane?
- 12 A. Yes, ma'am, I was.
- 13 Q. And did you go to the Henderson Police Department
- 14 for a briefing?
- 15 A. No, no.
- 16 Q. Were you briefed by a sergeant regarding what had
- 17 occurred?
- 18 A. Yes.
- 19 Q. Did you go right to a residence where some of the
- 20 kids -- or where the kids already were?
- 21 A. The first place I went, right to the apartment
- 22 complex, yes.
- 23 Q. On Warm Springs?
- 24 A. Yes.
- 25 Q. Would that be Crystal Creek Apartments?

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- 1 A. Yes, ma'am.
- 2 Q. And when you got to the Crystal Creek Apartments,
- 3 were there a bunch of other detectives there?
- 4 A. Yes, there was.
- 5 Q. And like a little bit of everybody was there?
- 6 A. Yes.
- 7 Q. Was there also patrol there?
- 8 A. Yes.
- 9 Q. And were there sergeants kind of divvying out
- 10 tasks for individual detectives to do?
- 11 A. Yes.
- 12 Q. What was your first assigned task?
- 13 A. Sergeant Dunway kind of got everybody together in
- 14 the parking lot, and for me was, that he kind of gave us
- 15 a briefing of what happened, and he said -- one of the
- 16 others that we went to was a bank, two banks over off of
- 17 Eastern and St. Rose area, and further down I believe
- 18 Silverado and Eastern area, so he assigned me to go to
- 19 those two banks. He knew they weren't open, but to see
- 20 if we could contact -- find any members and contact them
- 21 and see if we could get any photographs or something,
- 22 say, hey, we need this.
- 23 Q. Okay. So what did you do in furtherance of
- 24 getting those types of photos?
- 25 A. I went to the bank on St. Rose and Eastern, and I

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1 believe it's a U.S. Bank, I'm not sure, and I'd have to
2 look at my notes, but I went there, looked on the door,
3 and I got the phone number and called, actually talked
4 to, a person there, an answering service type guy, and
5 told them that one of our victims had an account number,
6 and this was about the time it went through ATM, and if
7 you could just mark or freeze all lanes for photographs
8 if you have them, and somebody would contact them.

9 Q. What time of day was it that you contacted the
10 bank and left the message?

11 A. Probably about 4 or 5:00 in the morning.

12 Q. Okay. Did you contact two different banks?

13 A. Yes, I did.

14 Q. Could one of them have been a Wells Fargo Bank?

15 A. Yes.

16 Q. Could the other one have been like a Bank of
17 Nevada?

18 A. Yes.

19 Q. At some point did you actually get a phone call
20 back from one of the banks?

21 A. Yes.

22 Q. And did you actually get a photograph from one of
23 the banks?

24 A. Yes, I did.

25 MS. LUZAICH: May I approach?

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1 THE COURT: Sure.

2 BY MS. LUZAICH:

3 Q. Showing you what has been marked as State's
4 Proposed Exhibit 29, which has been shown to counsel, do
5 you recognize that?

6 A. Yes, I do.

7 Q. Is that a still photograph -- or a photograph
8 that you received from the bank?

9 A. Yes.

10 Q. Which bank was it?

11 A. This is Wells Fargo on St. Rose and Eastern.

12 MS. LUZAICH: Move it into evidence.

13 MR. LANDIS: No objection.

14 THE COURT: That is admitted.

15 BY MS. LUZAICH:

16 Q. Thank you.

17 Now, you said when you contacted the bank, you
18 let them know there was a particular account that was
19 accessed, and did you say you gave them a time frame as
20 well?

21 A. Yes.

22 Q. Is that something that you guys generally do, I
23 mean, call them up and explain that, you know, you can
24 access that kind of information?

25 A. Yes, this is the first time I've done it, but

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1 yeah, we worked that in robberies before, like ATM
2 robberies and things like that.

3 Q. Now, when you were at the Crystal Creek
4 Apartments, did you have occasion to see the kids that
5 were there that were victims of the crimes?

6 A. Briefly.

7 I mean, there were some at the top of the stairs,
8 and I believe they walked by.

9 Q. Okay. After contacting the banks, what did you
10 do?

11 A. I was told then by Sergeant Dunway to meet over
12 at 690 Great Dane.

13 Q. Did you go over to the Great Dane address?

14 A. Yes, I did.

15 Q. And was it your purpose just to clear the
16 residence so crime scene could get in?

17 A. Yes.

18 Q. Did you do that with Detective Hartshorn?

19 A. Yes, and Sergeant Dunway.

20 Q. Okay. And did you guys also canvas the
21 neighborhood a little bit to see if you could figure out
22 if anybody heard or saw anything?

23 A. Yes, we did.

24 Q. That didn't yield anything?

25 A. No.

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1 Q. What else did you do after leaving the 690 Great
2 Dane address?

3 A. While we were there in the cul-de-sac, I believe
4 it was Detective Hartshorn, he looked on the internet
5 for the Clark County Assessor's file for that address
6 because some of the information that was passed on to us
7 was, they went in there and asked for a Grant, so we
8 were trying to see if a Grant lived there, so we found
9 the owner of the house on Clark County Assessor's, and
10 so we went to that residence that was listed for the
11 owner, Victor Michlak I believe was the name, and that's
12 where we ended up going.

13 Q. And did the owner of the 690 Great Dane address
14 give you a name as to somebody who had previously been
15 renting the house?

16 A. Yes.

17 Q. And did he also indicate that he knew there may
18 have been a Grant there?

19 A. Yes.

20 Q. And the name of the person who was previously
21 renting the house was?

22 A. Brandon Preston.

23 Q. Did you contact Brandon Preston?

24 A. Yes, I did.

25 Q. Did you explain to him what you were

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1 investigating?

2 A. Over the phone I did not. I just told him we
3 would like to talk to him.

4 He told is where he was, at a car dealership
5 replacing wind shields, and once we went there, I did
6 explain to him.

7 Q. You actually went and talked to Brandon Preston
8 in person?

9 A. Yes.

10 Q. And you explained to him what had occurred?

11 A. Yes.

12 Q. And did he give you information about Grant?

13 A. Yes, he did.

14 Q. And in fact he was still living with Grant?

15 A. Yes.

16 Q. And did he tell you where he believed Grant would
17 be at that moment?

18 A. Yes.

19 Q. Was that at their home?

20 A. Yes, their apartment.

21 Q. Did you go there?

22 A. Yes, I did.

23 Q. And were you able to find Grant?

24 A. Yes, I was.

25 Q. Was it a little difficult?

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1 A. Yes, it was.

2 Q. Did you have to go inside and kind of wake him
3 up?

4 A. Yes, we did.

5 Q. While you were inside talking to Grant, did you
6 also notice anything in the house?

7 A. Yes.

8 Q. What did you find?

9 A. A strong odor of what appeared to be fresh
10 marijuana.

11 Q. Did you actually collect the marijuana?

12 A. Yes, I did.

13 Q. Did you actually collect some of his money?

14 A. Yes, I did.

15 Q. Was he still cooperative though?

16 A. Yes, he was.

17 Q. And what were you looking for from Grant?

18 A. I was looking for information, since these people
19 went in the house and asked for Grant, looking for
20 information did he know who would be coming to his house
21 wanting to rob him, or you know, if he had any idea at
22 all what was going on.

23 Q. Did he have -- or did you explain to him what the
24 individuals who came to the house looking for him looked
25 like?

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1 A. Yes.

2 Q. And based on what you told him, did he give you a
3 name?

4 A. Yes, he did.

5 Q. What name did he give you?

6 A. He gave me a name of Kameron, which was Delarian
7 Wilson.

8 Q. And did you also bring him down to the station?

9 A. Yes.

10 Q. While you were at the station, and had Delarian
11 Kameron Wilson identified, did Detective Niswonger
12 provide you with a photograph of the individual that
13 became known to you as Delarian Kameron Wilson?

14 A. Yes, I believe it was a 2005 booking photo we
15 had.

16 Q. A booking photo from a traffic offense at Metro?

17 A. Yes.

18 Q. Did Grant identify that photograph?

19 A. Yes, he did.

20 Q. And did you -- or are you aware that it was put
21 into a photo line-up and shown to some of the kids?

22 A. Yes, that's what they said.

23 Q. Maybe all of the kids.

24 Did you participate in then attempting to find

25 Delarian Kameron Wilson?

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1 A. At that point I was not, and we had other people
2 out there looking for him at that point.

3 Q. Okay. I guess the better question might be,
4 while you are doing all of the stuff that you are just
5 telling us about, are you sharing information as to what
6 you found with the other detectives who are
7 participating in this investigation?

8 A. Yes, ma'am.

9 Q. And are the other detectives who are
10 participating in the investigation also sharing
11 information with you?

12 A. Yes.

13 Q. And was it your understanding that some of the
14 detectives had contacted -- Well, I'm sorry, just to
15 backtrack one second, was it your understanding one of
16 the cell phones from the kids was still missing?

17 A. Yes.

18 Q. And was it your understanding some other
19 detectives had contacted that phone company to see if
20 they could determine whether or not that phone was being
21 used by the suspects?

22 A. Yes.

23 Q. And was it your understanding -- or did they let
24 you know they discovered the phone was being used in the
25 vicinity of Circus Circus?

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1 A. Yes.

2 Q. And was it your understanding that detectives
3 went to Circus Circus and actually located a room for
4 Delarian Kameron Wilson and the person of Delarian
5 Kameron Wilson?

6 A. Yes.

7 Q. Did you then get to go to Circus Circus and
8 continue to participate?

9 A. Yes, yes.

10 Q. When you went to Circus Circus, what did you do?

11 A. At that point we went upstairs, met with the
12 other officers already there in a room across from
13 Delarian's.

14 Detective Pena was with the search warrant for
15 the room of Delarian Wilson, so Detective Hartshorn and
16 I left that once we went up there to that room and went
17 downstairs, where they had Delarian detained down in the
18 security office, so we went downstairs, and that's what
19 myself and Detective Hartshorn did, we interviewed
20 Delarian Wilson.

21 Q. I'm sorry.

22 Apparently I had it a little bit backwards.

23 So you went to the room that Delarian Wilson was
24 registered in?

25 A. No, the room across is where all the narcotics --
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1 We rent -- not rented a room -- They gave us a room
2 directly across from Delarian while they were looking
3 for him, to see if he would come back.

4 We knew he was at the blackjack table, so they
5 still kept that room once they contacted Delarian Wilson
6 and detained him because they didn't want anybody to go
7 in that room while waiting for the search warrant.

8 Q. To physically arrive?

9 A. Right.

10 So at that point I did go upstairs from the room
11 across from Delarian's, never went into Delarian's room.

12 Q. Okay. And while the officers were in the room
13 across from Delarian Wilson's, obviously he never came
14 back to the room?

15 A. Correct, they already had him detained.

16 Q. Okay. And so you said you did go downstairs and
17 actually have personal contact with Delarian Kameron
18 Wilson?

19 A. Yes, I did.

20 MS. LUZAICH: May I approach?

21 THE COURT: Yes.

22
23
24
25

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1 BY MS. LUZAICH:

2 Q. Showing you what has been marked as State's
3 Proposed Exhibit 44, I've shown it to counsel.

4 For the record, do you recognize that?

5 A. Yes.

6 Q. Who is that?

7 A. Delarian Wilson.

8 Q. Is that a photograph of Delarian Wilson I should
9 say?

10 A. Yes, it is.

11 Q. And just for the record as well, does it say
12 February 27th, 2007 on that?

13 A. February 28th, 2007.

14 Q. That would have been long after you contacted
15 him, correct?

16 A. Yes, ma'am.

17 Q. And if people are switched from Henderson Jail to
18 Clark County Jail, do they get re-booked into Clark
19 County Jail?

20 A. Yes, they do.

21 Q. And is that Delarian Wilson, or is that how he
22 looked when you meet him on February 19th of 2007?

23 A. Yes, ma'am.

24 MS. LUZAICH: Move it into evidence.

25 MR. LANDIS: No objection.

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1 THE COURT: Marked what number?

2 MS. LUZAICH: 44.

3 THE COURT: 44.

4 44 is admitted.

5 MS. LUZAICH: Thank you.

6 BY MS. LUZAICH:

7 Q. And that is Delarian Kameron Wilson?

8 A. Yes, ma'am.

9 Q. When you were at the Circus Circus security room,
10 and speaking with Delarian Kameron Wilson, who was with
11 you?

12 A. Detective Hartshorn.

13 Q. Were you trying to find out not only what had
14 occurred at the Great Dane address, but who was with
15 him?

16 A. Yes, I was.

17 Q. And were you aware that -- or were you told that
18 some of the kids thought they heard the -- I'm sorry --
19 Just to go back, would you agree that Delarian Kameron
20 Wilson is somewhat stocky?

21 A. Yes.

22 Q. And were you aware that some of the kids said
23 they thought they heard the stocky one call the other as
24 yet unnamed suspect by a name?

25 A. Yes.

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1 Q. And what was the name you thought?
 2 A. They thought they heard the name Marcus.
 3 Q. Okay.
 4 A. That's what I understood.
 5 Q. Okay. Did you actually get a name from Delarian
 6 Wilson?
 7 A. Yes.
 8 Q. What was the name you got from Delarian Wilson?
 9 A. Narcus, with an N.
 10 Q. But only the first name, is that correct?
 11 A. Yes.
 12 Q. He did not give you the last name?
 13 A. Yes.
 14 Q. Does Delarian Wilson in person appear to be fit
 15 enough to play college football?
 16 A. Yes, ma'am.
 17 Q. Did he talk to you about having played college
 18 football?
 19 A. Yes, he did.
 20 Q. And did you discover where Narcus knew Delarian
 21 Wilson from?
 22 A. Yes.
 23 Q. Where was that?
 24 A. He said they played football at UNLV.
 25 Q. With that information, did you cause somebody to
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1 go to UNLV and see if they could get any information
 2 about a football player named Narcus?
 3 A. Yes.
 4 Q. And did you get information back with a last
 5 name?
 6 A. Yes, I did.
 7 Q. What was the last name?
 8 A. Wesley.
 9 Q. And was that from the athletic department at
 10 UNLV?
 11 A. From my understanding, it was Detective Backal
 12 (Phonetic) said that's where he got it.
 13 Q. Now, when you are at security talking to Delarian
 14 Wilson, we're into Monday, February 19th, correct?
 15 A. Yes, later that evening.
 16 Q. And after you spoke with Delarian Wilson, did you
 17 arrest him?
 18 A. Yes, I did.
 19 Q. Did you have to transport him to the Henderson
 20 Police Department?
 21 A. We had somebody transport him, yes.
 22 Q. Did you cause him to be transported?
 23 A. Yes, ma'am.
 24 Q. Did you then go to the Henderson Police
 25 Department and like do the booking process and all that?
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1 A. Yes, I did.
 2 Q. Does that take quite sometime?
 3 A. Yes, ma'am.
 4 Q. Do you know about when it was that you got
 5 finished with all of that?
 6 A. I want to say I didn't probably get out of the
 7 office until 1 or 2:00 in the morning.
 8 Q. So was it the next morning, Tuesday morning, that
 9 you were sharing the information about Narcus and UNLV
 10 football?
 11 A. Yes.
 12 Q. So was it on Tuesday that you got the information
 13 about Narcus Wesley?
 14 A. Yes.
 15 Q. And did you also get an address from UNLV?
 16 A. Yes.
 17 Q. What was the street?
 18 A. Valley Drive.
 19 Q. With the information, Narcus Wesley, and a Valley
 20 Drive address, what did you do?
 21 A. With that information, what I did was, called
 22 Nevada Power and spoke to a Donna Lamont (Phonetic), and
 23 I said we wanted to see who had power at 2372 Valley
 24 Drive.
 25 While she was checking it, I said, I'm looking
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1 for the name of Narcus Wesley.
 2 She then said, that address no longer has power.
 3 Let me check something.
 4 And then she gave me an address of I want to say
 5 4232 Gay Avenue.
 6 Q. When you had that conversation with her, is that
 7 something you could call up and ask for, or do you need
 8 a little bit more than, hey, I'm a police officer, I
 9 want to know this information?
 10 A. I explained to her the situation, that was the
 11 second time I talked to her, and I told her the
 12 emergency and the circumstances of the situation, and
 13 she said, okay.
 14 Q. But there was robbery and weapons and sexual
 15 assault and suspects at large?
 16 A. Yes.
 17 Q. And did you indicate to her that you were going
 18 to send an official subpoena to her for the information,
 19 but you just needed it quick, so that you could do
 20 something about it?
 21 A. I explained to her we still had an outstanding
 22 person.
 23 Q. Okay. And she gave you the Gay Lane address?
 24 A. Yes, she did.
 25 Q. And when you hung up with her, did you then cause
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1 a subpoena to be sent to her?

2 A. Yes, I did.

3 Q. And what did you do with the information that you
4 had?

5 A. Immediately once I faxed the subpoena Detective
6 Hartshorn and I immediately got in the vehicle and went
7 to Gay Avenue.

8 Q. When you went there, what was your purpose?

9 A. To determine if that was where he was, where
10 Narcus Wesley was.

11 Q. Did you get information in addition to the name
12 Narcus regarding a vehicle?

13 A. Yes, I did.

14 Q. What information did you get regarding the
15 vehicle?

16 A. That he was driving a white Chrysler 300.

17 Q. When you went to the Gay address, what if
18 anything did you see?

19 A. A white Chrysler 300 parked in the driveway with
20 an older GMC truck on the side.

21 Q. Did you stay at the Gay address for a period of
22 time?

23 A. Approximately 20 to 30 minute.

24 Q. What was your purpose?

25 A. To see if we saw anybody coming and going from
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1 the house, and then we ran the registration on the
2 vehicle.

3 Q. What did the vehicle registration indicate?

4 A. It came back to Narcus Wesley, and then a female
5 who I cannot remember.

6 Q. And in the 20 or 30 minutes that you sat there,
7 did you see an individual who matched the description of
8 Narcus Wesley coming -- or anywhere at all?

9 A. No.

10 Q. Do you know about what time of day it was that
11 you and Detective Hartshorn went up there?

12 A. It was in the afternoon.

13 Q. So daylight?

14 A. Yes.

15 Q. Did you leave there and go somewhere else?

16 A. Yes.

17 Q. Where did you go?

18 A. At that point I went back to the station, got a
19 picture of Narcus, and I showed it to Delarian, and he
20 said, that was him.

21 And immediately I went back to the station and
22 started doing an affidavit and warrant for the
23 residence.

24 Q. When you say, you got a picture of Narcus, was
25 that the UNLV picture?

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1 A. I believe it was a DMV photo.

2 Q. Sorry.

3 And you showed it to Delarian Wilson, who said,
4 yeah, that's Narcus?

5 A. Yes.

6 Q. And you authored a search warrant for the
7 residence at Gay Lane?

8 A. Yes, I did.

9 Q. What were you looking for?

10 A. Looking for Narcus, and then clothes he would
11 have been wearing, any money left over, a firearm, I
12 believe we were still looking for condoms.

13 Q. Things that were taken from the robbery?

14 A. Yes.

15 Q. Okay. Did you get a -- or actually write a
16 search warrant?

17 A. Yes, I did.

18 Q. Did you get it signed by a Judge?

19 A. Yes, I did.

20 Q. Now, is it your habit or practice to serve it
21 yourself?

22 A. No, not in that circumstance, no.

23 Q. In what circumstance?

24 A. Whenever there is a violent crime like this,

25 especially with a firearm being used, detectives don't
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1 serve that, we get the SWAT team to serve that.

2 Q. Did you contact the SWAT team in advance?

3 A. Yes, I called Sergeant Hart.

4 Q. Why did you do that?

5 A. Because it takes a while for the SWAT team first
6 of all to get their team members together, and not only
7 their team members, they have alternates, so they do an
8 outcall, then they have to have somebody go by and recon
9 the residence and decide what their game plan is going
10 to be, so I usually whenever I feel like I may have a
11 search warrant even coming up in the next day or so, as
12 soon as I know I usually give him a call and let them
13 know, so they can be prepared.

14 Q. So you contact SWAT, and as far as you know do
15 they go out to the house on Gay?

16 A. Yes.

17 Q. And conduct their recon, or whatever they do?

18 A. Yes, ma'am.

19 Q. Did you get the search warrant signed and bring
20 it to the house?

21 A. Yes.

22 Q. About what time was it that you went to the
23 house?

24 A. I want to say right around 9 or 10.

25 They were briefing close to the residence behind
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1 a bar, I can't remember, and there while they were doing
2 the briefing, they sent Detective Hartshorn and myself
3 to keep eyes on the house the give them updates if
4 anybody is coming or leaving from the house, and then I
5 believe they served it around 9 or 10:00

6 Q. Okay. And were you in the vicinity when they
7 actually banged on the door and went in?

8 A. Yeah.

9 If I remember, the street kind of curves like
10 this, I was on this curve here, and their house was over
11 here, so in the line of vision.

12 Q. Did they let you know when the residence was safe
13 for the rest of you to enter?

14 A. Yes.

15 Q. And did they actually let you know it was safe
16 for you to enter?

17 A. Yes.

18 Q. Now, when you approached the residence, was
19 somebody coming out?

20 A. Yes.

21 I pulled our vehicle up in front of the
22 residence, got out, was getting my stuff together, and
23 that's when they brought out Narcus.

24 Q. When you say, they, who is they?

25 A. SWAT members.

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1 Q. And you kind of nodded over here.

2 Do you see the person that was brought out of the
3 house here in court?

4 A. Yes, I do.

5 Q. Can you describe where he's sitting, and what
6 he's wearing?

7 A. Sitting at the Defendant table in the middle, in
8 like a tannish gray suit coat, cream colored shirt,
9 multi-colored tie.

10 MS. LUZAICH: May the record reflect
11 identification of the Defendant?

12 THE COURT: Yes, the record will so show.

13 MS. LUZAICH: Thank you.

14 BY MS. LUZAICH:

15 Q. When SWAT was bringing the Defendant out of the
16 house, was it just him?

17 A. Yes.

18 Q. Was he dressed?

19 A. Yes.

20 Q. Do you know what he was dressed in?

21 A. I think he had shorts on and a T-shirt.

22 Q. It's February, so it's kind of chilly, right?

23 A. Yes.

24 Q. Was he -- Was he cuffed?

25 A. Yeah, he had the zip tie cuffs on.

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1 Q. What are zip ties, for those of the jurors who
2 don't know?

3 A. Basically they are all set up. They have like
4 two holes in them, and they just put them over their
5 hands and pull them tight like you would around a
6 garbage bag.

7 It's easy for the SWAT team members to have them
8 hooked to their belt, and they don't know how many
9 people they are going to encounter, so instead of having
10 three or four sets of handcuffs, they zip tie them to
11 detain them, and that's pretty much what they do.

12 Q. They are plastic?

13 A. Yes.

14 Q. And disposable?

15 A. Yes.

16 Q. So he was in zip ties when he was brought out by
17 SWAT?

18 A. Yes, he was.

19 Q. What if anything did you do with him?

20 A. At that point at the rear of the vehicle I saw he
21 was in zip ties and checked him, and they were pretty
22 tight, so I asked Detective Hutchison if he had any
23 cutters. He did, and we sat there trying to cut those
24 things off, and trying to get him out, and have a little
25 conversation about how tight they were, and got them off

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1 him, asked if he was all right.

2 He said, yes.

3 Q. You were trying to make him more comfortable?

4 A. Yes, I was.

5 Q. When you brought him towards your car, did you go
6 into the house at that point?

7 A. No, ma'am, I didn't.

8 Q. So you never made it in until later?

9 A. Correct.

10 Q. Was Detective Hartshorn with you outside?

11 A. Off and on.

12 He was with me in the beginning and then --

13 Q. That's what I meant, when the Defendant was
14 brought out of the house, Detective Hartshorn was with
15 you?

16 A. Him and detective Hutchison.

17 Q. And Detective Hutchison, who works with you --

18 A. Yes.

19 Q. Did you then have a conversation with the
20 Defendant?

21 A. Yes, I did.

22 Q. Where did that conversation take place?

23 A. It started in the back of the vehicle, and he
24 said he was cold, so we turned on the car heat, and then
25 he went into the back seat.

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1 He sat there, and I had the door open, and I was
2 talking to him while he was sitting there.

3 Q. Okay. Is that when that conversation -- was that
4 conversation tape recorded?

5 A. Yes, it was.

6 Q. Now, when that conversation was done, did you
7 bring him into the house?

8 A. Yes, I did.

9 Q. Was that the first time that you entered the
10 house?

11 A. Yes, ma'am, it was.

12 Q. When you entered the house with him, was
13 Detective Hartshorn with you, or was he already inside?

14 A. I believe he came in with me.

15 At that point I think Detective Hutchison was the
16 one on the inside. I can't remember for sure.

17 I know I handcuffed him before we went in.

18 He wasn't cuffed when he was in the car, and I
19 handcuffed him, and we went in.

20 Q. Why did you handcuff him when you brought him in?

21 A. He wasn't cuffed, and I explained to him, you are
22 kind of a big guy, and at least -- and there is no way I
23 can catch you.

24 Q. And when you went inside the house, was the tape
25 recorder still running?

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1 A. Yes.

2 Q. Does the tape actually record what was happening
3 in the house?

4 A. Yes.

5 Q. Did something happen -- or when you went into the
6 house, did you discover there were other people inside
7 the house besides the police?

8 A. Yes.

9 Q. Who else was in the house?

10 A. Narcus' father.

11 Q. You are pointing.

12 Do you see him here in court?

13 A. Yes, he's behind Narcus.

14 Q. Okay.

15 A. Dressed in blue, I believe, a blue shirt.

16 Q. Who else was there?

17 A. His stepmother -- or I assumed it was his mother,
18 but I didn't realize until later it was his stepmother.

19 Q. Okay. And how were they dressed?

20 A. I believe they were in there pajamas, so --

21 Q. It was pretty clear they were woken up?

22 A. Yes.

23 Q. Both his stepmother and his dad?

24 A. Yes.

25 Q. Okay. And did you discover something while you

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1 were in the house at some point?

2 A. Yes.

3 Q. What did you discover?

4 A. A rifle.

5 Q. Information, did you discover some information?

6 A. I'm sorry, yes.

7 When I gave him the search warrant, he said that
8 the part where I put the power was in Narcus Wesley's
9 name was not in fact Narcus Wesley, his father's name is
10 -- Narvus (Phonetic) name, it was actually in Narvus'
11 name.

12 Q. Was he pretty upset about that, Mr. Wesley?

13 A. Yes, he appeared so.

14 Q. Was there actually some conversation about the
15 search warrant before they saw it?

16 MR. LANDIS: Judge, I'm going to object to
17 relevance.

18 THE COURT: Come here.

19 (Thereupon, a discussion was had between Court and
20 Counsel at sidebar.)

21 BY MS. LUZAICH:

22 Q. Did detectives search the house?

23 A. Yes.

24 Q. And were you looking for items that were used in
25 the robbery?

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1 A. Yes.

2 Q. And at the conclusion of your time at the house,
3 was the Defendant arrested?

4 A. Yes, he was.

5 Q. And was he taken to the Henderson Police
6 Department?

7 A. Yes, he was.

8 Q. And did you have some conversation on the ride to
9 the Henderson Police Department as well?

10 A. Yes, we did.

11 Q. And was that tape recorded also?

12 A. Yes, it was.

13 Q. You read the Defendant his rights pursuant to
14 Miranda before you started any conversation outside?

15 A. Yes, ma'am, I did.

16 Q. And just because a lot of people don't
17 understand, there is a lot of conversation about what
18 had occurred at the Great Dane house, correct?

19 A. Yes.

20 Q. And there was some conversation about a lick?

21 A. Yes.

22 Q. For those who don't know, can you describe what
23 is a lick?

24 A. A lick is a derogatory term used for a robbery,
25 committing a robbery.

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1 A lot of times they will say, you want to go do a
 2 lick, or let's do a lick, and that means a robbery.
 3 Q. Is that people who participate in robberies that
 4 use that term?
 5 A. Yes, ma'am.
 6 Q. And police officers know about it because of
 7 that?
 8 A. Yes, ma'am.
 9 Q. Okay. The conversations between yourself and the
 10 Defendant were tape recorded you said?
 11 A. Yes, ma'am.
 12 Q. Did you cause a copy of that to be given to me?
 13 A. Yes.
 14 Q. On a disk?
 15 A. Yes.
 16 MS. LUZAICH: For the record, Your Honor, I have
 17 State's Proposed Exhibit 43, and I would move it into
 18 evidence, and I am a going to ask to play it.
 19 THE COURT: Any objections?
 20 MR. LANDIS: We don't have an objection.
 21 THE COURT: 43 is admitted.
 22 Go ahead and publish.
 23 MS. LUZAICH: Do you want to play it, or take a
 24 recess?
 25 MR. BANKS: Court's pleasure.
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1 THE COURT: Play it.
 2 (State's Exhibit Number 43 is now played for the
 3 jury.)
 4 MS. LUZAICH: For the record, I made an extra
 5 copy for the Court Reporter, and I have copies for
 6 everybody to follow along.
 7 I ask the copy be made next proposed in order for
 8 the record.
 9 THE COURT: 45.
 10 MS. LUZAICH: And I have one for the Court.
 11 MR. BANKS: May I approach with Ms. Luzaich?
 12 THE COURT: Yes.
 13 (Thereupon, a discussion was had between Court and
 14 Counsel at sidebar.)
 15 THE COURT: We'll make a record.
 16 These are for the purposes of just following
 17 along on the CD.
 18 As soon as we get done, we're going to collect
 19 these back.
 20 When the jury deliberates, they will have the CD,
 21 not transcript.
 22 Furthermore, Bill, you are not transcribing the
 23 CD.
 24 Go ahead.
 25 (The CD, State's Exhibit 43, is now played for
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1 the jury.)
 2 MS. LUZAICH: If I can be on the record for one
 3 second, the transcript indicates this initial
 4 conversation about the zip ties is you and Detective
 5 Hartshorn.
 6 Is the cutting of the zip ties actually
 7 Hartshorn, or is it somebody else?
 8 THE WITNESS: It's Detective Hutchison.
 9 BY MS. LUZAICH:
 10 Q. And he only participated in the cutting of the
 11 zip ties.
 12 Does Detective Hutchison walk away as soon as the
 13 zip ties are off?
 14 A. Yes, ma'am.
 15 Q. And then it would be you and Detective Hartshorn,
 16 or just you with the Defendant?
 17 A. Correct.
 18 Q. Thank you.
 19 THE COURT: There is no guarantee we'll get this
 20 thing to work.
 21 MS. LUZAICH: It's worth a try.
 22 THE COURT: All right. Let's take a five-minute
 23 break. Hopefully, it will be five minutes.
 24 (The jury is admonished by the Court.)
 25 THE COURT: Leave your transcripts there on the
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1 chair.
 2 (Jury excused from the courtroom.)
 3 (Thereupon, the following proceedings were had
 4 out of the presence of the jury.):
 5 THE COURT: Bring them in now.
 6 Hang on.
 7 Get them lined up.
 8 Are we going to mark this?
 9 MS. LUZAICH: It needs to be marked and can be a
 10 Court's exhibit just for purposes of appeal, nothing for
 11 the jury.
 12 THE COURT: It's still not given to the jurors.
 13 MS. LUZAICH: Right.
 14 If you want to mark it as a Court's Exhibit 1,
 15 that is fine.
 16 THE COURT: Okay. For the record, the Court is
 17 going the mark this copy of the transcript as Court's
 18 Exhibit 1.
 19 It's not going to be admitted as an evidentiary
 20 item, nor will it be going back to the deliberation room
 21 with the jurors.
 22 MS. LUZAICH: Correct.
 23 THE COURT: Okay.
 24 MS. KOLLINS: While we are doing that, do you
 25 want to clean up A and B?
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1 THE CLERK: Let's cover Defense --
 2 MR. LANDIS: A, B and C.
 3 MS. LUZAICH: Those are items that were entered
 4 into evidence at the evidentiary hearing.
 5 THE COURT: A, B and C are not evidence items
 6 from this trial.
 7 MS. LUZAICH: Correct.
 8 THE COURT: They were from the evidentiary
 9 hearing we had prior to the start of this trial.
 10 So the two items that have been admitted, marked
 11 and admitted, are Defendant's Exhibits D and E, which
 12 are those first two exhibits.
 13 So for purposes of this trial, A, B and C are not
 14 evidence in this trial.
 15 MS. LUZAICH: And don't go back to the jury?
 16 THE COURT: Don't go back to the jury, to make
 17 sure everybody understands that.
 18 Okay?
 19 MS. KOLLINS: The clerk's minutes could just
 20 reflect that in case there is a different clerk
 21 tomorrow, so everyone understands when it comes time for
 22 deliberation.
 23 Thank you.
 24 THE COURT: Okay. Anything else?
 25 MR. BANKS: A motion based on some testimony
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1 elicited from Detective Weske.
 2 THE COURT: What is that?
 3 MR. BANKS: It might take a couple of minutes.
 4 THE COURT: All right. Go ahead.
 5 MR. BANKS: My preference would be Detective
 6 Weske wait in the ante room while I make my motion.
 7 THE COURT: Okay. We have them lined up.
 8 This will only take a second.
 9 (Witness excused from the courtroom.)
 10 THE COURT: Go ahead.
 11 MR. BANKS: Judge, I've been scared to death of
 12 this issue for this entire trial, and so scared to death
 13 of this issue that I actually mentioned it to Miss
 14 Kollins during jury selection, and mentioned it to Miss
 15 Luzaich during jury selection. I mentioned it again I
 16 believe it was Friday, last week Friday. We have
 17 actually had conferences at the bench about it.
 18 And that is, that there was a rifle that was
 19 found pursuant to the search warrant at the Gay Lane
 20 address. Here's my concern:
 21 This is the concern that I've had all along. My
 22 concern is, that to effectively represent Narcus as far
 23 as this rifle, or at least try to exercise his Sixth
 24 Amendment rights pursuant to the U.S. Constitution to
 25 confront what is now testimony in evidence, to be able
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1 to effectively do that I have to somehow deflect his
 2 interest in that rifle.
 3 Here's my fear:
 4 My fear is, to point at the ex-felon who lives in
 5 the house, who is sitting in this courtroom, and that is
 6 Mr. Wesley's father, Narvus Wesley, I got a problem
 7 doing that because my hands are tied, and he is a client
 8 of the Clark County Public Defenders office.
 9 This is the particular and precise issue that
 10 I've addressed with counsel. It's been my fear that if
 11 this, God forbid, comes into evidence, which it now has,
 12 and that's why I've tried to give everybody a heads up
 13 numerous times, if it comes into evidence, I got a real
 14 problem, my stomach is now in knots because we've got a
 15 gun found at my client's residence, and I got no way
 16 that I can defend that without throwing my other client,
 17 Narvus Wesley, under the bus. That is a problem. That
 18 is a problem that I've made clear from jump street.
 19 It is so prejudicial in a case like this for it
 20 to be hanging out there that my client Narcus Wesley
 21 does have access to some kind of a gun when our defense
 22 is, he didn't have a gun at any time during the entire
 23 episode at any time material to this case, and I think
 24 we all agree that execution of the search warrant is
 25 certainly material to this case. I think it's so
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1 prejudicial that no corrective or curative instruction
 2 under the sun with the way the state of the evidence as
 3 it is now, no curative instruction under the sun is
 4 going to undue the damage that is now done, which is my
 5 client now has access to a gun in his residence.
 6 Mr. Landis and I are precluded because of Costa
 7 (Phonetic) versus State from -- adequately exercising
 8 the Sixth Amendment rights of confrontation for Narcus
 9 Wesley.
 10 I think a mistrial is the only appropriate remedy
 11 because there is no way Narcus is getting a fair trial
 12 with that sort of prejudicial testimony that is now in
 13 evidence now before this jury.
 14 THE COURT: The motion for a mistrial is denied.
 15 First of all, everybody that has heard this case
 16 so far understands without any question that whatever
 17 Narcus supposedly had in his hand was certainly not a
 18 rifle, number one.
 19 Number two, I think that under the circumstances
 20 a curative instruction, and I'll do it however you so
 21 choose, to simply from the Court explain to the jury in
 22 a rifle found at the Defendant's dad's house, no one
 23 claims that the Defendant had or exercised any control
 24 or ownership whatsoever in regards to that rifle, and I
 25 think that I don't even quite understand how this can
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1 possibly even relate to the Defendant.

2 No mention has ever been made of a rifle used in
3 the crime, and it's quite clear that this is not just
4 the Defendant's residence, it's his dad's, his dad and
5 his stepmother's residence where he is found, where it
6 was located.

7 I don't think anybody can impute anything
8 whatsoever, any ownership of this rifle to the
9 Defendant, and I will give an instruction however you
10 want.

11 If you want me to simply not even bring it up, if
12 you want me to explain to the jury that under no one's
13 theory does anyone assert that the Defendant owned or
14 controlled or in any way asserted any ownership or
15 control over the rifle that was mentioned during the
16 course of the execution of the search warrant, but other
17 than that there is absolutely nothing that gives rise to
18 a mistrial under these circumstances.

19 Anything you want to say?

20 MS. LUZAICH: No, I agree with the Court.

21 What I would have offered was, the rifle was
22 actually kind of like in the garage in a corner, you
23 know, just off somewhere. I would have offered to have
24 the officer testify that it was near the Defendants desk
25 in the house in a corner somewhere, and nobody has any
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1 reason to believe the Defendant had anything to do with
2 the rifle, or that he ever exercised any control over
3 it, if the Defense wants.

4 If they want to leave it alone, that's fine.

5 If they want to give a curative instruction,
6 that's fine too.

7 But I do agree with the Court, a rifle, it's
8 three feet, handgun six inches.

9 THE COURT: Right.

10 Tell me what you want me to do.

11 I will do this:

12 I will let you draft, if you so choose, a
13 curative instruction, and then I will read it to the
14 jury, however you want to do it.

15 MR. BANKS: I appreciate the consideration, Your
16 Honor.

17 The pickle that I'm in is --

18 THE COURT: The other part, just to touch real
19 briefly, the fact that Wesley's -- or Narcus's dad has
20 been a client of the Public Defenders office, first of
21 all I think his case is quite old.

22 MR. BANKS: No, Your Honor.

23 So the record is perfectly clear, Narvus Wesley
24 was a client of the Public Defenders office regarding
25 the rifle that Weske just testified to. The case was
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1 dismissed.

2 MS. LUZAICH: A private attorney handled that,
3 not the PDs office.

4 MR. BANKS: It was Christopher Jones from the
5 Public Defenders office that handled it.

6 MS. LUZAICH: How did you let that happen?

7 MR. BANKS: I didn't let it happen.

8 MS. LUZAICH: The collective you, not you
9 personally.

10 MR. BANKS: It's not a conflict, unless somebody
11 comes in and testifies to it, and that is why I have
12 been very clear that this is inadmissible evidence.

13 THE COURT: This is the first that I have ever
14 been informed there was ever even a criminal charge with
15 regards to his father in reference to the rifle that was
16 mentioned as being found during the course of that
17 search warrant. I was not aware of that.

18 MS. KOLLINS: Doesn't that speak for itself?

19 It's not imputable to the Defendant's possession
20 if the dad was prosecuted for it.

21 THE COURT: And the case was dropped.

22 MS. LUZAICH: It was submitted, stay out of
23 trouble, forfeit.

24 MR. BANKS: But everybody sees my problem.

25 Right, or not?

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1 THE COURT: At least it's not the fact you
2 represented his dad 15 years ago, and on something else,
3 which is what I thought. I had no idea there was a
4 recent criminal charge. It doesn't change anything.

5 Nobody is certifying that Narcus had anything to
6 do whatsoever with the rifle.

7 MS. LUZAICH: Correct.

8 THE COURT: I mean, it should be made perfectly
9 clear.

10 I think that is more than adequate.

11 As I said, I'll let you draft it if you want.

12 If you don't want to say anything, I won't say a
13 word.

14 If you want me to ad lib some type of an
15 admonishment or instruction, as I indicated, or if you
16 want me to wait and let you draft it, I'll read it,
17 however you want.

18 MR. BANKS: Well, I'm thinking, Judge, because
19 now I'm weighing the interests of more than the client I
20 have sitting at the defense table, I'm now weighing the
21 interest of another client who was actually prosecuted
22 for possession of that --

23 MS. LUZAICH: It's been dismissed, so there is no
24 interest.

25 MR. BANKS: There is interests.

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1 I think Costa makes it clear there is interest,
2 even though the case was dismissed.
3 It's something I'm going to have to discuss with
4 Mr. Landis.

5 THE COURT: Okay. We will address it whenever
6 and however you want to have it handled.

7 MS. KOLLINS: The State of the record right now
8 is, it is just a rifle that is innocuous, could be a
9 hunting rifle in the garage with like camping equipment.
10 It's innocuous how it appears in the record right
11 now.

12 THE COURT: It's even less innocuous than that.

13 It's just a rifle found in the course of, that's
14 it, period.

15 MR. BANKS: Court's indulgence.

16 MR. BANKS: Judge, if this issue had come up
17 pretrial, and we knew we were going to have to contend
18 with this rifle evidence in this trial, I think it's
19 safe to say that the Defense at that point if the
20 evidence was coming in would have declared a conflict
21 and moved to withdraw from the case on the grounds that
22 with that evidence coming in before a jury we can't
23 adequately represent Narcus and challenge that
24 effectively.

25 I think that's where we are now that that has

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1 come in, and at this point I submit to the Court I think
2 we have a conflict in light of this evidence, perhaps
3 our office withdrawing, and somebody to represent Mr.
4 Wesley be appointed.

5 Perhaps dismissal of the charges are appropriate,
6 in light of what has transpired today.

7 THE COURT: There is not going to be a mistrial.

8 You are not going to get off of this case.

9 There is no conflict, and we're proceeding.

10 As far as the issue of how you want to handle the
11 comment by the Detective Weske about finding the rifle
12 during the course of the execution of the search
13 warrant, I'll handle it how ever you want.

14 If you want me to tell them, nobody even remotely
15 asserts that Narcus owned or controlled or exercised any
16 control over that rifle whatsoever, I'll be more than
17 happy to do that however you want to do it.

18 MR. BANKS: Yes, sir.

19 And as to that issue, like I said, Mr. Landis and
20 I will have to confer a little bit more.

21 Thank you.

22 THE COURT: Okay. Bring them in.
23
24
25

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1 (Thereupon, the following proceedings were had in open
2 court and in the presence of the jury.):

3 THE COURT: Do the parties stipulate to the
4 presence of the jury?

5 MR. LANDIS: Yes, Judge.

6 MS. LUZAICH: Yes, Judge.

7 THE COURT: All right.

8 MS. LUZAICH: For the record, Detective Weske is
9 back on the stand.

10 THE COURT: Okay. Detective Weske's back on the
11 witness stand.

12 You are still under oath.

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. Now, I think we have the CD
15 all ready to go.

16 So are we ready?

17 MS. LUZAICH: I think so.

18 (Now State's Exhibit Number 43, the CD, is played
19 for the jury from page 3.)

20 MR. BANKS: Can we approach, Judge?

21 THE COURT: Yes.

22 Stop the CD.

23 (Thereupon, a discussion was had between Court and
24 Counsel at sidebar.)
25

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1 THE COURT: Don't read anymore of the transcript
2 until we tell you.

3 Leave it alone.

4 We're going to start right from there.

5 Just a second.

6 I need to explain to the members of the jury that
7 this is called a curative instruction.

8 Detective Weske's mentioned a rifle was found
9 during the execution of the search warrant. I need to
10 explain to the members of the jury that the rifle that
11 was found belonging to the father, was in the garage,
12 has absolutely nothing to do with this case.

13 No one has ever asserted that the Defendant in
14 this case owned or exercised any control whatsoever over
15 that rifle.

16 But for an inadvertent statement by the
17 detective, there wouldn't even be a discussion.

18 It has nothing to do with this case, so just
19 disregard that completely.

20 All right. Let's go back.

21 We're on page four, aren't we?

22 Go ahead and start.

23 (Continuation of the exhibit now played for
24 jury.)
25

MS. LUZAICH: Detective, just for the record,

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1 there is a period of really long silence here, and are
2 you guys serving the warrant while the Defendant and his
3 family are in the living room?

4 THE WITNESS: Yes, that was at the end of page
5 23.

6 MS. LUZAICH: Can we approach?

7 THE COURT: Yes.

8 (Thereupon, a discussion was had between Court and
9 Counsel at sidebar.)

10 THE COURT: We're going to collect your
11 transcripts.

12 The interview was sectioned off, the last section
13 of the interview that didn't make it onto this CD, so
14 what we're going to do is, pass your transcripts back
15 in, we're going to collect them, we will finish.

16 There is one more small section to the CD, which
17 we will finish tomorrow, that will be added on, and that
18 will start when we just finish on page 31 of the
19 transcript.

20 Are we going to stop, or continue, with the
21 examination of the detective?

22 MS. LUZAICH: No, we need to finish the disk.

23 THE COURT: Okay. So we're going to stop.

24 MS. LUZAICH: If that's okay.

25 THE COURT: What are we talking about tomorrow?

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1 This is your last witness?

2 Probably another 20, 30 minutes on direct, and
3 maybe another --

4 MR. BANKS: If anything, I think we will wrap up
5 closing argument and everything tomorrow.

6 THE COURT: Okay. Let's do this then, it's 20
7 minutes till, let's take our evening break.

8 We are real close to having the State's case
9 over, so we're going to take an overnight recess.

10 The calendar tomorrow is not overly long, it's a
11 civil calendar, and I think that I am also handling
12 Judge Loehrer's criminal calendar, but that's at 8:30,
13 and I'll be done with that before 9 and should be done
14 with my civil calendar before 9:30.

15 Do you guys want to start at 9:30?

16 MS. LUZAICH: I think you are being a little
17 optimistic.

18 THE COURT: Maybe, but I'd rather get going as
19 fast as we can.

20 Do you want to say 10:00?

21 MS. LUZAICH: I don't think you will be done
22 before 10.

23 MR. BANKS: So it sounds reasonable, Judge.

24 THE COURT: I think I'll go ahead, release you
25 guys.

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1 You have an overnight break until five until 10
2 in the morning.

3 Meet Joe outside the doubles doors and come in,
4 and we'll be starting right on the money.

5 So during this next overnight recess I will
6 admonish the members of the jury.

7 (Jury admonished by the Court.)

8 See you all tomorrow morning ten minutes before
9 10.

10 (Thereupon, the following proceedings were had
11 out of the presence of the jury.):

12 THE COURT: How do you want to do this?

13 MR. LANDIS: We haven't had a chance to look at
14 theirs, to be honest with you.

15 THE COURT: You want to do it tomorrow morning?

16 MR. LANDIS: How much fighting are we going to
17 do?

18 You probably know better than me.

19 MS. LUZAICH: Obviously I disagree with quite a
20 bit of yours.

21 (Thereupon, a discussion was had off the record.)

22 THE COURT: Narcus Wesley, I need to put on the
23 record --

24 MR. LANDIS: Could we just have one moment,
25 Judge?

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1 THE COURT: Sure.

2 We need to put on the record, Narcus, some
3 information with regards to what your rights are in
4 regards to testifying or not testifying in this case.

5 Under The Constitution of the United State's and
6 State of Nevada, you cannot be compelled to testify in
7 this case.

8 You understand that?

9 THE DEFENDANT: Uh-huh.

10 THE COURT: You discussed that with your
11 attorneys?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. You may at your own request
14 give up your right against not testifying, and you can
15 take the witness stand and testify.

16 If you do so, you will be subject to
17 cross-examination by the deputy district attorneys, and
18 anything you say, be it on direct or cross-examination,
19 will be the subject of fair comment by the deputy
20 district attorneys when they argue to the jury at their
21 final argument.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. If you choose not to testify,
25 the Court will -- I will not allow the deputy district

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1 attorneys to make mention of the fact that you chose not
2 to testify.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: At your request, if you elect not to
6 testify, I will give a specific instruction only if you
7 and your attorneys so indicate that you want this
8 special instruction given, but the law does not compel a
9 Defendant in a criminal case to take the stand and
10 testify, and no presumption would be raised, and no
11 inference of any kind would be drawn, from the failure
12 of a Defendant to testify in a criminal case.

13 That would be the instruction I would give should
14 you choose not to testify and want me to give that
15 instruction.

16 Do you have any questions about the rights I just
17 explained?

18 THE DEFENDANT: No.

19 THE COURT: Okay. You are further advised, if
20 you have a conviction, a felony conviction -- Any reason
21 to go over that?

22 MS. LUZAICH: I'm not aware of any felony
23 conviction, Judge.

24 THE COURT: Okay. We'll skip that.

25 That's it.

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1 You guys discuss amongst yourselves what you
2 decide to do, and let us know in the morning.

3 MR. BANKS: Yes, sir.

4 Thank you.

5 MR. LANDIS: Yes, sir.

6 THE COURT: We're in recess.

7 See you tomorrow.

8 (Recess taken for the evening, and proceedings
9 concluded.)

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STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, Bill Nelson, RMR, CCR 191, do hereby certify
that I reported the foregoing proceedings; that the same
is true and correct as reflected by my original machine
shorthand notes taken at said time and place before the
Hon. James M. Bixler, District Court Judge, presiding.

Dated at Las Vegas, Nevada this 31st day of
October, 2008.



Bill Nelson, RMR, CCR 191,
Certified Court Reporter
Las Vegas, Nevada

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IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
NARCUS WESLEY,)
)
Defendant.)

Case No. C232494
Dept. No. 24

JURY TRIAL

Before the Honorable James M. Bixler
Wednesday, April 16, 2008, 10:00 a.m.

Reporter's Transcript of Proceedings

APPEARANCES:

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Las Vegas, Nevada

For the Defendant: Jeff Banks, Esq.
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Deputies Public Defender
Las Vegas, Nevada

REPORTED BY: BILL NELSON, RMR, CCR No. 191

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IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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6 STATE OF NEVADA,)
7)
8 Plaintiff,)
9 vs.)
10 NARCUS WESLEY,)
11)
12 Defendant.)

Case No. C232494
Dept. No. 24

12

JURY TRIAL

13

Before the Honorable James M. Bixler
Wednesday, April 16, 2008, 10:00 a.m.

14

Reporter's Transcript of Proceedings

15

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Las Vegas, Nevada, Wednesday, April 16, 2008

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(Thereupon, the following proceedings were had out of
the presence of the jury.):

6

THE COURT: Back on the record in the matter of
State of Nevada versus Narcus Wesley.

8

Any matters to be addressed before we bring the
jury in?

10

MS. LUZAICH: I don't think so.

11

Can I put the transcripts on their chairs?

12

THE COURT: Yes.

13

MR. BANKS: I think there is one brief thing.

14

The Court gave a curative instruction as far as
some testimony that came out on Detective Weske's direct
regarding the rifle found at the Gay Lane address, and I
just wanted to be clear that up that was not an
instruction proffered by the Defense, and that it was my
position, and it still, as I indicated this at the
bench, that I didn't feel that any curative instruction
could cure the prejudice, and I just wanted to put that
on the record.

23

Thank you.

24

THE COURT: I don't think any of this actually
got on the record, that you moved for a mistrial based

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1 upon that.

2

MR. BANKS: Yeah, I did.

3

MS. LUZAICH: We made a huge record on that.

4

MR. BANKS: I hope that is on the record, Judge.

5

MS. LUZAICH: Yes, we did, with the jury outside
the courtroom.

6

7

THE COURT: Okay. Anything else?

8

Have you guys looked at each other's

9

instructions?

10

MS. LUZAICH: I hate to say, I lost theirs, so I

11

did not look at them.

12

I looked at them briefly.

13

THE COURT: Let's try to do that over the lunch

14

hour.

15

So what we're going to do now is, have Detective
Weske on the stand, and we are going to just resume
listening to the CD and commencing at about page 31 is
where we were, somewhere in that area?

19

MR. BANKS: 31 and 32, yeah.

20

MS. LUZAICH: Yes, page 31.

21

THE COURT: Okay. Are we going to need any
explanations to the jury?

23

MS. LUZAICH: Page 31.

24

THE COURT: I'll tell them, we're picking up

where we left off on page 31.

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1 MS. LUZAICH: Okay.
 2 (Thereupon, the following proceedings were had in open
 3 court and in the presence of the jury.):
 4 THE COURT: Do the parties stipulate to the
 5 presence of the jury?
 6 MR. LANDIS: Yes, Judge.
 7 MS. LUZAICH: Yes, Judge.
 8 THE COURT: All right. Does the State want to
 9 call the next witness?
 10 Should we have Detective Weske sworn back in
 11 again?
 12 It's been overnight.
 13 MS. LUZAICH: You can if you want.
 14 That is fine.
 15 THE COURT: Let's go ahead.
 16
 17 CURTIS WESKE,
 18
 19 who, being first duly sworn to tell the truth, the whole
 20 truth, and nothing but the truth, was examined and
 21 testified as follows:
 22 THE CLERK: You may be seated.
 23 Please state your name for the record.
 24 THE WITNESS: Curtis Allen Weske.
 25 THE COURT: Ladies and gentlemen, we're going to
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1 resume right where we left off yesterday.
 2 So we have a DVD that is going to start I think
 3 the transcript on page 31, so we should be able to start
 4 playing it and follow right along, right?
 5 MS. LUZAICH: Yes, Judge.
 6 For the record, I've had it marked as State's
 7 Proposed Exhibit 43-A. All it contains is the last
 8 track of the interview.
 9 I explained that to Defense counsel, and I would
 10 move 43-A into evidence.
 11 MR. LANDIS: We have no objection.
 12 THE COURT: 43-A is admitted then.
 13 Go ahead and start.
 14 (State's Exhibit Number 43-A is now played for
 15 the jury.)
 16 (Thereupon, a discussion was had off the record.)
 17 THE COURT: Just kind of pass those transcripts
 18 down, and Joe can pick them up.
 19 MS. LUZAICH: For the record, the marshal is
 20 collecting all of the transcripts from the jury.
 21 THE COURT: We're going to put the evidence
 22 sticker on the envelope.
 23 THE CLERK: And then I'll write the number on the
 24 CD.
 25 MS. LUZAICH: I think the actual 43 has the
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1 number written on it, instead of the sticker.
 2 Thank you.
 3 THE COURT: Okay. Go ahead.
 4 MS. LUZAICH: Thank you.
 5
 6 **CONTINUING DIRECT EXAMINATION OF CURTIS WESKE**
 7 BY MS. LUZAICH:
 8 Q. Okay. Detective Weske, we just listened to a
 9 significant period of time of a conversation interview
 10 you and Detective Hartshorn had with the Defendant, and
 11 just for the record, would you agree that it's at times
 12 very difficult to understand what the Defendant was
 13 saying?
 14 A. Yes.
 15 Q. Did the Defendant's story kind of evolve over
 16 time of your interview from, I know nothing, I have no
 17 idea why you are here, to well, okay, maybe I touched
 18 her?
 19 A. Yes.
 20 Q. Initially did he indicate that he didn't even
 21 know a Kameron?
 22 A. No, he initially said he didn't know why we were
 23 there, and then I said, let me mention one name,
 24 Kameron, and I believe that's when he said --
 25 Q. He said, I know of a Kameron?
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1 A. Yes.
 2 Q. He didn't say, I know Kameron?
 3 A. Correct.
 4 Q. And then that evolved to Kameron called him, and
 5 they were going to get smoke, right?
 6 A. Yes.
 7 Q. That would be marijuana?
 8 A. Yes.
 9 Q. He told you that -- The Defendant told you he
 10 didn't have a gun, correct?
 11 A. Correct.
 12 Q. The other person did?
 13 A. Yes.
 14 MR. LANDIS: Judge, I'm going to object to
 15 leading in these questions.
 16 THE COURT: It is, but we have already heard and
 17 read all this, but go ahead.
 18 Just don't suggest your answer.
 19 MS. LUZAICH: Okay.
 20 BY MS. LUZAICH:
 21 Q. Did he indicate during that interview these kids
 22 were actually laughing and giggling at a point?
 23 A. Yes.
 24 Q. Did he tell you that at one point he didn't touch
 25 anybody?
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1 A. Yes.

2 Q. Then ultimately after being confronted with
3 things, did he admit he touched Danielle?

4 A. Yes.

5 Q. Although he did not mention her by name, correct?

6 A. Correct.

7 Q. But as far as you know, she was the only girl
8 there?

9 A. Yes.

10 Q. Now, throughout the course of that interview did
11 you ever hear him once say the name Grant?

12 A. I don't believe so.

13 There was two interviews quite lengthy, so I'm
14 trying to recall, but I don't believe he said, Grant.

15 Q. You did, but he never said, Grant?

16 A. Right.

17 Q. And he never actually used the name Kameron, that
18 Kameron did anything?

19 A. Correct.

20 Q. Correct.

21 Did he agree it was Kameron's idea to leave
22 though, or his friend's idea to leave?

23 A. Yes.

24 Q. Did he indicate that the girl actually didn't
25 mind that he touched her, he asked her, and she didn't

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1 mind?

2 A. Yes.

3 Q. Did he actually tell you that she asked him to
4 give her a hand and help her up?

5 A. Yes, at one point when she was on the stairs he
6 said she requested him to help her up.

7 Q. Did he ever tell you he was afraid of Kameron?

8 A. No.

9 Q. Did he ever give you any indication that he was
10 afraid of Kameron?

11 A. No, he did not.

12 Q. In fact, did he say the reason he touched her was
13 he didn't want to be a punk?

14 A. Yes, ma'am.

15 Q. What does that mean?

16 A. It means, he just didn't want to seem like he
17 wasn't up for it, you know.

18 MR. BANKS: Judge, objection.

19 Speculation.

20 MS. LUZAICH: That's fine.

21 MR. BANKS: That's not even close to what he
22 said.

23 MS. LUZAICH: That's fine.

24 THE COURT: Okay.

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1 BY MS. LUZAICH:

2 Q. When you were asking him about what was going on
3 while his friend was at the ATM with one of the kids in
4 the house, did he indicate to you, I didn't say nothing
5 the whole time?

6 A. Yes.

7 Q. And then shortly thereafter did he say, well, I
8 asked them where is the closest store?

9 A. Yes.

10 Q. Did he say at one point he thought it was funny
11 what was going on?

12 A. Yes, he said he thought it was funny, and it was
13 like being in the movies.

14 Q. You asked him when his friend was gone at the ATM
15 if he stuck around, did he agree with you?

16 A. Yes.

17 Q. And that when -- Did he indicate why he stayed?

18 A. Yes, he did.

19 Q. What was that?

20 A. He said he was just dressed in a T-shirt, and it
21 was cold outside, and he didn't know where he was, so if
22 he had to call somebody, where would he tell them to
23 come pick him up.

24 Q. There was six kids -- or five kids on the floor
25 that knew where they were though, right?

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1 A. Yes.

2 Q. After you -- I'm sorry -- Before you transported
3 him to jail, you mentioned you guys served a search
4 warrant looking for money from the robbery, or a gun
5 from the robbery and clothes.

6 Did you actually find the clothes that the
7 Defendant wore during the robbery?

8 A. Yes, I believe Detective Hartshorn --

9 Q. Impounded them?

10 A. -- impounded those clothes.

11 Q. Did the Defendant indicate those were the clothes
12 he wore during the robbery?

13 A. Yes, I believe they brought him back to the room,
14 he identified them.

15 MS. LUZAICH: Thank you.

16 I have nothing else.

17 THE COURT: Cross?

18 MR. LANDIS: Thank you, Judge.

19 - - -

CROSS-EXAMINATION OF CURTIS WESKE

20 BY MR. LANDIS:

21 Q. Detective, are you familiar with the phrase,
22 snitches get stitches?

23 A. Yes.

24 Q. What does that mean?

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1 A. If you snitch on somebody, you probably will get
2 hurt.

3 Q. What is the very last thing we hear you say on
4 that tape?

5 A. Are you going to have a problem with Kameron in
6 here.

7 Q. And that was directed at Narcus?

8 A. Yes.

9 Q. I'm going to go back to when you first got
10 involved in this case.

11 You arrived at Crystal Creek at about 3:10 a.m.?

12 A. Yes, sir.

13 Q. By that time Officer Slattery had already been
14 there?

15 A. I believe so.

16 I don't know all the officers that were there.

17 Q. Some beat cops had already been there?

18 A. Yes.

19 Q. They were the first to arrive?

20 A. Yes, sir.

21 Q. They talked to the six kids?

22 A. I believe so.

23 Q. We can assume when an officer was found, they
24 talked to the people who called, right?

25 A. The responding officer, yes, but I don't know if

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1 it was Officer Slattery or who it was.

2 Q. The first officers who arrived talked to the six
3 kids?

4 A. Yes, sir.

5 Q. By the time you got there there was some other
6 detectives already there?

7 A. Yes, sir.

8 Q. When you arrived, they were in the process, maybe
9 had completed something, but were interviewing these
10 people?

11 A. Yes, sir.

12 Q. And in the process -- Were they finished, some
13 finished, some still going on, do you remember?

14 A. I believe they were still in the process.

15 Q. We know that before -- those first officers
16 arrived, whoever they were, there was an amount of time
17 when the kids were at the Great Dane residence, correct?

18 A. Yes.

19 Q. They left the Great Dane residence, went to the
20 Crystal Creek Apartments?

21 A. Yes.

22 Q. And there was an amount of time before those
23 officers arrived when they awaited at the Crystal Creek
24 Apartments?

25 A. Yes, sir.

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1 Q. When you got there that morning at about 3:10,
2 you were briefed about what occurred at the Great Dane
3 residence?

4 A. A little bit, yes, sir.

5 Q. You were given some background what they thought
6 had occurred?

7 A. Yes, sir.

8 Q. You found out that these six kids were telling
9 the very similar story?

10 A. I didn't know at that time it was all six kids,
11 but yes.

12 Q. You were told a singular story?

13 A. Yes, sir.

14 Q. And that story was that, two black men came to
15 the door?

16 A. Yes.

17 Q. Asking for a man named Grant?

18 A. Yes.

19 Q. Descriptions of the two men weren't that
20 specific, they weren't that great, you would agree with
21 that?

22 A. Yes.

23 Q. One was described as a shorter and stockier one?

24 A. Yes, I believe wearing something with leather A
25 on it.

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1 Q. And all six agreed one was short or stockier?

2 A. I believe so.

3 Q. You didn't hear anything different?

4 A. No, sir.

5 Q. And one of them was -- I think they were
6 describing him as taller and thinner?

7 A. Yes.

8 Q. You learned that that shorter stockier one who
9 may have had a black T-shirt with an A on it was more in
10 control?

11 A. I heard he was the one that asked for Grant, and
12 he's the one that went to the ATM.

13 Q. He did more of the talking?

14 A. Yes, sir.

15 Q. He's the one who demanded the money?

16 A. Yes, sir.

17 Q. Demanded the debit cards?

18 A. Yes, sir.

19 Q. As you said, he is the one who actually went to
20 the ATM with one of the kids?

21 A. Yes, sir.

22 Q. When they returned from the ATM, it was the
23 shorter stockier one who started with the comment that,
24 we're 90 percent done, we have ten percent to go?

25 A. I believe so.

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1 I'd have to look at my notes.
2 Q. And he began ordering two of the kids to perform
3 sex acts on one another?

4 A. I don't recall who was the one that ordered them
5 because I'm going through the interviews, and they are
6 both saying each other did it.

7 Q. I'm talking right now just about that morning at
8 Crystal Creek Apartments.

9 A. Right.

10 And I don't think we had all that information at
11 that time.

12 We were just told that this is what happened a
13 robbery, sexual assault, and they didn't go into details
14 of who did what at that point.

15 As soon as I got there, I was sent off to the
16 banks.

17 Q. Some details, but not a lot?

18 A. Yes, sir.

19 Q. Not that night, but eventually later, after you
20 did some further investigation, you learned that the
21 individual who was described as the shorter stockier one
22 was Delarian Wilson?

23 A. Yes, sir.

24 When you say, that night, because it was early in
25 the morning, so --

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1 Q. I'm not trying to trick you.

2 A. No, no, I understand.

3 Q. The people in that house, the one described as
4 the shorter stockier one, you later discovered to be
5 Delarian Wilson?

6 A. Yes, during that day.

7 Q. And the taller skinnier one who was in that house
8 that night you later discovered to be Narcus Wesley?

9 A. Yes, sir.

10 Q. Through the course of your employment, both as a
11 detective and previously as an officer, you interviewed
12 a lot of victims?

13 A. Yes, sir.

14 Q. It's your bread and butter in a lot of ways, how
15 a case will start?

16 A. Yes, sir.

17 Q. A lot of times, especially when you deal with
18 violent crimes, these people are frightened when you
19 talk to them?

20 A. Yes, sir.

21 Q. A lot of times they have a lot of stress on their
22 shoulders?

23 A. Yes, sir.

24 Q. A lot of times they are still startled from what
25 just occurred?

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1 A. Yes, sir.

2 Q. And you would agree that because of these factors
3 sometimes these people have a hard time remembering
4 things accurately?

5 A. I think there is some things.

6 We've been trained that when you are in shock,
7 you slowly remember things later sometimes.

8 Sometimes they do.

9 I can't say, all of them.

10 Q. Sometimes we can agree, detective, that
11 perceptions aren't a hundred percent accurate based on
12 those factors?

13 A. Yes.

14 Q. We can also agree that if this were a perfect
15 world, the police would be able to talk to every single
16 victim -- or every single victim of a crime immediately
17 thereafter?

18 A. Yes.

19 Q. Before they talked to anybody else?

20 A. Yes, I would agree with that.

21 Q. Rarely the case?

22 A. That we get to talk to --

23 Q. To witnesses or victims of crimes immediately
24 after it happens, before they have the opportunity to
25 talk to anybody else?

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1 A. I wouldn't say, rarely, but yeah, more commonly.

2 Q. There is usually a lag time between the crime and
3 when you guys have the opportunity to get there?

4 A. Yes, if --

5 Q. Because they have to call the police, the police
6 have to respond?

7 A. Yes, sir.

8 Q. One of the reasons that you would prefer people
9 to not talk to one another before you get there is that
10 there is a danger that in talking to one another they
11 may adopt each other's perceptions?

12 A. Correct.

13 Q. And you want that to be avoided?

14 A. Correct.

15 Q. You want to hear what they saw and what they saw
16 alone?

17 A. Yes, sir.

18 Q. How tall is Narcus Wesley?

19 A. Approximately six foot.

20 Q. Would looking at an incident report in the case
21 refresh your recollection?

22 A. Yes.

23 MS. LUZAICH: Looking at what?

24 I'm sorry.

25 MR. LANDIS: An incident report.

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1 And I'll show you.
 2 May I approach, Judge?
 3 THE COURT: Yes.
 4 BY MR. LANDIS:
 5 Q. Before I ask you, any time a crime occurs,
 6 especially when people are booked into the jail, you get
 7 a lot of their identifying characteristics, is that
 8 correct?
 9 A. Before they are booked into jail?
 10 Q. No, no, when they are booked into jail.
 11 A. When they are booked into jail, unless they have
 12 been booked over -- a lot of times if you have them in
 13 your system.
 14 Q. You will rely on what is already in there?
 15 A. Right.
 16 Q. One of the things you always have or get is
 17 height?
 18 A. Yes.
 19 Q. Another thing would be race?
 20 A. Yes.
 21 Q. Another thing would be weight, the best you can?
 22 A. Yes.
 23 Q. That occurred in this case at some point
 24 obviously?
 25 A. Yes.

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1 Q. What height is Narcus Wesley?
 2 A. 6 foot, according to this.
 3 Q. What height is Delarian Wilson?
 4 A. It's got listed as 6 foot also.
 5 MR. LANDIS: Can I approach, Judge?
 6 THE COURT: Sure.
 7 BY MR. LANDIS:
 8 Q. One of the things -- When you got -- Strike that
 9 -- When you got to the Crystal Creek Apartments, there
 10 was somebody who was kind of giving out duties?
 11 A. Yes.
 12 Q. Somebody telling people to go here, telling
 13 people to go there?
 14 A. Yes.
 15 Q. Your first duty was to go to the bank, if I'm not
 16 mistaken, or at least contact the bank?
 17 A. Yes, sir.
 18 Q. Who was that person?
 19 A. Sergeant Dunway.
 20 Q. Sergeant Dunway?
 21 A. Yes.
 22 Q. Okay. What role did Detective Niswonger have in
 23 this?
 24 A. He was the first responder as far as the bureau,
 25 so first detective there under my assumption, so he was

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1 I think in charge of gathering the victims' statements
 2 and getting that out, and he was kind of conferring with
 3 the sergeant.
 4 Sergeant Dunway was our sergeant for the major
 5 crimes, so they would talk, and then Sergeant Dunway
 6 would give us our duties.
 7 We talked to Detective Niswonger too.
 8 Q. After you went to the bank, one of your next
 9 duties involved finding out who the Grant guy was?
 10 A. The very next one was to clear the house at 690
 11 Great Dane.
 12 Q. Sooner or later you got to Grant?
 13 A. Yes, sir.
 14 Q. And you found out who Grant was?
 15 A. Yes, sir.
 16 Q. You found out where he lived?
 17 A. Yes, sir.
 18 Q. And you went and met Grant?
 19 A. Yes, sir.
 20 Q. Found out that Grant was a marijuana dealer?
 21 A. Yes, sir.
 22 Q. And to be clear, when you went to Grant's house,
 23 you smelled marijuana?
 24 A. Yes, sir.
 25 Q. You asked him about it?

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1 A. Yes, sir.
 2 Q. He showed you some marijuana that you
 3 confiscated?
 4 A. Yes, sir.
 5 Q. And he showed you some money that you
 6 confiscated?
 7 A. Later, yes, but he did.
 8 Q. You went back to his house after you took him to
 9 the station?
 10 A. Yes, sir.
 11 Q. And you again confiscated some more money, or at
 12 least money?
 13 A. No, the money at that time -- Yes.
 14 Q. And more marijuana?
 15 A. No.
 16 Q. Roughly how much money did you take from him?
 17 A. I believe it was \$7,000.
 18 Q. And roughly how much marijuana do you think you
 19 seized?
 20 A. It wasn't a whole lot, but it was separated in
 21 four different jars with handles.
 22 Q. Based on your training and experience, Grant was
 23 more than just a recreational pot dealer?
 24 MS. LUZAICH: Objection.
 25 Relevance.

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1 THE COURT: Well --

2 MS. LUZAICH: He hasn't laid a foundation for his
3 training and experience.

4 MR. LANDIS: I'll be happy to do so.

5 THE COURT: Can you answer that or not?

6 THE WITNESS: I don't -- You would have to define
7 what recreational and major drug dealer means.

8 THE COURT: Explain what you mean.

9 MR. LANDIS: I was just using the State's terms
10 they used earlier, Judge.

11 THE COURT: That is true.

12 I don't know who said that, but that was a term
13 that was used.

14 MS. KOLLINS: I said it.

15 He had an objection.

16 MR. LANDIS: I didn't have an objection to it.

17 I'm just trying to make clear what it is.

18 THE COURT: I'm not sure we have a definition,
19 but I'll let you ask the question.

20 That was terminology used.

21 Go ahead.

22
23
24
25
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1 BY MR. LANDIS:

2 Q. Briefly, you dealt with a lot of drug dealers?

3 A. I wouldn't say, a lot.

4 Q. You have arrested some drug dealers?

5 A. Yes, sir.

6 Q. You confiscated drugs in your area as a police
7 officer?

8 A. Yes, sir.

9 Q. And you would agree that some people sell a bag
10 of marijuana and another bag of marijuana here and
11 there?

12 A. Yes.

13 Q. And then there is some people who make a living
14 off selling marijuana?

15 A. Yes.

16 Q. Would it be fair to term the person who sells the
17 bag of marijuana here and there a recreational drug
18 dealer?

19 A. I guess that would be fair.

20 I mean, I guess I would have to look at his O
21 sheets. I never found any O sheets to see how often he
22 sells, or what he does with that money, or he's working
23 it.

24 Q. Well, when you talked to Grant, he told you a few
25 things about his dealings in marijuana?

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1 A. Like what?

2 Q. That he usually buys a pound or two pounds at a
3 time?

4 A. Yes.

5 Q. And that he's been ripped off of thousands of
6 dollars before in bad drug deals?

7 A. I don't think he said thousands of dollars, but
8 he told me about one time when he was ripped off for
9 around a thousand dollars.

10 Q. Based on that information, based on the \$7,000
11 you seized from him, would it be your conclusion as an
12 officer that he deals a bag of marijuana here and there,
13 or it's more of a career, or was more of a career the
14 time you met him?

15 A. I would.

16 MS. LUZAICH: I'm sorry.

17 Objection.

18 Simply based on the fact there was some money and
19 pot there, you can't form that conclusion.

20 THE COURT: Well, I'm going to overrule the
21 objection.

22 The detective interviewed with him and
23 confiscated it.

24 If he has an opinion on it, you are asking for an
25 opinion basically, if he has one, I'll let him give it.

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1 THE WITNESS: Okay. I don't know. I can't
2 honestly say whether it was a career or not.

3 He said some of the money belonged to his brother
4 for gambling.

5 He said he was working -- or starting a job at
6 Hard Rock.

7 I mean, according to the information we had, he
8 did deal marijuana.

9 So I don't know if that was his soul earnings,
10 and that's what he lived on.

11 I was told he worked -- or was working at Hard
12 Rock.

13 So you might be doing stuff out of there too.

14 So I can't say that was his soul earnings.

15 He had a job too, but I would say he did more
16 than a bag here and there, yes, sir.

17 BY MR. LANDIS:

18 Q. Very briefly, then we'll leave it.

19 All that \$7,000 you seized, you gave some of it
20 back to him?

21 A. I gave \$900 he said was I believe his brother's.

22 Q. You determined that the remainder of that amount
23 was marijuana proceeds, and that's why you seized it?

24 A. Yes.

25 Q. You also learned from Grant that he knew who was
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1 at the Great Dane residence that night?
 2 A. He had an idea, yes, sir.
 3 Q. He had a pretty good idea?
 4 A. Yes.
 5 Q. And that individual was Kam Wilson?
 6 A. Yes, sir.
 7 Q. And he knew it was Kam Wilson because Kam Wilson
 8 robbed him before?
 9 A. Yes, sir.
 10 Q. And he described that robbery to you?
 11 A. Yes, he did.
 12 Q. And it was armed?
 13 A. Yes.
 14 Q. And the way he described it was, it took the
 15 majority of the robbery to occur before he even realized
 16 what was going on?
 17 A. Yes.
 18 Q. That's because him and Kam were pretty good
 19 friends before that?
 20 A. Yes, sir.
 21 Q. He actually helped Kam even move to Colorado when
 22 he transferred schools?
 23 A. I can't remember if he said he helped him move.
 24 Q. But he definitely said that they used to spend a
 25 fair amount of time together when Kam lived in Las
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1 Vegas?
 2 A. Yes.
 3 Q. Kam was apprehended at Circus Circus?
 4 A. Yes, sir.
 5 Q. That was before you arrived?
 6 A. Yes, sir.
 7 Q. And --
 8 A. He was detained.
 9 Q. Found at a blackjack table?
 10 A. Yes, sir.
 11 Q. Officers took him from that blackjack table to
 12 some kind of secure location at Circus Circus?
 13 A. Yes, they did.
 14 Q. And he sat there for a fair amount of time?
 15 A. I believe so.
 16 I mean, that was my understanding.
 17 I couldn't tell you how long he sat there. I
 18 wasn't there.
 19 Q. A fair amount of time before you and Detective
 20 Hartshorn sat down and talked to him?
 21 A. Yes, sir.
 22 Q. He knew when he was approached by officers,
 23 detained and placed in that security room he was in some
 24 trouble?
 25 MS. LUZAICH: Well, objection.
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1 He can't testify what Mr. Wilson knew.
 2 THE COURT: Rephrase your question.
 3 BY MR. LANDIS:
 4 Q. When he was approached, and if you don't know,
 5 you don't know, by officers at the blackjack table,
 6 detained and placed in the security room, they made sure
 7 he knew that he was in some trouble?
 8 MS. LUZAICH: Well, objection.
 9 He wasn't there, he was very clear about that, so
 10 he doesn't know what anybody did there.
 11 THE COURT: Were you told anything about the
 12 arrest of Wilson?
 13 THE WITNESS: No.
 14 He just said he was playing blackjack, and the
 15 detective took him downstairs.
 16 THE COURT: Okay.
 17 BY MR. LANDIS:
 18 Q. Based on your training and experience, when an
 19 individual is approached by officers and detained, they
 20 conclude that they are in some sort of trouble?
 21 A. I can't --
 22 MS. LUZAICH: Speculation.
 23 THE COURT: I'll give you some leeway, but I
 24 assume when somebody gets arrested, they know they are
 25 in trouble.
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1 Is that your point?
 2 MR. LANDIS: Yes.
 3 I think it's simple.
 4 THE COURT: Okay.
 5 THE WITNESS: I can't even remember if he was
 6 handcuffed.
 7 I don't know what he was thinking.
 8 When I detain somebody for somebody else, I just
 9 say, you will have to wait to talk to the officer that
 10 wants to talk to you.
 11 BY MR. LANDIS:
 12 Q. When you guys finally got down there, you told
 13 him you wanted to talk to him a little bit?
 14 A. Yes, sir.
 15 Q. And as you do when somebody's in custody, you
 16 read him his Miranda rights?
 17 A. Yes, sir.
 18 Q. That is a required step for you to take any time
 19 you are going to interrogate somebody about something?
 20 A. Yes, sir.
 21 Q. And after you read those Miranda rights to
 22 somebody, they have a few choices?
 23 A. Yes, sir.
 24 Q. And they can choose to remain silent?
 25 A. Yes, sir.
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1 Q. They can choose to request an attorney?
 2 A. Yes, sir.
 3 Q. Or they can choose to talk to you?
 4 A. Yes, sir.
 5 Q. And if they choose to talk to you, they can tell
 6 you the truth obviously?
 7 A. Yes, sir.
 8 Q. Or they can lie?
 9 A. Yes, sir.
 10 Q. And I'm sure you experienced all those different
 11 options through the course of your career?
 12 A. Yes, sir.
 13 Q. Your preference obviously is for people to talk?
 14 A. Yes, sir.
 15 Q. And in this case when you went and saw Kam, he
 16 chose to talk to you?
 17 A. Yes, sir.
 18 Q. You have been trained and experienced informal
 19 courses how to conduct interviews and interrogations?
 20 A. Yes, sir.
 21 Q. There is a specified techniques that you use at
 22 certain times in an attempt to get information?
 23 A. Yeah, you are told about themes and things like
 24 that, yes, sir.
 25 Q. There is different ways to go about it with
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1 different suspects?
 2 A. Yes, sir.
 3 Q. Depending upon the case?
 4 A. Yes, sir.
 5 Q. One of those themes, one of those techniques, is
 6 to minimize the suspect's conduct?
 7 A. Yes, sir.
 8 Q. To make them feel that what they did isn't as bad
 9 as it seems?
 10 A. Correct.
 11 Q. And it can go so far as to make them believe that
 12 you think it's okay?
 13 A. That you sympathize with them, yes, sir.
 14 Q. You try to get them to understand you are almost
 15 on their side, and you understand why they did what they
 16 did?
 17 A. Yes, sir.
 18 Q. Moments after you sat down with Mr. Wilson you
 19 chose to use that theme?
 20 A. I'd have to look at the beginning of it to see
 21 exactly what I said, but I believe it was something to
 22 the effect of --
 23 Q. Does this sound familiar, detective:
 24 All right. Because you are the person that they
 25 described as the one that stopped the major event, okay,
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1 last night you stopped whoever was with you from getting
 2 too carried away on what happened, here is what I
 3 believe happened:
 4 I believe you went over there, and you wanted to
 5 confront someone that you felt owed you some money, and
 6 shit got out of hand with this other person.
 7 Now I'm giving you a chance, I'm coming to you
 8 first?
 9 A. Yes, sir.
 10 Q. And that's that technique we just discussed?
 11 A. Yes, that's one of them.
 12 Q. It also says --
 13 MS. LUZAICH: Judge, can we approach?
 14 THE COURT: Sure.
 15 (Thereupon, a discussion was had between Court and
 16 Counsel at sidebar.)
 17 THE COURT: Go ahead.
 18 MR. LANDIS: Court's indulgence.
 19 BY MR. LANDIS:
 20 Q. Do you also remember saying, like I said, I'm
 21 tired, bro, Kameron, I'm going to -- what happened I
 22 think, and this is from doing this for 13 years, what I
 23 think happened is, you got a little over your head
 24 yesterday, last night, it started last night, and it
 25 went on for a couple hours, and then you actually saved
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1 some girl's life last night, and that's what I truly
 2 believe, so you, that's why when I said why I wanted to
 3 talk to you, I said I wanted to talk to you Kameron,
 4 everybody else calls you Kamerson, right?
 5 A. Yes.
 6 Q. You didn't truly believe he saved somebody's life
 7 that night?
 8 A. No, I believe he stopped a sexual assault.
 9 Q. Well, correct me if I'm wrong, but the
 10 information you had at that time was the sexual assault
 11 had already occurred?
 12 A. Yes.
 13 Q. And --
 14 A. I mean, what I'm talking about, sexual assault
 15 I'm talking about.
 16 Q. Sex?
 17 A. Having sex, and I knew it was just digital
 18 penetration, which is no better, but I mean, I believe
 19 he stopped full-blown sex.
 20 Q. We can agree that at the time you had that
 21 conversation with Kam Wilson, that you had a lot more
 22 details about what occurred in that house than you had
 23 at the Crystal Creek Apartments?
 24 A. I had more information.
 25 Q. There was some further briefings you attended?
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1 A. By the time I got to Wilson?
 2 No.
 3 I mean, I was out there, was dealing with Grant
 4 most of the time, and then when they said they located
 5 him, the only thing I went to is, I went over to the
 6 sexual side of our department, and they were preparing
 7 the search warrant for the room, so I really had no
 8 other briefings.
 9 Q. Did you get a good look at that search warrant?
 10 A. No, not really.
 11 It was prepared by Detective Pena.
 12 We were going over it and calling. There was
 13 people assigned to call Detective Niswonger.
 14 He was already out saying, what did this victim
 15 say, and people assigned to do different things, but we
 16 never sat down and had a briefing.
 17 Q. There is a fairly detailed narrative in that
 18 report what the victim said and what officers believed
 19 had occurred that night?
 20 A. Yes, I believe so.
 21 Q. So you did have a fair amount of details as to
 22 the roles of the two individuals in that house?
 23 A. It was my understanding for the roles that
 24 Delarian was the one that initiated the contact because
 25 he knew Grant, and that when they came back from the
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1 ATM, Narcus was the one doing the sexual stuff, that was
 2 my understanding at that time.
 3 I did not go through the details of reading what
 4 each victim said, or that search warrant.
 5 Like I said, it was everybody was doing their own
 6 thing, and Detective Pena was preparing that.
 7 I didn't even read that search warrant at that
 8 point.
 9 Q. Well, clearly you didn't get that information
 10 about who initiated the sexual contact from the victims?
 11 A. No, other officers were discussing that.
 12 Q. So did you get your material from other officers?
 13 A. Yeah, just like I said, while they were preparing
 14 the search warrant, they were talking about it and
 15 saying call, Detective Niswonger, somebody would have
 16 the call Detective Niswonger to see what this person
 17 said, or what they were looking for, because like I
 18 said, he left at 4:00 when they were preparing it.
 19 Q. Okay. And if the information you received at
 20 that time was that it was Narcus Wesley who initiated
 21 the sexual conduct when they returned from the ATM, I
 22 think you would agree that everybody in this room,
 23 including you, knows that was not accurate information,
 24 correct?
 25 A. To the statement of the 90 percent, 10 percent,
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1 yes, but as far as some of the actions, no.
 2 Q. We now know too it was Delarian Wilson who
 3 ordered their clothes off?
 4 A. Yes.
 5 Q. Who ordered Justin and Danielle to perform sex
 6 acts on one another?
 7 A. Yes.
 8 Q. After discussing them with Mr. Wilson of
 9 minimizing his culpability, he chose to talk to you?
 10 A. Yes.
 11 Q. The first thing he told you was that he was with
 12 a friend named Christopher?
 13 A. Yes, sir.
 14 Q. He said Christopher was the one who knows Grant?
 15 A. Yes, sir.
 16 Q. That he met Christopher earlier in the evening of
 17 the crime at the Stratosphere?
 18 A. Yes, sir.
 19 Q. That they went to the door of the Great Dane
 20 residence?
 21 A. Yes, sir.
 22 Q. That would be Christopher and Kam?
 23 A. Yes, sir.
 24 Q. And Christopher decided to rob Grant?
 25 A. Yes, sir.
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1 Q. That Christopher pulled out a gun?
 2 A. Yes, sir.
 3 Q. That Christopher said when they returned from the
 4 ATM, we're 90 percent done, we have ten percent to go?
 5 A. Yes, sir.
 6 Q. That Christopher told Danielle Browning to take
 7 her clothes off?
 8 A. I believe so, yes, sir.
 9 Q. That during no time did Kam have a gun?
 10 A. Yes, sir.
 11 Q. Just Christopher?
 12 A. Yes, sir.
 13 Q. Delarian said he stayed at the house while
 14 Christopher went to the ATM?
 15 A. Yes, sir.
 16 Q. You asked him, why didn't you leave?
 17 A. I believe so.
 18 I'd have to look.
 19 Q. And he told you he didn't leave because he was
 20 scared?
 21 A. I believe so.
 22 If you are reading that from a transcript,
 23 obviously I need to see that.
 24 Q. You had some issues with the line of answers?
 25 A. Pardon me?
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1 Q. You had some issue with those answers at the
2 time?

3 A. At that time I really thought Christopher
4 existed.

5 Q. After he told you that story about Christopher,
6 did the interrogation end?

7 A. Yes, it wasn't until he included the third person
8 that --

9 Q. What I'm getting at, that is one of three stories
10 that you heard that night from the mouth of Kam Wilson?

11 A. Yes.

12 Q. So you didn't end questioning him when he told
13 you about Christopher?

14 A. I was still questioning him because we wanted
15 details, and at that point I thought he knew the person
16 -- or knew the last name.

17 Q. As he told you the story about Christopher, one
18 of the things you asked him was about Grant?

19 A. Yes.

20 Q. And you asked him about Grant because you had
21 already talked to Grant?

22 A. Yes.

23 Q. And you knew that Kam and Grant had been friends?

24 A. Yes.

25 Q. And you also knew that Kam had robbed Grant in
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1 the past?

2 A. According to Grant, yes.

3 Q. You had no reason to question Grant?

4 A. No.

5 Q. You would agree he came off as a pretty sincere
6 guy when he sat in your room at the police station?

7 A. Yes, sir.

8 Q. You asked Kam if he had robbed Grant in the past?

9 A. Yes.

10 Q. He denied that at first?

11 A. Yes.

12 Q. Roughly around that same time in the interview
13 you also talked to him a little bit about the ATM and
14 the fact the ATMs have cameras?

15 A. Yes.

16 Q. At that point did you actually have that picture
17 from the ATM?

18 A. No, sir.

19 Q. You told him you had it though, right?

20 A. I don't think I told him we had it.

21 I said, I implied that we might have had it or --
22 I don't even know if I implied it.

23 I'd have to look at the transcript, but I think I
24 told him, you know, when you went to the ATM, there is
25 cameras there, you are going to be in a picture or
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1 something to that effect. Like I said, I'd have to look
2 at the transcript if you have it there.

3 Q. You would agree implying you have evidence is
4 another technique of interrogation?

5 A. Yes.

6 Q. Designed to get them to talk?

7 A. Yes.

8 Q. Designed to get people to tell you the truth?

9 A. Yes, sir.

10 Q. After you talked to Kam a little bit about Grant,
11 and after you talked to him a little bit about this ATM,
12 we get to story two?

13 A. Yes, sir.

14 Q. Story two still involves Christopher?

15 A. Yes.

16 Q. But we hear about a third person?

17 A. Yes.

18 Q. Christopher's cousin?

19 A. Yes, sir.

20 Q. I think he describes Christopher's cousin as
21 somebody he just met?

22 A. Yes, I believe so.

23 Q. I think he gives him the name D.C.

24 Does that sound right?

25 A. Yes, sir.

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1 Q. And he starts telling you the story of what
2 occurred at the Great Dane residence a second time?

3 A. Yes, sir.

4 Q. Again, like the first time, Christopher had the
5 gun?

6 A. I believe so.

7 Q. Christopher pulled out the gun at the door?

8 A. Yes, sir.

9 Q. But this time unlike the first story Kam actually
10 went to the ATM with Christopher while the cousin stayed
11 behind at the house with the six kids?

12 A. Yes, sir.

13 Q. He tells you this time that when they returned
14 from the ATM, that he, Kam, was scared because
15 Christopher and his cousin were holding these kids
16 hostage?

17 A. Yes, sir, that sounds familiar.

18 Q. And he says, sir, I had to watch the full --
19 Christopher, he could have blasted me?

20 A. I believe so.

21 Q. He says that after they left, after Christopher,
22 D.C. and Kam left, Christopher decided to give him
23 roughly \$200 of the money they got?

24 A. I believe so, yes, sir.

25 Q. You are again not too happy with that story?

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- 1 A. No.
 2 Q. The reason you are not too happy with that story
 3 is because you knew there was only two people in that
 4 house?
 5 A. Yes, sir.
 6 Q. And you knew that because all six kids told you
 7 the exact same thing regarding that?
 8 A. Yes, sir.
 9 Q. When you confronted him with that information, we
 10 get to story number three?
 11 A. Yes, sir.
 12 Q. He finally gives you a name, and that name is
 13 Narcus?
 14 A. Yes, sir.
 15 Q. No last name?
 16 A. No, sir.
 17 Q. No great detail about Narcus?
 18 A. No, sir.
 19 Q. Except he used to play football with him at UNLV?
 20 A. Yes, sir.
 21 Q. We now get to the third telling of what occurred
 22 at the Great Dane house?
 23 A. Yes, sir.
 24 Q. This time it's Kam and Narcus?
 25 A. Yes, sir.

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- 1 Q. No third person?
 2 A. Yes, sir.
 3 Q. And no Christopher?
 4 A. Correct.
 5 Q. But again it's not Kam with the gun?
 6 A. Correct.
 7 Q. Narcus had the gun?
 8 A. Yes, he said it was a fake gun.
 9 Q. He said Narcus had a fake gun?
 10 A. Yes, sir.
 11 Q. But Kam didn't touch the gun according to Kam the
 12 third time around again?
 13 A. Correct.
 14 Q. Narcus took the cell phones?
 15 A. I believe so.
 16 I'd have to look at the transcript.
 17 Q. Narcus made Danielle and Justin take their
 18 clothes off?
 19 A. I believe so.
 20 Q. Narcus was the one who said when they returned
 21 from the ATM, we're 90 percent done, ten percent left to
 22 go?
 23 A. Yes, sir.
 24 Q. And Narcus ordered all of the sexual contact that
 25 occurred that night?

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- 1 A. I'd have to look at the transcript of that.
 2 MR. LANDIS: Court's indulgence.
 3 THE COURT: Certainly.
 4 BY MR. LANDIS:
 5 Q. If I were to play a tape recording of that
 6 interview with Mr. Wilson, would you be able to
 7 recognize it and authenticate it was actually the
 8 interview that you had?
 9 A. Yes, sir.
 10 MR. LANDIS: Judge, I would move for admission of
 11 Defense --
 12 MS. LUZAICH: May we approach?
 13 THE COURT: Sure.
 14 (Thereupon, a discussion was had between Court and
 15 Counsel at sidebar.)
 16 THE COURT: We're going to have to make a record
 17 on this outside of your presence, so you guys go ahead
 18 and take a break. Hopefully this will only be a few
 19 minutes, but take a break.
 20 (Jury admonished by the Court.)
 21 (Thereupon, the following proceedings were had out of
 22 the presence of the jury.):
 23 THE COURT: All right. For the record, this is
 24 the dilemma:
 25 The Defense seeks to play an hour-and-a-half CD
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- 1 of the interview between the witness, Detective Weske,
 2 and the Co-Defendant Delarian Wilson. The content, the
 3 Court has absolutely no idea what the content of this
 4 statement is, but I presume this was an early -- I think
 5 the first interview. I don't know how many there were,
 6 but this was apparently the initial interview between
 7 Detective Weske and Defendant Wilson.
 8 This stems from the position yesterday that was
 9 disclosed by the Defense indicating their desire to have
 10 Co-Defendant Wilson's plea entered into evidence before
 11 the jury.
 12 The Co-Defendant Wilson has plead to three
 13 charges, three felony charges.
 14 MS. LUZAICH: He plead to two counts of robbery
 15 with use of deadly weapon and one count of sexual
 16 assault.
 17 THE COURT: Okay. And I took his plea about a
 18 week ago. He was canvassed, and we even have a copy of
 19 the transcript of the canvas and the plea that was
 20 taken.
 21 Under normal circumstances the Defendant wouldn't
 22 -- The Defendant in this situation certainly wouldn't
 23 want that information, but at your request I presume for
 24 the purpose of establishing responsibility for the
 25 criminal conduct alleged taken by responsibility taken
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1 by Mr. Wilson --

2 MR. BANKS: That's part of it.

3 THE COURT: And the Court said that if you wanted
4 to introduce his plea, that everything relative to his
5 plea is going to come in, which means the canvas is
6 going to come in, the guilty plea agreement is going to
7 come in, everything, and we will have to redact a few
8 things relative to penalty.

9 MR. LANDIS: Penalty.

10 Sorry to interrupt you, Judge.

11 The State insisted on that. That wasn't just the
12 Court's ruling, that was the State's position as well.

13 THE COURT: I think the State pointed it out,
14 obviously there is some information about the penalty
15 that can't be in there, so it would have to be redacted,
16 and the Court agreed if the plea comes in, if Wilson's
17 plea comes in, then everything relative to the plea the
18 Defense could -- couldn't simply pick and choose what
19 part of his plea was going to be admitted.

20 The dilemma here is, this ain't part of this
21 plea, this has nothing to do with this plea. This in
22 fact is a statement, some of it may be incriminating,
23 some may be exculpatory, some may be incriminating
24 towards this Defendant, I mean, it's -- I'm sure it
25 takes on a whole bunch of aspects.

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1 MS. KOLLINS: A substantial portion of it is
2 self-serving as well.

3 THE COURT: I'm sure you are absolutely correct
4 because at this point in this investigative process
5 Wilson's not saying anything, he's not admitting squat
6 at this point in the investigation.

7 So I'm quite sure there is very little, if any,
8 of the statement that is actually incriminating towards
9 Wilson.

10 The problem the State has pointed out, to play
11 this statement, as opposed to the statement made by the
12 Defendant, which obviously is clearly admissible, the
13 statement from the Co-Defendant presents another unique
14 problem inasmuch as the State has no opportunity to
15 cross-examine Mr. Wilson regarding his statement or
16 anything else that may be on that interview.

17 So have I accurately reflected everybody's
18 position?

19 MS. LUZAICH: Well, essentially yesterday when I
20 said that if the fact of the plea comes in, that it all
21 comes in, I certainly didn't mean his entire statement,
22 and I was very specific when I said that when he entered
23 his plea, Mr. Wilson -- sorry, and he was canvassed, he
24 put the culpability for the sexual assault on Narcus
25 Wesley, and therefore that should be admissible as well

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1 as during this interview where he puts the culpability
2 on Narcus Wesley, where he says that, yeah, I was there,
3 but Narcus had the gun, and Narcus did the sex stuff.
4 That is what is admissible.

5 The whole hour pertaining -- you know, I probably
6 should have objected earlier when they started talking
7 about him giving the Christopher statement, and I
8 didn't. I figured I would give a little bit of leeway.
9 I never expected that they were going to play the whole
10 statement, none of that, the entire thing pertaining to
11 Christopher and Christopher's cousin, none of that is a
12 declaration against interests because he never during
13 that says that he did anything wrong, just that it was
14 Christopher, and he was scared, and this, that and the
15 other thing.

16 It is not a declaration against interests.
17 Therefore, it is hearsay. There is no hearsay
18 exception, and the reason that would therefore not be
19 admissible because as the Court pointed out, I cannot
20 cross-examine Delarian Wilson. He's entered a plea, not
21 yet been sentenced, and he still has Fifth Amendment
22 rights.

23 So even if we were to drag his butt out of the
24 jail and bring him down here, we cannot force him to
25 testify, he's got a Fifth Amendment rights, and he's
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1 still getting ready to be sentenced on 10 to life and 24
2 to 40, could be a really long time if he's consecutive,
3 so he's never going to open up his mouth. Therefore,
4 the statement the tape is not admissible.

5 The bits and pieces that are declarations against
6 penal interests are, but because they want to bring in
7 the plea, anything he says pertaining to Narcus Wesley
8 is also admissible, but that's it.

9 THE COURT: You need to convince me that there is
10 some legal authority for admitting this entire statement
11 outside of the limited well-known exceptions of
12 statements against penal interests by the declarant.

13 MR. BANKS: A combination of penal interests.

14 And then in light of his guilty plea it is now a
15 prior inconsistent statement.

16 MR. LANDIS: And under the rule of completeness
17 you can't just put in portions of the statement, which
18 is what they are asking you to do, put in the parts that
19 hurt us, but the rest of it doesn't come in.

20 If any of it comes in, it all comes in, which
21 includes everything, every single thing he said.

22 His statement mirrors, really does, what Narcus
23 said, just different people in different roles, and you
24 know they think that is a statement against interest,
25 they played it, and I promise you they will argue the
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1 heck out of it in closing, the fact someone says they
2 went to a place, participated in the robbery, and
3 actually took some of the proceeds, is a statement
4 against interests.

5 The fact he says he's the minor person in it
6 shows he's maybe not the most culpable, but it is a
7 statement against interests and confession that lead to
8 him getting charged, that confession lead to him
9 eventually pleading to mandatory prison time.

10 There is no way they can honestly say it's not a
11 statement against interests.

12 They are going to say in closing what he said
13 shows he's responsible, shows he is culpable the same
14 way what declarant said shows he's culpable.

15 They can't say the only parts that come in are
16 the statements about the gun, the fact Narcus has a gun,
17 it all comes in, and to give the jury a complete picture
18 I think that needs to come in.

19 As far as the right to confront Mr. Wilson, we
20 don't know if he would plead the fifth if he took the
21 statement, that's an assumption. If we put him up
22 there, maybe he would, maybe he wouldn't, maybe he
23 thinks his best option as far as sentencing would be to
24 go up there and speak the truth and mitigate, I don't
25 know, I never talked to the man.

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1 Two, the State's right to confront and
2 cross-examine witnesses does not trump our right to a
3 fair trial and his constitutional right to present a
4 defense, and that's the bottom line.

5 Our right to confront and cross-examine witnesses
6 is a lot stronger than the State's rights, and that's
7 the truth, Judge.

8 This is a criminal Defendant. He has stronger
9 rights than does the State.

10 MS. LUZAICH: He got the right to present a
11 defense, but he doesn't have the unlimited right to do
12 anything he wants in furtherance of presenting his
13 defense. He can only present legal admissible evidence.

14 I believe that Delarian Wilson's plea is not
15 legal admissible evidence. However, the Court has ruled
16 that it is coming in, and I am living with that ruling.

17 In light of that ruling, that is why I believe
18 that only his declarations against interests and the
19 statements he made inculcating Narcus Wesley are
20 admissible because that's how his plea went down.

21 That rule of completeness, that doesn't apply
22 here.

23 It's because they are going out of their way to
24 bring in what otherwise is not admissible.

25 THE COURT: Is not admissible.

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1 This is kind of unusual circumstances here
2 because if we were trying this case as one case,
3 obviously we're seeing right now what the problems would
4 be. That is why we are virtually impossible to try
5 these two guys together, because of exactly what we are
6 experiencing right now. The extent of which the
7 statements made by a Co-Defendant in a separate trial
8 are going to come in as evidence, I agree with him, I
9 agree with him, I'm going to let it come in, I'm going
10 to let the whole statement come in and the whole thing
11 come in.

12 MS. LUZAICH: Well, then we're not going to
13 finish today because I'm going to try to get Delarian
14 Wilson here.

15 MS. KOLLINS: We can't do that on-the-fly.

16 MS. LUZAICH: I can't do it that fast.

17 THE COURT: Well, we'll just keep going. We'll
18 keep going.

19 I'm not going to cut them off.

20 I think that they are entitled to present this.

21 I think they are entitled to present it.

22 MS. LUZAICH: They are entitled to their theory
23 of defense.

24 They can't present anything in the world that
25 they want.

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1 THE COURT: No, you got two people charged with
2 committing an act.

3 One of the two people makes an extensive
4 statement to the police.

5 There is no possible way you can argue that it's
6 irrelevant, it's any of the other things that would
7 normally be argued, the fact that he's a Co-Defendant
8 and has certain constitutional rights against
9 self-incrimination and putting him on the witness stand.

10 You are never going to get to put this guy on the
11 witness stand. He's going to be unavailable as a
12 witness to cross-examine, period.

13 MS. LUZAICH: That's why his statement is
14 inadmissible.

15 THE COURT: Well, I don't agree.

16 I think it's admissible.

17 I think they are entitled to put it on if they
18 want to.

19 I don't know why, you guys all know what it says,
20 I don't, I don't know why you want it in.

21 MS. KOLLINS: The whole reason for Bruton is
22 this, if we were going to use the statement, the State
23 would be forced to put Mr. Wilson under subpoena, put
24 him on the stand shall, then impeach him with the
25 statement.

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1 What you are letting them get away with is,
2 playing it without them even making any attempt to put
3 declarant Wilson on the stand, impeach him and play his
4 statement.

5 That's the difference.

6 That is why this is completely inappropriate.

7 THE COURT: Here's how you impeach him:

8 He gets on the statement to the police, and he
9 says he blames this Defendant for everything.

10 A year later he stands there, and in handcuffs,
11 and he admits to committing criminal acts, a bunch of
12 which this Defendant is charged with.

13 He impeaches himself when he is questioned and
14 canvassed as to his plea of guilty.

15 That is how you impeach him.

16 That's how it works.

17 MS. LUZAICH: Well, no, because you didn't take a
18 good plea. You never had him admit to anything about
19 the robbery.

20 He admitted the sexual assault occurred, and he
21 said that Narcus Wesley did it.

22 THE COURT: He said he aided and abetted.

23 MR. LANDIS: Abided.

24 THE COURT: That's the terminology, if I remember
25 correctly.

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1 MR. LANDIS: As to the sexual assault, it was
2 aiding and abiding.

3 As to the robbery with use, I think he did take
4 direct responsibility.

5 MS. KOLLINS: I guess we're asking to Court for
6 this, that -- I don't know how we're going to try to
7 accomplish or accommodate for this evidence on this
8 short of notice.

9 We have given them every professional courtesy.
10 It obviously hasn't been extended the other way.

11 MR. BANKS: I take issue with that.

12 MS. KOLLINS: Well --

13 MR. BANKS: I absolutely take issue.

14 THE COURT: Let her finish.

15 Go ahead.

16 MS. KOLLINS: I don't know if we're going to try
17 to endorse a late witness or subpoena and call Delarian
18 Wilson, so if he's going to invoke the -- I can't tell
19 you what we're going to do, so the Court understands
20 that.

21 THE COURT: I will certainly accommodate you,
22 whatever you want to do I'll make an accommodation.

23 If we need to add people, rebuttal or whatever,
24 that's fine, I will let you do whatever you need to do.

25 I mean, are you sure you know what you are doing?

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1 MR. LANDIS: We talked a little bit.

2 THE COURT: You better be absolutely certain,
3 because from a strategic perspective, this certainly
4 does make this take a turn 90 degrees.

5 MR. LANDIS: True.

6 MS. KOLLINS: Based on the motions filed
7 pretrial, this Defendant was deprived of his right to
8 confront Delarian Wilson, and now they are playing the
9 very tape that implicates to some extent their client,
10 they understand and have made that strategic decision.

11 For purposes of counsel, I'd ask counsel to put
12 that on the record.

13 MR. LANDIS: Without doubt, Judge.

14 Just to be clear, in my notion to severe I had a
15 number of issues.

16 Bruton issues were one.

17 A second ground, as we say, with Grant testifying
18 we intended to introduce that testimony about Delarian
19 Wilson's prior robberies, that would have not been
20 admissible if he was sitting here, and you are right, we
21 are making the reasonable decision after talking to each
22 other, and talking to his client, to admit his statement
23 of plea and plea canvas, and we're not flying off the
24 cuff to make this, I assure you this.

25 MS. KOLLINS: Before any guilty plea agreement
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1 and canvasses are marked and admitted, we get to review
2 them, make sure they appropriately redacted, and no one
3 is going to discuss penalties, probationable nature, or
4 non-probationable nature, of offenses because once that
5 gets to them we're done.

6 THE COURT: Everybody understands how it works,
7 the rules?

8 MR. BANKS: That is always off limits, the
9 punishment.

10 THE COURT: Right, always off limits.

11 And I want to make sure everybody goes through
12 that canvas and that plea agreement.

13 You guys I assume are familiar with what is in
14 this statement?

15 MR. LANDIS: Yes, Judge.

16 MS. KOLLINS: That includes registration as a sex
17 offender, psychosexual examinations, any of the 160.410
18 conditions, anything like that.

19 MR. LANDIS: I have a redacted guilty plea, takes
20 out each and every one of those things.

21 I wasn't going to admit the plea canvas because
22 I'm guessing they are going to do it on redirect, and I
23 assumed that's the way it is going to go, so they will
24 introduce it when we introduce the other two things.

25 I trust them to redact it and be fair, and

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1 obviously the penalty is not an issue.

2 MS. LUZAICH: Okay. Are we ready to play this
3 thing?

4 MR. LANDIS: We're more than ready, Judge.
5 Or give them lunch right now.
6 It's up to you.

7 THE COURT: Do you guys want to go ahead, take a
8 lunch break right now, so you guys can figure out what
9 you want to do, see if you can get Wilson?

10 MS. KOLLINS: Jump off the balcony.
11 We're not going to figure out if we can get him.

12 THE COURT: You know where he is?

13 MS. LUZAICH: He's represented by an attorney.
14 I got to get Oronoz in here and talk to Oronoz
15 and send Oronoz over to talk to him.

16 That ain't happening today.

17 MR. LANDIS: We'll give them every opportunity,
18 Judge.

19 MS. KOLLINS: For all we know, Oronoz isn't even
20 in the jurisdiction.

21 THE COURT: Do you want to start playing this
22 right now?

23 MS. LUZAICH: No, I do not want to start playing
24 it right now.

25 THE COURT: Okay. Let's take a lunch break.
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1 They are admonished already, so tell them to be
2 back here at 1:30.

3 MS. KOLLINS: Just so the Court knows, again this
4 wasn't anticipated, we have not reviewed Wilson's
5 statement for anything that we feel is necessary to be
6 redacted.

7 Should we find that over the lunch hour Defense
8 counsel's we're going to have to bring that up with the
9 Court, they will be responsible for the audio and
10 written redactions, correct?

11 We're not taking care of that for them.

12 THE COURT: Okay. Fair enough.

13 We're going to take a recess until 1:30.

14 (Thereupon, a luncheon recess was had.)

15 - - -

16 (Thereupon, the following proceedings were had
17 out of the presence of the jury.):

18 THE COURT: We're back on the record in State of
19 Nevada versus Narcus Wesley.

20 Here's what we're going to do about this
21 statement:

22 It takes an hour-and-a-half to read through it.
23 Here's what we're going to do.

24 There is a couple things that are absolutely not
25 permissible to be said, even inferred, in front of the
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1 jury.

2 It starts on page 74. There is a reference to
3 the time he's going to do, and reference to the fact
4 there is a requirement for being a registered sex
5 offender for the rest of your life, or something to that
6 effect.

7 There hasn't been an ounce of truth in anything
8 that is said up until that point. It is a variety of
9 stories, as you have already described, and had the
10 detective acknowledge a variety of stories were given by
11 Wilson, but at that point there is someplace on page 74
12 I think a reference to the number of years he's going to
13 do, and then on 75 -- on the bottom of 74 it says,
14 register as a sex offender for your whole life.

15 MS. LUZAICH: If you get out.

16 THE COURT: If you get out.

17 That absolutely can't come in, and there is no
18 way to redact it off this CD.

19 Here's what we're going to do:

20 We're going to start at page 75. He's going to
21 fast forward this CD to page 75, and then from that
22 point on I will make an explanation that there has been
23 nothing consistent in the stories as the witness
24 acknowledged by the declarant.

25 MS. KOLLINS: Well, that's a Court's comment on
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1 his credibility, so I think you need to be very cautious
2 how to phrase that.

3 THE COURT: I'll just say, at the point in the CD
4 I'll ask the detective did he feel as though there had
5 been anything --

6 MS. KOLLINS: I don't think you can ask him that
7 either.

8 You can't ask someone else to comment on a
9 witness' credibility.

10 THE COURT: They were totally inconsistent
11 stories that Wilson told him.

12 MS. KOLLINS: Well, I think --

13 THE COURT: I think he's already said that.

14 MS. KOLLINS: I think Mr. Landis can ask him, or
15 Mr. Banks, up until this point in the CD did you get the
16 several versions of events from Wilson that we went
17 through on cross-examination before our break, and leave
18 it at that.

19 I don't think --

20 THE COURT: That's fine.

21 I just think there needs to be some brief
22 explanation.

23 We're going to take these transcripts, and we're
24 going to start them at page 75.

25 MR. LANDIS: I can redact that thing before 2:00,
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1 to be honest with you, Judge.
 2 THE COURT: Redact what thing?
 3 MR. LANDIS: That one comment in the tape.
 4 THE COURT: To be perfectly honest with you, I
 5 don't know what purpose it serves.
 6 It's totally his fabricated stories up until that
 7 point.
 8 They don't do one thing.
 9 MS. LUZAICH: That's what I was trying to convey
 10 to the Court earlier.
 11 THE COURT: You guys are aware of it.
 12 I'm not.
 13 I read it.
 14 I understand what it says.
 15 It's totally --
 16 MS. LUZAICH: Irrelevant.
 17 THE COURT: Irrelevant, and bears nothing other
 18 than the comment they were inconsistent stories, period,
 19 just totally inconsistent stories.
 20 MS. LUZAICH: The jury has already heard the
 21 substance of the inconsistent stories.
 22 THE COURT: The detective's already been
 23 questioned, and he's already answered and said
 24 absolutely, did he tell you this, did he tell you this,
 25 totally inconsistent stories before he actually said
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1 anything, and that started from that point of the
 2 statement on.
 3 MS. KOLLINS: I guess then because this is a
 4 decision the Court has made, I would ask Mr. Banks and
 5 Mr. Landis to reiterate their decision to still play
 6 this based on that ruling, because I mean, they made a
 7 decision to play this tape and waive any confrontation
 8 based on the playing of the entire tape, and if that has
 9 affected their strategy or decision at all, they need to
 10 make a record it hasn't, and they are happy with the
 11 portion that is going to be played.
 12 I'm just looking to preserve the record, Your
 13 Honor.
 14 MR. BANKS: Yeah, we think the whole thing should
 15 be played, with that part that concerns the Court be
 16 redacted.
 17 I guess if -- I don't know if it's a time issue.
 18 THE COURT: It's not a time issue, just that it
 19 serves no purpose, it's totally irrelevant to listen to
 20 fabrications by Wilson. That serves no point.
 21 Everybody admits they were inconsistent stories.
 22 MR. LANDIS: But here is what is important to our
 23 defense, Judge:
 24 You are right they are inconsistent, but
 25 consistent in one respect.
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1 In each case he talks about somebody else forcing
 2 him to do it, somebody else having the gun, and somebody
 3 else doing the robberies, the sexual contact, and he
 4 assumes our client's position.
 5 All of that is very relevant.
 6 THE COURT: The rest of the statement too.
 7 MR. LANDIS: But he does it three different
 8 times.
 9 THE COURT: I'm not arguing.
 10 He does.
 11 But the same thing is accomplished by -- on page
 12 75 on. We don't need to accomplish it three times
 13 because it's just those other inconsistent stories for
 14 the first 75 pages are so irrelevant to anything, except
 15 for the fact that the declarant is able to make
 16 inconsistent stories, period, that's all it establishes,
 17 and he says the same thing even on the last 25 pages in
 18 terms of his non-involvement and blaming it all on
 19 Narcus. No question he does that consistently.
 20 But that doesn't make it anymore relevant, the
 21 first 75 pages, when he just totally makes up stories.
 22 MR. LANDIS: The stories are true, I mean, what
 23 he says is true. Just he makes himself Narcus Wesley
 24 and invents another person, or another two people, but
 25 what he says about what goes on in the house is pretty
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1 accurate.
 2 MS. KOLLINS: That's argument.
 3 THE COURT: And I don't agree at all. I don't
 4 agree at all.
 5 You can make that part of the record, but those
 6 are such goofy versions of some twisted made up story I
 7 don't know, I was in the bathroom, I didn't see
 8 anything, there is nothing that is relevant about the
 9 first 75 pages of that transcript, just nothing there.
 10 MS. LUZAICH: That is exactly what I argued to
 11 the Court this morning.
 12 THE COURT: And I read it, and I agree with you
 13 completely.
 14 I don't think until they get past that part where
 15 they are talking about obviously he got scared, from
 16 that point on I think that it probably bears some
 17 relevancy and will bear upon his plea and what he took,
 18 what deal he took, whatever.
 19 But if you want to do it, I agree with you, you
 20 can do it, but we're not playing the first 75 pages, nor
 21 am I letting them see a transcript of that first 75
 22 pages. It just doesn't serve a purpose.
 23 So we're going to be in recess right now because
 24 he's going to start it at 75 pages.
 25 MS. KOLLINS: Judge, may be approach?
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1 THE COURT: Sure.
 2 (Thereupon, a discussion was had between Court and
 3 Counsel at sidebar.)
 4 THE COURT: The last thing he can't say is, on
 5 the bottom of page 74.
 6 MR. BANKS: So the first page is page 75?
 7 THE COURT: Right.
 8 The jurors will all have the transcripts from 75
 9 on, right?
 10 MR. BANKS: Yes, sir.
 11 THE COURT: Bring them in.
 12 We need to get Detective Weske back on the stand.
 13 Bring the jury in, then get Detective Weske.
 14 (Thereupon, the following proceedings were had in open
 15 court and in the presence of the jury.):
 16 THE COURT: Do counsel stipulate to the presence
 17 of the jury?
 18 MR. LANDIS: Yes, Your Honor.
 19 MS. LUZAICH: Yes, Your Honor.
 20 THE COURT: All right. Bring in Detective Weske.
 21 Detective Weske, you are still under oath.
 22 Okay?
 23 THE WITNESS: Yes, sir.
 24 (Thereupon, a discussion was had off the record.)
 25 THE COURT: Ladies and gentlemen, you have before
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1 you a transcript that begins well into the interview
 2 what we're about to play, has been marked as Defense
 3 Exhibit -- Defense Exhibit F-1.
 4 You can follow along on your transcripts. It
 5 should coincide with what exactly what you have in front
 6 of you.
 7 Ready?
 8 MR. LANDIS: Just for the record, I think my last
 9 question for the record of the detective was, would you
 10 recognize the recorded interview if I were to play it?
 11 THE WITNESS: Yes, most of it.
 12 There is sometimes I walked out.
 13 MR. LANDIS: Judge, I would move to admit Defense
 14 Exhibit F-1, a portion of the interview with Delarian
 15 Wilson this Court deemed admissible, subject of course
 16 to authentication by Detective Weske.
 17 MS. LUZAICH: And I don't have a problem with
 18 authentication, but it would be subject to the
 19 objections that we raised already.
 20 THE COURT: The objections that you have already
 21 raised have been on the record.
 22 That noted, it will be admitted.
 23 MR. LANDIS: I move to publish.
 24 THE COURT: Go ahead and publish.
 25 MS. KOLLINS: Your Honor, just because the
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1 detective wasn't there for the entire interview, just so
 2 we can make sure he has a copy.
 3 THE COURT: Sure.
 4 THE COURT: Everybody ready?
 5 Go ahead.
 6 (Defendant's Exhibit F-1 played for the jury.)
 7 THE COURT: Go ahead and pass those transcripts
 8 down to Joe.
 9 Go ahead, counsel.
 10 BY MR. LANDIS:
 11 Q. To put that in context for the jurors a bit, that
 12 was the third story he told you?
 13 A. Yes, sir.
 14 Q. That's the first story where he mentioned Narcus?
 15 A. Was that?
 16 Q. That was the first story where Narcus became
 17 involved?
 18 A. Yes, sir.
 19 Q. Just so we are clear, the first story was
 20 Christopher?
 21 A. Yes, sir.
 22 Q. The second story was Christopher and D.C.,
 23 Christopher's cousin?
 24 A. Yes, sir.
 25 Q. Before lunch we talked a little bit about what
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1 people you interrogate.
 2 One was, they might not talk.
 3 One was, they might talk, might tell you the
 4 truth, or they might lie?
 5 A. Yes, sir.
 6 Q. We can agree that Mr. Wilson gave you a little
 7 bit of both?
 8 A. Yes, sir.
 9 Q. Told you some truths?
 10 A. Yes, sir.
 11 Q. And he told you some lies?
 12 A. Yes, sir.
 13 Q. We can also agree that at the time you conducted
 14 that interrogation you didn't know some of the things he
 15 was telling you were true or not?
 16 A. Yes, sir.
 17 Q. And that's because the investigation wasn't
 18 complete involving the six kids -- or let me clarify.
 19 You didn't have all the information that those
 20 six kids had given?
 21 A. Yes, sir.
 22 Q. So you were still trying to figure out what they
 23 had to say, them being Mr. Wilson and Mr. Wesley?
 24 A. Yes.
 25 Q. Definitely you didn't know at that time exactly
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- 1 what had happened after Wilson returned from the ATM?
 2 A. Correct.
 3 Q. Throughout his three stories there is a few
 4 things that Wilson does not waiver on.
 5 Those being, A, he never had the gun, correct?
 6 A. Yes, sir.
 7 Q. B, that he wasn't really in charge?
 8 A. Yes, sir.
 9 Q. And --
 10 MS. LUZAICH: I'm sorry.
 11 I didn't hear that.
 12 MR. LANDIS: That he was never really in charge.
 13 MS. LUZAICH: Okay.
 14 BY MR. LANDIS:
 15 Q. He never says it was him that took the cell
 16 phones?
 17 A. Yes, sir, I believe he didn't.
 18 Q. He never says he took the condoms?
 19 A. Took the what?
 20 Q. Condoms.
 21 A. I think he said he grabbed them and gave them to
 22 Narcus.
 23 Q. That's the third story?
 24 A. Yes.
 25 Q. At that last story he says a few things about

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- 1 Grant doing him wrong, that Grant kind of took his
 2 business?
 3 A. Yes, sir.
 4 Q. Did you hear any other information to support
 5 that throughout your investigation?
 6 A. That Grant took his business?
 7 Q. Yes.
 8 A. No.
 9 Q. Throughout his three stories, he's never the one
 10 who says, we're 90 percent done, we have ten percent
 11 left to do?
 12 A. Correct.
 13 Q. And that last story he tells the one we all
 14 heard, he says that his home girl picked him up after
 15 Narcus dumped him on the streets pretty much?
 16 A. Yes, sir.
 17 Q. By that he meant his home girl who had the Dodge
 18 Charger?
 19 A. Yes, sir.
 20 Q. We know he had that Dodge Charger the whole day
 21 and the day before?
 22 MS. LUZAICH: Well, objection.
 23 We don't know that.
 24 THE COURT: If the we is including me, I don't
 25 know that.

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- 1 MS. LUZAICH: Well, nobody knows when he had the
 2 Charger, except when it was found in his possession at
 3 Circus Circus.
 4 THE COURT: Rephrase that.
 5 Ask him if he knows that.
 6 BY MR. LANDIS:
 7 Q. The official renter of that Dodge Charger was
 8 talked to during this investigation?
 9 A. I believe so.
 10 There was a female down there talked to by one of
 11 the other officers.
 12 Q. And through that section of the investigation we
 13 learned that Wilson had the Dodge Charger at the time of
 14 his arrest and sometime before that, we don't know
 15 exactly when he took it?
 16 A. Well, the Dodge Charger, from my understanding,
 17 was parked in the parking garage.
 18 Q. At Circus Circus?
 19 A. And I understood there was another guy staying
 20 with them, and I believe -- I don't know if the girl was
 21 or was not there, was the girl down there, but I didn't
 22 talk to these guys, and I didn't get anybody else's
 23 report on that.
 24 Q. Throughout his three stories he never had
 25 anything to do with the sexual contact?

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- 1 A. Correct.
 2 Q. He never ordered any of it?
 3 A. Correct.
 4 Q. He never touched anybody?
 5 A. Correct.
 6 Q. He definitely didn't hold a gun to anybody's
 7 head?
 8 A. Correct.
 9 Q. He definitely didn't say, if somebody doesn't get
 10 hard, somebody's going to die?
 11 A. Correct, that's what he said.
 12 Q. According to him, he didn't really see what
 13 happened with the sexual contact, he was kind of
 14 standing by the back?
 15 A. I believe that was in his first two stories.
 16 I think in the third one he said that he saw her
 17 -- or saw him touch her.
 18 Q. Could I refer you to the bottom of page 83?
 19 A. Sure.
 20 Q. He said he was standing by the bathroom and kind
 21 of assumes that is what happened, but never really said
 22 he was close enough to know, is that fair?
 23 A. Yeah, in this one.
 24 I believe a little later though he says, I may be
 25 wrong, I have to look through the thing, but I believe

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1 later he says that when he touched her, he told him to
2 stop.

3 Q. Yeah, he does say that, I agree with that.

4 A. But in this paragraph he says he's by the
5 bathroom.

6 Q. There is a part in there where I'm not sure if
7 it's you or Detective Hartshorn that says, we're going
8 to know who the guy is whether you tell us or not.

9 A. Do you know what page that's on?

10 Q. Yes.

11 On page 78, Detective Hartshorn.

12 A. Thank you.

13 Q. That is before he gave you the name, Narcus?

14 A. I believe so.

15 Q. He gives the name Narcus for the first time on
16 81, correct?

17 A. Yes, sir.

18 Q. Is that statement true?

19 A. I don't believe so at that time.

20 Q. Okay. That is another interrogation technique,
21 right?

22 A. Yes, sir.

23 Q. On page 78 Detective Hartshorn says, the only
24 thing we can give us is what we are telling you is that
25 when we go to the DA, and the DA says, okay, this is
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1 everything that is going to happen, we are going to say
2 that he was cooperative the whole entire time, he had
3 nothing to do with the sexual assault, he tried to stop.
4 He gave us a name. We would find out anyways,
5 and find out probably in the next couple days, and that
6 that goes a long ways, someone shows honesty goes a long
7 ways.

8 After that, which is to be clear a technique used
9 to gather further information, you agree with that?

10 A. Yes, I believe that's what he was doing.

11 Q. Promising somebody that you will help them with
12 the DA, be more lenient with them, that is something you
13 have been taught to do, correct?

14 A. No, we've been taught not to make any promises at
15 all.

16 Q. You can't make promises that are out of your
17 hands, you can't make promises that sentence -- or these
18 charges -- or those charges will occur, but you can tell
19 them you will go to the DA and talk to them, correct?

20 A. Yes, sir.

21 Q. That's a technique used to try to get
22 information?

23 A. Yes, sir, sometimes.

24 Q. That is what it was done here, correct?

25 A. Like I said, I'm not Detective Hartshorn, so I

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1 believe so.

2 He was here earlier.

3 Q. We can agree that lead to him giving you the name
4 Narcus?

5 A. I don't know.

6 MS. LUZAICH: Objection.

7 The only people that can tell about him giving
8 the name was Delarian.

9 BY MR. LANDIS:

10 Q. We can agree he gave the name Narcus?

11 A. Not right away.

12 Q. Eventually?

13 A. It looks like I talked for a while, yes, sir.

14 Q. If you know, did you or Detective Hartshorn ever
15 go to the DA and talked to them about the cooperation
16 that Delarian Wilson gave?

17 A. No.

18 I talked to the district attorney the next day
19 and advised them of the whole situation with everything,
20 and that's the only time we talked, we talked about what
21 his statements were, and what happened at the search
22 warrant with Narcus.

23 Q. Did you or Detective Hartshorn, if you know, ever
24 ask for leniency on his behalf?

25 A. No, sir, I didn't.

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1 I don't know about Detective Hartshorn.

2 Q. To your knowledge, he didn't?

3 A. To my knowledge.

4 Q. And in that statement you mentioned something
5 about contacting the person at screening?

6 A. Yes.

7 Q. Screening is where a case goes after you submit
8 it to the District Attorneys office, correct?

9 A. Yes.

10 Q. Eventually a case was submitted to screening,
11 that part is true?

12 A. Yes.

13 Q. A charge involved Narcus and Delarian with some
14 crimes?

15 A. Yes.

16 Q. Same crimes?

17 A. I believe so.

18 Q. 18 felonies?

19 A. I don't know how many, but if you say 18, I don't
20 have a problem with that.

21 Q. We can agree there is some conspiracy counts?

22 A. Yes.

23 Q. We can agree there was some robbery with use
24 counts?

25 A. Yes.

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1 Q. We can agree there was a first degree kidnapping
2 count?

3 A. Yes.

4 Q. We can agree there was some sexual assault
5 counts?

6 A. Yes, sir.

7 Q. In April of 2007 was the first time you testified
8 in open court about this case?

9 MS. LUZAICH: Objection.

10 MR. LANDIS: I'm sorry.

11 April of 2007 was the first time you testified in
12 open court about this case.

13 MS. LUZAICH: Well, actually objection.

14 I don't believe he testified --

15 THE COURT: Did you testify?

16 THE WITNESS: No, sir.

17 BY MR. LANDIS:

18 Q. I'm sorry.

19 April 2007 is the first time this case was in
20 open court?

21 A. I believe I was gone during that time.

22 If you say so.

23 I wasn't part of it.

24 Q. There was a preliminary hearing in 2007, and you
25 are aware of that?

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1 A. I believe there was a preliminary hearing.

2 I don't know when it was.

3 Q. Okay. And at that time both Wilson and Wesley
4 were -- are set as Co-Defendants, you are unaware of
5 that?

6 A. No.

7 Q. Is this the first time you testified in the trial
8 involving these charges and those events that occurred
9 in February 2007?

10 A. Besides the other day?

11 Q. Yes.

12 A. Yes, sir.

13 Q. And every piece of testimony you have given has
14 been with only this man sitting at the Defense table,
15 correct?

16 A. Yes, sir.

17 Q. You have not testified in any way, shape or form
18 with Mr. Wilson sitting at the Defense table?

19 A. No, sir.

20 Q. Why?

21 A. I was gone during the preliminary hearing.

22 I was subpoenaed, but I can't remember what I had
23 going in April, but when I went, they decided Detective
24 Hartshorn would be sufficient.

25 Q. Have you been subpoenaed to testify in the trial

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1 of Delarian Wilson?

2 A. I believe when I got the subpoena, and I'd have
3 to look at it again.

4 I believe they had both names on there, sir.

5 Q. Do you know if you have been scheduled to testify
6 in the future at Delarian Wilson's trial?

7 A. No, sir. I don't believe -- Like I said, the
8 subpoena had both names.

9 I don't believe I'm scheduled to testify for
10 Delarian.

11 Q. Do you know where in the process Delarian
12 Wilson's case is?

13 A. I believe he's plead to I don't know exactly
14 what, but four counts or something.

15 Q. He plead guilty to some crimes?

16 A. Yes.

17 Q. Thereby foregoing his right to trial?

18 A. Yes, sir.

19 MR. LANDIS: Judge, I move for admission of
20 Defense Proposed G.

21 THE COURT: Any objection, other than that?

22 MS. LUZAICH: Other than that which has been
23 discussed.

24 THE COURT: And it's Defense Exhibit G is going
25 to be admitted.

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1 MR. LANDIS: Can I approach the witness?

2 THE COURT: Yes.

3 We made a record of your objection.

4 BY MR. LANDIS:

5 Q. It's not the first time you seen one of those, is
6 it, detective?

7 A. No, sir.

8 Q. It's a guilty plea agreement, correct?

9 A. Yes, sir.

10 Q. Of the 18 felonies that both Delarian Wilson and
11 Narcus Wesley were charged with, how many felonies did
12 Delarian Wilson plead to on that sheet?

13 MS. LUZAICH: Objection.

14 Because I believe that does misstate --

15 THE COURT: How many?

16 MR. LANDIS: I'm sorry.

17 17 felonies and one gross misdemeanor were the
18 original charges.

19 THE COURT: Okay. Is that correct?

20 MS. LUZAICH: There is actually two gross
21 misdemeanors.

22 MR. LANDIS: 16 felonies and two gross
23 misdemeanors.

24 I apologize.

25
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1 BY MR. LANDIS:
 2 Q. Of the 16 felonies and two gross misdemeanors,
 3 it's true that Delarian Wilson plead to three felonies?
 4 A. I see two there.
 5 MS. LUZAICH: Judge, the document speaks for
 6 itself.
 7 Detective Weske is a police officer. He's not a
 8 lawyer.
 9 I don't know he deals with these documents.
 10 Yes, he plead. The State will stipulate he plead
 11 guilty to three felonies.
 12 MR. LANDIS: The State would stipulate that was
 13 two counts of robbery with use of deadly weapon and one
 14 count of sexual assault without the use of deadly
 15 weapon?
 16 MS. LUZAICH: Yes.
 17 THE COURT: All right.
 18 BY MR. LANDIS:
 19 Q. When you interviewed both victims and suspects,
 20 and possible Defendants alike, you would agree that
 21 sometimes they take on different postures, sometimes
 22 they make light of the situation, sometimes they laugh?
 23 A. Yes, sir.
 24 Q. Sometimes they cry?
 25 A. Yes, sir.
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1 Q. Sometimes they are indifferent?
 2 A. Yes, sir.
 3 Q. And the posture that they have is not necessarily
 4 indicative of whether or not they are telling the truth?
 5 A. Yes, sir.
 6 Q. I'm sure in your experience you have came across
 7 people who are crying and lying?
 8 A. Yes, sir.
 9 Q. And people who are laughing and telling the
 10 truth?
 11 A. Yes, sir.
 12 Q. And we all touched on this in jury selection, it
 13 just kind of depends on the person, you would agree with
 14 that?
 15 A. Yes, sir.
 16 Q. When you spoke to Kam Wilson, he didn't laugh?
 17 A. No, sir.
 18 Q. He didn't cry?
 19 A. No, sir.
 20 Q. And we have already established that some of the
 21 things he said were true, and some of the things he said
 22 were false?
 23 A. Correct.
 24 Q. I want to talk to you a little bit about Narcus
 25 Wesley's confession.
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1 A. Yes, sir.
 2 Q. Narcus never talked about people who weren't at
 3 that house?
 4 A. People who weren't at the house?
 5 Q. There was no Christopher in Narcus' story?
 6 A. No, sir.
 7 Q. You told him the name Kameron?
 8 A. Yes, sir.
 9 Q. He said, I know of a Kameron?
 10 A. Yes, sir.
 11 Q. And within moments he knew what that was about?
 12 A. Yes, sir.
 13 Q. And he didn't try to hide that he was there?
 14 A. No, sir.
 15 Q. From the start, he told you in no uncertain terms
 16 that he never had a gun?
 17 A. Yes, sir.
 18 Q. He told you that he thought they were going there
 19 to buy to some weed?
 20 A. Yes, sir, in one of them.
 21 Q. He admitted to being there when the people were
 22 robbed?
 23 A. Yes, sir.
 24 Q. He told you that it was Kam who took the wallets?
 25 A. I believe it was ATM cards, yes, sir.
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1 Q. He told you it was Kam who went to the ATM?
 2 A. Yes, sir.
 3 Q. He told you he stayed there?
 4 A. Yes, sir.
 5 Q. He told you that when they returned, it cast Kam
 6 who said, it's 90 percent done, there is ten percent
 7 left to go?
 8 A. Yes, sir.
 9 Q. He told you it was Kam who ordered that they take
 10 their clothes off?
 11 A. When he said that he may have performed oral sex
 12 in that, he told Kam that he thought the girl was cute,
 13 so Kam said, my boy thinks you are cute, so take your
 14 clothes off I believe is what he said.
 15 Q. He said that Kam ordered Justin and Danielle to
 16 have oral sex?
 17 A. Yes.
 18 Q. But then ultimately Kam ordered clothes off?
 19 A. Yes, he did.
 20 Q. He told you that Kam was threatening to kill
 21 people?
 22 A. I don't remember that.
 23 Q. He told you that he did touch that girl?
 24 A. Yes, sir.
 25 Q. He told you that Kam gave him some of the money?
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1 A. Yes, sir.
 2 Q. And he told you what he did with that money?
 3 A. Some of it.
 4 Q. He told you he spent it?
 5 A. Yes, he told me he spent it, yes, sir.
 6 Q. You asked him, or somebody on your team asked
 7 him, to point out the clothes he wore during the
 8 robbery?
 9 A. Yes, sir.
 10 Q. He gave you those shoes?
 11 A. Yes, sir.
 12 Q. He gave that you shirt?
 13 A. Yes, sir.
 14 Q. And he gave you those jeans?
 15 A. Yes, sir.
 16 Q. You asked him where the condom was that Kam gave
 17 him, and he told you it might be in his car, but he
 18 wasn't too sure?
 19 A. Yes, sir.
 20 Q. About, I don't know, a minute or two minutes
 21 after he began talking to Narcus he told you that he was
 22 cold?
 23 A. Yes, sir.
 24 Q. And he said to you, could we go somewhere warm, I
 25 don't want to appear nervous, I don't want to appear
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1 like I'm lying?
 2 A. Yes, sir, he did say that.
 3 Q. He told you at another time, I wouldn't lie to
 4 ya'll?
 5 A. Yes, sir.
 6 Q. At one point when you were talking about what
 7 occurred with Danielle, he said, I did not want to do
 8 that?
 9 A. Do you know which part it was?
 10 MR. LANDIS: Court's indulgence.
 11 I apologize.
 12 THE COURT: That's all right.
 13 BY MR. LANDIS:
 14 Q. At the time that you guys talked to Narcus you
 15 still didn't know which one of them was responsible for
 16 the sexual conduct?
 17 A. No, the information I had, like I said, I didn't
 18 talk to the victims, whether it was right or wrong, the
 19 information I had was the stocky one, like you said,
 20 said that 90 percent, ten percent made them take their
 21 clothes off, but it was Narcus' description that was the
 22 one that touched them.
 23 Q. As Narcus told you?
 24 A. Yes.
 25 Q. And you also knew -- at the time you knew that
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1 when you talked to Narcus, correct?
 2 A. Yes, that's information I had.
 3 Q. And you also knew at the time you talked to
 4 Narcus that the shorter stockier one was termed held
 5 guns to people's heads?
 6 A. I didn't think I had that information there was
 7 guns put to heads, but there was guns out, yes.
 8 Q. You knew that he had said, if somebody doesn't
 9 get hard, I'm going to shoot people, that would be the
 10 shorter stockier one?
 11 A. I am not sure if he said, I'm going to kill them,
 12 or do it myself, but yeah, he was the one, the shorter
 13 stockier one, was the one telling them to have sex.
 14 MR. LANDIS: Court's indulgence.
 15 THE COURT: Sure.
 16 MR. LANDIS: I will pass the witness, Your Honor.
 17 THE COURT: Redirect?
 18 MS. LUZAICH: Thank you.
 19 - - -

REDIRECT EXAMINATION OF CURTIS WESKE

20 BY MS. LUZAICH:
 21 Q. Mr. Landis talked to you quite bit about
 22 interview techniques.
 23 As a police officer you go through a lot of
 24 training, correct?
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1 A. Yes, ma'am.
 2 Q. It starts in the academy, and then you are
 3 required to keep up with certain training, and then in
 4 fact if you want to advance in the police department,
 5 you voluntarily go to more training, correct?
 6 A. Yes, ma'am.
 7 Q. And one of those trainings is specifically on
 8 interview techniques, right?
 9 A. Yes, ma'am.
 10 Q. And you learn there are different ways to
 11 interview different types of people, for example you
 12 would not interview the victim of a sexual crime the
 13 same way that you would interview a suspect to a murder,
 14 right?
 15 A. Correct.
 16 Q. And when you learn about interview techniques
 17 with suspects, it's because you are trying to elicit
 18 information?
 19 A. Yes.
 20 Q. And if it's somebody you believe committed the
 21 crime, you are trying to seek an admission, right?
 22 A. Yes, ma'am.
 23 Q. And Mr. Landis talked to you a little bit about
 24 certain techniques where you kind of befriend them a
 25 little bit and sympathize with them, right?
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- 1 A. Yes.
 2 Q. Now, when you utilize that technique, you don't
 3 really believe what you are saying, do you?
 4 A. Correct.
 5 Q. Like it's okay to sexually assault that girl, I
 6 know you have a problem, you don't believe it when you
 7 say something like that?
 8 A. No, ma'am.
 9 Q. But it makes them comfortable so that they will
 10 talk to you?
 11 A. Yes, ma'am.
 12 Q. Is it your experience if somebody is not
 13 comfortable with you, and very often people are not
 14 comfortable with police, they just won't talk?
 15 A. Yes, ma'am.
 16 Q. Another interview technique would be where you
 17 minimize their conduct, I know you held those four
 18 people at gunpoint, but you didn't really shoot them,
 19 something like that?

20 A. You try to get something good out of it, yes,
 21 ma'am.
 22 Q. And sometimes you imply that you have evidence
 23 that you don't really have, you know, I know your semen
 24 was found in her vagina, so why don't you just tell me
 25 you put your penis in there kind of thing?

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- 1 A. Yes, ma'am.
 2 Q. But you don't believe everything you tell them,
 3 right?
 4 A. No, ma'am.
 5 Q. And in this particular case you utilized some
 6 techniques with both of the suspects, with Delarian
 7 Wilson as well as the Defendant?
 8 A. Yes, ma'am.
 9 Q. Now, he also asked you about snitches, something
 10 about snitches end up with stitches or something like
 11 that.
 12 At the time that you spoke to this Defendant he
 13 already knew that Kameron Wilson had given him up,
 14 right, otherwise you wouldn't be there?
 15 A. Yes, ma'am.
 16 Q. And you told him that you had gotten his name
 17 from Wilson, right?
 18 A. Yes, ma'am.
 19 Q. And in truth and in fact when he talked, he, the
 20 Defendant, sorry, spoke to you, he didn't really give
 21 Wilson up at all, did he?

22 MR. LANDIS: I object to leading.
 23 I tried to give some leeway, but it's about ten
 24 questions in a row.
 25 THE COURT: Don't suggest your answer.

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- 1 MS. LUZAICH: Just because it's a yes or no
 2 question doesn't suggest the answer.
 3 BY MS. LUZAICH:
 4 Q. Did he ever say, Kameron did this -- He talked
 5 about the other guy in general.
 6 A. Yes.
 7 I'm trying to think.
 8 There was a couple times he mentioned Kameron's
 9 name, but for the most part it wasn't.
 10 Q. For example, in the very beginning when you said,
 11 we know you were both there, you and Kameron, who got
 12 crazy, did he say, can't I just say it wasn't me?
 13 A. Yes, ma'am.
 14 Q. So he didn't say, Kameron got crazy?
 15 A. Correct.
 16 Q. So it was really not a snitch kind of issue?
 17 A. Correct.
 18 Q. In fact, when we heard Wilson's statement, he was
 19 the one that wasn't talking to you about not wanting to
 20 snitch anybody out, right?
 21 A. Yes.
 22 Q. You know, the Defendant has sat here throughout
 23 the trial, but nobody has ever mentioned how old is he?
 24 A. At the time of the crime, 24.
 25 Q. Okay. That was a year ago, so he's 24, maybe 25

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- 1 now?
 2 A. He's 25 now.
 3 Q. Okay. When you heard that there were two
 4 individuals that had gone into the house, one was a
 5 shorter stockier one, one was a taller thinner one, you
 6 have seen both of the individuals, Delarian Kameron
 7 Wilson and Narcus Wesley?
 8 A. Yes.
 9 Q. Would you agree -- or do you believe, is Kameron,
 10 is he real stocky?
 11 A. Yes, ma'am.
 12 Q. So you would never confuse this person sitting
 13 right here with being the stockier one?
 14 A. No, ma'am.
 15 Q. Taller and slender would you say he appears to
 16 be, the Defendant?
 17 A. Yes, ma'am.
 18 Q. Does he look the same as he did then or --
 19 A. It's hard to say.
 20 He's wearing a suit coat.
 21 I mean, when I saw him, he was in shorts and
 22 hardly anything on, was pretty ripped.
 23 Q. Pretty ripped, like, you know, big, muscular
 24 ripped?
 25 A. Yeah.

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1 He said he was trying for the NFL.

2 I believed him.

3 Q. Okay. He asked you, Mr. Landis, a bit about
4 Grant and drug dealing and stuff like that.

5 You have absolutely no idea the extent to which
6 Grant dealt in marijuana, is that correct?

7 A. No, nothing firm.

8 Q. And at the time that you contacted him he
9 actually had a legitimate job with a paycheck, right?

10 A. Yes, he was working at one of the casinos, I
11 think Hard Rock, in the club there.

12 Q. And when he discussed the prior robbery where his
13 friend Kameron came into the house with a mask, took his
14 safe and whatnot, he had a job at that time to working
15 construction?

16 A. Yes.

17 Q. Construction pays pretty well, doesn't it?

18 A. I believe so.

19 Q. Well, in this town anyway?

20 A. Yes.

21 Q. You had mentioned that of the 7,000 you seized
22 that you had agreed to give back \$900, something about
23 his brother and gambling or some such thing, right?

24 A. Correct.

25 At that time I felt since he said some of it was

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1 for his brother's gambling, and gave me the amount, he
2 could argue with the city -- or attorney, or whoever the
3 seizure attorney is, about the rest of it based on what
4 we found and what he told me.

5 Q. Are you aware he did in fact get a lawyer to
6 argue with the city attorney and get some back?

7 A. Yes.

8 Q. Do you know how much was given back after your
9 900?

10 A. I believe -- This is because I went to a seizure
11 class with the city attorney, Doug Quan (Phonetic), and
12 he talked about it, he said he gave him half of it back,
13 I believe 3500 or something to that amount, to the best
14 of my recollection.

15 Q. And the city attorney isn't going to give money
16 back for no reason whatsoever?

17 MR. LANDIS: Objection.

18 Lack of foundation, Judge.

19 She said he's a police officer, not a lawyer.

20 MS. LUZAICH: That's fine. That's fine.

21 THE COURT: All right.

22
23
24
25
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1 BY MS. LUZAICH:

2 Q. The description of the robbery that Grant had
3 given you, the prior robbery, he was very clear that
4 Delarian Wilson went in there with a mask on, right?

5 A. Yes.

6 Q. And there is nobody in this case who mentioned
7 anything about the Defendant or Delarian Wilson wearing
8 a mask, right?

9 A. Correct.

10 Q. And in the description of the robbery that Grant
11 told you there was nothing about an ATM card?

12 A. No.

13 Q. Did he tell you anything about sexual conduct
14 during that robbery?

15 A. No.

16 Q. Did he tell you anything about threats to kill or
17 harm during that robbery?

18 A. No.

19 Q. In fact, he thought it was his friends, and
20 therefore he didn't even believe it was a robbery?

21 A. Correct.

22 Q. What occurred at Great Dane, there is no doubt
23 that was a robbery?

24 A. Correct.

25 Q. Mr. Landis also talked to you about when you

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1 interview suspects, there are three choices that they
2 can either say, I don't want to talk to you at all
3 because I want a lawyer, or they can tell a lie, or they
4 can tell the truth.

5 Now, in your experience don't many suspects tell
6 you a little bit of both, some truth, some lies?

7 A. Correct.

8 Q. Do they very often try to minimize their conduct?

9 A. Yes.

10 Q. They may for example admit to being there, but
11 that's all?

12 A. Correct.

13 Q. Place the blame on somebody else?

14 A. Yes.

15 Q. In fact, when you listened to Delarian Wilson,
16 you knew that the first story was not true?

17 MR. LANDIS: Objection.

18 Leading, Judge.

19 Every single question is suggestive and leading
20 since she started this redirect.

21 THE COURT: Sustained.

22 You are suggesting the answers.

23 MS. LUZAICH: Okay.

24
25
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1 BY MS. LUZAICH:

2 Q. As you listened to Delarian Wilson in the
3 beginning of the interview when he talked about
4 Christopher, what were you thinking?

5 MR. BANKS: Relevance.

6 THE COURT: We -- It's coming in.

7 Overruled.

8 Go ahead.

9 THE WITNESS: You know, when he mentioned
10 Christopher, I had no reason to doubt maybe that was the
11 guy's name.

12 When we started getting into the how, it was
13 always Christopher, and, you know, we had some of the
14 information from the victims, but it was through other
15 officers, and then when he got into Grant a little bit,
16 then I had my doubts, you know, he was not coming clean.

17 BY MS. LUZAICH:

18 Q. At first it could be true, and then you keep
19 asking questions, and you are discovering in your own
20 mind whether or not it is true?

21 A. In discrepancies, yes, ma'am.

22 Q. That's what you do, kind of focus on facts you
23 know are true and see how the answers come out?

24 A. Yes, ma'am.

25 Q. So basically what we can take from -- Well, you
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1 never expect to get perfect information from suspects,
2 correct?

3 MR. LANDIS: Judge, object.

4 Leading.

5 Suggestive.

6 BY MS. LUZAICH:

7 Q. Do you ever expect to get perfect information
8 from the suspects?

9 THE COURT: Overruled.

10 Go ahead.

11 MR. BANKS: Judge, what is perfect?

12 MS. LUZAICH: Accurate.

13 MR. BANKS: Perfect does not mean --

14 THE COURT: Overruled.

15 Go ahead.

16 THE WITNESS: Do I expect it?

17 No.

18 Does it happen you can -- can't count on all the
19 interviews, does somebody come out and say, yep, you got
20 me?

21 BY MS. LUZAICH:

22 Q. When you were talking to the Defendant, his story
23 evolved over time, right?

24 A. Yes.

25 Q. Do you have his interview in front of you?

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1 A. Yes, ma'am.

2 Q. On page 25 he told you he asked her if she could
3 touch her butt, and then did touch her butt, is that
4 right?

5 A. I'm sorry.

6 Yes.

7 Q. And then on page 29 did he tell you, I ain't
8 touched nobody?

9 A. Yes, in the first sentence.

10 Q. And then on page 33 did he talk about touching
11 the top of her vagina, rubbing the top of her vagina?

12 A. Yes.

13 Q. So all of in about five minutes he just went back
14 and forth and back and forth?

15 A. Yes, ma'am.

16 Q. He never did admit putting his finger in her
17 vagina, correct?

18 A. No, ma'am.

19 Q. So basically of the two interviews, the one of
20 Delarian Wilson, and the one of Narcus Wesley, the only
21 thing that we really get out of both interviews is that
22 they were both there at the Great Dane house, that's the
23 only accurate information that we could be sure of, is
24 that right?

25 A. Yes.

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1 Q. And we know that because each one said the other
2 one was there?

3 A. Yes.

4 Q. Now, did Delarian Wilson tell you that he was
5 only present, and that Narcus pretty much did
6 everything, except that Delarian agreed he went to the
7 ATM?

8 A. I'm sorry.

9 Could you repeat that again?

10 Q. Did Wilson tell you that while he was there, he
11 was just merely present, that Narcus did everything
12 except for going to the ATM, pretty much everything?

13 A. Yes.

14 Q. And he said, Narcus had the gun?

15 A. Yes.

16 Q. And then in Narcus' interview did he tell you
17 that he was merely present, that Wilson did everything?

18 A. Everything except for the touching, yes.

19 Q. And he said that Wilson had the gun?

20 A. Yes.

21 Q. So the only thing we can take from both
22 interviews is that each one of them were there at the
23 Great Dane house?

24 A. Yes, ma'am.

25 MS. LUZAICH: Thank you.

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1 Nothing further.

2 MR. LANDIS: Court's indulgence.

3 THE COURT: Sure.

4 - - - -

5 **RECROSS-EXAMINATION OF CURTIS WESKE**

6 BY MR. LANDIS:

7 Q. You did not listen to the testimony of the six
8 victims in this case obviously?

9 A. No, sir.

10 Q. And you would agree that is for the jury to
11 decide which one of these two men's stories were more
12 consistent with what those victims said?

13 MS. LUZAICH: Well, objection.

14 That is an either or.

15 It's possible neither one are consistent.

16 THE COURT: Well, no, you can ask.

17 BY MR. LANDIS:

18 Q. That's what our system is based on, you agree
19 with that, detective?

20 A. Yes.

21 MR. LANDIS: No further questions.

22 THE COURT: Is that it?

23 MS. LUZAICH: Yep.

24 THE COURT: All done?

25 MS. LUZAICH: Yep.

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1 THE COURT: Thank you for your testimony. I
2 appreciate it.

3 I hope we won't have to have you back.

4 MS. LUZAICH: You know, can we approach one
5 second before he goes?

6 THE COURT: Sure.

7 (Thereupon, a discussion was had between Court and
8 Counsel at sidebar.)

9 THE COURT: Detective, one last question before
10 you leave.

11 In the course of this entire investigation did
12 you ever recover any handguns?

13 THE WITNESS: No, sir.

14 THE COURT: Okay. Does that cause anybody else
15 to have a question?

16 MS. LUZAICH: No, sir.

17 MR. LANDIS: No, Judge.

18 THE COURT: Thank you very much for your
19 testimony. I appreciate it.

20 All right.

21 MS. LUZAICH: This could be our last witness.

22 THE COURT: We're through for now?

23 MS. LUZAICH: Uh-huh.

24 THE COURT: You know what, come here for just a
25 second.

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1 I should have asked you this.

2 (Thereupon, a discussion was had between Court and
3 Counsel at sidebar.)

4 THE COURT: For the benefit of the jury, we are
5 out of witnesses for today.

6 We are not going to be quite finished. We're
7 going to have to settle a few instructions on the law,
8 and there may be a brief bit of testimony. They will
9 decide between now and tomorrow morning.

10 But in any event, we are very close to being
11 over.

12 That having been said, I know it's kind of early,
13 but we got a bunch of work we're going to have to do
14 that you can't be involved with, so I'll go ahead and
15 discharge you for the evening and ask you to come back
16 tomorrow at 10:00.

17 We're anticipating no matter what this thing will
18 be given to the jury tomorrow.

19 So that having been said, we're going to have an
20 overnight recess.

21 (Jury admonished by the Court.)

22 (Thereupon, the following proceedings were had out of
23 the presence of the jury.):

24 THE COURT: You are in recess.

25 See you in the morning.

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1 (Thereupon, the following proceedings were had
2 out of the presence of the jury.):

3 THE COURT: Off the record.

4 (Thereupon, a discussion was had off the record.)

5 (Proceedings concluded for the evening.)

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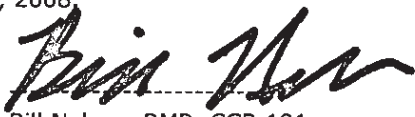
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CERTIFICATE

STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, Bill Nelson, RMR, CCR 191, do hereby certify
that I reported the foregoing proceedings; that the same
is true and correct as reflected by my original machine
shorthand notes taken at said time and place before the
Hon. James M. Bixler, District Court Judge, presiding.

Dated at Las Vegas, Nevada this 7th day of
November, 2008.



Bill Nelson, RMR, CCR 191,
Certified Court Reporter
Las Vegas, Nevada

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IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY OF NEVADA

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
NARCUS WESLEY,)
)
Defendant.)

Case No. C232494
Dept. No. 24

JURY TRIAL

Before the Honorable James M. Bixler
Thursday, April 17, 2008, 10:00 a.m.

Reporter's Transcript of Proceedings

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For the Defendant: Jeff Banks, Esq.
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Las Vegas, Nevada

REPORTED BY: BILL NELSON, RMR, CCR No. 191

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IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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STATE OF NEVADA,)

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Plaintiff,)

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vs.)

Case No. C232494
Dept. No. 24

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NARCUS WESLEY,)

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Defendant.)

11

JURY TRIAL

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Before the Honorable James M. Bixler
Thursday, April 17, 2008, 10:00 a.m.

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Reporter's Transcript of Proceedings

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1 Las Vegas, Nevada, Thursday, April 17, 2008

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* * * * *

4 (Thereupon, the following proceedings were had out of
5 the presence of the jury.):

6

THE COURT: We're back on the record in the
7 matter of State of Nevada versus Narcus Wesley.

8

All right. The first thing, the instructions

9

that we settled last night, we have 50 instructions. My
10 secretary is numbering them right now.

11

Does the State have --

12

MS. LUZAICH: I thought you numbered them last
13 night.

14

THE COURT: No, I had to wait until you gave me
15 the corrected pages.

16

MS. KOLLINS: Are they consistent with what we
17 put on the record?

18

THE COURT: They are the exact same 50
19 instructions, just substituted two pages you had on
20 duress, are substituted. I don't know the numbers, 30,
21 31, and then the Count 17 we added on the boxes.

22

MS. LUZAICH: Extra boxes?

23

THE COURT: That's the only difference between
24 that and what we ended up with last night.

25

MS. LUZAICH: I want to make sure the numbers are

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I N D E X

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3 Jury Instructions - Pg. 20

4 Closing Arguments - Pg. 22

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1 the same.

2

THE COURT: She will bring them in, but there are
3 50 instructions plus the verdict.

4

Does the State have any objection to any of those
5 50 instructions?

6

MS. LUZAICH: No.

7

THE COURT: Does the State have any instructions
8 that the Court -- that were proposed that the Court has
9 declined to put in?

10

MS. LUZAICH: No.

11

THE COURT: Does the Defense have any objection
12 to any of the 50 instructions that we settled last
13 night?

14

MR. LANDIS: We don't have any objection, Judge.
15 I have filed two Defense Proposed.

16

THE COURT: You have two proposed instructions
17 the Court refused, and we are going to mark those A and
18 B.

19

The A instruction, I'll read it for the record.

20

It says:

21

If you find the State has established the
22 Defendant has committed sexual assault, you should
23 select sexual assault as your verdict.

24

The crime of sexual assault may include the crime
25 of open and gross lewdness.

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1 You shall find the Defendant guilty of open and
2 gross lewdness if one -- at least one of you is not
3 convinced beyond a reasonable doubt that the Defendant
4 is guilty of sexual assault.

5 If all 12 of you are convinced beyond a
6 reasonable doubt that the Defendant is guilty of the
7 crime of open and gross lewdness --

8 MS. LUZAICH: For the record, if I could, because
9 this one was not submitted yesterday, that is not an
10 accurate statement of the law.

11 Open and gross lewdness is not a lesser-included
12 instruction of sexual assault, it's a lesser-related.

13 Therefore, this is an incorrect statement and
14 flawed.

15 MR. LANDIS: I agree with them, it's a
16 lesser-related.

17 The language is there may -- Lessers are
18 included.

19 Lesser-related are discretionary with the Court.

20 They gave us the extra boxes on the verdict form.

21 I think this instruction would help the jury
22 deliberate as to that count.

23 THE COURT: With that explanation, I think they
24 have been adequately instructed, and the definition of
25 open and gross lewdness, if they so find on the verdict
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1 form, find the Defendant guilty of that in lieu of
2 sexual assault.

3 The B instruction that was rejected reads as
4 follows:

5 If at least one of you is not convinced beyond a
6 reasonable doubt that Defendant was in actual possession
7 of a deadly weapon, then Defendant cannot be held
8 responsible for use of a deadly weapon unless he has
9 actual or constructive control over the deadly weapon.

10 An unarmed Defendant does not have constructive
11 control over a weapon unless the State proved beyond a
12 reasonable doubt that he had knowledge the offender was
13 armed, and he had the ability to exercise control over
14 the firearm. That is that instruction B rejected by the
15 Court. That is a combination of the Brooks instruction,
16 where under the circumstances of that case the
17 particular Defendant was obviously -- never even was
18 asserted that the Defendant was in possession of a
19 firearm.

20 The only issue presented in that matter was if
21 the Defendant wasn't aware that the Co-Defendant had a
22 weapon, and whether or not he could have exercised any
23 control over the weapon, that not being the case in this
24 case, that is why that instruction was declined.

25 So we made a record on your proposed.
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1 Any other proposed instructions?

2 MR. LANDIS: No, Judge.

3 THE COURT: All right. Those are made part of
4 the record.

5 Now, as we bring the jury in, the State is going
6 to make a record in regards to the Co-Defendant Wilson's
7 plea, is that correct?

8 MS. LUZAICH: Yes, Judge.

9 Originally we had planned on just redacting the
10 document of the plea canvas, but in truth and in fact
11 there is more black lines than typewritten lines, so I'm
12 just going to have Brad Turner, an attorney in our
13 office, read the part, so that we can do it out loud.

14 If the Court would read the Court, Mr. Turner
15 will read the Defendant Wilson, and I'll be me.

16 THE COURT: I have a copy of the plea.

17 MS. LUZAICH: Then so the Court is aware, on page
18 6 there is a slight mistake on line 13. It says --

19 Defendant Wilson says, yes, sir, and then on line 14 it
20 says, Defendant Wilson, did you also read through that,
21 I assume was the Court.

22 THE COURT: Yes.

23 MS. LUZAICH: I can't imagine the Defendant
24 Wilson asking himself.

25 THE COURT: On line 14 where it says, Defendant
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1 Wilson, it should read, the Court.

2 THE COURT: So the Court -- The process is going
3 to be, you will explain to the jury what is about to
4 occur is that in lieu of a transcript for them to follow
5 -- or I can explain it.

6 It's so much redacted, it's simply easier to read
7 it.

8 MS. LUZAICH: We don't necessarily want them to
9 know it's redacted, so if I can offer the Defendant's
10 actual plea into Court, I would call Mr. Turner to read
11 it, so that the jury can hear it.

12 THE COURT: That's fine.

13 And I'm looking at the same redacted copy he is,
14 right?

15 MS. LUZAICH: Right.

16 THE COURT: And that --

17 MS. KOLLINS: Just explain we're going to read it
18 into the record.

19 THE COURT: And they will not be receiving a copy
20 of a transcript, just as they have not received a copy
21 of any of the transcripts of any of the statements with
22 you, there is not even a disk to go with this?

23 MS. LUZAICH: Correct.

24 And then just on the first page if we could start
25 at line 7, the Court, okay, this is the matter of State
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1 of Nevada versus Delarian Wilson, we don't really need
2 to read that.

3 Are we also on for Narcus Wesley, Mr. Landis, and
4 Mr. Landis saying, the Defendant's not here.

5 THE COURT: You want me to take out now what?

6 MS. LUZAICH: Lines 9, 10 and 11 and 12, 13.

7 THE COURT: Who is Mr. Laurent?

8 MS. LUZAICH: Me, I'll do the State.

9 THE COURT: Okay. You are going to read the
10 Complaint on the instructions.

11 THE CLERK: Okay.

12 THE COURT: Do we all stipulate the instructions
13 do not need to be reported?

14 MS. LUZAICH: Oh, sure.

15 We can give him a copy if that's okay.

16 THE COURT: The Reporter will have a copy of the
17 instructions. They are part of the record.

18 No sense in making him report those.

19 MR. LANDIS: That's fine with the Defense, Judge.

20 THE COURT: Okay. Ready to have the jury in?

21 MR. LANDIS: We are, Judge.

22 THE COURT: So we are all clear, as soon as we
23 conclude this, the State will then rest, and you are not
24 to call any the Defendant or put on any other witnesses?

25 MR. LANDIS: True.

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1 THE COURT: So we'll go right from there, read
2 the instructions, and go right into closing arguments,
3 right?

4 I called Judge Vega's office yesterday and talked
5 to her.

6 MS. LUZAICH: They screwed up all the
7 information.

8 I have been there and taken care of it.

9 THE COURT: I told them you were going to be
10 late.

11 We were trying to get this done as soon as
12 possible.

13 (Thereupon, a discussion was had off the record.)

14 (Thereupon, the following proceedings were had in open
15 court and in the presence of the jury.):

16 THE COURT: Do the parties stipulate to the
17 presence of the jury?

18 MR. LANDIS: Yes, Judge.

19 MS. LUZAICH: Yes, Your Honor.

20 THE COURT: All right. The State has one more
21 evidentiary item.

22 MS. LUZAICH: Your Honor, the State's going to
23 offer the actual plea canvas of the Delarian Wilson, and
24 I'm going to offer it through somebody reading it.

25 THE COURT: That's fine.

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1 MS. LUZAICH: Who for the record is Brad Turner
2 from my office.

3 THE COURT: All right. There are three basic
4 speakers in this transcript, the Court, the Defendant
5 Wilson and the district attorney.

6 So I'm going to read what I said.

7 This was from March 28th -- or no, it says 2007,
8 but --

9 MS. LUZAICH: It does, but it was 2008.

10 THE COURT: So March 28th, 2008.

11 This is the matter of the State of Nevada versus
12 Delarian Wilson.

13 MS. LUZAICH: With regard to Mr. Wilson, the
14 other one, I am filling in right now for Miss Luzaich on
15 the Wilson matter, which she has familiarity with, but I
16 know nothing about any new trial dates or anything like
17 that.

18 THE COURT: All right. No problem. We are
19 primarily dealing with Mr. Wilson.

20 It's my understanding Mr. Wilson's going to take
21 the offer that was made.

22 MS. LUZAICH: Mr. Oronoz, who represented Mr.
23 Wilson, said, yes, sir.

24 MS. LUZAICH: All right. Mr. Wilson, is it your
25 understanding that this morning you are going to
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1 withdraw your plea of not guilty and be entering a plea
2 of guilty to one count of robbery with use of deadly
3 weapon and one count of sexual assault, is that it, two
4 counts?

5 MS. LUZAICH: Mr. Oronoz said, two counts of
6 robbery.

7 THE COURT: Two counts of robbery with use of a
8 deadly weapon and one count of sexual assault.

9 Is that correct, Mr. Wilson?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. And I have in my hand a
12 guilty plea agreement.

13 Have you read through it?

14 THE WITNESS: Yes, sir.

15 THE COURT: Did you go through it with your
16 attorney?

17 THE WITNESS: Yes, sir.

18 THE COURT: Fine.

19 Did you understand everything?

20 THE WITNESS: Yes, sir.

21 THE COURT: On page five of this guilty plea
22 agreement is what I'm showing you is -- there is a
23 signature.

24 Is that your signature?

25 THE WITNESS: Yes, sir.

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1 THE COURT: And did you read through it, discuss
2 it with your attorney, and understand everything that it
3 contained in this guilty plea agreement before you
4 signed it?

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay. There are a couple of things
7 that are contained in the guilty plea agreement that I
8 need to touch upon to make sure that you understand.

9 You understand that what happens to you when it
10 comes time for sentencing, if I understand correctly,
11 the State retains the right to argue at sentencing, is
12 that correct?

13 MS. LUZAICH: Mr. Oronoz said, yes, Your Honor.

14 THE COURT: What happens to you at the time of
15 sentencing is entirely up to the Court?

16 THE WITNESS: Yes, sir.

17 THE COURT: And what happens to you at the time
18 of sentencing, and nobody can promise or predict what is
19 going to happen, do you understand that?

20 THE WITNESS: Yes, sir.

21 THE COURT: Did you also read through and
22 understand that you have certain rights in regards to
23 having a trial, those rights are explained to you in the
24 guilty plea agreement?

25 THE WITNESS: Yes, sir.

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1 THE COURT: Did you discuss those rights with
2 your attorney?

3 THE WITNESS: Yes, I did.

4 THE COURT: Do you understand those rights?

5 THE WITNESS: Yes, sir.

6 THE COURT: Do you understand that by accepting
7 this guilty plea agreement and entering these pleas of
8 guilty today that you will by necessity have to give up
9 your right to have a trial, do you understand that?

10 THE WITNESS: Yes, sir.

11 THE COURT: Is that what you want to do?

12 THE WITNESS: Yes, I do.

13 THE COURT: Other than which is contained in this
14 guilty plea agreement, has anybody promised you anything
15 that is not contained in here in return for your plea of
16 guilty to these charges?

17 THE WITNESS: No, sir.

18 THE COURT: Has anybody threatened or coerced you
19 in any fashion or in any manner in order to get you to
20 plead guilty to these charges?

21 THE WITNESS: No.

22 THE COURT: In the Amended Information it
23 indicates that these charges that you are pleading
24 guilty to occurred on or about February 18th, 2007
25 within Clark County, State of Nevada.

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1 Tell me in your own words what happened on
2 February 18th, 2007 which causes you to plead guilty
3 today to these charges.

4 THE WITNESS: I came in Las Vegas.

5 THE COURT: The Court Reporter said, speak up,
6 please.

7 THE WITNESS: I'm sorry.

8 I came into Las Vegas, and I went in there, and I
9 robbed two people, I robbed these people at gunpoint and
10 aided and abetted in a sexual assault that was going on.

11 MR. BANKS: I think the transcript actually he
12 says, abided.

13 THE COURT: It says, aid and abided.

14 THE WITNESS: Aided and abided.

15 THE COURT: Your friend, Mr. Wesley, who you were
16 -- was who you had committed these acts with?

17 THE WITNESS: Yes, sir.

18 THE COURT: And these were acts that were
19 committed with the use of a firearm, is that correct?

20 THE WITNESS: Yes, sir.

21 THE COURT: How many people were in the house
22 when you guys went in there?

23 THE WITNESS: Six, I believe.

24 THE COURT: And then someone took one of these
25 people to the ATM machine and had them get money out of

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1 an ATM machine, is that correct?

2 THE WITNESS: Yes, sir.

3 THE COURT: Who did that?

4 THE WITNESS: I did, sir.

5 THE COURT: And then in regards to the sexual
6 assault, your partner actually committed the sexual
7 assault, but you assisted and encouraged in the overall
8 commission of the crime, is that right?

9 THE WITNESS: Yes, sir.

10 THE COURT: Do you understand that still makes
11 you viable of having committed a sexual assault?

12 THE WITNESS: Yes, sir.

13 THE COURT: It's liable.

14 And you went through with that with your
15 attorney, and you went through that with your attorney,
16 and you understand why?

17 THE WITNESS: Yes, sir.

18 THE COURT: Okay. Are you pleading guilty to the
19 two counts of robbery with the use of a deadly weapon
20 and one count of sexual assault because in truth and in
21 fact you are actually guilty of committing those
22 offenses?

23 THE WITNESS: Yes, sir.

24 THE COURT: And you are not pleading guilty for
25 any other reason?

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1 THE WITNESS: No, sir.

2 THE COURT: Now, understanding all this, is it
3 your desire still to enter your plea of guilty to three
4 charges, two counts of robbery with use of a deadly
5 weapon, and one count of sexual assault, is that
6 correct?

7 THE WITNESS: Yes, sir.

8 THE COURT: Anything else?

9 MS. LUZAICH: No, Your Honor.

10 Thank you.

11 THE COURT: The Court is going to accept your
12 plea of guilty to those three charges, Counts 1, 2
13 robbery with use of a deadly weapon, and Count 3 sexual
14 assault, having been freely and voluntarily entered.

15 MS. LUZAICH: Thank you.

16 If the record could just reflect the Defendant
17 was in fact -- or that Delarian Wilson was in fact
18 represented by an attorney, James Oronoz, when he
19 entered that plea.

20 THE COURT: Yes, that's correct.

21 Those are all matters of public record and
22 matters of the record in this case.

23 MS. LUZAICH: Yes, Judge.

24 THE COURT: Okay.

25 MS. LUZAICH: Your Honor, the State rests its
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1 presentation of its case in chief.

2 THE COURT: Okay. The State rested their case.
3 Is the Defense putting on evidence?

4 MR. LANDIS: No, Judge.

5 THE COURT: Okay. We are waiting for the
6 instructions.

7 I'll give you a little preview.

8 I am at this point going to read you the
9 instructions on the law in this case.

10 You are all going to have a copy of the
11 instructions. They are just coming off the press.

12 There are 50 instructions, plus a verdict form.

13 Everybody will have their copy of the
14 instructions which I will read into the record.

15 And then counsel will present their closing
16 arguments.

17 As I indicated to you early in the case, because
18 of the State's burden of proof, they make the initial
19 closing argument, followed by the Defense, and then the
20 State has an opportunity if they choose to make the
21 last closing argument.

22 At that point the court staff, both my secretary
23 and the bailiff, will be sworn in to take charge of the
24 jury.

25 You will leave your set of instructions on your
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1 chair.

2 We will give you the one original set of
3 instructions, plus the verdict forms, and you will be
4 escorted to the jury deliberation room, at which time
5 you will then commence your deliberations.

6 Okay. We have to wait here for a second for the
7 instructions to get here.

8 Because of the fact this is undoubtedly going to
9 go through the lunch hour, when you commence your
10 deliberations, we'll have lunch ordered for you.

11 So you can deliberate and eat lunch.

12 This is going to take 30 minutes to read the
13 instructions.

14 MS. LUZAICH: At least.

15 THE COURT: How long will your closings take?

16 MS. KOLLINS: Probably --

17 THE COURT: 30?

18 MS. KOLLINS: I'm a little longer than that.

19 There are a lot of instructions, probably 45 for
20 me.

21 THE COURT: What about you guys?

22 MR. BANKS: Half hour maybe.

23 THE COURT: So we're probably talking about
24 ordering lunch in an hour.

25 All right. Instructions to the jury, Does
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1 everybody have their copy?

2 ALL JURORS: Yes.

3 THE COURT: Counsel, everybody got their copies?

4 MS. LUZAICH: Yes.

5 MR. LANDIS: Yes.

6 (The Court's instructions are now read to the
7 jury by the Court.)

8 THE COURT: Counsel, are you ready?

9 MS. LUZAICH: Yes, Judge.

10 I think Mr. Banks wanted to approach.

11 THE COURT: Sure.

12 (Thereupon, a discussion was had between Court and
13 Counsel at sidebar.)

14 THE COURT: Pass those instructions over to Joe.

15 We're going to take about 10 minutes because
16 their closing arguments are going to take a little
17 while, so you might as well relax a little bit, go to
18 the restroom, and then we'll come back and hear the
19 closing arguments.

20 (Admonishment read to the jury by the Court.)

21 THE COURT: Ten minutes.

22 Go ahead and go with Joe.

23 (Thereupon, a recess was had.)
24
25

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1 (Thereupon, the following proceedings were had out of
2 the presence of the jury.):

3 THE COURT: Anything to address?

4 MS. LUZAICH: No.

5 We just need to turn off --

6 MS. KOLLINS: I don't have any sound in here.

7 THE COURT: Go ahead and bring them in, Joe.

8 All right. There was a question asked by a
9 juror.

10 I think, Mr. Banks, you are the only one that
11 didn't see this.

12 Bonnie Brunson, juror 10, had a question.

13 Was the bullet spent or unspent?

14 First of all, that --

15 MS. KOLLINS: They can open it when they go back
16 there.

17 If you want to instruct them as to that --

18 THE CLERK: They can't open it.

19 We would have to mark it.

20 MS. KOLLINS: It is -- It's admitted.

21 THE CLERK: No, inside they would have to open it
22 up in here.

23 MR. LANDIS: Someone should be able to fill her
24 in on that back there.

25 THE COURT: You can just address that.

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1 You can explain to them what is in the envelope,
2 and if they want to look at it, they can.

3 That's the question.

4 It's not being asked of anybody by me.

5 All right.

6 Ready?

7 Bring the jury in.

8 (Thereupon, the following proceedings were had in open
9 court and in the presence of the jury.):

10 THE COURT: Do the parties now stipulate to the
11 presence of the jury?

12 MR. LANDIS: Yes, Judge.

13 MS. KOLLINS: Yes, Judge.

14 THE COURT: All right. Go ahead.

15 MS. KOLLINS: Thank you, Judge.

16 (Closing arguments of counsel as follows.):

17 MS. KOLLINS: Good afternoon, ladies and
18 gentlemen.

19 First of all, on behalf of the Clark County
20 District Attorneys office, more specifically the special
21 victims unit, I'd like to take just one minute to thank
22 you for your service over the last seven days.

23 We appreciate your time.

24 We know you have other obligations that you have
25 set aside to be here.

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1 So on behalf of my office and my unit I thank
2 you.

3 The facts of this case are about six kids. They
4 are Danielle Browning, Justin Richardson, Ryan and Clint
5 Tognotti, Aitor Eskandon, and Justin Foucault.

6 In every criminal case there is primary questions
7 for you to answer.

8 Who is responsible, and for what criminal conduct
9 are they responsible for?

10 Now, there is a lot of instructions in this case,
11 so my goal today is to go through those instructions
12 with you and give you a framework with which to match
13 the evidence and the testimony that you have heard at
14 this trial to those instructions.

15 What this case is about is that this is Defendant
16 Narcus Wesley's trial.

17 Instruction 41 tells you:

18 You are here to determine the guilt or innocence
19 of the Defendant on trial.

20 Even if you think one or more persons is
21 responsible, you are to confine your deliberations and
22 your decision making to the evidence as it applies to
23 Mr. Wesley.

24 You are not to consider Delarian Wilson.

25 You are not to consider Delarian Wilson's

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1 punishment.

2 The criminal justice system will take care of
3 Delarian Wilson.

4 He has entered his plea of guilty.

5 You heard that plea.

6 You have the guilty plea memo to look at.

7 This chair is reserved for Narcus Wesley, and
8 your deliberations are reserved for Marcus Wesley.

9 There are three ways, and this is outlined in the
10 Information, what we call pleadings, that if you break
11 it down just a little simpler, there are three ways to
12 hold a criminal Defendant responsible for his criminal
13 conduct, either they directly committed the act that
14 constitutes the offense, they aided and abetted in the
15 commission of that offense, or they were a member of a
16 conspiracy, and they conspired to commit that offense.

17 Now, the factual basis in cases like these for
18 aiding and a bedding and conspiracy are similar, but
19 what these are are different criminal theories of
20 responsibility.

21 To the extent anyone thinks this is obvious, and
22 I'm stating the obvious, if I didn't go through this, I
23 wouldn't do my job, so if it bores you, I apologize in
24 advance, because it does unfortunately read a little
25 like a law school lecture.

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1 Speaking to those theories, either the Defendant
2 personally committed the actual act in this case, the
3 digital penetration of Danielle Browning, while she sat
4 in that chair, whether he conspired with Delarian
5 Wilson, or whether he aided and abetted Delarian Wilson,
6 those are the three theories, your verdict has to be
7 unanimous as to your decision, but not as to your
8 theory.

9 So that is outlined for you in instruction 24,
10 it's on the screen now. That means, if six of you
11 believe, or a portion of you believe, that Delarian
12 Wilson -- excuse me, that Narcus Wesley aided and
13 abetted, and a portion of you believe that he is
14 responsible under a conspiracy theory, but you still
15 believe that the State proved its case beyond a
16 reasonable doubt, as to Delarian Wilson, then your
17 verdict should be guilty.

18 Your disagreement as to the theory is
19 inconsequential.

20 There is something I want to make really clear
21 about this case. This is not a percentage game between
22 the Defendant and Delarian Wilson because Delarian may
23 have been louder and more talkative, he may have been
24 the leader. You can be criminally responsible as the
25 quieter follower. You can be held accountable.

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1 It's the State's position that Narcus Wesley is
2 as accountable as is Delarian Wilson for the crimes that
3 we have charged in Counts 1 through 18 in the
4 Information.

5 This is not a percentage game.

6 I talked to you about the two theories. I'm
7 going to start with the easier one first, aiding and
8 abetting. It reads a little simpler.

9 Then I'll try to walk you through how those apply
10 to each specific crime that is charged in the
11 Information.

12 When two or more people are accused of committing
13 a crime together, their guilt can be established without
14 proof that each person personally did the act charged.

15 In other words, for example in this case Delarian
16 Wilson takes Ryan Tognotti to the ATM machine at
17 gunpoint in his Honda Civic. You have the surveillance
18 photo from the bank of that.

19 Now, we all know from the testimony Narcus Wesley
20 was back at the home, and Narcus Wesley did not
21 personally take Clint -- excuse me, Ryan to the ATM, but
22 the law recognizes that by his assistance, his counsel,
23 his encouragement, his willingness to participate, his
24 willingness to hold those other kids at gunpoint on that
25 floor, makes him equally responsible for those acts that

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1 he did not personally commit and that occurred outside
2 his presence. That is the gist of aiding and abetting.

3 The law as you have sworn to follow in this case
4 requires that if you follow that evidence, and you
5 follow that logic, that you find the Defendant guilty of
6 those offenses for which he aided and abetted,
7 encouraged, whether present or not.

8 Some of you may not like that law, but that is
9 the law that you swore to follow in this case.

10 Part of what I want you to pay attention to as
11 well as in an aiding and abetting theory, the State is
12 not required to prove which person actually committed
13 which act or made which statement.

14 It is to counsel, encouragement, presence before
15 and after the fact, leaving the residence with Mr.
16 Wilson, all the actions that took place from the knock
17 on the door when both Defendants came in according to
18 the testimony of Ryan Tognotti, lifted their shirts, and
19 took out handguns, from that moment in time through
20 everything that transpired in that house, the State is
21 not required to prove exactly which Defendant made which
22 statement or did which act.

23 If you find there is aiding and abetting by
24 counsel and encouragement, they are both responsible
25 under the law for the crimes charged.

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1 I apologize, that aiding and abetting instruction
2 I just went to on the screen was instruction number 9.

3 Your instructions are not necessarily in order.

4 There is instruction number 10 that talks about
5 mere presence.

6 Mere presence in this series of instructions is
7 applicable only to the theory of aiding and abetting.

8 There is a different version for conspiracy law.

9 Presence at the scene of the crime and knowledge
10 it's been committed is not enough.

11 But when you look at facts, and you look for
12 active participation, counsel, encouragement, all of
13 her, if nobody else can, let me do it, I'm hard, those
14 kinds of statements, keep your head down, those things
15 are counsel and encouragement that the State submits to
16 you take this case outside of what is mere presence by
17 this Defendant.

18 The next theory is a conspiracy theory, and
19 lawyers wrote this so it's complicated and convoluted,
20 but the factual basis for which you can find conspiracy,
21 and/or aiding and abetting in this case is similar, and
22 again I'm going to go through the charges with you in a
23 second, I just want to go through these theories a
24 little bit.

25 Conspiracy's an agreement between two or more
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1 people for an unlawful purpose.

2 To be guilty of a conspiracy, a Defendant must
3 agree to commit, or aid in the commission of, a specific
4 crime agreed to. The crime is actually in the act of
5 conspiracy.

6 Conspiracy's charged here in Counts 1 and 2 as an
7 independent crime, and then it's charged as a theory in
8 the remaining counts, except for number 17.

9 A person who knowingly does any act in
10 furtherance of that conspiracy after that agreement is
11 made is responsible under a theory of conspiracy. That
12 is the first part of that, it is in instruction number
13 4, and this is the remainder of instruction number 4.

14 What I want you to pay particular attention to is
15 the second part there.

16 Conspiracy is seldom capable of proof and is
17 usually established by an inference of the surrounding
18 circumstances.

19 In a case like this traveling to the crime scene
20 together, entering the residence together, armed
21 together, gathering, holding certain victims at bay
22 while other victims were gathered from the bedroom
23 together, holding victims at bay while one person was
24 taken to the ATM for the purposes of getting the money
25 for which they came to the residence for, their common

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1 objective, this Defendant and Delarian Wilson being to
2 get money from Grant.

3 And then the parts that go haywire, these are
4 things from which you can infer there was a conspiracy
5 when the sexual conduct and terrorization of those kids,
6 those are things you can infer there was an agreement
7 beforehand to travel to this residence and commit the
8 robberies and the kidnapping, and eventually the sexual
9 assault.

10 Now, the State has not submitted to you that
11 there was some agreement necessarily before they entered
12 that residence to commit sexual acts, but at sometime in
13 that house, at sometime late that night, this Defendant
14 and Delarian Wilson had some kind of tacit understanding
15 about rolling a boyfriend over, putting a gun -- or
16 rolling him over and putting a gun to his head and
17 making him perform sex acts with his girlfriend, at some
18 point there was a tacit agreement, and you know that
19 because of how this Defendant reacted.

20 If you can't get it up, I'll get it hard, I'll F
21 her. You know, Delarian Wilson probably started that
22 series of acts, and you know that because you have his
23 fingerprints on the lotion bottle, but what you also
24 have is the testimony of those kids hearing Narcus jump
25 on the sex wagon, and that's enough for you to imply

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1 that there was an agreement to commit the acts that
2 transpired in that house.

3 There is no need that you have -- This is in
4 instruction number 5 -- an express or formal agreement.
5 In other words, there doesn't need to be a point in time
6 that the State proves that Narcus and Mr. Wilson sat
7 down, discussed the objective of that conspiracy, put it
8 in writing, agreed to the time, place and manner.

9 The agreement can be implicit, it can be implied,
10 it can be acquiesced to, and be inferred from, as
11 instruction number 4 tells, you, inferred from all the
12 circumstances tending to show a common intent.

13 A co-conspirator's smart.

14 Instruction number 6 tells you what it means to
15 withdraw from a conspiracy, and this is what the law
16 would recognize as a withdrawal from that conspiracy.

17 A person can only withdraw by taking some
18 positive action which disavowed or defeated the purpose
19 of the conspiracy.

20 It's not enough to show that the evidence -- not
21 enough the evidence shows the Defendant merely ceased
22 his own activities in furtherance of the conspiracy.

23 So the fact that Narcus Wesley went over to those
24 stairs, sat down with his gun, and remained quiet for a
25 period of time, doesn't mean that he didn't want

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1 everything in this case to come out the way it did. He
2 sat there and waited for the money.

3 There was no affirmative action to withdraw from
4 what was going on there.

5 He didn't call the police.

6 He didn't express that he was afraid.

7 He didn't let the victims move.

8 Did he leave the residence when Delarian's gone?

9 He's in NFL football training, and he's afraid.

10 What is he afraid of when Delarian's gone?

11 By his statement, because it was cold outside,
12 and I didn't know where I was.

13 You just took six kids cell phones.

14 You walk out the door.

15 You make a call.

16 And you get the hell out if you are afraid.

17 He never tried to dissuade Delarian, Delarian
18 don't make those kids take their clothes off and perform
19 oral sex on each other on the floor, my vernacular, not
20 theirs, don't do this, let's get out of here.

21 He took no affirmative, positive step to withdraw
22 from that conspiracy.

23 He never expressed surprise to what's going on.

24 He never called the police when he got away.

25 He went to his own car, he drove home, went home

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1 like nothing happened.

2 That conduct post commission of these crimes is
3 also something from which you can infer an agreement to
4 commit what transpired inside that house.

5 Once you find that there is a conspiracy, what
6 does the act involve?

7 For specific intent crimes you have to find the
8 person shared the specific intent for the underlying
9 crime to be committed for a general intent crimes, just
10 that they shared the general intent.

11 I can tell you, in the Information that sexual
12 assault is a general intent crime, robbery is a general
13 intent crime, open and gross lewdness is a general
14 intent crime.

15 Specific intent crimes charged are burglary, the
16 first degree kidnapping, and the assault with a deadly
17 weapon.

18 Once you find a conspiracy existed, and an
19 agreement, they had the shared intent to commit those
20 crimes, they are equally responsible.

21 As the State, we ask you to look inside their
22 mind and decipher what their intent was, and the only
23 way you can do that was to look at their conduct before,
24 after and during the commission of these offenses.

25 Once you believe that a conspiracy exists, and
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1 this is instruction number 44, statements made by each
2 conspirator during the commission of a crime may be
3 imputed to each other.

4 So when you walk in the door, as Delarian Wilson,
5 and you said, get down on the ground, and Narcus Wesley
6 is beside you with his gun, Delarian's telling everybody
7 to get down and cover their face, those statements are
8 imputable to Narcus Wesley.

9 Once you find that there is an agreement to
10 commit these crimes, Delarian Wilson's telling those
11 kids, suck your boyfriend's dick, eat out your
12 girlfriend, even though those statements aren't out of
13 Narcus Wesley's mouth, those are imputable to him during
14 the course and commission of those crimes, if there is
15 an agreement to commit those crimes. You may not like
16 that, but that is the law, and that is the law that you
17 have sworn to follow.

18 If you find that there is a conspiracy, they are
19 equally responsible for those statements made during the
20 course of the conspiracy, because the law presumes that
21 co-conspirators with an object crime in mind share the
22 same intent for the underlying crimes, they share and
23 adopt each other's statements in commission of those
24 crimes. Those statements include statements that are
25 made whether or not each party is present.

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1 So those statements include anything said to Ryan
2 Tognotti in the car.

3 The statements include during the sexual assault.

4 Those statements include those statements made
5 when Defendants first came in the door.

6 Instruction number 8 talks about association.

7 It's kind of like the mere presence statute that went
8 with the aiding and abetting. If you are in the company
9 or associated with one or more persons alleged to be
10 members of a conspiracy, that is not sufficient to prove
11 your membership. However, just like the facts for
12 aiding and abetting that I talked about, the presence,
13 the companionship, the conduct before, during and after
14 the offense are circumstances with which you measure
15 someone's criminal intent, and therefore measure whether
16 or not they are a member of the conspiracy.

17 I told you this stuff was long and boring.

18 Starting with the counts in the Information,
19 specifically Counts 1, 3 and 11 have to do with the
20 crime of burglary.

21 Count 1 is actually conspiracy to commit
22 burglary.

23 Too much coffee this morning.

24 We discussed the law of conspiracy, so I'm not
25 going to go over that with you again, but I will talk to
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1 you about the underlying charge of burglary.

2 If every person by day or by night enters a house
3 or a vehicle with intent to commit larceny, and/or
4 robbery, that would be an underlying felony, is
5 criminally responsible for the crime of burglary, and
6 what the law does is, it measures a criminal's intent
7 upon entry into the residence or the vehicle. That is,
8 the crime is the entry.

9 The underlying crime, the robbery or the larceny,
10 that is separate, and a person may be punished
11 separately for that.

12 In this case there are two counts of burglary
13 charged, one for entry into that Great Dane residence,
14 and I submit to you that when you walk in a house, and
15 lift your shirt, and draw a gun, and tell everybody to
16 get down on the ground, and aid and abet those persons
17 that give those commands, you are criminally responsible
18 for the crime of burglary, and those are the actions of
19 Narcus Wesley in this case.

20 Their intent being to rob money, although their
21 intent was to find Grant, that did not stop them from
22 their target crime or their goal to get money.

23 Just because it was the wrong intended victim
24 does not vitiate any of their responsibility.

25 Count 11 is for the entry into the vehicle of
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1 Ryan Tognotti by Delarian Wilson with intent to commit
2 the robbery. Again, the crime is committed upon the
3 entry with the felonious intent to steal or commit
4 robbery upon the person of Ryan Tognotti.

5 Now, this is one of those circumstances where the
6 law states -- never alleged Narcus Wesley got in that
7 blue Honda. By all the testimony, he didn't.

8 But is he liable as a co-conspirator or as an
9 aider and abetter?

10 Well, again some of these facts may sound
11 repetitive to you, but how is he responsible for the
12 burglary if Delarian's the one that got in the car with
13 Ryan?

14 Well, he went to the residence with a gun, so he
15 shared some common plan or purpose.

16 The only person that denies that the Defendant
17 had a gun is the Defendant.

18 We know there was a real gun at that residence.

19 There is a live round in State's 42 that hasn't
20 been fired.

21 The only person that says Defendant didn't have
22 the gun was the Defendant.

23 Ryan Tognotti, with the best observation of the
24 Defendant as he opens the front door, sees the gun come
25 from his waist band.

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1 Justin Richardson believes he sees a gun in his
2 hand, and has no reason to believe it's not a gun based
3 on any conduct, actions or statements of the Defendant.

4 Clint Tognotti, when he is laying on the floor
5 and stretches up, he sees the Defendant sitting on the
6 stair kind of with his legs bent, and sees the gun
7 hanging over the Defendant's leg.

8 Now, the kids were forced to lay down face down
9 on a floor at gunpoint. They believed what they saw
10 were two weapons.

11 You cannot as a collective group expect them to
12 test whether or not those weapons are real. You can't
13 expect them to jeopardize their lives, their safety, to
14 look up and make sure that this Defendant still is in
15 possession of a weapon.

16 So is Narcus responsible for both of those counts
17 of burglary?

18 Everyone says he had a gun.

19 That should infer to you he went there with a
20 common purpose.

21 When you go there with a common purpose, either
22 by agreement or by assistance, you are responsible with
23 the conduct of the person you agreed with or as an aider
24 and abettor.

25 Did he aid the entry to Ryan Tognotti's car?

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1 Absolutely, he stood over the rest of the kids on
2 the floor. It doesn't matter whether he just said while
3 he was in there -- First of all, he agreed with Delarian
4 Wilson on the way out the door, if anybody moves, shoot
5 them, okay, it's cool, I got it, or whatever his words
6 were, and then he's quiet and paces around and wants to
7 know where the nearest store is.

8 Just because that is all he said, and maybe told
9 Clint Tognotti once to keep his head down, that is his
10 assistance to the burglary of Ryan Tognotti's car. That
11 is how he aids and abets.

12 One, he makes sure nobody gets up and calls the
13 police and gives a description of Ryan's car, hey, this
14 guy just came in, gunned up, took my buddy to the ATM,
15 he makes sure that doesn't happen, he makes sure none of
16 those kids move. That is how he aided and abetted, and
17 that's how he's responsible for an act.

18 While he did not personally get in Ryan
19 Tognotti's car and drive him to the ATM, the law finds
20 him responsible.

21 The larceny is one of the underlying crimes in
22 the burglary. Either you have to commit robbery or
23 larceny. It is the taking or carrying away of any
24 personal property, and the value doesn't matter. This
25 is in instruction 12.

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1 Very briefly, because Ryan Tognotti let's
2 Delarian Wilson in the car, and because Ryan Tognotti
3 opens that front door, there can be no consent to enter
4 that house, not under these circumstances, because when
5 you do so by force or by threat or intimidation, you
6 negate any of that consent.

7 So the fact that Ryan opens the door or let's
8 Delarian in the car is no defense to the crimes of
9 burglary. It's actually in instruction number 13.

10 Just to make things -- put one more layer on the
11 burglary, and the underlying felony, you have to decide
12 whether or not a firearm was used during the commission
13 of those burglaries.

14 Well, you know, Ryan Tognotti had a gun to his
15 side during the whole ride to the ATM and whole ride
16 home, so there was a firearm in Delarian Wilson's
17 possession.

18 As for the entry into the Great Dane house, I'm
19 going to say it again, the only person that says Narcus
20 Wesley didn't have a gun is Narcus Wesley. All those
21 kids to the best of their abilities, some have more gun
22 knowledge than others, they put a gun in his hand.

23 So he entered that residence with a weapon.

24 So the entry with the intent the commit the
25 robbery or the larceny while in possession of a firearm

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1 is the way Counts 3 and 11 are charged in our
2 information.

3 Again, because you have to have the intent to
4 commit an underlying crime, the State can charge you
5 with the burglary as well as the underlying robbery or
6 larceny, and there is criminal responsibility for both
7 of those, and we can charge those separately.

8 I'm sorry. I lost my place. I got ahead of
9 myself, so I'm just going to move on. I talked ahead of
10 my sights, and that happens sometimes.

11 Instruction number 16 talks to you about robbery,
12 and those are the elements of the offenses of robbery.

13 In this case the robbery Counts are Counts 4, 6,
14 7 and 9. Just a little bit about what is required for
15 the offense, and then I'll go through those counts with
16 you.

17 Robbery is the unlawful taking of personal
18 property from another, or in their presence, against
19 their will, through some means of force or violence or
20 fear of injury, and you do that with the purpose of
21 obtaining or retaining possession of that property,
22 preventing or overcoming resistance to the taking, or to
23 facilitate your escape, those are the purposes for which
24 a person would take the property. The degree of force
25 is immaterial. In other words, the State doesn't have
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1 to prove physical injury or discharge of a weapon to
2 prove these kids were afraid or fearful when guns were
3 being drawn and money and ATM cards and cell phone
4 phones were being demanded. As long as that force or
5 threat of force is used to make those people acquiesce
6 and turn that property over, that is all that matters.

7 It doesn't matter if a gun was discharged.

8 It doesn't matter if somebody was actually hit or
9 struck.

10 It's just taking that property by force or by
11 fear, or by creating that fearful situation, and that
12 would complete the crime of robbery.

13 Again, value of the property taken doesn't
14 matter. That is in instruction 17. That would probably
15 fall more into your deliberations in Count 4, wherein
16 the State has charged that Delarian Wilson walked Justin
17 Richardson back to his room at gunpoint and took condoms
18 from his possession. The fact that the value of those
19 condoms was worth a couple, three or four dollars
20 doesn't matter. It's the taking of the property by
21 force. There is no value requirement. There is no
22 fixed location for robbery, and this instruction, this
23 is instruction number 18, comes into play when Danielle
24 Browning is charged a count of robbery for her cell
25 phone, her cell phone was in Justin's bedroom, Danielle
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1 was outside in the living room on the floor when that
2 cell phone was taken.

3 If you create the fearful situation that places
4 everyone in fear, keeps them in fear, the fact you go in
5 another room and take that personal property, one that
6 it's still in your presence, the location doesn't
7 matter. That is what instruction number 18 says.

8 In number 19, in the presence, that is just kind
9 of a follow-up on that. It's -- the object is in your
10 presence, if it's in your reach, or in your inspection,
11 or in your constructive possession, so number 19
12 explains that to you.

13 Counts 4, 6, 7 and 9 are the counts the State has
14 charged robbery with use of a deadly weapon.

15 Count 4, Justin Richardson.

16 Count 6, the money from Justin Foucault.

17 Count 7, money from Ryan Tognotti.

18 And Count 9, the cell phone from Danielle
19 Browning.

20 Is Narcus Wesley responsible for these counts
21 under an aiding and abetting theory?

22 Well, remember that under aiding and abetting
23 guilt may be established without proof that each person
24 personally did every act constituting the offense, and
25 either directly committed the act, or actively

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1 participated in the commission of that act, with the
2 intent, aided and abetted, encouraged in its commission.

3 Well, if you remember the count regarding Justin
4 Richardson, these kids are on the floor, they have no
5 clothes on, they tried to get Ryan Tognotti to
6 masturbate to erection so that someone can have sex with
7 Danielle, and then all the while Defendant saying, I can
8 do her, I can have sex with her, I'm ready, let me at
9 it, well that's when the conversation with the condoms
10 comes up, and Delarian Wilson walks Justin Richardson
11 back to his bedroom at gunpoint and takes those condoms
12 by force, by holding a weapon on him, and Justin turns
13 over possession of those condoms.

14 Narcus Wesley's equally responsible for that
15 robbery. He didn't walk Justin back there. He assisted
16 and encouraged its commission. He was ready to have sex
17 with Danielle. He was smart enough to cover up his
18 parts before he was going to do it and sent Delarian
19 back there, or at least acquiesced to Delarian going
20 back there and getting a condom. So he's responsible
21 for that forceful taking of that property, and despite
22 the fact if it's a condom or gun it doesn't matter,
23 Narcus Wesley's responsible under the law.

24 As to the money from Justin Foucault, Justin
25 emptied a few dollars from his wallet on the floor.
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1 When they first got in there, Defendant and Delarian,
2 they were looking for Grant, and they were looking for
3 money. It finally dawned on one or both of them that
4 they were in the wrong house, they are already in there,
5 let's get money from who is here, we're not leaving here
6 empty handed.

7 So all the kids scramble, you heard their
8 testimony, they didn't have 20 bucks between them. Both
9 of them are responsible for that, and I Submit to you
10 that while Delarian's the one doing the talking, Narcus
11 is still standing there, gun drawn, waiting for the
12 money to come. That is not only aiding and abetting,
13 that is active commission. He's providing the force
14 that is causing Justin to give over that money and get
15 over that ATM card.

16 It doesn't matter Delarian's yelling the
17 commands, that is more than than aiding and abetting,
18 that is making him responsible for that force on Justin
19 Foucault. Part of that force that caused Justin
20 Foucault to empty his pockets and give what he had so he
21 could save his life, wasn't going to get shot over 10 or
22 15 bucks in his pocket.

23 The same analysis goes for Count 7 with Ryan
24 Tognotti. This Defendant, with a gun in his hand,
25 equally applied the force that caused Ryan Tognotti to
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1 give over his ATM card, and ultimately give over the
2 money to Delarian Wilson inside the Honda Civic at the
3 ATM.

4 He shared in the force that got Ryan to agree to
5 go with Delarian Wilson to the ATM.

6 He's equally responsible for that robbery.

7 Now, if you want to factually confine the robbery
8 of Ryan Tognotti to what transpired in the car, he is
9 still liable as an aider and abettor or a
10 co-conspirator.

11 Because again, what did he do?

12 I touched on it earlier.

13 He held the other kids at bay.

14 He shared the common purpose of wanting money.

15 He shared in the force that was applied to get
16 Ryan Tognotti out of that house into that vehicle to
17 that ATM machine.

18 He agreed verbally with Delarian Wilson on
19 Delarian's way out the door that, yeah, I'll make sure
20 they all stay here.

21 If anything happens, Delarian says, if anybody
22 moves, shoot them, and he says, yeah, I got it.

23 So he's equally responsible for that robbery of
24 Ryan Tognotti.

25 Count 9, regarding Danielle Browning for the
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1 robbery of the cell phone, they took cell phones off all
2 these kids and ultimately Danielle Browning's cell phone
3 was what lead to the detection, location, arrest of
4 Delarian Wilson, and ultimately fortunately for
5 Henderson Police Department to the arrest of Narcus
6 Wesley.

7 That phone was taken out of Justin's bedroom.
8 Justin and Danielle did not see Delarian pick up that
9 phone. They just know the phone was gone once the
10 Defendant and Delarian left.

11 Part of committing that crime is making sure when
12 you are watching six kids on the ground there, you want
13 to make sure none of them can get to a phone and dial
14 911. So that is part of their efforts to conceal that
15 crime and those efforts to conceal and avoid detection,
16 because they are smart. Anyone of those could be lying
17 on the ground and call 911 and let the voices fly and
18 let the 911 operator hear it, so part of taking all
19 those phones and cutting off those kids communication is
20 part of aiding and abetting in the robberies, and that's
21 part of the Defendant's aiding and abetting in the
22 robbery of Danielle's phone. It is taken by force and
23 fear.

24 Had a fearful situation been created in the
25 living room by this point?

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1 Absolutely.

2 Is that personal property taken?

3 Absolutely.

4 Was it retained?

5 Yep, that's how we got to Delarian. Because that
6 was part of their common seem scheme and plan when they
7 are holding everybody at gunpoint, creating chaos and
8 fear, taking that phone is a robbery, and this Defendant
9 could be held responsible.

10 We've charged two Counts of assault with a deadly
11 weapons in this case, Counts 5 and 8, the victims being
12 Aitor Eskandon and Clint Tognotti.

13 Clint had no money on him.

14 Aitor had a little bit of money on him, and later
15 we discovered a cell phone.

16 But this conduct is for this Defendant and
17 Delarian Wilson coming in that front door, aiming
18 firearms, causing fear or apprehension of bodily harm
19 for not turning over personal property.

20 Because Clint didn't have anything to turn over,
21 aiming a firearm at him, either by the Defendant
22 directly committing it, which the State submits to you
23 he did because he had a firearm, he aimed that firearm
24 at everybody in the residence, Clint just didn't have
25 any property to give up, and Clint testified he was

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1 scared, and I think everyone of these kids testified
2 they were scared, and one or both aiding and abetting or
3 conspiring to commit the robbery with the firearm's also
4 responsible for Count 5, aiming a firearm at Aitor
5 Eskandon.

6 First degree kidnapping is charged in Count 10.
7 This is an instruction number 21. It's the same aiding
8 and abetting co-conspirator logic that I went through
9 about the robbery of Ryan Tognotti.

10 In other words, the conduct that is the
11 kidnapping of Clint Tognotti's putting him -- moving him
12 from the house to the Honda Civic, driving him at
13 gunpoint to the ATM, and returning home, that is the
14 conduct that is the kidnapping in this case.

15 If you seize, confine, kidnap or carry away any
16 person, by any means, with the intent or purpose of
17 committing robbery, you are guilty of first degree
18 kidnapping. Now, again this is the type of conduct
19 where while Narcus didn't directly place Ryan into the
20 vehicle, he is responsible as an aider and abettor or as
21 a co-conspirator, and I submit to you there is factually
22 sufficient evidence in this case for you to find there
23 was an agreement to commit a robbery before they got to
24 that residence.

25 Therefore, any acts that were foreseeable where
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1 the Defendant shared the same intent, he would be
2 responsible for.

3 Once there is no money at the residence, and they
4 both decided they are not settling for \$20, Delarian
5 starts looking for ATM cards, Narcus is going to hold
6 down the fort, and Delarian's going to take Clint, that
7 is either the product of a conspiracy or Narcus' conduct
8 holding those kids on the floor at bay, not calling the
9 police, not thwarting the efforts of the conspiracy, not
10 thwarting the goal of the conspiracy, make him
11 responsible under the law.

12 Remember, just to reiterate, if I'm getting
13 repetitive, I apologize, but I just want to make a
14 point, he didn't call the police, he didn't ask those
15 kids for help, he never expressed that he was afraid, he
16 never told those kids they could get up, he never told
17 them they could leave the house, he didn't call the
18 police. All that in action goes to his agreement, his
19 willingness, and his participation to commit those
20 crimes, send Clint Tognotti at gunpoint to that ATM and
21 wait for the fruits of the crime. By his own statement,
22 he even shared in the money to that, he even shared 260
23 bucks of the money that was taken from Clint Tognotti at
24 the ATM.

25 So now you can believe he's a co-conspirator, or
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1 half of you believe he's an aider and abettor, he is
2 responsible and legally criminally culpable for first
3 degree kidnapping for the taking of Ryan Tognotti to
4 that ATM.

5 Instruction 24 talks to you about sexual assault
6 and the kind of activity that finds someone responsible
7 for sexual assault under the law.

8 Sexual assault is not necessarily just
9 penis/vagina, so we're going to go through what some of
10 that conduct is.

11 You can commit the crime of sexual assault by
12 subjecting someone to penetration against their will,
13 without their consent, under circumstances where you
14 know or should know that they are incapable of giving
15 their consent, or if you look at line 2, forces another
16 person to make a sexual penetration on himself or
17 another, forces another to make a sexual penetration on
18 himself or herself, or on another.

19 Sexual penetration includes cunnilingus,
20 fellatio, and digital penetration.

21 I hate technology.

22 It might be too graphic, but I have to go through
23 it so bear with me.

24 Cunnilingus is the touching, however slight, of
25 the female vagina with the mouth, and/or tongue of the
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1 perpetrator. There is no penetration required. In
2 other words, a women's vagina has lips and a labia, and
3 there is no requirement the tongue or mouth go past any
4 portion of the canal. It's just the simple act of
5 touching at all with the mouth or lips that constitutes
6 cunnilingus for purposes of sexual assault.

7 The same rational for fellatio, there is no
8 requirement, just that the mouth or the tongue touch the
9 penis of a man. There is no depth requirement if you
10 will.

11 Digital penetration, placing a finger in a
12 genital opening. It's penetrate, however slight,
13 however slight. There is no just between the lips, and
14 the female vagina. There is no requirement that
15 anything go any farther than that.

16 Counts 12, 13, 14 and 15 and 17 in this case
17 involve sexual assault.

18 Count 12 is for the Defendant's forcing Danielle
19 to perform fellatio on Justin Richardson.

20 Count 13 is for forcing Danielle to be subjected
21 to cunnilingus.

22 14 is for forcing Justin Richardson to receive
23 fellatio.

24 Count 15 forcing Justin Richardson to perform
25 cunnilingus.

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1 And count 17 is the digital penetration, which
 2 I'm going to leave aside for just a minute.
 3 First of all, where multiple acts of sexual
 4 assault occur you can charge all of those acts, and what
 5 we have done in this case is actually, if you recall the
 6 testimony, Justin Richardson was forced to perform oral
 7 sex on Danielle more than one time, and Danielle was
 8 forced to perform fellatio on him more than one time,
 9 but what we've done is for each type of sexual act
 10 charged a single count, as there is a single victim, and
 11 I don't know that I articulated that well.

12 Let me talk to you about some of the other
 13 qualifiers for the crime of sexual assault, and then
 14 we'll get back to the counts.

15 Again, I'm getting ahead of myself.

16 I know I have had you for a while now.

17 No physical force is necessary.

18 I submit to you there is physical force or that
 19 threat of physical force, but it's not -- in other
 20 words, I mean, Danielle was never held down, Justin was
 21 never held down, but the implication of the force was
 22 there, they were forced to engage in conduct that they
 23 didn't want, and did not want to do in a room full of
 24 their friends, naked at gunpoint.

25 There is no -- Just because they are boyfriend
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1 and girlfriend, the fact they were induced to submit and
 2 participate in that sexual conduct without being held
 3 down or punched, or anything that was hands on physical
 4 force, that doesn't make it any type of consensual
 5 conduct issue.

6 The law doesn't require a victim to fight back.

7 If you recall Justin's testimony, it was pretty
 8 emotional when he was talking about having to lay there
 9 and try to perform, and listening to the commands and
 10 maybe feeling a little guilt about not being the
 11 protector.

12 The law does not require him to fight back,
 13 doesn't require Danielle to fight back, and I submit to
 14 you with two firearms there, it's a good thing that they
 15 didn't.

16 So submitting to those commands is not consent.

17 In other words, yielding to a gun to your head
 18 and a pillow over your head, and letting your girlfriend
 19 perform fellatio on you, is not consent, that is not
 20 yielding to the conduct such that it negates any
 21 responsibility for sexual assault, and again this may be
 22 very obvious, but I just want to go through it with you.

23 Physical evidence of sexual assault is not
 24 required.

25 The statements and recitation of those assaults
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1 by the victims are sufficient without any corroboration.

2 Linda Ebbert was here, and this goes more to the
 3 penetration count, but Linda Ebbert was here, and she
 4 told you that there was no damage or injury to
 5 Danielle's genital area. Not surprising, given the type
 6 of assault. It was a single finger digital penetration
 7 of the vagina. It didn't last for a long time. So
 8 there is no surprise there would be no physical
 9 evidence, and there certainly was no exchange of any
 10 bodily fluids, no testimony there would been have
 11 ejaculation such that any DNA testing could be done,
 12 there is no requirement for physical corroboration of a
 13 victim of sexual assault's testimony.

14 The Danielle and Richardson counts, the Danielle
 15 and Justin Counts, Counts 12 and 14, actually go
 16 together because they describe the same conduct with
 17 both victims on receiving or giving side of that same
 18 conduct, if that makes sense.

19 Both Danielle and Justin are a victim for forcing
 20 Danielle to perform fellatio on Justin Richardson, and
 21 forcing Justin Richardson to receive that fellatio, so
 22 Counts 12 and 14 actually go together, but those are
 23 charged for the same acts. Because when you force a
 24 person to make a penetration, i.e. forcing Danielle to
 25 put her mouth on his penis, or force someone else to be
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1 penetrated under the law, forcing Justin to have a mouth
 2 placed on his penis, those are both acts of sexual
 3 assault.

4 Counts 13 and 15 also go together and under the
 5 same rationale.

6 When Danielle Browning is forced to be subjected
 7 to cunnilingus, that is a penetration against her will
 8 without her consent for purposes of sexual assault.

9 Count 15 is forcing Justin to perform that
 10 penetration, which also makes him a victim of sexual
 11 assault.

12 So even though we kind of plead them every other
 13 one, 12 and 14 go together, and 13 and 15 go together.

14 Now, is Defendant Narcus Wesley responsible as an
 15 aider and abetter, or responsible because he conspired
 16 for those sexual assaults?

17 I think the testimony is clear, the 90 percent,
 18 10 percent, Delarian got the ball rolling, that does not
 19 give Narcus Wesley a walk on these sexual assaults. He
 20 aided and abetted by counsel and encouragement.

21 Justin Richardson laying there, no pants on, gun
 22 to his head, and they are egging him on to get an
 23 erection, and he can't. Not surprising under those
 24 circumstances.

25 Does Narcus say, hey, man, let it go, leave him
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1 alone, this is crazy?
 2 No.
 3 What does Narcus do?
 4 I'm hard.
 5 I'll F her.
 6 She's hot.
 7 That's counsel and encouragement.
 8 This sexual conduct, this mutual oral sex, this
 9 doesn't go on for five minutes, this doesn't go on for
 10 ten minutes, it goes on between 20 and 30 minutes, guns
 11 drawn, these kids are naked on the floor in front of
 12 their friends, does nothing to stop it, only expresses
 13 his willingness to jump in and get the job done. He
 14 shows no empathy for those kids, no sympathy. He
 15 doesn't stop anything.
 16 Delarian's yelling about, you better get it up or
 17 I'm going to go around the room and start shooting until
 18 somebody gets an erection, takes the lotion bottle over
 19 to Ryan.
 20 Does Narcus stop any of that?
 21 No, he's on the wagon.
 22 Yeah, this is hot.
 23 Your girlfriend's kind of hot.
 24 That is counsel and encouragement.
 25 Either he's responsible as an aider and abettor

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1 to that continued 20 or 30 minutes of sexual conduct, or
 2 at some point after that conduct started there is a
 3 tacit agreement for it to continue. Therefore, he's
 4 responsible as a co-conspirator.
 5 He says, ain't none of them that can do it, I'm
 6 the only one that can do it. The testimony was as
 7 Delarian tells Danielle to take her clothes off, the
 8 Defendant gets excited, I can do it, give me a chance to
 9 do it.
 10 I don't think you can see the bottom of that
 11 screen. I think he drops an F bomb, I will F her. You
 12 can up there, not up here.
 13 Count 17 is for the digital penetration of
 14 Danielle. Defendant's conduct, I'm talking about this
 15 Defendant, I'm talking about Narcus Wesley, Defendant's
 16 conduct in putting that girl in a chair, and have her
 17 raise her legs in the air, asking her if he can touch
 18 her vagina, and then putting his finger in her vagina,
 19 goes a long way to measuring his intent from the rest of
 20 the sex stuff that just transpired. If he didn't have
 21 intent for something sexual to happen there, he sure was
 22 following through on it by digitally penetrating her
 23 vagina while she was sitting in that chair.
 24 This is an act where you don't have to worry
 25 about conspiracy or aiding and abetting because there

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1 has never been any allegation that Delarian Wilson put
 2 her fingers in the vagina of that 18 year old girl, it
 3 was the Defendant, Narcus.
 4 He asked her if it felt good.
 5 He just says he touched the top of her vagina.
 6 Danielle was clear, his fingers went -- his
 7 finger, excuse me, went inside her vagina.
 8 He asked her something like, do you want it, and
 9 she said, no, I would rather have Justin.
 10 The Defendant in his statement says that these
 11 kids were laughing, and she didn't mind.
 12 Do you believe for a second at gunpoint with two
 13 strangers that this girl said, she didn't mind if this
 14 man she had never seen made her raise her legs in the
 15 air in a chair in front of five of her friends,
 16 including her boyfriend, and be digitally penetrated,
 17 she didn't mind?
 18 It's insulting, she said it was okay.
 19 Danielle Browning no more consented to that
 20 conduct and that contact, it's just not accurate.
 21 What that is, is the Defendant's self-serving
 22 statement minimizing his behavior and his exposure to
 23 the police.

24 In fact, all the testimony was consistent that
 25 Delarian, even though you don't like him, Delarian who
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1 plead guilty, Delarian whose statement you heard part of
 2 yesterday, Delarian told him, that's enough, they went
 3 and got some condoms.
 4 But at some point Delarian Wilson, you want to
 5 call him the ring leader, the bad guy, Delarian told him
 6 to stop, told him to stop digitally penetrating that
 7 girl.
 8 Instruction number 30 defines open and gross
 9 lewdness.
 10 We have charged in Count 18 for Delarian touching
 11 the chest, and/or buttocks of Danielle, and open and
 12 gross lewdness is confined as any indecent, obscene or
 13 vulgar act of a sexual nature committed in a public
 14 place, even if the act is not observed or committed in a
 15 private place, but in an open manner, this action being
 16 touched on the buttocks or chest, does not amount to
 17 sexual assault.
 18 Rely on your notes the best you can. I think
 19 Danielle remembered being touched but wasn't sure in
 20 what chronology that happened.
 21 The Defendant in his own statement said that he
 22 touched her booty, but I don't think that is Danielle's
 23 recollection under the stressful situation. I don't
 24 think that's what she testified to, but rely on your own
 25 notes.

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1 If you believe Delarian Wilson was the one that
2 touched her on the breast, or touched her on the
3 buttocks, do you believe this Defendant aided and
4 abetted, or that is still part of the conspiratorial
5 nature, and the prior sexual acts that took place of the
6 digital penetration and the forced mutual oral sex, if
7 you believe that that naturally follows that, that even
8 the Defendant can be equally responsible under the law,
9 regardless of whom you think touched Danielle.

10 Count 31 is coercion. In this case, sexually
11 motivated, the State charged a count of coercion for the
12 Defendants, specifically Delarian, handing Ryan
13 Tognotti, Ryan sure got the brunt in this case, the
14 lotion bottle, and trying to force him to masturbate to
15 get an erection for purposes of having sex with Danielle
16 because at this point they were hell bent on someone is
17 having sex in front of us. Whenever you use violence on
18 another, or threaten violence or injury, which was done
19 to Ryan, because if somebody doesn't get a hard-on,
20 we're going to shoot, to force them to do something, or
21 abstain from doing something they have a right to do or
22 not to do, Ryan had an absolute right not to masturbate
23 in the living room at gunpoint in front of his friends,
24 so that is the crime of coercion, and with Ryan being
25 the victim, and we have plead it sexually motivated on I
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1 think the facts I'll submit to you, it's your decision,
2 speak for themselves, having him masturbate to have sex
3 with Danielle is a sexually motivated purpose.

4 In each one of these offenses, robbery, assault,
5 first degree kidnapping, sexual assault, and coercion,
6 and open and gross lewdness, everything but Counts 1 or
7 2, you are going to have to decide whether or not a
8 deadly weapon was used.

9 Now, a firearm is a deadly weapon. There is an
10 instruction that tells you that, instruction 36. I'm
11 going to reiterate this, and I know I said it earlier,
12 but I just want to make it clear.

13 The State has taken the position and presented
14 evidence consistent throughout this trial that this
15 Defendant had a firearm in his possession. We know
16 there was a real firearm there. There was a live round.
17 Now that round we believe came out of Delarian Wilson's
18 gun, but the testimony was that visually this Defendant
19 had a firearm.

20 So every one of these acts, the robberies, the
21 sexual assaults, while Delarian is still in direct
22 possession of that firearm, had been modified such that
23 it's robbery with use of a deadly weapon, sexual assault
24 with use of a deadly weapon, and we could ask that you
25 so find.

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1 The only, and I mean shred, only shred of
2 anything that you have heard that this Defendant did not
3 have a weapon, was out of Narcus Wesley's mouth.

4 When you look at the credibility of those
5 statements, what is the motive for Ryan Tognotti to lie
6 and put a weapon in Narcus Wesley's hand?

7 What is the motive for Justin Foucault to lie and
8 put a weapon in Narcus Wesley's hand?

9 What is Danielle Browning's motive?

10 What is Justin Richardson's motive?

11 What is Aitor Eskandon's motive?

12 What is the motivation of those kids, six kids,
13 that never met him before to lie and say he had a
14 weapon?

15 So when you consider the one piece of evidence
16 that you have that he did not have a weapon in his
17 possession, what is Narcus Wesley's motivation to lie
18 about his having a weapon, a firearm?

19 Those kids have nothing to lose either way.

20 That leaves me to this instruction, instruction
21 37. If for some reason some or any of you believe the
22 Defendant, if you believe these self-serving I didn't
23 have a gun statements, if you think that the kids, these
24 18, 19 year old kids, didn't give you a good enough
25 description to that to the best of their ability, if you
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1 believe that, the Defendant can still be held
2 responsible if you believe he was unarmed during the
3 course and the commission of these offenses.

4 Each person, the Defendant can be convicted for
5 the commission of the offenses if the weapon was only in
6 Delarian's hand using this instruction, if they had
7 knowledge of the use of the weapon, so even if you think
8 Narcus didn't have a gun, which the State submits to you
9 the only consistent evidence is that he did, but if you
10 think he didn't have a gun, he can still be held
11 responsible for the use of that gun if he had knowledge
12 of its use during the course of these offenses.

13 Now, if he didn't have knowledge, he certainly
14 did once he got in the door, and he certainly had
15 knowledge that that gun was being used when those kids
16 were being ordered on the ground.

17 And he certainly had knowledge there was a gun
18 when Delarian was going to leave.

19 And he certainly had knowledge that Delarian took
20 Clint out at gunpoint.

21 And he certainly had knowledge that when Delarian
22 Wilson held that gun over the pillow to Justin
23 Richardson's head, that there was a gun involved in
24 those sexual assaults.

25 So even if you want to take the only piece of
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1 evidence, Defendant's statement that he didn't have a
2 gun, and hang some credibility to that, he still is
3 responsible for the use of Delarian's weapon once he
4 knows that the weapon is there, and he continues to
5 participate in the offenses.

6 To use a gun, to use a deadly weapon in the State
7 of Nevada you don't have the shoot somebody, using it
8 just to produce the fear or create a fear of harm in
9 someone by displaying it, that is use of a weapon.

10 You don't have to shoot it.

11 You don't have to show the victim it really
12 works.

13 The State is not required to recover firearms.

14 In other words, you can find the use of this
15 deadly weapon, these deadly weapons if you will, even if
16 the State, who didn't find it in Delarian's hotel room,
17 didn't find a weapon with the Defendant, that doesn't
18 mean that you cannot make the use of a deadly weapon
19 part of your verdict.

20 I've been talking for a long time now, so I went
21 through the last couple of slides.

22 You are going to get a verdict form, and it is
23 going to look somewhat like what is on the screen, but
24 more appropriately like this, and it's going to go on
25 for several pages. It looks kind of like we have here.

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1 If you remember, Counts 1 and 2 conspiracy to
2 commit burglary, and conspiracy to commit robbery, those
3 are not enhanced with a use of a deadly weapon.

4 The State would respectfully ask that at the
5 conclusion of your deliberations you find Defendant
6 Narcus Wesley guilty of both conspiracy to commit
7 burglary and conspiracy to commit robbery based on the
8 facts and the evidence that you have heard.

9 The next -- or I'm sorry for the font size
10 difference, Count 3 on your verdict form is for the
11 burglary, again at the Great Dane residence. You can
12 only choose one of these. In other words, Defendant is
13 guilty of burglary with use of a deadly weapon, guilty
14 of burglary if you find no weapon, or not guilty.

15 The State's submitting to you we have offered you
16 proof beyond a reasonable doubt the standard used in
17 every criminal case across this country every day that
18 the Defendant is criminally responsible for the burglary
19 with use of deadly weapon at the 690 Great Dane Court.

20 I went through the robbery Counts with you.

21 Count 4 applies to Justin Richardson.

22 Again, the State would ask you to check the
23 appropriate box on the verdict forms pertaining to the
24 evidence that you have heard, guilty of robbery with use
25 of a deadly weapon, the assault with a deadly weapon.

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1 Count 5, that pertains to Aitor Eskandon.

2 And so you know so you can match up the
3 information, these delineations are on your verdict form
4 as well, so you won't have to go check and flip back and
5 forth to see which counts applies to which and what.

6 We ask you find the Defendant guilty of the
7 assault with deadly weapon for Aitor Eskandon, that he
8 laid on that floor at the 690 Great Dane residence.

9 Count 6 and 7 are the robbery of Justin Foucault
10 and Ryan Tognotti.

11 Justin Foucault was the money and the ATM card,
12 as he laid on the floor, upon the initial entry into the
13 690 Great Dane residence.

14 I spoke to you about how Defendant's responsible
15 by directly conspiring or aiding and abetting. We ask
16 you find him guilty of robbery with use of deadly weapon
17 for Justin Foucault.

18 Ryan Tognotti, a name you will see several times
19 in this information, Ryan's the one that again went to
20 the ATM with Delarian Wilson.

21 I just talked at length about how Narcus Wesley
22 as he sits there today is criminally responsible for the
23 victimization of and robbery of Ryan Tognotti, and the
24 State would ask based on the evidence you heard and the
25 testimony of these kids that you find the Defendant

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1 criminally responsible and guilty of robbery with use of
2 deadly weapon regarding Ryan Tognotti.

3 Clinton Tognotti, Ryan's little brother, didn't
4 have any money, laid on the floor, had firearms pointed
5 at him by one or both of these Defendants.

6 Either Defendant is responsible by directly
7 aiming his firearm, by aiding and assisting the
8 endeavors of Delarian Wilson in aiming his firearm, or
9 by virtually of his conspiracy to go to that house,
10 enter that house, detain everyone for committing the
11 robbery, so he's responsible under any of those
12 theories.

13 I ask you to find the Defendant guilty of assault
14 with deadly weapon regarding Clinton Tognotti.

15 Robbery with use of a deadly weapon for the cell
16 phone of Danielle Browning, Danielle Browning is also a
17 name you will see several times listed as victim in this
18 information. She was the victim of robbery with use of
19 deadly weapon, as well committed by the force and fear
20 created by both Defendants, and the ultimate taking of
21 the personal property, the cell phone, out of the room
22 by Delarian Wilson.

23 I'd ask you find the Defendant guilty of robbery
24 with use of a deadly weapon for the victimization in
25 this count of Danielle Browning.

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1 Ryan Tognotti, the taking and carrying away of
2 Ryan Tognotti in his Honda Civic to the ATM machine at
3 Wells Fargo, I'd ask you find the Defendant guilty of
4 first degree kidnapping with use, and it was
5 accomplished for the purposes of robbery with use of a
6 deadly weapon for Ryan Tognotti.

7 The burglary while in possession of deadly weapon
8 for the Honda Civic Count 11.

9 Counts 12, 13, 14 and 15 are the mutual sexual
10 assault counts, the sexual victimization of Justin
11 Richardson and Danielle Browning, I ask you find
12 Defendant guilty of Counts 13, 14, 15 -- I'm sorry 12,
13 13, 14, 15, all guilty of sexual assault with use of a
14 deadly weapon.

15 Count 16, coercion with use of deadly weapon for
16 Ryan Tognotti.

17 Count 17, the State would ask you return a
18 verdict of guilty for the digital penetration of
19 Danielle Browning by the Defendant also with the use of
20 a deadly weapon.

21 And Count 18, the open and gross lewdness with
22 use of a deadly weapon.

23 I know that I have spoken very long today.

24 I thank you for your time and consideration, and
25 I appreciate it.

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1 THE COURT: Thank you, counsel.

2 It's been well over an hour.

3 My suggestion is, we take about ten minutes.

4 The Defense closing and rebuttal, we are going to
5 do that all at once.

6 So we'll take one ten minute recess, and then
7 we'll wrap up the closing arguments, and the case will
8 be submitted to you.

9 So during the next ten minute recess, stretch, go
10 get some coffee, go to the restroom.

11 I'm admonishing all of you as a jury not to
12 converse.

13 (Jury admonished by the Court.)

14 THE COURT: Go ahead with Joe.

15 Ten minutes.

16 we're in recess.

17 You got ten minutes.

18 (Thereupon, a recess was had.)

19 (Thereupon, the following proceedings were had
20 out of the presence of the jury.):

21 THE COURT: Anything we need to put on the record
22 before we bring the jury in?

23 MR. LANDIS: No, Judge.

24 MS. KOLLINS: No.

25 THE COURT: All right. Bring them in.

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1 (Thereupon, the following proceedings were had in open
2 court and in the presence of the jury.):

3 THE COURT: Do the parties stipulate to the
4 presence of the jury?

5 MR. BANKS: Yes, Judge.

6 MS. LUZAICH: Yes, Judge.

7 THE COURT: All right. Go right ahead.

8 MR. BANKS: You should be held responsible for
9 choices that you make of your own free will, for
10 situations that you create. I got no problem with that.

11 Don't think anybody in this room has got a
12 problem with that.

13 The problem arises when the government wants to
14 hold somebody accountable for choices that you don't
15 make and situations that you do not create.

16 Let me say this:

17 For a case that is not about Delarian Wilson, we
18 sure heard a lot of evidence about a guy named Delarian
19 Wilson.

20 Delarian Wilson turned the, let's go buy
21 marijuana, into an armed robbery, not Narcus Wesley.

22 Delarian Wilson escalates an armed robbery into a
23 kidnapping at gunpoint, not Narcus Wesley.

24 Delarian Wilson escalates a kidnapping at
25 gunpoint into forced sex at gunpoint, not Narcus Wesley.

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1 Delarian Wilson escalates sex at gunpoint to
2 murder, if somebody does not do something to Danielle
3 Browning.

4 We all heard the testimony.

5 We've got to compare what Delarian Wilson did to
6 what Narcus did.

7 Why?

8 I agree, Mr. Landis agrees, that the State has
9 the overwhelming case of guilt against Delarian Wilson.

10 And the prosecution is banking on you to transfer
11 your outrage at Delarian Wilson onto Narcus.

12 What did the witnesses tell us in this case?

13 Well, they told us a lot.

14 They said someone came in and said, get down on
15 the floor. That was Delarian Wilson.

16 They said, somebody cocked a nine millimeter, and
17 a bullet ejects, and it hits the coffee table and lands
18 on the floor. That was Delarian Wilson.

19 Kidnapping Ryan Tognotti, forcing him into a car
20 to go to an ATM to withdraw money while he's got a gun
21 in his hip. That was Delarian Wilson.

22 Ordering sex at gunpoint. Wilson.

23 Holding a pillow over somebody's head and put a
24 gun pointed at it during oral sex. That was Delarian
25 Wilson.

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1 Holding a gun to Justin Richardson's head while
2 he's down on his knees after he just gave him some
3 condoms for about ten seconds and then saying, you know
4 what, I'm just joking with you. That was Delarian
5 Wilson.

6 Robbing friends at gunpoint to then move to
7 Colorado when you transferred to another school to play
8 football. That was Delarian Wilson.

9 Threatening to commit murder in that house if
10 someone does not have sex with Danielle Browning. That
11 was Delarian Wilson.

12 Now, in contrast what did we learn about Narcus?
13 Nervous.

14 Pacing.

15 Sitting on the stairs, wondering if he should
16 leave.

17 Doing nothing to anybody in that room, while
18 Delarian Wilson is kidnapping Ryan Tognotti and
19 terrorizing him while he drives a car at gunpoint.

20 Narcus Wesley went to that Great Dane house with
21 the false pretense of buying marijuana, a false pretense
22 created by Delarian Wilson. I went there to buy
23 marijuana.

24 I know Kameron, played football with Kameron.

25 It was All-star Weekend, February. I got a call
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1 from Kameron. We are friends. He said, let's get out,
2 let's go do something.

3 I talked to my dad, asked --

4 THE COURT REPORTER: Counsel, I can't hear you.

5 MR. BANKS: And we're in a part of town I didn't
6 know. I don't live in Henderson.

7 We go up to the door, and I knock on the door.

8 Kam told me to step aside.

9 The door starts to open.

10 We go in, and Kam pulls out a gun and says,
11 everybody get down on the floor.

12 I'm not sure what I was supposed to do, should I
13 get down on the floor. It's not the Kam that I know.

14 Those kids are down on the floor, and Kam goes
15 over and cocks his gun, and a bullet flies out.

16 Then he says, is there anybody else here?

17 And those kids say, yeah, Justin's in his bedroom
18 with his girlfriend.

19 I'm just kind of standing off in the background.

20 This was like a movie.

21 I'm not saying anything.

22 The next thing I know Delarian, Kam Wilson, is
23 leading this guy and this girl down a dark hallway into
24 this other room at gunpoint, and then he starts asking,
25 whose got money, we need at least a thousand dollars.
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1 And nobody has any money.

2 Then I'm getting nervous, and I'm not saying
3 anything.

4 And Kam says, who has an ATM card, and one of
5 those kids on the floor says, I do, and another one
6 says, I do.

7 Kam took him, and they left, and I was there in
8 that house with those guys.

9 Can you imagine?

10 Can you imagine being in that situation, some guy
11 that you know from football all of a sudden is robbing
12 people at gunpoint when you are going to a house to buy
13 some blunt. What do you do?

14 Guys waving guns around, cocking pistols. What
15 do you do in that situation?

16 Was he afraid of him?

17 Let me think about that for a second.

18 How about Delarian Wilson?

19 Mr. Landis had a great question for Detective
20 Weske. He asked him has he ever heard the phrase that
21 snitches get stitches, and you know what Weske said, and
22 very clearly, the last words on that interview by Weske
23 with Narcus, you are going to have a problem with
24 Delarian when you get in here, and then he cuts off.

25 You know, with respect to Counts 1 through 16 in
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1 this case, the evidence clearly did not show that Narcus
2 directly committed any of those offenses, you know that.

3 I submit to you that the evidence did not show
4 that he aided and abetted in those offenses, nor did he
5 conspire in those offenses.

6 To the contrary, the evidence on those counts is
7 that he's nervous, he's pacing, he's not doing or saying
8 anything to anybody.

9 You know, the evidence, when you take it as a
10 whole, when you take it as a whole, and you put the
11 hearing in Wilson's statement versus Narcus Wesley's
12 statement, you need to reconcile it with something, and
13 I suggest that you folks, and you all took notes, and we
14 all heard what those witnesses said, I suggest that you
15 folks reconcile the words of Delarian Wilson and the
16 words of Narcus Wesley with the words of the people in
17 that house and find out who is between those two is the
18 most consistent.

19 The evidence in this case shows that Narcus
20 Wesley is just there under a false pretense, until,
21 until Delarian Wilson threatens to commit murder, and
22 that's what we heard on that stand, somebody's going to
23 get killed. I don't need to tell you this, that is a
24 murder threat. And it is Delarian Wilson's agenda, and
25 Delarian Wilson's agenda alone, to go and rob anybody.
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1 A lot of instructions.
 2 Ladies and gentlemen, mere presence and
 3 association with somebody, it's not just legal
 4 mumbo-jumbo, instructions, it's not just legal
 5 mumbo-jumbo, the law recognizes, the law recognizes that
 6 two people can be in a situation, and one has a
 7 nefarious agenda, and the other does not, and the law is
 8 crystal clear that the one that does not have the
 9 nefarious agenda cannot be held criminally liable for
 10 just being there. Simply being in the company of
 11 Delarian Wilson, that's not enough. Just because he's
 12 there pacing, nervous, not doing anything, that is not
 13 enough.

14 No matter how many times we talk about the bad
 15 stuff that went on in that house, and it was bad, the
 16 evidence you have seen is not enough.

17 I submit to you that with thoughtful review of
 18 the evidence in this case you will see that it's not
 19 enough.

20 The gun.

21 Well, we know they didn't find a gun.

22 We know Narcus said he didn't have a gun.

23 You say well, Jeff, these people say he had a
 24 gun, they say they saw a gun.

25 Well, some of them did, some of the witnesses did
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1 testify to that.

2 I want to take a few moments and talk about the
 3 reliability of that testimony.

4 As the Judge just instructed you, we're talking
 5 beyond a reasonable doubt. That means that in this room
 6 on this case you have got to have an abiding conviction
 7 of the truth of the charge. That means you got to know
 8 it today, you got to know it tomorrow, you got to know
 9 it ten years from now, you got to know for the rest of
 10 your lives.

11 You know why?

12 Because you got to live with that decision for
 13 the rest of your lives because he's got to live with
 14 your decision for the rest of his life.

15 I'll tell you what, this was a big case, and I'll
 16 tell you something else, the police work on this case
 17 was pretty good.

18 I'm going to take it a step further.

19 The police were on this work on this case was
 20 really good, it was outstanding.

21 And we heard police officer after police officer
 22 testify about the steps they take to preserve the
 23 integrity and the reliability of that investigation that
 24 they are building that case upon, and they did that.

25 But you know what, God bless them, there is some
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1 things that they can't control, and they told you that
 2 too.

3 What did the witnesses tell us about what went on
 4 before the police were even called, before the police
 5 got there?

6 What happened was, a group discussion about who
 7 saw what, who was where, who didn't see what, why, who
 8 was saying what, who was standing where, who was talking
 9 to whom, and all of that, that back and forth together,
 10 went into their decision to call the police, and you
 11 know what, it was the right decision.

12 But we all know because the police officers told
 13 us that the one thing that they want to avoid when they
 14 are building a case is contamination between potential
 15 witnesses. They don't like that.

16 Why?

17 Because they told you why, it's because it leads
 18 to unreliable accusations and evidence.

19 Not everybody said they saw a gun, and I ask you
 20 to go over all of that testimony with a fine-tooth comb,
 21 taking into consideration that back and forth for a
 22 pretty good chunk of time, for police officers when they
 23 are conducting an investigation. They don't want that.
 24 Unfortunately they've got it in this case, and I submit
 25 to you that it needs to be considered when you are
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1 deciding if you have an abiding conviction of the truth
 2 of the charges, all the charges, including the gun.

3 You are 90 percent done. The other ten percent
 4 is up to you.

5 When Delarian Wilson says he's going to rob
 6 somebody, he robs somebody.

7 When Delarian Wilson says he's going to kidnap
 8 somebody, he kidnaps them, puts them in a car and takes
 9 them to the ATM at gunpoint.

10 When Delarian Wilson says, you better start
 11 having sex right now, people start having sex right now.
 12 He forces people into sex, and it's escalating, and it's
 13 escalating, and it's getting worse, and the stakes are
 14 getting hire, and that room is getting scarier.

15 So when Delarian Wilson says, if somebody doesn't
 16 have sex with this girl, somebody's going to die, there
 17 is not a reason in that room, and there is not a reason
 18 in the world, when he's got a gun in his hand, that
 19 somebody is not going to die if somebody doesn't have
 20 sex in that room with her, if somebody does not get with
 21 Danielle Browning.

22 This psychopath makes good on his threats.

23 We all heard the evidence in this case. It is
 24 after that threat that Narcus Wesley's involvement
 25 increases.

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1 Why?

2 Well, it's because of one of two things.

3 It's either because Narcus Wesley is a sick,

4 demented person who gets off on violent sexual

5 situations that none of us can conceive in our wildest

6 dreams, it's either that, or he is reacting in a scary,

7 dangerous by all accounts, situation.

8 He's either the sicko that I've described, or is

9 caught up in this surreal situation that is like a

10 movie, a scary movie I would suggest.

11 And I want to explain to you why the evidence in

12 this case shows that he is caught up in a scary

13 situation.

14 He's pacing.

15 He's nervous.

16 He asks her if he can touch her.

17 The State's right, no, it's not a consent case, I

18 mean, it's not consent, it's not.

19 But isn't that a peculiar statement, he asks if

20 he can touch her, isn't that a peculiar statement in

21 that situation?

22 I mean, he could have talked to her in a sexually

23 degrading way while Delarian's off at the ATM.

24 He could have raped her while Delarian's off at

25 the ATM.

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1 He didn't.

2 He could have forced her to perform oral sex

3 while Delarian's off at the ATM.

4 He didn't.

5 He did touch her.

6 Why?

7 Because if someone did not do something sexual to

8 Danielle Browning at that moment, somebody was going to

9 die, and you know what, then we would all be here on a

10 murder case.

11 Yeah, I can get -- Let me do it, let me touch

12 her, I can get hard.

13 We're going to hear more of that I imagine.

14 What Narcus did was vile.

15 It was disgusting.

16 It was horrific.

17 And Danielle didn't deserve that. She didn't

18 deserve that.

19 It was bad, and don't think that everybody in

20 this room doesn't feel that way.

21 But what he did was on the heels of a death

22 threat, and it done under duress.

23 Was the situation of his own making?

24 No.

25 Now, the State might get up here and start

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1 asking, why didn't he leave, why didn't he get out of

2 there?

3 Well, while Delarian's at the ATM, why didn't he

4 say, stop?

5 Why didn't he respond differently?

6 Why didn't he do this?

7 Why didn't he do that?

8 Those are all interesting questions. Those are

9 all interesting questions.

10 But the fact that Narcus did not react and

11 respond differently under those circumstances is not

12 evidence of a crime.

13 The fact that Narcus did not respond differently

14 at the time is not evidence of a crime.

15 It's interesting to think about, and it's

16 interesting to discuss, and I suppose after your verdict

17 those might be things to talk about, but it is not

18 evidence of a crime.

19 And in a few minutes I think the prosecutor's

20 going to get up here and try and substitute those

21 questions for evidence of a crime, but they are simply

22 not proof of any crimes committed. Don't let them spin

23 it any other way.

24 If they do, I want you to consider this: They

25 have a lack of proof to convict Narcus. They start

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1 asking those questions, it's a lack of proof to convict

2 Narcus.

3 You got to talk about one more thing.

4 It's no secret that Delarian Wilson plead guilty

5 to three crimes, three, and in a few minutes the

6 prosecutor's going to get up here and with a straight

7 face ask you to convict Narcus of 18 crimes.

8 How is that just?

9 How is that fair?

10 The system is about justice, and justice requires

11 you only to find fault where it is warranted.

12 The laws that you have to decipher, very

13 technical, a lot of stuff there, but I submit to you

14 that it is not long, nor is it boring, it's my client's

15 life.

16 You heard the evidence, and the government is

17 banking on you to transfer your outrage at Delarian

18 Wilson onto Narcus.

19 Hold Narcus accountable only for what he did, but

20 more importantly do not hold him accountable for that

21 what he did not do.

22 THE COURT: Thank you, counsel.

23 MS. LUZAICH: The guy's a hero.

24 He took one for the team.

25 He stuck his finger in her vagina to save the

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1 world.
 2 I mean, that's what they are asking you to do
 3 right here and right now.
 4 You should be held responsible for the choices
 5 that you make, absolutely positively.
 6 He chose to go to that home on Great Dane with
 7 his friend Delarian Wilson. He chose to. Now, they are
 8 telling you that the only reason he went there is to buy
 9 marijuana.
 10 But where did that evidence come from?
 11 The self-serving statement of the Defendant to
 12 the police.
 13 Now, let's talk about the statement the Defendant
 14 made to the police for one second.
 15 Was any of it true?
 16 Let's see. It starts out with a lie.
 17 Do you have any idea why we are here?
 18 I have no idea.
 19 Let's see, he's in a house for three hours
 20 holding kids at gunpoint, causing kids to have sex with
 21 each other, sticking his finger in a vagina, and he has
 22 no idea why they may be at his house less than 48 hours
 23 later.
 24 Please.
 25 They say, do you know Kameron?
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1 He says, I know of a Kameron.
 2 Well, less than 48 hours ago he spent three hours
 3 with Kameron waving guns, forcing kids to have sex, and
 4 sticking his finger in a vagina.
 5 He knows of a Kameron.
 6 In his statement to the police he first says,
 7 well, I touched her booty.
 8 And then less than a minute-and-a-half later he
 9 says, I didn't touch no one.
 10 And then less than a minute-and-a-half later all
 11 of a sudden he's rubbing her vagina.
 12 He can't get his own statement straight. You
 13 can't accept anything that he said to the police, except
 14 that he was there.
 15 And the same thing with Delarian Wilson's
 16 statement. The only thing that you guys can accept as
 17 true from either one of their statements is that they
 18 were there because what happened?
 19 Delarian Wilson says, Narcus had the gun, and
 20 Narcus did all the bad things, except I went to the ATM.
 21 What does Narcus Wesley say?
 22 Delarian Wilson had the gun, he did all the bad
 23 things, I rubbed her vagina though.
 24 So really the only thing that you can take from
 25 their statements is that they were there.
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1 You know, I'm sorry, I'm going to little out of
 2 order here, but I'm kind of -- the Defense attorney says
 3 he was nervous, he was pacing, and that's how you know
 4 he was nervous, and he was merely present, and he's
 5 wondering where is he and how long is this going to
 6 take.
 7 You want to know why he was nervous and pacing
 8 while Delarian Wilson was gone?
 9 Because he was afraid Delarian Wilson wasn't
 10 coming back, he was taking the money for himself and
 11 leaving him there with the gun and the four or five kids
 12 when the police eventually did show up.
 13 He's worried he's not coming back, going off with
 14 the money, or maybe he had already gotten caught by the
 15 police and coughing him up like a hair ball, which he
 16 ultimately did, Delarian Wilson coughed him up like a
 17 hair ball. So did he sort of.
 18 Where is the gun?
 19 Just because there was no gun found, does that
 20 mean there wasn't a gun?
 21 Have you ever heard of somebody ditching a gun?
 22 We know that there was a gun there, at least one.
 23 Now, the kids said there were two guns there, but
 24 we know for a fact there was at least one gun there
 25 because we have a bullet.
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1 And how did people know it was a nine millimeter
 2 gun?
 3 Because on the bullet it says, nine millimeter.
 4 So we know there was a gun there.
 5 Yet they didn't find a gun in Delarian Wilson's
 6 hotel room.
 7 They didn't find a gun in the car he was driving.
 8 They didn't find a gun at Narcus' parents' house.
 9 Because they ditched the guns. That's easy.
 10 Ryan Tognotti is sitting at home watching a
 11 movie, knock, knock, knock on the door.
 12 He gets up, and he walks over to the door, and
 13 you saw in the picture this is a very small area, I
 14 don't know if I will be able to find the picture, very
 15 small area, he's sitting on the couch, TV's there, it's
 16 on, therefore the room is fairly lit up, plus the lights
 17 are on.
 18 He answered the door, and there are two men
 19 there. You can see clearly, or he -- Sorry -- he can
 20 see clearly two guys there.
 21 And after this slight interchange, and they
 22 realize that there is no Grant, and therefore no money,
 23 both of the guys pick up their shirts and pull out guns,
 24 both of the guys.
 25 There is no perception problem there.
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1 There is no making anything up there.
 2 He sees immediately that both of them had a gun.
 3 Now, you know the Defense would have you believe
 4 that all of these kids' statements and perceptions were
 5 compromised because they had some conversation before
 6 the police got there.

7 Well, you know, if there perceptions and their
 8 recollections were so compromised, wouldn't all of them
 9 have said exactly the same thing to you?

10 Now there wouldn't have been any I don't knows,
 11 or I don't remembers, but Aitor told you, you know what,
 12 I don't think I did see a gun in the second one's hands,
 13 I was nervous, I have it on the ground right away, I
 14 didn't see a gun in the second one's hands.

15 Clint Tognotti told you, well, he was 75 percent
 16 sure.

17 If they had all gotten together and cooked this
 18 up about the two guns, all six of them would have been
 19 100 percent sure that there were two guns.

20 So there is no compromise there.

21 He took one for the team.

22 This psychopath, what did he say, this psychopath
 23 makes good on his threats?

24 What makes us think that?

25 Did he shoot anybody?

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1 Did you hear any one of those six kids say he
 2 shot them?

3 Did he hit anybody with a gun?

4 Did he hurt, physically hurt, anybody?

5 We didn't hear any of that.

6 Now, in truth and in fact we heard from Grant,
 7 who was his friend, who he robbed a year earlier, and
 8 Grant, who knows him, Grant doesn't even believe that
 9 it's a robbery because he knows Delarian Kameron Wilson,
 10 and he knows he's not going to hurt him, Grant knows
 11 Wilson's not going to hurt him.

12 You heard him explain to his parents on that
 13 tape, it's my homeboy, he's my friend, he knows him, and
 14 he knows, Narcus Wesley knows, that Delarian Wilson
 15 isn't going to hurt anybody. He knows that.

16 Should you be outraged at the conduct of Delarian
 17 Wilson?

18 Absolutely, positively.

19 Does the State want you to transfer that outrage
 20 on to Narcus Wesley?

21 No way.

22 Delarian Wilson plead guilty, Delarian Wilson
 23 accepted responsibility, and he's going to be sentenced,
 24 and you have to trust that the Court is going to
 25 sentence him appropriately.

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1 But what you also need to know, and when you
 2 look, go back there and look at Defense Exhibit G, that
 3 is the guilty plea agreement, and you know that because
 4 it says right here guilty plea agreement, and attached
 5 to the very back of it is what is called an Amended
 6 Information, it is the charging document he plead guilty
 7 to, and you will notice when you look at it that he
 8 plead guilty to two Counts of robbery with use of deadly
 9 weapon. However, in those two Counts all four of the
 10 robbery victims are named.

11 He plead guilty to robbing Justin Richardson and
 12 Justin Foucault and Danielle Browning and Ryan Tognotti.
 13 So he did accept responsibility for what he did there.

14 He plead guilty to the sexual assault. He plead
 15 guilty to forcing Danielle and Justin to perform sexual
 16 acts on each other, which is what he did.

17 Now, he says that he did it in an aiding and
 18 abetting, although he said, aiding and abiding manner,
 19 that he aided and abetted Narcus Wesley, but he plead
 20 guilty to the sexual assault's involving Danielle and
 21 Justin.

22 No one in the entire residence said that Delarian
 23 Wilson put his finger in Danielle's vagina.

24 Danielle said Narcus Wesley put his finger in her
 25 vagina, and all five of the guys said that they heard

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1 Narcus Wesley by Danielle when she was in the chair with
 2 her legs in the air, not Delarian Wilson.

3 Be outraged at Narcus Wesley for what Narcus
 4 Wesley did.

5 He chose to go to that house with his friend
 6 Delarian Wilson.

7 He chose to go there with a gun, and we know that
 8 because Ryan saw it at a time that perception wasn't a
 9 problem. He saw it when the lights were on.

10 He saw both of them pull guns out.

11 He chose to go with his friend Delarian Wilson
 12 with a gun, while Delarian Wilson was telling the kids
 13 to get down.

14 Did he tell Delarian Wilson, don't do that, Kam?

15 When Delarian Wilson was taking the cell phones
 16 and the money and the ATM cards, did he tell him, Kam,
 17 don't do that?

18 When Delarian Wilson took Ryan Tognotti and put
 19 him in the Civic and took him to the ATM, did Narcus
 20 Wesley tell him, come on, Kam, don't do that?

21 No, he held his gun, and he kept the other five
 22 on the ground.

23 He was an active participant.

24 He kept them there.

25 He kept them from calling the police.

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1 He kept them from doing anything.
 2 When Wilson came back with Ryan Tognotti, and he
 3 told these kids to perform sexual acts, Danielle and
 4 Justin, did Narcus Wesley ever tell him, don't do that,
 5 Kam, that is not nice?
 6 No, he said, I'm hard, I'll do it, I'll fuck her.
 7 I'm not quite as delicate as Miss Kollins.
 8 He had no problem with it.
 9 He was excited those kids said that.
 10 He was confident.
 11 He was eager.
 12 That's not merely present. That is an active
 13 participate.
 14 Be outraged at him for what he did.
 15 Now, Mr. Banks tells you, well, when I come up
 16 here, and I talk about all the things he didn't do, that
 17 that is lack of evidence.
 18 No, that is lack of duress.
 19 The Defense has raised duress as a defense that
 20 he took one for the team, but he did it because he
 21 thought somebody was going to die. He knew nobody was
 22 going to die.
 23 He didn't do any of those things because he
 24 wanted to be there. He wanted to get the money from the
 25 robbery, and he wanted to get the things from the sex
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1 act. He is the one who stuck his finger in her vagina.
 2 He is the one. The active participant, not the merely
 3 present person.
 4 There was no evidence whatsoever that Narcus
 5 Wesley believed himself that his life was in danger,
 6 none whatsoever. And in order for you to believe there
 7 was duress, you would have to believe first that a
 8 reasonable person would believe that his own life was in
 9 danger, not somebody else's, his own, and that that
 10 person actually believed that his own life was in
 11 danger.
 12 He knew his homeboy wasn't going to hurt him.
 13 There is no evidence whatsoever that he thought
 14 his life was in danger.
 15 At the beginning of the trial the Defense said
 16 that the case is about choices.
 17 In his closing shortly ago Mr. Banks said that
 18 this case is about choices, and it is.
 19 You know, you can't choose your family. There
 20 are a lot of things you can't choose.
 21 But the one thing in your life that you can
 22 choose is your friends.
 23 He chose to be friends with Delarian Wilson.
 24 He chose to go there that day.
 25 He chose to take a gun.
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1 He chose to let this happen.
 2 He chose to participate.
 3 He held a gun while these kids laid there
 4 terrorized.
 5 He stuck his finger in her vagina.
 6 He is guilty of all of those Counts.
 7 Thank you.
 8 THE COURT: Thank you, counsel.
 9 Joe's going to go get Tatyana, and we're going to
 10 swear her in, both Joe and Tatyana, to take charge of
 11 the jury.
 12 Before you deliberate -- or rather when you start
 13 to deliberate, somebody has to be in charge of the jury
 14 from now until the time you reach the verdict.
 15 (Court officers sworn in by the clerk to take
 16 charge of the jury during deliberations.)
 17 THE COURT: All right. Joe's got the original
 18 instructions. He's got the verdict forms.
 19 I want everybody except Melinda Wright to stay
 20 there. I got special instructions for you.
 21 Everybody else go ahead and go with Joe.
 22 (Jury excused from the courtroom for deliberation
 23 purposes, with the exception of the alternate juror, and
 24 the following proceedings were had.):
 25 THE COURT: Melinda, you are in a special
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1 category. You are still on the jury, but you are the
 2 designated alternate at this point.
 3 The admonishments that I have given you
 4 throughout the course of this trial still apply to you.
 5 You are a member of this jury. You are just not
 6 deliberating.
 7 You are subject to the same admonishments I've
 8 given you all along here.
 9 You are not to discuss this case, converse with
 10 anybody, about the case whatsoever.
 11 You are not to listen or read or watch any
 12 reports or commentaries through any medium of
 13 information, radio, television, internet, newspapers.
 14 Don't form or express any opinion whatsoever on
 15 any subject having to do with this trial, any person
 16 having to do with this trial, until such time you get a
 17 call from Tatyana that you have been discharged.
 18 If something happens during the course of
 19 deliberations, one of the jurors -- somebody already
 20 left, we have one juror short, we have 14 left in
 21 reserve, you go with her, give her your phone numbers so
 22 she knows how to get ahold of you because you will need
 23 to be available for something less than an hour or 45
 24 minutes.
 25 In the event it's not necessary to have you
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1 participate in the deliberations she will also call you
2 and tell you the jury has reached a verdict, and that
3 you at that point are no longer subject to the
4 admonishments I have given you.

5 At that point you will be discharged from your
6 duties as a juror and be free to discuss the case as you
7 see fit.

8 Okay. In case I don't see you again, I want to
9 tell you how much I appreciate the effort that you have
10 given this case.

11 You guys have all been wonderful, been prompt,
12 attentive.

13 This is a very grateful job that you have
14 undertaken, and I truly appreciate the fact that you
15 have been so good about this.

16 Thank you very much. I appreciate it.

17 Go ahead, and go with Tatyana, and she will get
18 all the information from you, and she will also be the
19 one you will converse with and let you know you are off
20 jury duty.

21 Okay?

22 ALTERNATE JUROR: Okay.

23 THE COURT: Okay.

24 (Alternate juror now excused from the courtroom.)
25

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1 (Thereupon, the following proceedings were had out of
2 the presence of the jury.):

3 THE COURT: Everybody's got a number to be
4 reached?

5 Stay within 30 minutes of the courthouse,
6 something like that.

7 (Thereupon, a discussion was had off the record.)

8 (Thereupon, a recess was had.)
9

10 (Proceedings concluded for the evening.)
11
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CERTIFICATE

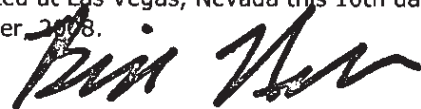
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2
3
4 STATE OF NEVADA)

5) ss.

6 CLARK COUNTY)
7
8

9 I, Bill Nelson, RMR, CCR 191, do hereby certify
10 that I reported the foregoing proceedings; that the same
11 is true and correct as reflected by my original machine
12 shorthand notes taken at said time and place before the
13 Hon. James M. Bixler, District Court Judge, presiding.

14 Dated at Las Vegas, Nevada this 10th day of
15 November, 2008.
16
17
18



19 Bill Nelson, RMR, CCR 191,
20 Certified Court Reporter
21 Las Vegas, Nevada
22
23
24
25

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1 INST

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20 2:53 pm

CHARLES J. SHORT
CLERK OF THE COURT

BY Theresa Lee
THERESA LEE DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 -vs-)

11 NARCUS SAMONE WESLEY)

12 Defendants.)

CASE NO: C232494

DEPT NO: XXIV

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this case. It is
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it
20 would be a violation of your oath to base a verdict upon any other view of the law than that
21 given in the instructions of the Court.

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AA 001129

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

1
2 An Information is but a formal method of accusing a person of a crime and is not of
3 itself any evidence of his guilt.

4 In this case, it is charged in an Second Amended Information that on or about the 18th
5 day of February, 2007, within the County of Clark, State of Nevada, contrary to the form,
6 force and effect of statutes in such cases made and provided, and against the peace and
7 dignity of the State of Nevada,

8 COUNT 1 - CONSPIRACY TO COMMIT BURGLARY

9 Defendant and DELARIAN KAMERON WILSON did then and there meet with each
10 other and between themselves, and each of them with the other, wilfully and unlawfully
11 conspire and agree to commit a crime, to-wit: Burglary, and in furtherance of said
12 conspiracy, Defendant and DELARIAN KAMERON WILSON did commit the acts as set
13 forth in Counts 3 & 11, said acts being incorporated by this reference as though fully set
14 forth herein.

15 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

16 Defendant and DELARIAN KAMERON WILSON did then and there meet with each
17 other and between themselves, and each of them with the other, wilfully, unlawfully, and
18 feloniously conspire and agree to commit a crime, to-wit: Robbery, and in furtherance of
19 said conspiracy, Defendant and DELARIAN KAMERON WILSON did commit the acts as
20 set forth in Counts 4, 6, 7, & 9, said acts being incorporated by this reference as though fully
21 set forth herein.

22 COUNT 3 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

23 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,
24 unlawfully, and feloniously enter, while in possession of a deadly weapon, to-wit: a hand
25 gun, with intent to commit larceny and/or a felony, to-wit: Robbery, the house at 690 Great
26 Dane Court, Henderson, Clark County, Nevada, the Defendant being criminally liable under
27 one or more of the following principles of criminal liability, to-wit: (1) by directly
28 committing this crime; and/or (2) by Defendant and DELARIAN KAMERON WILSON

1 aiding or abetting one another in the commission of this crime by assisting one another and
2 by providing counsel and encouragement each carrying out specific acts with the intent that
3 this crime be committed; and/or (3) pursuant to a conspiracy to commit this crime.

4 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

5 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,
6 unlawfully, and feloniously take personal property, to-wit: condoms, from the person of
7 JUSTIN RICHARDSON, or in his presence, by means of force or violence or fear of injury
8 to, and without the consent and against the will of the said JUSTIN RICHARDSON, said
9 Defendant and DELARIAN KAMERON WILSON using a deadly weapon, to-wit: a hand
10 gun, during the commission of said crime, the Defendants being criminally liable under one
11 or more of the following principles of criminal liability, to-wit: (1) by directly committing
12 this crime; and/or (2) by Defendant and DELARIAN KAMERON WILSON aiding or
13 abetting one another in the commission of this crime by assisting one another and by
14 providing counsel and encouragement each carrying out specific acts with the intent that this
15 crime be committed; and/or (3) pursuant to a conspiracy to commit this crime.

16 COUNT 5 - ASSAULT WITH USE OF A DEADLY WEAPON

17 Defendant and DELARIAN KAMERON WILSON did wilfully, unlawfully, and
18 feloniously place another person in reasonable apprehension of immediate bodily harm, to-
19 wit: AITOR ESKANDON, by pointing a hand gun at and forcing the said AITOR
20 ESKANDON to lay on the ground while personal property was taken from others in his
21 presence, said Defendant and DELARIAN KAMERON WILSON using a deadly weapon,
22 to-wit: a hand gun, during the commission of said crime, the Defendant being criminally
23 liable under one or more of the following principles of criminal liability, to-wit: (1) by
24 directly committing this crime; and/or (2) by Defendant and DELARIAN KAMERON
25 WILSON aiding or abetting one another in the commission of this crime by assisting one
26 another and by providing counsel and encouragement each carrying out specific acts with the
27 intent that this crime be committed; and/or (3) pursuant to a conspiracy to commit this crime.

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1 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,
3 unlawfully, and feloniously take personal property, to-wit: money, from the person of
4 JUSTIN FOUCAULT, or in his presence, by means of force or violence or fear of injury to,
5 and without the consent and against the will of the said JUSTIN FOUCAULT, said
6 Defendant and DELARIAN KAMERON WILSON using a deadly weapon, to-wit: a hand
7 gun, during the commission of said crime, the Defendant being criminally liable under one
8 or more of the following principles of criminal liability, to-wit: (1) by directly committing
9 this crime; and/or (2) by Defendant and DELARIAN KAMERON WILSON aiding or
10 abetting one another in the commission of this crime by assisting one another and by
11 providing counsel and encouragement each carrying out specific acts with the intent that this
12 crime be committed; and/or (3) pursuant to a conspiracy to commit this crime.

13 COUNT 7 - ROBBERY WITH USE OF A DEADLY WEAPON

14 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,
15 unlawfully, and feloniously take personal property, to-wit: money, from the person of
16 RYAN TOGNOTTI, or in his presence, by means of force or violence or fear of injury to,
17 and without the consent and against the will of the said RYAN TOGNOTTI, said Defendant
18 and DELARIAN KAMERON WILSON using a deadly weapon, to-wit: a hand gun, during
19 the commission of said crime, the Defendant being criminally liable under one or more of
20 the following principles of criminal liability, to-wit: (1) by directly committing this crime;
21 and/or (2) by Defendant and DELARIAN KAMERON WILSON aiding or abetting one
22 another in the commission of this crime by assisting one another and by providing counsel
23 and encouragement each carrying out specific acts with the intent that this crime be
24 committed; and/or (3) pursuant to a conspiracy to commit this crime.

25 COUNT 8 - ASSAULT WITH USE OF A DEADLY WEAPON

26 Defendant and DELARIAN KAMERON WILSON did wilfully, unlawfully, and
27 feloniously place another person in reasonable apprehension of immediate bodily harm, to-
28 wit: CLINTON TOGNOTTI, by pointing a hand gun at and forcing the said CLINTON

1 TOGNOTTI to lay on the ground while personal property was taken from others in his
2 presence, said Defendant and DELARIAN KAMERON WILSON using a deadly weapon,
3 to-wit: a hand gun, during the commission of said crime, the Defendant being criminally
4 liable under one or more of the following principles of criminal liability, to-wit: (1) by
5 directly committing this crime; and/or (2) by Defendant and DELARIAN KAMERON
6 WILSON aiding or abetting one another in the commission of this crime by assisting one
7 another and by providing counsel and encouragement each carrying out specific acts with the
8 intent that this crime be committed; and/or (3) pursuant to a conspiracy to commit this crime.

9 COUNT 9 - ROBBERY WITH USE OF A DEADLY WEAPON

10 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,
11 unlawfully, and feloniously take personal property, to-wit: cell phone, from the person of
12 DANIELLE BROWNING, or in her presence, by means of force or violence or fear of
13 injury to, and without the consent and against the will of the said DANIELLE BROWNING,
14 said Defendant and DELARIAN KAMERON WILSON using a deadly weapon, to-wit: a
15 hand gun, during the commission of said crime, the Defendant being criminally liable under
16 one or more of the following principles of criminal liability, to-wit: (1) by directly
17 committing this crime; and/or (2) by Defendant and DELARIAN KAMERON WILSON
18 aiding or abetting one another in the commission of this crime by assisting one another and
19 by providing counsel and encouragement each carrying out specific acts with the intent that
20 this crime be committed; and/or (3) pursuant to a conspiracy to commit this crime.

21 COUNT 10 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

22 Defendant and DELARIAN KAMERON WILSON did wilfully, unlawfully,
23 feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct,
24 conceal, kidnap, or carry away RYAN TOGNOTTI, a human being, with the intent to hold
25 or detain the said RYAN TOGNOTTI against his will, and without his consent, for the
26 purpose of committing Robbery, said Defendant and DELARIAN KAMERON WILSON
27 using a deadly weapon, to-wit: a hand gun, during the commission of said crime, the
28 Defendant being criminally liable under one or more of the following principles of criminal

1 liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and
2 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this
3 crime by assisting one another and by providing counsel and encouragement each carrying
4 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a
5 conspiracy to commit this crime.

6 COUNT 11 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

7 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,
8 unlawfully, and feloniously enter, while in possession of a deadly weapon, to-wit: hand gun,
9 with intent to commit larceny and/or a felony, to-wit: Robbery, the Honda Civic belonging
10 to RYAN TOGNOTTI, the Defendant being criminally liable under one or more of the
11 following principles of criminal liability, to-wit: (1) by directly committing this crime;
12 and/or (2) by Defendant and DELARIAN KAMERON WILSON aiding or abetting one
13 another in the commission of this crime by assisting one another and by providing counsel
14 and encouragement each carrying out specific acts with the intent that this crime be
15 committed; and/or (3) pursuant to a conspiracy to commit this crime.

16 COUNT 12 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

17 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,
18 unlawfully, and feloniously sexually assault with use of a deadly weapon, to-wit: a hand gun,
19 and subject DANIELLE BROWNING, a female person, to sexual penetration, to-wit: by
20 forcing DANIELLE BROWNING to perform fellatio on JUSTIN RICHARDSON while
21 threatening to kill her or others if she didn't perform said sexual act, against her will, the
22 Defendant being criminally liable under one or more of the following principles of criminal
23 liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and
24 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this
25 crime by assisting one another and by providing counsel and encouragement each carrying
26 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a
27 conspiracy to commit this crime.

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1 COUNT 13 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

2 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,
3 unlawfully, and feloniously sexually assault with use of a deadly weapon, to-wit: a hand gun,
4 and subject DANIELLE BROWNING, a female person, to sexual penetration, to-wit: by
5 forcing DANIELLE BROWNING to be subjected to cunnilingus performed by JUSTIN
6 RICHARDSON while threatening to kill her or others if she didn't engage in said acts said
7 sexual act, against her will, the Defendant being criminally liable under one or more of the
8 following principles of criminal liability, to-wit: (1) by directly committing this crime;
9 and/or (2) by Defendant and DELARIAN KAMERON WILSON aiding or abetting one
10 another in the commission of this crime by assisting one another and by providing counsel
11 and encouragement each carrying out specific acts with the intent that this crime be
12 committed; and/or (3) pursuant to a conspiracy to commit this crime.

13 COUNT 14 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

14 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,
15 unlawfully, and feloniously sexually assault with use of a deadly weapon, to-wit: a hand gun,
16 and subject JUSTIN RICHARDSON, a male person, to sexual penetration, to-wit: by
17 forcing JUSTIN RICHARDSON to receive fellatio from DANIELLE BROWNING while
18 threatening to kill him and/or others if he did not engage in said sexual conduct, against his
19 will, the Defendant being criminally liable under one or more of the following principles of
20 criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and
21 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this
22 crime by assisting one another and by providing counsel and encouragement each carrying
23 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a
24 conspiracy to commit this crime.

25 COUNT 15 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

26 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,
27 unlawfully, and feloniously sexually assault with use of a deadly weapon, to-wit: a hand gun,
28 and subject JUSTIN RICHARDSON, a male person, to sexual penetration, to-wit: by

1 forcing JUSTIN RICHARDSON to perform cunnilingus on DANIELLE BROWNING while
2 threatening to kill him and/or others if he did not engage in said sexual conduct, against his
3 will, the Defendant being criminally liable under one or more of the following principles of
4 criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and
5 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this
6 crime by assisting one another and by providing counsel and encouragement each carrying
7 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a
8 conspiracy to commit this crime.

9 COUNT 16 - COERCION WITH USE OF A DEADLY WEAPON

10 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,
11 unlawfully, and feloniously use physical force, or the immediate threat of such force, against
12 RYAN TOGNOTTI, with intent to compel him to do, or abstain from doing, an act which he
13 had a right to do, or abstain from doing, by using a deadly weapon, to-wit: a hand gun, and
14 forcing RYAN TOGNOTTI to masturbate his penis, said acts being sexually motivated, the
15 Defendant being criminally liable under one or more of the following principles of criminal
16 liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and
17 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this
18 crime by assisting one another and by providing counsel and encouragement each carrying
19 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a
20 conspiracy to commit this crime.

21 COUNT 17 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

22 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,
23 unlawfully, and feloniously sexually assault with use of a deadly weapon, to-wit: a hand gun,
24 and subject DANIELLE BROWNING, a female person, to sexual penetration, to-wit:
25 digital penetration, Defendant NARCUS WESLEY penetrating DANIELLE BROWNING's
26 vagina, however slight with his hand and/or one or more fingers, against her will, the
27 Defendant being criminally liable under one or more of the following principles of criminal
28 liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and

1 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this
2 crime by assisting one another and by providing counsel and encouragement each carrying
3 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a
4 conspiracy to commit this crime.

5 COUNT 18 – OPEN OR GROSS LEWDNESS WITH USE OF A DEADLY WEAPON

6 Defendant and DELARIAN KAMERON WILSON did then and there wilfully and
7 unlawfully commit an act of open or gross lewdness by touching and/or rubbing the chest
8 and/or buttocks of DANIELLE BROWNING, with use of a deadly weapon, to-wit: a hand
9 gun, the Defendant being criminally liable under one or more of the following principles of
10 criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and
11 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this
12 crime by assisting one another and by providing counsel and encouragement each carrying
13 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a
14 conspiracy to commit this crime.

15 It is the duty of the jury to apply the rules of law contained in these instructions to the
16 facts of the case and determine whether or not Defendant is guilty of one or more of the
17 offenses charged.
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A conspiracy is an agreement between two or more persons for an unlawful purpose. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator. However, mere knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one a party to conspiracy. Conspiracy is seldom susceptible of direct proof and is usually established by inference from the conduct of the parties. In particular, a conspiracy may be supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the existence of an agreement.

A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime.

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2 It is not necessary in proving a conspiracy to show a meeting of the alleged
3 conspirators or the making of an express or formal agreement. The formation and existence
4 of a conspiracy may be inferred from all circumstances tending to show the common intent
5 and may be proved in the same way as any other fact may be proved, either by direct
6 testimony of the fact or by circumstantial evidence, or by both direct and circumstantial
7 evidence.
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Once a person joins a conspiracy, that person remains a member until he withdraws from it. A person can withdraw from a conspiracy by taking some positive action which disavowed or defeated the purpose of the conspiracy. It is not enough if the evidence shows that the defendant merely ceased his own activities in furtherance of the conspiracy.

The State has the burden of proving beyond a reasonable doubt the defendant did not withdraw from the conspiracy.

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Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for a specific intent crime of a co-conspirator that follows as one of the probable and natural consequences of the object of the conspiracy so long as the specific intent crime was intended by the co-conspirator. A conspirator is also legally responsible for a general intent crime that follows as one of the probable and natural consequence of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.

Evidence that a person was in the company or associated with one or more other persons alleged or proven to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy. However, you are instructed that presence, companionship, and conduct before, during and after the offense are circumstances from which one's participation in the criminal intent may be inferred.

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

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2 Mere presence at the scene of the crime and knowledge that a crime is being
3 committed are not sufficient to establish that the defendant aided and abetted the crime,
4 unless you find beyond a reasonable doubt that the defendant is a participant and not merely
5 a knowing spectator. However, the presence of one at the commission of a crime of another
6 is evidence which can be considered in determining whether or not he is guilty of aiding or
7 abetting, as well as the defendant's presence, companionship, and conduct before, during and
8 after the participation in the criminal act.
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INSTRUCTION NO. 11

Every person who, by day or night, enters any house, room, tenement, shop, store, other building, or vehicle with the intent to commit a larceny and/or robbery therein is guilty of Burglary.

AA 001146

INSTRUCTION NO. 12

Larceny is defined as the stealing, taking and carrying away of the personal goods or property of another with the intent to permanently deprive the owner thereof.

AA 001147

1
2 Consent to enter is not a defense to the crime of burglary so long as it is shown that
3 entry was made with the specific intent to commit a larceny and/or robbery therein. Force
4 or a "breaking" as such is not a necessary element of the crime.

5 The intention with which entry was made is a question of fact which may be inferred
6 from the defendant's conduct and all other circumstances disclosed by the evidence.
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2 Every person who commits the crime of burglary, who has in his possession or gains
3 possession of any firearm or deadly weapon at any time during the commission of the crime,
4 at any time before leaving the structure, or upon leaving the structure, is guilty of burglary
5 while in possession of a weapon.

6 If more than one person commits a crime, and one of them possesses a deadly weapon
7 in the commission of that crime, each may be convicted of while in possession of the deadly
8 weapon if the unarmed offender had knowledge of the possession of the deadly weapon.
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2 Every person who, in the commission of a burglary, commits any other crime, may be
3 prosecuted for each crime separately.
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Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. A taking is by means of force or fear if force or fear is used to:

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

The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property. A taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear. Robbery is a general intent crime.

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2 The value of property or money taken is not an element of the crime of Robbery, and
3 it is only necessary that the State prove the taking of some property or money.
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2 Robbery is not confined to a fixed locus, but may spread over considerable and
3 varying periods of time. All matters immediately antecedent to and having direct causal
4 connection with the robbery are deemed so closely connected with it as to form in reality a
5 part of the occurrence. Thus, although acts of violence and intimidation preceded the actual
6 taking of the property and may have been primarily intended for another purpose. It is
7 enough to support the charge of robbery when a person takes the property by taking
8 advantage of the terrifying situation he created.
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2 Personal property is "in the presence" of a person, in respect to robbery, when it is
3 within the person's reach, inspection, observation or control, and the person could (if not
4 prevented by intimidation or threat of violence) retain possession of the property.
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A person who intentionally places another person in reasonable apprehension of immediate bodily harm is guilt of Assault.

Every person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for the purpose of committing robbery upon or from the person is guilty of Kidnapping in the First Degree, a specific intent crime.

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2 You are instructed that if you find that the State has established that the defendant has
3 committed first degree kidnapping you shall select first degree kidnapping as your verdict.
4 The crime of first degree kidnapping includes the crime of second degree kidnapping. You
5 may find the defendant guilty of second degree kidnapping if:

6 1. You have not found, beyond a reasonable doubt, that the defendant is guilty of
7 kidnapping of the first degree, and

8 2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty
9 of the crime of second degree kidnapping.

10 If you are convinced beyond a reasonable doubt that the crime of kidnapping has been
11 committed by the defendant, but you have a reasonable doubt whether such kidnapping was
12 of the first or of the second degree, you must give the defendant the benefit of that doubt and
13 return a verdict of kidnapping of the second degree.

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Every person who willfully and without authority of law seizes, inveigles, takes, carries away or kidnaps another person with the intent to keep the person secretly imprisoned within the state, or for the purpose of conveying the person out of the state without authority of law, or in any manner held to service or detained against his will, is guilty of kidnapping in the second degree.

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2 A person who subjects another person to sexual penetration, or who forces another
3 person to make a sexual penetration on himself or on another, against the victim's will or
4 under conditions in which the perpetrator knows or should know that the victim is mentally
5 or physically incapable of resisting or understanding the nature of his conduct, is guilty of
6 sexual assault.

7 "Sexual penetration" includes cunnilingus, fellatio, digital penetration, or any
8 intrusion, however slight, of any part of a person's body. Evidence of ejaculation is not
9 necessary.

10 Cunnilingus is a touching, however slight, of the female sexual organ by the mouth or
11 tongue of another person.

12 Fellatio is a touching, however slight, of the penis by the mouth or tongue of another
13 person.

14 Digital penetration is the placing, however slight, of one or more fingers into the
15 genital opening of another person.
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Where multiple sexual acts occur as part of a single criminal encounter a defendant may be found guilty for each separate or different act of sexual assault and/or lewdness.

Where a defendant commits a specific type of act constituting sexual assault and/or lewdness he may be found guilty of more than one count of that specific type of act of sexual assault if:

1. there is an interruption between the acts which are of the same specific type,
2. where the acts of the same specific type are interrupted by a different specific type of sexual assault or
3. For each separate object manipulated or inserted into the genital or anal opening of another.

Only one sexual assault occurs when a defendant's actions were of one specific type of sexual assault and those acts were continuous and did not stop between the acts of that specific type.

Physical force is not necessary in the commission of sexual assault. The crucial question is not whether a person was physically forced to engage in a sexual assault but whether the act was committed without his/her consent or under conditions in which the defendant knew or should have known, the person was incapable of giving his/her consent or understanding the nature of the act. There is no consent where a person is induced to submit to the sexual act through fear of death or serious bodily injury.

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2 A person is not required to do more than her age, strength, surrounding facts and
3 attending circumstances make it reasonable for him/her to do to manifest opposition to a
4 sexual assault.
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Submission is not the equivalent of consent. While consent inevitably involves submission, submission does not inevitably involve consent. Lack of protest by a victim is simply one among the totality of circumstances to be considered by the jury.

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2 There is no requirement that the testimony of a victim of sexual assault be
3 corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is
4 sufficient to sustain a verdict of guilty.
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Open and Gross Lewdness is defined as any indecent, obscene or vulgar act of a sexual nature that:

1. is intentionally committed in a public place, even if the act is not observed; or
2. is committed in a private place, but in an open manner, as opposed to a secret manner, and with the intent to be offensive to the observer.

INSTRUCTION NO. 31

Any person who uses violence upon another person or threatens violence or injury to another person with the specific intent to compel another to do or abstain from doing an act which such other person has a right to do or abstain from doing is guilty of Coercion.

A defendant acts under duress if at the time of the offense charged:

1. the threats and menaces are such that they would cause a reasonable person to fear that his life would be in immediate danger if he did not engage in the conduct charged, and
2. the person then actually believed that his life was so endangered.

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The defendant does not act voluntarily if the defendant acts under duress at the time of the offense charged. If the State fails to prove the absence of duress beyond a reasonable doubt, then you must find the defendant not guilty.

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2 Although your verdict must be unanimous as to the charge, you do not have to agree
3 on the theory of guilt. Therefore, even if you cannot agree on whether the facts establish
4 liability as directly committing the crime, as an aider and abettor, or a co-conspirator, so long
5 as all of you agree that the evidence establishes the defendant's guilt of the charge, your
6 verdict shall be guilty of the charge.
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2 You are instructed that if you find a defendant guilty of Robbery, Assault, First or
3 Second Degree Kidnapping, Sexual Assault, Coercion or Open Or Gross Lewdness you must
4 also determine whether or not a deadly weapon was used in the commission of this crime.

5 If you find beyond a reasonable doubt that a deadly weapon was used in the
6 commission of such an offense, then you shall return the appropriate guilty verdict reflecting
7 "With Use of a Deadly Weapon".

8 If, however, you find that a deadly weapon was not used in the commission of such an
9 offense, but you find that it was committed, then you shall return the appropriate guilty
10 verdict reflecting that a deadly weapon was not used.

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death, or, any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

You are instructed that a firearm is a deadly weapon and proof of its deadly capabilities is not required.

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2 If more than one person commits a crime, and one of them uses a deadly weapon in
3 the commission of that crime, each may be convicted of using the deadly weapon if the
4 unarmed offender had knowledge of the use of the deadly weapon.

5 In order to "use" a deadly weapon, there need not be conduct which actually produces
6 harm but only conduct which produces a fear of harm or force by means or display of the
7 deadly weapon in aiding the commission of the crime.

1
2 To constitute the crime charged, there must exist a union or joint operation of an act
3 forbidden by law and an intent to do the act.

4 The intent with which an act is done is shown by the facts and circumstances
5 surrounding the case.

6 Do not confuse intent with motive. Motive is what prompts a person to act. Intent
7 refers only to the state of mind with which the act is done.

8 Motive is not an element of the crime charged and the State is not required to prove a
9 motive on the part of the Defendant in order to convict. However, you may consider
10 evidence of motive or lack of motive as a circumstance in the case.

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The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

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It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

1
2 You are here to determine whether the Defendant is guilty or not guilty from the
3 evidence in the case. You are not called upon to return a verdict as to the guilt or innocence
4 of any other person. So, if the evidence in the case convinces you beyond a reasonable
5 doubt of the guilt of the Defendant, you should so find, even though you may believe one or
6 more persons are also guilty.
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2 In you deliberation you may not discuss or consider the subject of punishment, as that
3 is a matter which lies solely with the court. Your duty is confined to the determination of
4 whether the defendant is guilty or not guilty.
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2 The evidence which you are to consider in this case consists of the testimony of the
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

4 There are two types of evidence; direct and circumstantial. Direct evidence is the
5 testimony of a person who claims to have personal knowledge of the commission of the
6 crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof
7 of a chain of facts and circumstances which tend to show whether the Defendant is guilty or
8 not guilty. The law makes no distinction between the weight to be given either direct or
9 circumstantial evidence. Therefore, all of the evidence in the case, including the
10 circumstantial evidence, should be considered by you in arriving at your verdict.

11 Statements, arguments and opinions of counsel are not evidence in the case. However, if the
12 attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and
13 regard that fact as proved.

14 You must not speculate to be true any insinuations suggested by a question asked a
15 witness. A question is not evidence and may be considered only as it supplies meaning to
16 the answer.

17 You must disregard any evidence to which an objection was sustained by the court
18 and any evidence ordered stricken by the court.

19 Anything you may have seen or heard outside the courtroom is not evidence and must
20 also be disregarded.

Any evidence of a statement made by one alleged conspirator other than at this trial shall not be considered by you as against another alleged conspirator unless you shall first determine from other independent evidence that at the time the statement was made a conspiracy to commit a crime existed and unless you shall further determine that the statement was made during the course and in furtherance of the conspiracy.

Whenever there is slight evidence that a conspiracy existed, and that the defendant was one of the members of the conspiracy, then the statements and the acts by any member of the conspiracy may be considered by the jury as evidence in the case as to the defendant. This is true even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

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2 The credibility or believability of a witness should be determined by his manner upon
3 the stand, his relationship to the parties, his fears, motives, interests or feelings, his
4 opportunity to have observed the matter to which he testified, the reasonableness of his
5 statements and the strength or weakness of his recollections.

6 If you believe that a witness has lied about any material fact in the case, you may
7 disregard the entire testimony of that witness or any portion of his testimony which is not
8 proved by other evidence.
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2 A witness who has special knowledge, skill, experience, training or education in a
3 particular science, profession or occupation is an expert witness. An expert witness may
4 give his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the
8 reasons given for it are unsound.
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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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2 When you retire to consider your verdict, you must select one of your number to act
3 as foreperson who will preside over your deliberation and will be your spokesperson here in
4 court.

5 During your deliberation, you will have all the exhibits which were admitted into
6 evidence, these written instructions and forms of verdict which have been prepared for your
7 convenience.

8 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it
9 signed and dated by your foreperson and then return with it to this room.
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2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you must reduce your request to writing signed
4 by the foreperson. The officer will then return you to court where the information sought
5 will be given you in the presence of, and after notice to, the district attorney and the
6 Defendant and his/her counsel.

7 ^{Remember,} Playbacks of testimony are time-consuming and are not encouraged unless you deem
8 it a necessity. Should you require a playback, you must carefully describe the testimony to
9 be played back so that the court recorder can arrange his/her notes. Remember, the court is
10 not at liberty to supplement the evidence.

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:

DISTRICT JUDGE

April 17, 2008

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IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA
CLERK OF THE COURT

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
NARCUS WESLEY,)
)
Defendant.)

Case No. C232494
Dept. No. 24

JURY TRIAL

Before the Honorable James M. Bixler
Friday, April 18, 2008, 10:00 a.m.

Reporter's Transcript of Proceedings

APPEARANCES:

For the State: Lisa Luzaich, Esq.
Stacy Kollins, Esq.
Deputies District Attorney
Las Vegas, Nevada

For the Defendant: Casey Landis, Esq.
Jeff Banks, Esq.
Deputies Public Defender
Las Vegas, Nevada

REPORTED BY: BILL NELSON, RMR, CCR No. 191

CLERK OF THE COURT

NOV 12 2008

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IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)
Plaintiff,)
vs.)
NARCUS WESLEY,)
Defendant.)

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Dept. No. 24

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APPEARANCES:

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Stacy Kollins, Esq.
Deputies District Attorney
Las Vegas, Nevada

For the Defendant: Casey Landis, Esq.
Jeff Banks, Esq.
Deputies Public Defender
Las Vegas, Nevada

REPORTED BY: BILL NELSON, RMR, CCR No. 191

BILL NELSON & ASSOCIATES
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702.360.4677
Fax 360.2844

Has the jury selected a foreperson?

JURY FOREMAN: Yes.

THE COURT: Who is that?

JURY FOREMAN: Me.

THE COURT: Please stand and identify yourself.

JURY FOREMAN: Joanne Verenski (Phonetic)

THE COURT: And has the jury reached a verdict?

JURY FOREMAN: Yes, Your Honor.

THE COURT: All right. Would you hand that
verdict form please to the bailiff. In fact, just hand
both of those. Hand him the instructions too.

I'm going to have the clerk read into the record
the verdict.

THE CLERK: District Court Clark County, Nevada.

The State of Nevada Plaintiff versus Narcus
Wesley Defendant.

Case number C232494.

Department Number 24.

Verdict. We, the jury in the above-entitled case
find the Defendant Narcus S. Wesley, as follows:

Count 1, guilty of conspiracy to commit burglary.

Count 2, guilty of conspiracy to commit robbery.

Count 3, guilty of burglary while in possession
of a deadly weapon.

Count 4, guilty of robbery with use of a deadly

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Las Vegas, Nevada, Friday, April 18, 2008

* * * * *

(Thereupon, the following proceedings were had out of
the presence of the jury.):

THE COURT: Back on the record in the matter of
State of Nevada versus Narcus Wesley.

As we have all been told, the jury has reached a
verdict.

Are there any matters we need to address before
the jury is brought in?

MR. LANDIS: No, Judge.

MS. LUZAICH: No.

THE COURT: Okay. I'll just step back here and
tell Joe to bring them in.

(Thereupon, the following proceedings were had in open
court and in the presence of the jury.):

THE COURT: Do the parties stipulate to the
presence of the jury?

MR. LANDIS: Yes, Judge.

MS. LUZAICH: Yes, Judge.

THE COURT: All right. The record should reflect
the presence of the Defendant, his counsel, counsel for
the State of Nevada.

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weapon.

Count 5, guilty of assault with use of a deadly
weapon.

Count 6, guilty of robbery with use of a deadly
weapon.

Count 7, guilty of robbery with use of a deadly
weapon.

Count 8, guilty of assault with use of a deadly
weapon.

Count 9, guilty of robbery with use of a deadly
weapon.

Count 10, guilty of second degree kidnapping with
use of a deadly weapon.

Count 11, guilty of burglary while in possession
of a deadly weapon.

Count 12, guilty of sexual assault with use of a
deadly weapon.

Count 13, guilty of sexual assault with use of a
deadly weapon.

Count 14, guilty of sexual assault with use of a
deadly weapon.

Count 15, guilty of sexual assault with use of a
deadly weapon.

Count 16, guilty of coercion with use of a deadly
weapon.

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1 Count 17, guilty of sexual assault with use of a
 2 deadly weapon.
 3 Ladies and gentlemen of the jury, is that your
 4 verdict as read -- or I have one more count.
 5 I'm sorry.
 6 Count 18, guilty of open or gross lewdness with
 7 use of a deadly weapon.
 8 Dated this 18th day of April, 2008.
 9 Joanne Verenski foreperson.
 10 Now, ladies and gentlemen of the jury, is that
 11 your verdict as read, so say you one, so say you all?
 12 ALL JURORS: Yes.
 13 THE COURT: Thank you.
 14 Would you like to have the jury polled?
 15 MR. LANDIS: Please, Judge.
 16 THE COURT: Go ahead and poll the jury.
 17 (Jury polled. All answer in the affirmative.)
 18 THE COURT: Okay. That's 12.
 19 Ladies and gentlemen, you are now discharged from
 20 your duties as a juror in this case.
 21 I'm just going to go ahead and cut to the chase,
 22 have you step out with Tatyana.
 23 Go to the jury deliberation room, and I'll be in
 24 in a few minutes to talk to you.
 25 Thank you very much. I'll be there in just a
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1 minute.
 2 (Jury excused from the courtroom.)
 3 (Thereupon, the following proceedings were had out of
 4 the presence of the jury.):
 5 THE COURT: All right. The Defendant's going to
 6 be remanded into custody.
 7 MS. LUZAICH: I ask he be held without bail.
 8 THE COURT: He will be held without bail.
 9 Do we need anything besides a sentencing date?
 10 MS. LUZAICH: A sentencing date.
 11 THE COURT: 45 days.
 12 The bond is exonerated. There was a substantial
 13 bond posted.
 14 THE CLERK: June 5th, 8:30 a.m.
 15 MS. LUZAICH: Thank you.
 16 THE COURT: Thank you, ladies and gentlemen. I
 17 appreciate it.
 18 (Proceedings concluded.)
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CERTIFICATE

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 4 STATE OF NEVADA)
 5) ss.
 6 CLARK COUNTY)
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9 I, Bill Nelson, RMR, CCR 191, do hereby certify
 10 that I reported the foregoing proceedings; that the same
 11 is true and correct as reflected by my original machine
 12 shorthand notes taken at said time and place before the
 13 Hon. James M. Bixler, District Court Judge, presiding.

14 Dated at Las Vegas, Nevada this 11th day of
 15 November, 2008.

Bill Nelson

18 Bill Nelson, RMR, CCR 191,
 19 Certified Court Reporter
 Las Vegas, Nevada

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 BILL NELSON & ASSOCIATES
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<p style="text-align: center;">N</p> <p>NARCUS [1] - 1:9 Narcus [3] - 2:8, 3:15, 3:20 need [2] - 2:11, 6:9 Nelson [2] - 7:9, 7:18 NELSON [1] - 1:24 NEVADA [3] - 1:4, 1:6, 7:4 Nevada [9] - 1:19, 1:22, 2:1, 2:8, 2:25, 3:14, 3:15, 7:14, 7:19 notes [1] - 7:12 November [1] - 7:15 number [1] - 3:17 Number [1] - 3:18</p>	<p style="text-align: center;">S</p> <p>second [1] - 4:12 selected [1] - 3:1 sentencing [2] - 6:9, 6:10 sexual [5] - 4:16, 4:18, 4:20, 4:22, 5:1 shorthand [1] - 7:12 sorry [1] - 5:5 ss [1] - 7:5 Stacy [1] - 1:18 stand [1] - 3:5 STATE [2] - 1:6, 7:4 State [4] - 1:18, 2:8, 2:25, 3:15 step [2] - 2:15, 5:22 stipulate [1] - 2:19 substantial [1] - 6:12</p>	<p>yourself [1] - 3:5</p>
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1 VER

FILED IN OPEN COURT
APR 18 2008 2:53pm

DISTRICT COURT CHARLES J. SHORT
CLERK OF THE COURT

CLARK COUNTY, NEVADA

BY

Theresa Lee
DEPUTY

2 THE STATE OF NEVADA,

) THERESA LEE

3 Plaintiff,

) CASE NO: C232494

4 -vs-

) DEPT NO: XXIV

5 NARCUS S. WESLEY,

6 Defendant.

7
8
9
10 VERDICT

11 We, the jury in the above entitled case, find the Defendant NARCUS S. WESLEY, as
12 follows:

13 COUNT 1 – CONSPIRACY TO COMMIT BURGLARY

14 *(please check the appropriate box, select only one)*

15 ☒ Guilty of Conspiracy To Commit Burglary

16 ☐ Not Guilty

17
18
19 COUNT 2 – CONSPIRACY TO COMMIT ROBBERY

20 *(please check the appropriate box, select only one)*

21 ☒ Guilty of Conspiracy To Commit Robbery

22 ☐ Not Guilty

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COUNT 3 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

(690 Great Dane Court)

(please check the appropriate box, select only one)

- ☒ Guilty of Burglary While In Possession Of A Deadly Weapon
- ☐ Guilty of Burglary
- ☐ Not Guilty

COUNT 4 – ROBBERY WITH USE OF A DEADLY WEAPON (Justin Richardson)

(please check the appropriate box, select only one)

- ☒ Guilty of Robbery With Use of a Deadly Weapon
- ☐ Guilty of Robbery
- ☐ Not Guilty

COUNT 5 – ASSAULT WITH USE OF A DEADLY WEAPON (Aitor Eskandon)

(please check the appropriate box, select only one)

- ☒ Guilty of Assault With Use of a Deadly Weapon
- ☐ Guilty of Assault
- ☐ Not Guilty

COUNT 6 – ROBBERY WITH USE OF A DEADLY WEAPON (Justin Foucault)

(please check the appropriate box, select only one)

- ☒ Guilty of Robbery With Use of a Deadly Weapon
- ☐ Guilty of Robbery
- ☐ Not Guilty

1 **COUNT 7** – ROBBERY WITH USE OF A DEADLY WEAPON (Ryan Tognotti)

2 *(please check the appropriate box, select only one)*

3 ☒ Guilty of Robbery With Use of a Deadly Weapon

4 ☐ Guilty of Robbery

5 ☐ Not Guilty

6
7 **COUNT 8** – ASSAULT WITH USE OF A DEADLY WEAPON (Clinton Tognotti)

8 *(please check the appropriate box, select only one)*

9 ☒ Guilty of Assault With Use of a Deadly Weapon

10 ☐ Guilty of Assault

11 ☐ Not Guilty

12
13 **COUNT 9** – ROBBERY WITH USE OF A DEADLY WEAPON (Danielle Browning)

14 *(please check the appropriate box, select only one)*

15 ☒ Guilty of Robbery With Use of a Deadly Weapon

16 ☐ Guilty of Robbery

17 ☐ Not Guilty

18
19 **COUNT 10** – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON
(Ryan Tognotti)

20 *(please check the appropriate box, select only one)*

21 ☐ Guilty of First Degree Kidnapping With Use Of A Deadly Weapon

22 ☐ Guilty of First Degree Kidnapping

23 ☒ Guilty of Second Degree Kidnapping With Use Of A Deadly Weapon

24 ☐ Guilty of Second Degree Kidnapping

25 ☐ Not Guilty

COUNT 11 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

(Honda Civic)

(please check the appropriate box, select only one)

☒ Guilty of Burglary While In Possession Of A Deadly Weapon

☐ Guilty of Burglary

☐ Not Guilty

COUNT 12 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON
(Danielle Browning - fellatio)

(please check the appropriate box, select only one)

☒ Guilty of Sexual Assault With Use of a Deadly Weapon

☐ Guilty of Sexual Assault

☐ Not Guilty

COUNT 13 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON
(Danielle Browning - cunnilingus)

(please check the appropriate box, select only one)

☒ Guilty of Sexual Assault With Use of a Deadly Weapon

☐ Guilty of Sexual Assault

☐ Not Guilty

COUNT 14 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON
(Justin Richardson - fellatio)

(please check the appropriate box, select only one)

☒ Guilty of Sexual Assault With Use of a Deadly Weapon

☐ Guilty of Sexual Assault

☐ Not Guilty

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COUNT 15 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON
(Justin Richardson - cunnilingus)

(please check the appropriate box, select only one)

- ☒ Guilty of Sexual Assault With Use of a Deadly Weapon
- ☐ Guilty of Sexual Assault
- ☐ Not Guilty

COUNT 16 – COERCION WITH USE OF A DEADLY WEAPON
(Ryan Tognotti)

(please check the appropriate box, select only one)

- ☒ Guilty of Coercion With Use of a Deadly Weapon
- ☐ Guilty of Coercion
- ☐ Not Guilty

COUNT 17 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON
(Danielle Browning – digital penetration)

(please check the appropriate box, select only one)

- ☒ Guilty of Sexual Assault With Use of a Deadly Weapon
- ☐ Guilty of Sexual Assault
- ☐ Guilty of Open or Gross Lewdness With Use of a Deadly Weapon
- ☐ Guilty of Open or Gross Lewdness
- ☐ Not Guilty

1
2 **COUNT 18** – OPEN OR GROSS LEWDNESS WITH USE OF A DEADLY WEAPON
(Danielle Browning)

3 *(please check the appropriate box, select only one)*

4 ☒ Guilty of Open Or Gross Lewdness With Use Of A Deadly Weapon

5 ☐ Guilty of Open Or Gross Lewdness

6 ☐ Not Guilty

7
8 DATED this 18th day of April, 2008

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IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA
CLERK OF THE COURT

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STATE OF NEVADA,)

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Plaintiff,)

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vs.)

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Case No. C232494

Dept. No. 24

10

NARCUS WESLEY,)

DALARION WILSON,)

11

Defendants.)

12

SENTENCING

13

Before the Honorable James M. Bixler
Thursday, July 3, 2008, 8:30 a.m.

14

15

Reporter's Transcript of Proceedings

16

17

APPEARANCES:

18

For the State: Lisa Luzaich, Esq.
Deputy District Attorney
Las Vegas, Nevada

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20

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For the Defendants: Dan Winder, Esq.
James Oronoz, Esq.
Attorneys at Law
Las Vegas, Nevada

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REPORTED BY: BILL NELSON, RMR, CCR No. 191

CLERK OF THE COURT

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4 IN THE EIGHTH JUDICIAL DISTRICT COURT
5 CLARK COUNTY, NEVADA
6
7 STATE OF NEVADA,)
8 Plaintiff,)
9 vs.) Case No. C232494
10 NARCUS WESLEY,) Dept. No. 24
11 DALARION WILSON,)
12 Defendants.)
13
14 SENTENCING
15 Before the Honorable James M. Bixler
16 Thursday, July 3, 2008, 8:30 a.m.
17 Reporter's Transcript of Proceedings
18
19 APPEARANCES:
20 For the State: Lisa Luzaich, Esq.
21 Deputy District Attorney
22 Las Vegas, Nevada
23
24 For the Defendants: Dan Winder, Esq.
25 James Oronoz, Esq.
Attorneys at Law
Las Vegas, Nevada
REPORTED BY: BILL NELSON, RMR, CCR No. 191
BILL NELSON & ASSOCIATES 702.360.4677
Certified Court Reporters Fax 360.2844

1 Las Vegas, Nevada, Thursday, July 3, 2008
2
3 * * * * *
4
5 THE COURT: State of Nevada versus Darren Wilson
6 and Narcus Wesley.
7 We have speakers on this.
8 We're going to proceed more or less parallel, so
9 that the speakers don't have to speak at two different
10 sentencings.
11 MR. WINDER: Your Honor, I guess I was told
12 earlier you made a comment.
13 I have a sentencing memorandum, which I faxed to
14 your office. I also filed late, filed it.
15 I have a file stamped copy if you would like to
16 have it.
17 THE COURT: You came to my office this morning
18 and gave me a copy of it.
19 MR. WINDER: That was additionally the family
20 provided me with some letters, which I provided this
21 morning, which I provided a copy to the district
22 attorney, and I provided a copy to you.
23 I tried to do that ahead of time, so you have an
24 opportunity to read them.
25 THE COURT: For the record, Mr. Winder, in
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1 regards to Narcus Wesley, did the State get an
2 opportunity to peruse that sentencing memorandum?
3 The issues that have been raised in regards to
4 the enhancement provisions under the old law in effect
5 at the times these crimes were committed, as opposed to
6 the effective date of the amendment in regards to the
7 enhancement being in effect now at sentencing time, so
8 we have got --
9 MS. LUZAICH: Right, I did have the opportunity
10 to review the memo, and I have in fact responded to it
11 in the past, and I mean, I'll tell the Court that the
12 law in Nevada is that the sentencing scheme at the time
13 of the offense is what is controlling here, and that's
14 what all the courts have been doing.
15 I recognize that a lot of those are on appeal to
16 the Nevada Supreme Court, but the Nevada Supreme Court
17 has not ruled on it one way or another.
18 So I mean, I would submit that because that is
19 what the law is, that the Court must impose the sentence
20 that was in effect at the time of the offense, and not
21 the sentencing that -- that is what the Court going to
22 do today.
23 THE COURT: The difference being that under the
24 old law it was a mandated equal and consecutive with
25 enhancement.
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1 Under the new provision the robberies would be 1
2 to 15, the sexual assault --
3 MS. LUZAICH: 1 to 20.
4 THE COURT: 1 to 20.
5 The enhancement --
6 MR. WINDER: Your Honor, the matter is on appeal
7 before the Supreme Court, so that does not mean that you
8 could not rule our way, so that there would be actually
9 both issues on appeal before the Supreme Court, and let
10 the State actually have a chance to appeal it.
11 THE COURT: At least as to Narcus Wesley, I
12 presume the Supreme Court's going see this anyway no
13 matter what happens and how many issues are in the
14 appeal, they are probably going to be reviewing this no
15 matter what.
16 MR. WINDER: Correct.
17 THE COURT: I can tell you right now, this will
18 not be one of the issues because I'm going to use the
19 amended guidelines pursuant to the enhancement that was
20 -- just went into affect. I'm going to use them in
21 terms of sentencing these two Defendants, so you won't
22 have that to appeal.
23 MR. WINDER: Thank you, Your Honor.
24 MS. LUZAICH: No, but we will.
25 THE COURT: That's fine.
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1 You can both appeal.
 2 So this is the time set for sentencing as to both
 3 Defendants.
 4 Since Mr. Wilson plead to his three counts,
 5 right.
 6 MR. ORONOZ: Yes, sir.
 7 THE COURT: Let's proceed as to Mr. Wilson,
 8 Delarion Wilson first.
 9 So real quick, neither of the Defendants -- I
 10 think Wilson has a misdemeanor in his background.
 11 MR. ORONOZ: Judge, yes, he has one misdemeanor.
 12 That's the extent of it.
 13 THE COURT: I mean, I'm certainly well familiar
 14 with this whole thing, since we did have a trial on
 15 Wesley. I'm familiar with everything that went on.
 16 Knowing the Defendant's background, he had the
 17 lead role in this whole scenario.
 18 The State retained the full right to argue,
 19 right?
 20 MS. LUZAICH: Yes.
 21 THE COURT: It's your turn.
 22 MS. LUZAICH: Thank you, Judge.
 23 I recognize that Mr. Wilson did plead and should
 24 be entitled to some benefit because he accepted
 25 responsibility and plead guilty in this case.
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1 However, I would submit to the Court that all of
 2 the leniency that he's entitled to was given to him in
 3 the actual negotiation.
 4 Had he not plead, had he gone to trial and been
 5 convicted, there were about 12 life sentences that he
 6 was facing.
 7 Negotiation gave him one life sentence with a 10
 8 on the bottom.
 9 I guess the Court could sentence him to a term of
 10 25 years instead of a life sentence, but I would submit
 11 to the Court that based on the facts that the Court
 12 heard in this case that a life sentence is absolutely
 13 appropriate.
 14 There were multiple sexual assaults that
 15 occurred, and they occurred at the behest of Delarion
 16 Wilson, so absolutely a life sentence is appropriate.
 17 As far as the robberies, P & P is recommending 6
 18 to 15 with an equal and consecutive 6 to 15 for both.
 19 I recognize that the Court is not going to use
 20 the equal and consecutive. I do disagree with the
 21 Court, but I respect the Court's ruling.
 22 THE COURT: Well, if I understand the way the new
 23 enhancement provisions would apply, instead of mandated
 24 equal and consecutive 2 to 15, I would have discretion
 25 to sentence the consecutive enhancement anything between
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1 1 to 15 on the robbery.
 2 MS. LUZAICH: Correct.
 3 And I'm going to ask the Court to give him the
 4 equal and consecutive 6 to 15 based on the facts that
 5 occurred in this case, and I'm just -- I am making my
 6 record for appeal because of course it's going to get
 7 appealed.
 8 He is the one who not only was the ring leader,
 9 but who also physically took Ryan Tognotti away from his
 10 friends and to a location where God knows anything could
 11 have happened. I mean Ryan was smart, and he didn't
 12 fight, didn't try to grab the gun. So things were okay,
 13 and he came back safely, but this could have gone to
 14 hell very quickly.
 15 We could be here looking at something more like a
 16 murder, or attempt murder, or something like that.
 17 So I think that based on the conduct in this case
 18 the 6 to 15 and equal and consecutive 6 to 15s are very
 19 appropriate.
 20 I will comment that during the course of the
 21 trial involving Narcus Wesley an issue arose regarding
 22 Delarion Wilson and his statements, and I had asked Mr.
 23 Oronoz if I could speak with Mr. Wilson. Mr. Wilson was
 24 amicable, he did talk to us.
 25 We chose not to put him on the stand obviously,
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1 but I mean, I do -- I wasn't going to offer him
 2 anything, but I have to be honest and say that he did
 3 talk to us.
 4 But that being said, I would submit that all of
 5 the leniency he deserves was given to him in the
 6 negotiation, and I would ask the Court to follow the
 7 recommendation of P & P for all the consecutive time for
 8 Mr. Wilson.
 9 THE COURT: Your turn.
 10 Do you want to go first, or have Mr. Wilson
 11 speak?
 12 MR. ORONOZ: Do you want to hear the speakers or
 13 have them last?
 14 THE COURT: I'll hear them at the end.
 15 MR. ORONOZ: All right. Delarion.
 16 THE COURT: Mr. Wilson, this is your time. If
 17 you have anything to say to the Court, this is the time
 18 to do it.
 19 THE DEFENDANT WILSON: First off, I want to
 20 apologize to the Courts, to the State of Nevada, to my
 21 family, but most importantly to the victims and, every
 22 victim that was there I truly am sorry, I apologize for
 23 everything that what happened that night. I know today
 24 you may not be able to accept my apology, and I'm not
 25 the person that you want to see, but in the long run if
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1 you can truly understand from the bottom of my heart
2 that I am very sorry, I apologize for the pain, the
3 fear, the humiliation, and scaring everything, the
4 foolishness and stupidity that I did that night, and
5 there is not a day that I wake up and that I don't feel
6 bad for what I did, and I can only imagine the pain that
7 you feel, and I'm just truly sorry for everything that
8 happened.

9 Your Honor, I know that it seems that I was the
10 ring leader, but I take full responsibility for my
11 actions and the foolish things I did that night, but in
12 no way can I take responsibility for anyone else or the
13 ring leader. I was myself there, Your Honor. I didn't
14 force anyone to do anything, not the victims, but the
15 people that was with me, Your Honor, I just ask for the
16 Court today to just take into consideration that the
17 night that is not truly who I am, that is not the
18 character I really am, Your Honor.

19 I am a college graduate. I was two months away
20 from graduating college before this happened, and being
21 my education meant that much to me, I ended up finishing
22 my college education while I'm in here, Your Honor.

23 I've been playing football since I was five years
24 old. It's been a passion of my life, and I have a great
25 family, and they laid down the principles of what was
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1 right from wrong in life, and I know that that day I was
2 truly wrong and take full responsibility, Your Honor.

3 I have a problem with gambling. I am originally
4 from Colorado, not even from Las Vegas. I came out here
5 on vacation.

6 I moved away from Las Vegas because I have a
7 gambling problem. The problem is bigger than I thought
8 I had actually had, and the situation I ended up losing
9 all my money, and I had no way to even get back home to
10 Colorado to pay for my next semester fees, and being the
11 people I hung with, and I ended up taking drugs, and
12 even a drug that I never tried in my life, and I think
13 that has a part to do with the situation I was in right
14 now. No way that I come there to even attempt -- I had
15 no intention to even harm any of the people that was
16 there. I was looking for another person. He happened
17 not be there, Your Honor. I felt through my depression,
18 and felt if given time, I had no choice, so I chose to
19 act on stupidity on that day, and I know that I'm not
20 perfect, and I made a lot of mistakes in my life, but
21 this mistake by far is the worst ever, and I have to
22 live with it, Your Honor.

23 I went to school for sociology with emphasis in
24 criminology to work with trouble youths, kids who had a
25 rough time growing up, and being in this situation I was
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1 trying to be a positive role model. I spent several
2 hours at boys and girls clubs in Colorado working with
3 kids of all ages, coaching them, being a positive
4 influence in their lives, giving them hope I'd be
5 successful.

6 I know these crimes are serious, and in no way
7 the drugs or anything that happened that night will I
8 make excuses because I'm totally wrong for what I do,
9 and I deserve to be punished, and I know I'm going to
10 prison.

11 Your Honor, I just ask you take into
12 consideration of the letter that I referred to you, my
13 college degree, and actually the way my life -- the way
14 I lived my life in Colorado. I don't commit crimes in
15 Colorado, no problems in Colorado, because there is no
16 gambling and things in Colorado, no temptation.

17 Some places are good for people, and Las Vegas is
18 not good for me, Your Honor.

19 I just ask that 10 to 25 would be significant for
20 me.

21 Regardless of what you punish me today, it's not
22 going to take me that long to learn my lesson. The
23 lesson's been learned now. The greatest lessons in life
24 are the ones which you learn from, and I understand now
25 it takes a lifetime to build a life and only a second to
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1 destroy it, and I feel that deep sorrow in my heart, I
2 have destroyed it.

3 I put these people through everything they went
4 through, and I'm truly sorry, and I can't apologize
5 enough to the things that I did to these people and the
6 victims, and I apologize to their family and all the
7 grief that they are going through, just ask for
8 sympathy, Your Honor, from the Courts and mercy for the
9 things -- If you look at my entire life, not just the
10 crimes, that's all I have to say, Your Honor.

11 THE COURT: Mr. Oronoz.

12 MR. ORONOS: Your Honor, thank you.

13 Judge, the Court has known me for a long time,
14 and I've practiced, probably handled thousands of
15 criminal cases, and the Court is well aware of that.

16 By saying that, I want to emphasize a point, and
17 that is that this case is probably one of the most
18 tragic, if not the most tragic, that I have ever
19 handled. Not only is it a tragedy because of what
20 occurred to these victims, which is undoubtedly
21 horrific, and I don't mean to minimize that, but it's a
22 tragedy insofar as it involves two young men who had
23 incredibly promising futures, two young men who
24 generally -- People, as the Court knows, generally the
25 people that come before this Court have significant
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1 problems, and they have a significant history of
2 problems, but in this case it's unique, and I think it
3 applies to both. These young men could have done
4 virtually anything they set their mind to.

5 I know that Delarion, as he indicated, finished
6 his degree. He overcame a lot of obstacles. He
7 finished his education.

8 He had a chance to perhaps pursue a career in the
9 NFL as a professional football player, and those hopes
10 and those aspirations because of his conduct are now
11 dashed, they are gone, they are forfeited forever.
12 However, that is not the extent of it, Your Honor. That
13 is not the extent of it as well.

14 Meeting with his family, I'd like to impress upon
15 the Court they are devastated, their hearts are broken.
16 He has parents who love him deeply. He has parents who
17 had the utmost hope for him, for their son, a son that
18 they believed was doing fine, was excelling, was
19 accomplishing things, and they are also victims in this
20 situation. They are absolutely crushed by what has
21 occurred here.

22 And Delarion understands the position he put his
23 parents in.

24 Judge, I would ask for the Court to consider his
25 sentence of remorse.

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1 I would ask the Court to consider the fact that
2 he did own up to what he did, and that in and of itself
3 shows character and shows resilience, and shows an
4 ability to accept very severe consequences.

5 I would ask the Court to reflect back upon the
6 letters I submitted. I lost track, I think they were in
7 excess of 30 letters of support.

8 What I'm not asking the Court to do is, to simply
9 give him a slap on the wrist. We're talking about
10 years. We're talking about putting a young man in
11 prison for years, a minimum of a decade, almost half the
12 amount of time of that he's been on this earth. We know
13 he's going to do that. We know he's going to do a lot
14 of time, and as his lawyers we throw these numbers
15 around, prison sentences around, as though they are
16 nothing, when in fact they are very, very significant.

17 Your Honor, I think given his unique background,
18 and given what he's owned up to, and given his
19 potential, I think that a 10 to 25 is entirely
20 appropriate, and that is not meant to minimize what the
21 victims went through, but this is a unique young man who
22 made a very horrific decision, and this is a young man,
23 Your Honor, I think who has a chance at perhaps
24 rehabilitating.

25 This is a young man who after he does his time
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1 can come out of prison and can contribute to the
2 community.

3 I would ask the Court, and I would strongly
4 implore the Court even, to consider his unique
5 circumstances, and to consider the position Delarion's
6 in, and to consider the fact that if the Court was to
7 take a chance on anybody, of all the Defendants that
8 come in front of the Court, Delarion -- of all the
9 Defendants who I should say who are similarly situated
10 with Delarion's type of charges, if anybody is deserving
11 of a 10 to 25, it would be Delarion.

12 I don't think a life sentence is appropriate.

13 I would ask for the Court to impose the 10 year
14 sentence.

15 I would ask for the Court to run the robberies
16 concurrent.

17 Even if the Court does this, this young man's
18 going to do a decade at least in prison, and I think
19 given these unique circumstances when he gets out, he
20 can turn it around, Judge. He has the ability, and he
21 has the equipment, he has the skills to turn it around.

22 If anybody is deserving of this type of sentence
23 that I'm urging the Court to adopt, it is this young
24 man, and this young man contrary to what they, his life
25 isn't over, there is hope for some better things in the
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1 future. The day will come when he's in this 30s and
2 perhaps parole eligible. He may go out and leave prison
3 perhaps when he's my age and contribute, and I tried to
4 convey that to him.

5 He thinks life is done, it's over, but as you and
6 I know that that is not the case.

7 I would ask the Court to seriously, seriously
8 consider granting my request, impose a 10 to 25, run the
9 robberies concurrent.

10 And with that, I would submit it.

11 THE COURT: Okay. In regards to Wesley, I want
12 to get all this part out before we have the speakers
13 speak.

14 THE DEFENDANT WILSON: Your Honor, just one last
15 thing.

16 I don't want to today to take the initiative and
17 put all the spotlight on me, because they are the people
18 that has been hurt through all this, and I don't want to
19 forget that, and I truly am sorry, and I apologize for
20 not standing strong right now, but I've been waiting for
21 today to apologize from the day I left that house, and I
22 just wanted the Courts to know that.

23 THE COURT: All right. Now, as to Defendant
24 Wesley.

25 MR. WINDER: Yes, Your Honor.
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1 Mr. Wesley has a prepared statement that he would
2 like to read.

3 THE COURT: Well, first of all, I want the State
4 to argue the difference being Mr. Wesley went to trial,
5 he didn't take any deals, he went to trial, and the jury
6 convicted him of 18 counts, two gross misdemeanors, and
7 everything else is serious felonies.

8 He wouldn't -- Well, I don't know those two gross
9 misdemeanors, but the jury -- I can't remember. Did the
10 jury --

11 MS. LUZAICH: Everything.

12 THE COURT: Every single thing that was charged
13 to the jury?

14 MS. LUZAICH: Except second degree kidnapping,
15 which is a lesser of the first.

16 THE COURT: Except second degree kidnapping, and
17 in Defendant Wesley's case the fact he went to trial,
18 got convicted of everything, he didn't have even the one
19 misdemeanor that Mr. Wilson had, he didn't have any
20 kind.

21 He appeared to have been set for trial, quite
22 familiar with the whole scenario.

23 He didn't appear to have been the instigator, but
24 he did appear to have been a participant in the
25 offenses.

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1 It didn't take the jury too long to find the
2 State had proven their case beyond a reasonable doubt to
3 all those counts.

4 Your turn.

5 MS. LUZAICH: Thank you.

6 And I absolutely recognize that one can never be
7 penalized for exercising their right and going to trial,
8 and I would never ask the Court to do that.

9 THE COURT: Absolutely.

10 MS. LUZAICH: My comments regarding Mr. Wilson
11 were that he should get a benefit because he manned up
12 and entered a plea, but absolutely I would never ask the
13 Court to penalize anybody for going to trial.

14 That being said, however, the Defendant was in
15 fact convicted of very serious offenses, and you know
16 what, Judge, sometimes sentencing is merely about
17 punishment, it doesn't matter if you are 72 and lived a
18 perfect life for 72 years, and if in your 72nd year you
19 do something absolutely atrocious, you should be
20 punished for what you did. In here they take phones
21 that ring. This is a case where two people who had no
22 -- essentially no records whatsoever and were good kids,
23 college football players and whatnot, did something
24 absolutely atrocious.

25 Imagine being in your home sleeping in your bed

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1 where you think that you will be safe, and having two
2 young strangers come in, waving guns around, having you
3 and your five friends lay on the floor with guns at your
4 head, give us your money, give us your money, and
5 unfortunately because they are college kids with smaller
6 jobs, they got like 20 bucks between them, so they
7 pissed off the two guys with the guns who want more
8 money, and now they want ATM cards. Imagine how it felt
9 while they were laying there with guns at their heads,
10 and one of the guys took their friend away.

11 Now, I recognize that it was Wilson who was the
12 instigator here, but these kids were clear, Wesley had a
13 gun, and when Wilson left with Ryan Tognotti, Wesley
14 remained with the gun and kept those kids there. He
15 wasn't merely present. He was an active participant.

16 And if he really didn't want to be part of this,
17 if he really didn't want to be there, he could have let
18 them go, he could have let them call the police. He
19 could have called the police. He could have left. But
20 he chose to stay there with the gun pointed at these
21 five kids heads.

22 Even worse than that, when Ryan comes back, and I
23 recognize that it was Wilson that instigated what
24 happened next, but all that gratuitous sexual assault,
25 they could have just taken the money and left, and left

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1 it at that, but no, they had to take it one step
2 further.

3 At least Wilson, not that I'm condoning what he
4 did, was telling kids what to do. This one pipes up
5 with, if they can't do anything, I'll fuck her. He
6 wants to have sex with her.

7 He tells her she's got a nice ass, can I touch
8 it.

9 He is the one who digitally penetrated her.

10 This young girl is going to have to live with
11 that for the rest of her life.

12 And you know what is even worse, her boyfriend
13 was laying next to her with a gun to his head hearing,
14 if you can't fuck her, we're going to kill you, until
15 one of your friends can, and then he hears her being
16 taken away from himself and his friends to another part
17 of the room, and he hears what this guy is saying to
18 her, and he hears the guy sticking his finger in his
19 girlfriend's vagina while he is laying there helpless.
20 Imagine that.

21 So what I am not going to ask the Court -- You
22 know, I'm sure everybody thinks I'm asking the Court to
23 give him the maximum on everything and run it
24 consecutive. I recognize that because he has no prior
25 criminal history that that is not an appropriate

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1 sentence, that there is some mitigation here, that he
2 does not have a prior criminal history, that he has the
3 strong support of all of these friends and family
4 members, but you know what, when he stood in that house
5 with guns to these kids' heads, when he stuck his finger
6 in her vagina, he still had the loving support of his
7 family, and he did it anyway.

8 So what I am asking the Court to do is, to take
9 one of the either robbery or assault with deadly weapon
10 counts for each of these six kids, run them all
11 consecutive to each other on Count 4, the robbery for
12 Justin, I ask the Court to give him 5 to 15. I
13 recognize that the Court is going to use the statute as
14 a amended.

15 I still think an equal and consecutive 5 to 15 is
16 appropriate on Count 5, the assault with deadly weapon
17 for Aitor.

18 I ask the Court to sentence him to 2 to 6, with
19 an equal and consecutive 2 to 6 on Count 6, the robbery
20 for Justin Foucault, I ask the Court to sentence him
21 with 5 to 15, with equal and consecutive 5 to 15, and
22 will -- So I asked for 6 to 15, so one year less I'm
23 asking for.

24 And Count 7, robbery with deadly weapon for Ryan
25 Tognotti, I ask the Court to sentence him to 5 to 15,
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1 with equal and consecutive 5 to 15.

2 THE COURT: I just want to interrupt real quick.

3 When I was making my notes here, I don't know
4 which counts equate to which one of the victims, I just
5 used the number of the count and what it was for when I
6 was making my notes, so if you want me to custom some
7 sentences in accordance with which one of the victims
8 was the victim, I'm going to go back and make some
9 notes.

10 MS. LUZAICH: That's fine, just in general what
11 I'm asking the Court to do is, sentence him
12 consecutively one count for each of the victims
13 consecutive, and then I'm also asking you to run the
14 sexual assault, the digital penetration, consecutive to
15 that because that was just so above and beyond what
16 needed to happen there.

17 So do you want me to go back and go through
18 Counts 4 through 9?

19 THE CLERK: I broke it down per victim, per
20 issue, so you should have no problem.

21 THE COURT: But you are asking -- To be honest
22 with you, what you are asking is less than what I have
23 got denoted down here.

24 On the robbery charges you were asking --

25 MS. LUZAICH: 5 to 15, with an equal and
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1 consecutive 5 to 15, on Count 4.

2 And then Count 5 consecutive to Count 4, a 5 to
3 15, with an equal -- or sorry, 2 to 6, with an equal and
4 consecutive 2 to 6.

5 Assault with deadly weapon is a 1 to 6 --

6 Actually, there is no equal and consecutive -- Sorry,
7 that is just 2 to 6.

8 THE COURT: Right, just 2 to 6.

9 MR. LUZAICH: And then on Count 6, robbery with
10 deadly weapon, I ask that run consecutive to 4 and 5, 5
11 to 15, with an equal and consecutive 5 to 15.

12 Count 7 the robbery with use for Ryan, a general
13 count, consecutive to Count 6, 5 to 15, with an equal
14 and consecutive 5 to 15.

15 Count 8 again is an assault with deadly weapon
16 for Clint I would ask for 2 to 6 consecutive to counts
17 4, 5, 6 and 7, and count 9 robbery with use of deadly
18 weapon for Danielle consecutive to Counts 8, 7, 6, 5 and
19 4, a 5 to 15, with equal and consecutive a 5 to 15, and
20 then count 17 is the sexual assault with deadly weapon,
21 the digital penetration of Danielle, I would ask for a
22 10 to life.

23 I think he's earned every moment of a life
24 sentence.

25 I think 25 would be an insult.

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1 And I recognize the Court's not going to give an
2 equal and consecutive to even to life. I would ask the
3 Court to give an 8 to 20 and that that run consecutive
4 to 9, 8, 7, 6, 5 and 4.

5 THE COURT: Under the old guidelines sexual
6 assault with deadly weapon, with the sentence of --

7 MS. LUZAICH: 10 plus 10 would be 20.

8 THE COURT: No, with a sentence of life with the
9 possibility of parole is 10, that would have dictated
10 the same sentence.

11 MS. LUZAICH: Equal and consecutive, correct.

12 THE COURT: Otherwise, with the way that would
13 have been calculated he would have been eligible for
14 parole at 10, and -- on the underlying sentence, and
15 then to another 10, be eligible after 10 on the
16 enhancement.

17 MS. LUZAICH: Correct.

18 THE COURT: And under the new guidelines it's
19 just 1 to 20, the enhancement?

20 MS. LUZAICH: The enhancement is a 1 to 20,
21 correct.

22 THE COURT: Okay. I got it.

23 Okay. Anything else?

24 MS. LUZAICH: No.

25 THE COURT: Your turn.

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1 MR. WINDER: Your Honor, I'd like my client to
2 read his statement, make his statement first, please.

3 THE COURT: Go ahead.

4 THE DEFENDANT WESLEY: Well, by standing here on
5 this day of Judgment, to be judged as I'm being judged
6 today, one day we all, everybody in this room, will be
7 judged for his and her doings on this earth, the good,
8 the bad, and the plots and schemes. Surely that day is
9 coming. It will burn like a furnace, all the arrogant
10 evil doers will be, and that day is coming he will set
11 them on fire.

12 Says the Lord almighty, give careful thought to
13 your ways, for this day, for the days on this earth you
14 can consider your days for time on this earth is short.

15 So do not envy wicked men, do not desire their
16 company, that lips talk about making trouble does not he
17 who guards his life know it will not repay each person
18 according to what he or she has done. He who guards his
19 lips guards his life, but he who (unintelligible) comes
20 to ruin.

21 The right to hate is false, but the wickid brings
22 shame and disgrace.

23 Those who for sake the law praise the wicked, but
24 those who keep the law resist him.

25 Evil men and women do not understand justice, but
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1 those who seek the Lord understand it fully.

2 A truthful witness gives honest testimony, but a
3 false witness tells lies.

4 Reckless reports pierce like a sword, but the
5 tongue of the wise bring healing.

6 Truthful lips endure forever, but a lying tongue
7 lasts only a moment.

8 Your Honor, I come to you today with all these
9 people in this courtroom. It is no doubt that the
10 events that happened that night, you know, were tragic
11 and devastating I must say. If it was to happen to any
12 of my loved ones, my family members, I probably would
13 have had the same feeling in my heart as Lisa does, and
14 they do, you know, but I have no problem apologizing to
15 these people, but I know in my heart as God is my only
16 witness, my only true witness, that I didn't do what
17 they said I did. The part that I did play in their
18 ordeal is certainly not worth taking the rest of my
19 life.

20 I am ashamed for being acquainted in any way with
21 my Co-Defendant. He is the guilty one and has ruined
22 all our lives with this malarky. I am saddened with
23 myself and sorry for even knowing him. If I hadn't,
24 this would have never happened, or I would never been
25 involved, and I would like for, you know, God to be with
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1 everybody.

2 And just a few other things, you know.

3 I was placed on bail, on \$400,000 bail, and
4 throughout those nine-and-a-half months I trained, you
5 know, went to a couple try-outs, you know, had about
6 three arena try-outs, and I ran professionally track,
7 you know, during that time on bail, and went to my
8 former high school, and during that time, you know, I
9 drove to Arizona, drove to Utah, and these parents
10 believed in me and trusted, knowing after those counts,
11 after those 18 charges, that I wasn't that type of
12 person, so they trusted me with their kids to take them
13 to those track meets, to be a role model for them after
14 the incident.

15 I would just say, you know, that I apologize to
16 the Court.

17 And that's about it.

18 THE COURT: Okay.

19 MR. WINDER: Thank you, Your Honor.

20 Your Honor, Mr. Oronoz and I just recently did a
21 murder trial with Co-Defendants, and he's done an
22 excellent job of making a presentation, and I don't want
23 to repeat all of those things because as he said they
24 apply to both of these two gentlemen.

25 This is a very troubling case, Your Honor.
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1 Seldom have I had a case where an individual goes
2 from no prior history to looking at life in prison,
3 especially with the history he did have prior to these
4 events.

5 He did well in school, attended college, played
6 football.

7 He's been a good father to his child.

8 I saw there was a number of letters presented,
9 and I hope if I was ever in trouble I would have that
10 number of letters and recommendations presented from
11 friends and pastors and coaches, former coaches,
12 teachers, other individuals.

13 He has a number of family members who have been
14 here throughout most of the proceedings.

15 As the Court knows, I wasn't present at the
16 trial, I didn't do the trial. I wish I had.

17 My client though should not be punished for
18 having gone to trial.

19 THE COURT: He won't be.

20 MR. WINDER: Your Honor, there has been -- our
21 rules proportionality, and both you, who sat through the
22 trial, and Defense counsel, Co-Defense counsel, and even
23 Miss Luzaich, have indicated that my client was a minor
24 player in these circumstances, and despite being
25 convicted of 18 counts, Your Honor, there is a way under
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1 the sentencing pattern where my client can get less time
2 than the Co-Defendant.

3 Certainly he should not get anymore time for
4 exercising his right to go to trial.

5 I think it would be a tragedy, Your Honor, to
6 take away the light at the end of the tunnel for my
7 client, who I spent about two hours with last night, and
8 I have to present to him some of the same information
9 Mr. Oronoz presented where he's a young man 25, and I'm
10 a little over 50, and if he does at least 10 years,
11 which he will do even if he's sentenced to a minimum of
12 10 years, no one makes their first board with cases like
13 this, especially if you have 18 charges, he's probably
14 going to do closer to 20 years, he's going to be a
15 little younger than I am now, and I indicated to him,
16 you will have a chance at that point in time to lead a
17 productive life, and I believe he is salvageable, Your
18 Honor.

19 I believe he is rehabilitatable, and despite the
20 fact that we disagree with the verdict, and I know there
21 is going to be an appeal, I know the Court has to
22 sentence him today.

23 Your Honor, I would request that you do keep the
24 rules proportionate in mind when you administer that
25 sentence in a few moments.

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1 I would ask that you not run any of them
2 consecutive, Your Honor. If you run them consecutive,
3 he will wind up doing substantially more time than his
4 Co-Defendant, who was the major player in this
5 particular case.

6 I'm not going to go through each particular
7 count, I don't think that is necessary, but if -- I know
8 there has to be the enhancement because of the
9 conviction with the weapon, Your Honor, and I would ask
10 that we give him 10 to 25, without the 10 to life tail
11 on the sexual assault, and if we begin there, with
12 another, Your Honor, 2 to 6 years, as an enhancement for
13 the weapon, which has to be run consecutive, and from
14 there if we run all of the rest of his sentences
15 concurrent, Your Honor, with his time, then he will
16 serve as was pointed out at least 10 years in prison,
17 which is about a little less than half the time he's
18 already been on this earth, Your Honor.

19 And that is what I think would be a sufficient
20 sentence in this particular case.

21 I think when you -- the new factors under AB510
22 require the Court, since the Court indicated it will
23 sentence him under those factors, it requires the Court
24 the take into consideration the criminal history and the
25 mitigating factors surrounding the incident. Of course
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1 you have to take into account the facts and
2 circumstances of the crime itself, but I think there are
3 a lot of factors that mitigate in favor of a lesser
4 sentence, some light at the end of the tunnel for this
5 young man who has had no prior history, and that's what
6 I request the Court to do.

7 Thank you, Your Honor.

8 THE COURT: Who wants to speak?

9 MS. LUZAICH: Judge, they are electing not to
10 speak.

11 THE COURT: For the record, they both testified
12 at the trial, and the rest of the people in the house,
13 they all testified. The extent of the trauma imposed on
14 them has certainly not been lost on the Court, even
15 though they are not speaking at the sentencing due to
16 the fact that I heard them under oath on the witness
17 stand.

18 All right. I am going to preface this sentence
19 with this:

20 Wesley is certainly not going to be penalized for
21 having a trial, even though by going to trial and
22 getting convicted he exposed himself to tremendously
23 larger amounts of time that the Court could impose.

24 Keeping in mind that Mr. Wilson really played the
25 lead role in this, even though he's only got three

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1 counts, he's going to end up doing more time than
2 Narcus, but they are both doing substantial, substantial
3 amounts of time.

4 In regards to Delarion Wilson, the Court
5 adjudicates him guilty under Counts 1, robbery with use
6 of deadly weapon, and Count 3, sexual assault.

7 In regards to the two robbery charges -- and once
8 again I am applying the new guidelines in regards to the
9 enhancement, the Court has the option, which is really
10 the purpose of the change, so that the Court doesn't
11 have its hands tied, the Court has an option, a range
12 option different than under the old law, and -- but it's
13 still, the enhancement runs consecutive, and I have a
14 bottom end that is different than the robbery that
15 carries a 2 to 15, and under the old law the mandate a
16 consecutive 2 to 15.

17 Applying the new law here is how we're going to
18 do this:

19 As to the two robbery charges, Mr. Wilson is
20 being sentenced on Count 1 to 72 to 180 months on the
21 robbery, and equal and consecutive -- actually not equal
22 and consecutive, he's being sentenced to 72 to 180
23 months consecutive on the enhancement.

24 Count 2 he's being sentenced to 72 to 180 months
25 for the robbery, plus also being sentenced to 72 to 180
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1 months on the enhancement.

2 Count 3, on the sexual assault Mr. Wilson is
3 being sentenced to life with the possibility of parole
4 after 10 years.

5 Now, all of these sentences run consecutive to
6 each other.

7 In regards to Mr. Wesley, Mr. Wesley is being
8 adjudicated guilty on the following charges:

9 Count 1 and Count 18 are both gross misdemeanors.

10 Count 1 is conspiracy to commit burglary.

11 Count 18 is open and gross lewdness with a deadly
12 weapon.

13 Count 2 is conspiracy to commit robbery.

14 Counts 3 and 11 are burglary while in possession
15 of deadly weapon.

16 Counts 4, 6, 7 and 9 are robbery with use of
17 deadly weapon.

18 Counts 5 and 8 are assault with use of deadly
19 weapon.

20 Count 10, the second degree kidnapping with use
21 of deadly weapon, Counts 12, 13, 14, 15 and 17 are the
22 sexual assault charges with the use of a deadly weapon.

23 Count 16 is coercion with use of deadly weapon.

24 Count -- or that he is adjudicated guilty on each
25 of those counts as read.

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1 Now, in regards to the two gross misdemeanor
2 counts, Counts 1 and 18 the Defendant's sentenced to 12
3 months.

4 Count 2, conspiracy, the Defendant's sentenced to
5 28 to 72 months.

6 Counts 3 and 11, the burglary with a deadly
7 weapon, that is burglary in possession of deadly weapon,
8 no enhancement, the Defendant's sentenced to 72 to 180
9 months on each of those two counts.

10 On Counts 4, 6, 7 and 9, the robbery with use
11 charges, the Defendant's sentenced to a period of
12 incarceration between 60 to 180 months, plus an
13 additional 60 to 180 months on each of those four
14 counts.

15 On Counts 5 and 8, the assault with deadly
16 weapon, the Defendant's sentenced to 24 to 72 months on
17 each of those two counts.

18 On Count 10, the kidnapping of the second degree,
19 the Defendant's sentenced with a deadly weapon, the
20 Defendant's sentenced to 72 to 180 months, with an equal
21 and consecutive 72 to 180 months.

22 In regards to the Counts 12, 13, 14, 15 and 17,
23 all the sexual assault charges with use of deadly
24 weapon, the Defendant's sentenced to life with the
25 possibility of parole in 10 years.

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1 He's also sentenced to a consecutive 8 to 20
2 years.

3 Count 16 with the deadly weapon is 22 to 72
4 months.

5 The sentences as to Mr. Wesley -- or the coercion
6 charge with deadly weapon is a 24 to 72.

7 MS. LUZAICH: There should be an enhancement on
8 that.

9 THE COURT: The enhancement is 24 to 72
10 consecutive.

11 Mr. Wesley's case, he's got about 20 years on
12 those sexual assaults.

13 All of his counts run concurrent to each other.

14 By my penciling out the way they count, Mr.
15 Wesley is going to do about seven years less than Mr.
16 Wilson.

17 MS. LUZAICH: Well, no, 17 less.

18 THE COURT: Well, after you -- He's got 10 and 8,
19 18--

20 MR. LUZAICH: And he's got 34.

21 THE COURT: Right, he's got 34, Wilson got 34.

22 MR. WINDER: Thank you, Your Honor.

23 THE COURT: Okay. I would deduct half of that, I
24 was counting the way they do it, he will be eligible.

25 MS. LUZAICH: Also -- I'm sorry, the 25

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1 administrative assessment, the DNA.

2 THE COURT: A \$150 DNA assessment. The \$25
3 administrative assessment.

4 MS. LUZAICH: Lifetime supervision, registered
5 sex offender.

6 THE COURT: As to both of them, registered sex
7 offender, lifetime supervision.

8 MS. LUZAICH: Restitution jointly and severally.

9 THE COURT: \$3196 joint and several restitution.

10 MR. WINDER: Your Honor, I think PSI said my
11 client's entitled to 497 days credit for time served.

12 THE COURT: 497 days credit for time served as to
13 Wesley.

14 As to Wilson --

15 MR. ORONOZ: 499.

16 Your Honor, may I ask a question?

17 THE COURT: Sure.

18 MS. LUZAICH: That's not possible.

19 THE COURT: They were both arrested on the same
20 day.

21 MS. LUZAICH: And he's been out for six months,
22 Wesley, so Wilson's got to have a boat load more than
23 Wesley.

24 MR. ORONOZ: We have.

25 THE DEFENDANT WILSON: I have 500 total days.

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1 MR. ORONOZ: I think the P & P calculation is
 2 incorrect, Judge. They have 499.
 3 I think it's probably closer --
 4 THE CLERK: Has Mr. Wilson ever been out?
 5 MR. ORONOZ: No.
 6 THE COURT: Hold on.
 7 I have a program. I can tell you if I have the
 8 day of arrest.
 9 MS. LUZAICH: Wesley's is wrong because they have
 10 Wesley in custody the whole time.
 11 He hasn't been.
 12 MS. LUZAICH: I think Wilson's credit is correct.
 13 Wesley needs to lose like 300 days.
 14 MR. ORONOZ: He's entitled to 500 days.
 15 THE CLERK: February 19th of '07?
 16 MS. LUZAICH: Yes, that's correct.
 17 THE CLERK: Hold on.
 18 MS. LUZAICH: Wilson was out -- or Wesley was out
 19 before.
 20 THE COURT: I think P & P assumed Wesley was in
 21 custody the whole time.
 22 He was not though. He was out for six months.
 23 MS. LUZAICH: At least.
 24 He was in custody May 31st, '07 at his
 25 arraignment, but I don't know when he got out after
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1 that.
 2 THE COURT: He bailed out.
 3 THE CLERK: He has 500 days.
 4 MS. LUZAICH: Wilson does.
 5 I would agree that.
 6 THE COURT: Wilson gets 500 days credit for time
 7 served.
 8 And Wesley got no more than 317 days.
 9 MS. LUZAICH: Why should we give him that much?
 10 MR. WINDER: He wasn't sure of the dates.
 11 I'll try to recalculate it.
 12 THE COURT: I took off six months.
 13 MS. LUZAICH: I believe he was out more than six
 14 months.
 15 (Thereupon, a discussion was had off the record.)
 16 THE DEFENDANT WESLEY: Your Honor, it's about
 17 five-and-a-half months.
 18 THE DEFENDANT WILSON: He's been out since June
 19 8th, 2007.
 20 I got all the years everything on me, you know
 21 what I'm saying, he's been out since June 8, 2007 until
 22 February 18th, 2008.
 23 There is no way he could be anywhere near where
 24 I'm at.
 25 THE COURT: Okay.
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1 THE CLERK: Wesley was arrested the same day, so
 2 start date, then he got out?
 3 MS. LUZAICH: June 8th.
 4 THE CLERK: Same year?
 5 MS. LUZAICH: Yes.
 6 THE CLERK: February 19th, '07?
 7 MS. LUZAICH: Yes.
 8 THE CLERK: Then bailed out June 8th of '07?
 9 MS. LUZAICH: Yes.
 10 MR. ORONOZ: Judge, could we also make a record
 11 on some of the issues?
 12 THE CLERK: There is 109 days from those days
 13 from February 19th, '07 to June 8th, '07.
 14 Then he was remanded?
 15 MS. LUZAICH: 4/18/08 to today.
 16 THE COURT: Okay.
 17 THE CLERK: 76 more days.
 18 MS. LUZAICH: 185.
 19 THE CLERK: 185 days.
 20 THE COURT: Wesley gets 185 days credit for time
 21 served.
 22 THE CLERK: There you go.
 23 THE COURT: Okay.
 24 MR. WINDER: Your Honor, for the appeal may I at
 25 this point be appointed?
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1 The other thing is that my client certainly would
 2 like to pending appeal like to have -- or be able to
 3 have a bail set pending appeal.
 4 He wanted me to make that motion.
 5 MS. LUZAICH: I would object to that.
 6 I would object to him being appointed for appeal.
 7 THE COURT: Hold on.
 8 If you are going to take this up with the Supreme
 9 Court, you will have to go address any bail issues with
 10 the Supreme Court on appeal.
 11 There is not going to be any bail set here in
 12 this Court on appeal, but you are going to have to get
 13 that from the Supreme Court. I doubt you are going to
 14 get one, but that is where you are going to have to
 15 apply.
 16 What else you said?
 17 MR. WINDER: To be appointed to do the appeal,
 18 Your Honor.
 19 The family doesn't have the money to go forward
 20 any further. I am on the list, Your Honor, for appeals
 21 as of July 1st.
 22 MS. LUZAICH: There is no conflict.
 23 He fired the PD because he didn't want them.
 24 MR. WINDER: There is a conflict because in fact
 25 in his motion the Court actually mentioned the PDs can't
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1 do the appeal. If you remember at the last hearing
2 where I was -- the second to the last hearing when I
3 stepped in, he's accused them of certain actions, and
4 they requested not to do the appeal based on things that
5 he accused them of.

6 That was in his motion to have new counsel.

7 THE COURT: Well, I'll tell you what.

8 You will have to make that motion in writing, and
9 I'm going to have to examine it.

10 MR. WINDER: Okay. You know there is a 30 day
11 window.

12 I'll file the notice of appeal.

13 THE COURT: File the notice, and bring that back
14 before me, and I'll consider it.

15 MR. WINDER: Your Honor, also, I don't believe
16 it's the district attorney's position to decide one way
17 or another whether he's eligible to have me court
18 appointed.

19 THE COURT: I think the Public Defenders office
20 probably has more of a position to respond than the DAS
21 office.

22 MR. WINDER: Thank you, Your Honor.

23 MR. ORONOZ: Judge, if I can go one step further.

24 MR. BANKS: I can respond right now, Judge.

25 We're not in a position to accept appointment for

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1 Mr. Wesley on appeal.

2 THE COURT: I think if I remember off the top of
3 my head, the fact is that a good portion of that which
4 would be the appeal is going to involve your actual
5 representation.

6 I will have to say that, to say this on the
7 record that anything that asserts that he got anything
8 less than the absolute best representation at trial is
9 going to be hard to establish because in my opinion Mr.
10 Landis and Mr. Banks, it would have been hard to have
11 done any better job than they did. I thought they did
12 an excellent job presenting their case representing the
13 Defendant. There may be some decisions that were made
14 between them and the Defendant that may armchair
15 quarterback, Monday morning quarterback -- but as far as
16 their representation, they did such a good job.

17 In any event, I do now remember that part of that
18 which was asserted involved a sufficient conflict that
19 you are probably never going to be able to pursue the
20 appeal, the public defenders office.

21 MR. BANKS: That's our position, yes, sir.

22 THE COURT: I agree with you.

23 MS. LUZAICH: But I think the Court's recourse is
24 then to appoint an attorney on your contract list, not
25 the attorney of the Defense choice.

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1 MR. WINDER: I am on the contract list for
2 appeals, Your Honor, and for judicial economy --

3 THE COURT: The only reason I'm going to look --
4 I'm not making a decision right now is because I got to
5 look and see because all of that has changed, the way we
6 go about doing all of this has changed drastically in
7 the last six months, and I have got to go back, find out
8 how we go about doing it.

9 File your notice, and come back, put it back on
10 my calendar, and I'll figure out if you are the one or
11 if I should go outside with somebody else.

12 MR. WINDER: Thank you, Your Honor.

13 MR. ORONOZ: Your Honor.

14 THE COURT: You are in the same boat?

15 MR. ORONOZ: No, I have one final issue as well.

16 I know the Court has great latitude when it comes
17 to sentencing decisions. However, I want to make sure I
18 preserve any possible issues for further review. I'm
19 sure this thing may even find its way in the federal
20 courts.

21 It is our position that the sentence given Mr.
22 Wilson, with all due respect to the Court, the sentence
23 given Mr. Wilson was entirely too severe and entirely
24 excessive, and I believe that similarly situated
25 Co-Defendants or similarly situated Defendants in Mr.

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1 Wilson's situation with the factors that are enumerated
2 for a District Court Judge to consider would probably
3 not have received such a severe sentence.

4 And I know the State of the law right now is
5 fairly well settled in the Court's favor. However, we
6 want to make sure we preserve this issue so we can
7 possibly litigate it in the future in front of future
8 courts.

9 THE COURT: That's fine.

10 As I said at the beginning, they both got
11 hammered, but Wilson got the bigger sentence.

12 MR. WINDER: You want me to set a date for that
13 motion?

14 THE COURT: File it, and we'll notice -- File
15 your Notice of Appeal first.

16 MR. ORONOZ: Judge, if I'm able to discover any
17 issues for appeal, would you be able to appoint me as
18 well?

19 THE COURT: Let me figure out how this works.

20 Like I said, the whole process of appellate
21 counsel, as well as track counsel, everything has
22 changed, and I'm not sure I understand exactly what my
23 leeway actually is.

24 MR. ORONOZ: I understand.

25 Thank you, Your Honor.

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1 THE COURT: If it's possible, absolutely. I
2 mean, if I have the option, absolutely, I would much
3 prefer to have you than somebody else.

4 MR. ORONOZ: Thank you, Judge.

5 THE COURT: Okay.

6 THE COURT: All right. That should be it.

7 (Proceedings concluded.)
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1 C E R T I F I C A T E
2
3


4 STATE OF NEVADA)

5) ss.

6 CLARK COUNTY)
7
8

9 I, Bill Nelson, RMR, CCR 191, do hereby certify
10 that I reported the foregoing proceedings; that the same
11 is true and correct as reflected by my original machine
12 shorthand notes taken at said time and place before the
13 Hon. James M. Bixler, District Court Judge, presiding.

14 Dated at Las Vegas, Nevada this 1st day of
15 September, 2008

16 
17
18

19 Bill Nelson, RMR, CCR 191,
20 Certified Court Reporter
21 Las Vegas, Nevada
22
23
24
25

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DISTRICT COURT

Chaf
CLERK OF THE COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C232494

-vs-

DEPT. NO. XXIV

NARCUS S. WESLEY
aka Narcus Samone Wesley
#1757866

Defendant.

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1
– CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS
205.060, 199.480; COUNT 2 – CONSPIRACY TO COMMIT ROBBERY (Category B
Felony) in violation of NRS 205.380, 199.480; COUNTS 3 & 11 – BURGLARY WHILE
IN POSSESSION OF DEADLY WEAPON (Category B Felony) in violation of NRS
205.060; COUNTS 4, 6, 7 & 9 – ROBBERY WITH USE OF A DEADLY WEAPON
(Category B Felony) in violation of NRS 200.380, 193.165; COUNTS 5 & 8 – ASSAULT
WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT
10 – FIRST DEGREE KIDNAPING (Category A Felony) in violation of NRS 200.310,

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1 200.320, 193.165; COUNTS 12, 13, 14, 15, & 17 – SEXUAL ASSAULT WITH USE OF
2 A DEADLY WEAPON (Category A Felony) in violation of NRS 200.366, 200.364,
3 193.165; COUNT 16 – COERCION WITH USE OF A DEADLY WEAPON (Category B
4 Felony) in violation of NRS 207.190, 193.165; COUNT 18 – OPEN OR GROSS
5 LEWDNESS WITH USE OF A DEADLY WEAPON (Category D Felony) in violation of
6 NRS 201.210, 193.165; and the matter having been tried before a jury and the
7 Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO
8 COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS 205.060, 199.480;
9 COUNT 2 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of
10 NRS 205.380, 199.480; COUNTS 3 & 11 – BURGLARY WHILE IN POSSESSION OF
11 DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNTS 4, 6, 7
12 & 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation
13 of NRS 200.380, 193.165; COUNTS 5 & 8 – ASSAULT WITH A DEADLY WEAPON
14 (Category B Felony) in violation of NRS 200.471, COUNT 10 – SECOND DEGREE
15 KIDNAPING (Category B Felony) in violation of NRS 200.320, 193.165; COUNTS 12,
16 13, 14, 15, & 17 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Category
17 A Felony) in violation of NRS 200.366, 200.364, 193.165; COUNT 16 – COERCION
18 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 207.190,
19 193.165; COUNT 18 – OPEN OR GROSS LEWDNESS WITH USE OF A DEADLY
20 WEAPON (Category D Felony) in violation of NRS; thereafter, on the 3RD day of July,
21 2008, the Defendant was present in court for sentencing with his counsel, DAN
22 WINDER, ESQ., and good cause appearing,
23
24
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28

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee

including testing to determine genetic markers, and \$3,196.00 Restitution to be paid jointly and severally with co-defendant, the Defendant is SENTENCED as follows: AS TO COUNT 1 - TO TWELVE (12) MONTHS in the Clark County Detention Center (CCDC); AS TO COUNT 2 - TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS, in the Nevada Department of Corrections (NDC); AS TO COUNT 3 - TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SEVENTY-TWO (72) MONTHS in the Nevada Department of Corrections (NDC); AS TO COUNT 4 - TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS, plus an EQUAL and CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); AS TO COUNT 5 - TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC); AS TO COUNT 6 - TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS, plus an EQUAL and CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); AS TO COUNT 7 - TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS, plus an EQUAL and CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); AS TO COUNT 8 - TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR

1 (24) MONTHS in the Nevada Department of Corrections (NDC); AS TO COUNT 9 - TO
2 A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole
3 Eligibility of SIXTY (60) MONTHS, plus an EQUAL and CONSECUTIVE term of ONE
4 HUNDRED EIGHTY (180) MONTHS MAXIMUM with a MINIMUM Parole Eligibility of
5 SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); AS TO COUNT
6 10 - TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM
7 Parole Eligibility of SEVENTY-TWO (72) MONTHS, plus an EQUAL and
8 CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM and
9 SEVENTY-TWO (72) MONTHS MINIMUM for the Use of a Deadly Weapon in the
10 Nevada Department of Corrections (NDC); AS TO COUNT 11 - TO A MAXIMUM of
11 ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of
12 SEVENTY-TWO (72) MONTHS in the Nevada Department of Corrections (NDC); AS
13 TO COUNT 12 - TO LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS, plus a
14 CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM and EIGHT (8) YEARS
15 MINIMUM for the Use of a Deadly Weapon in the Nevada Department of Corrections
16 (NDC); AS TO COUNT 13 - TO LIFE with a MINIMUM Parole Eligibility of TEN (10)
17 YEARS, plus a CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM and EIGHT
18 (8) YEARS MINIMUM for the Use of a Deadly Weapon in the Nevada Department of
19 Corrections (NDC); AS TO COUNT 14 - TO LIFE with a MINIMUM Parole Eligibility of
20 TEN (10) YEARS, plus a CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM
21 and EIGHT (8) YEARS MINIMUM for the Use of a Deadly Weapon in the Nevada
22 Department of Corrections (NDC); AS TO COUNT 15 - TO LIFE with a MINIMUM
23 Parole Eligibility of TEN (10) YEARS, plus a CONSECUTIVE term of TWENTY (20)
24 YEARS MAXIMUM and EIGHT (8) YEARS MINIMUM for the Use of a Deadly Weapon

1 in the Nevada Department of Corrections (NDC); AS TO COUNT 16 - TO A MAXIMUM
2 of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR
3 (24) MONTHS, plus an EQUAL and CONSECUTIVE term of SEVENTY-TWO (72)
4 MAXIMUM and TWENTY-FOUR (24) MONTHS MINIMUM for the Use of a Deadly
5 Weapon in the Nevada Department of Corrections (NDC); AS TO COUNT 17 - TO LIFE
6 with a MINIMUM Parole Eligibility of TEN (10) YEARS, plus a CONSECUTIVE term of
7 TWENTY (20) YEARS MAXIMUM and EIGHT (8) YEARS MINIMUM for the Use of a
8 Deadly Weapon in the Nevada Department of Corrections (NDC); AS TO COUNT 18 -
9 TO TWELVE (12) MONTHS in the Clark County Detention Center (CCDC), COUNTS 1
10 - 18 to run CONCURRENT; with ONE HUNDRED EIGHTY FIVE (185) DAYS credit for
11 time served.
12

13
14 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION is
15 imposed to commence upon release from any term of imprisonment, probation or
16 parole.
17

18 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in
19 accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any release
20 from custody.
21

22
23 DATED this 17th day of July, 2008

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26 JAMES BIXLER
27 DISTRICT JUDGE
28

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IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA
CLERK OF THE COURT

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
NARCUS WESLEY,)
)
Defendant.)

Case No. C232494
Dept. No. 24

RE-SENTENCING

Before the Honorable James M. Bixler
Tuesday, September 23, 2008, 8:30 a.m.

Reporter's Transcript of Proceedings

APPEARANCES:

For the State: Lisa Luzaich, Esq.
Deputy District Attorney
Las Vegas, Nevada

For the Defendant: Dan Winder, Esq.
Deputy Public Defender
Las Vegas, Nevada

REPORTED BY: BILL NELSON, RMR, CCR No. 191

CLERK OF THE COURT
NOV 12 2008

Las Vegas, Nevada, Day, Month Date, 2008

* * * * *

THE COURT: /KOD /EU core /EU in 1234

/SKWR on wine ear.

THE COURT: What is the state of this DNA

report? 1234 Your Honor, I think I may have worked

this one out. The whole thus spoken with the family

just got in touch with me late tonight about it

/TP-FPLT we can report this like a week or less, I

don't know what the calendar is like on Friday

6789 list a /HRUZ /AFF on we put it on Tuesday 1234

next Tuesday? That's

THE CLERK: System 10th at 830. 6789 for a
status check negotiations?

THE COURT: Right.

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1 TRAN

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)

Plaintiff,)

vs.)

NARCUS WESLEY,)

Defendant.)

Case No. C232494
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For the Defendant: Dan Winder, Esq.
Deputy Public Defender
Las Vegas, Nevada

REPORTED BY: BILL NELSON, RMR, CCR No. 191

BILL NELSON & ASSOCIATES
Certified Court Reporters

702.360.4677
Fax 360.2844

CERTIFICATE

STATE OF NEVADA)

) ss.

CLARK COUNTY)

I, Bill Nelson, RMR, CCR 191, hereby certify
that I report the foregoing proceedings; that the same
is true and correct as reflected on my original machine
shorthand notes taken at said time and place before the
Hon. James M. Bixler, District Court Judge, presiding.

Dated at Las Vegas, Nevada this 17th day of
November, 2008.

Bill Nelson, RMR, CCR 191,
Certified Court Reporter
Las Vegas, Nevada

BILL NELSON & ASSOCIATES

702.360.4677

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Las Vegas, Nevada, Tuesday, September 23, 2008

* * * * *

THE COURT: Narcus Wesley.

MR. WINDER: /TKAPB wind ear.

The State's motion.

We're going to get to the bottom line real fast.

Here's my question mark:

First of all reading your response, I doubt the
State's read it because it wasn't even file stamped.

MS. LUZAICH: I got it last night.

MR. WINDER: I faxed it over, Your Honor.

THE COURT: I read it.

Here's the problem --

MS. LUZAICH: It's an illegal sentence.

You don't have a choice.

THE COURT: There is no law.

There is no authority.

The State's authority is about the extent of the
law on the subject.

MR. WINDER: Correct.

THE COURT: I thought I had more leeway in what
law was going to apply.

The fact of the matter is, I don't.

Under the new statutory scheme I certainly have

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1 considerably more leeway, but the old statutory scheme
2 was absolutely cut and dry, whatever the underlying
3 sentence is, it's enhancement's equal and consecutive,
4 and the fact that I was trying to give Narcus a break
5 didn't work out.

6 MR. WINDER: Well, Your Honor, you still can give
7 him somewhat of a break.

8 THE COURT: Here's the bigger question:

9 There is no question that the State's legal
10 position is exactly correct.

11 MR. WINDER: Yes, Your Honor, I read the new
12 case.

13 THE COURT: The law is crystal clear. The law in
14 effect at the time the crime was committed is that which
15 is doubling the sentencing, and the Defendant will have
16 to be sentenced to an equal and consecutive sentence for
17 the use of deadly weapon on the counts, what was it 12
18 through 15, and then 17 I believe?

19 MS. LUZAICH: Right.

20 All that changes is two years, goes from 18 to
21 life, instead of 20 to life.

22 The Co-Defendant you gave 34 to life.

23 So he's still almost double.

24 THE COURT: What the Defendant is --

25 MS. LUZAICH: What this Defendant is -- So when

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1 you are worried about being fair, you are still way too
2 fair.

3 THE COURT: All right. Here's my first question:

4 When I correct the illegal sentence, the front
5 end of the sentence there is nothing wrong with, just
6 the enhancement sentence, so I don't have -- or I can't
7 go back and correct the front end of those sentences.

8 If I wanted to change them in other words, that
9 there is nothing wrong with that.

10 MS. LUZAICH: Right, just the deadly weapon
11 enhancement.

12 THE COURT: Yes.

13 MR. WINDER: Correct, Your Honor.

14 THE COURT: So everybody agrees on that?

15 MR. WINDER: Yes.

16 And then you said you are running them
17 concurrent, so they still have to run concurrent.

18 MS. LUZAICH: Each count runs concurrent.

19 MR. WINDER: Of course the deadly weapon
20 enhancement continues to run consecutive, and the effect
21 will be, it goes from 18 to life, Your Honor, to 20 to
22 life using the -- with the change.

23 THE COURT: Exactly.

24 All right. As long as everybody's on the same
25 page, then we're going to fix it.

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1 What else?

2 MR. WINDER: Also, there is another issue, Your
3 Honor, and it just may be a minor thing, and technically
4 this case is on appeal at the Supreme Court, and so I
5 certainly -- the statute says any time the Court can
6 correct an illegal sentence, so this may be form over
7 substance, but I wanted to state for the record, I don't
8 know if you have the jurisdiction to correct it while
9 it's technically on appeal, but with that said, I think
10 the you have no choice but to correct it at this point.

11 THE COURT: I agree.

12 I don't think that there is a prohibition. There
13 is nothing I'm addressing here that has anything to do
14 with what is being addressed on appeal, and I think that
15 is why I can correct the sentence.

16 MR. WINDER: Yes.

17 THE COURT: So as to Counts 12, 13, 14, 15 and
18 17, is that correct?

19 MS. LUZAICH: That's correct.

20 MR. WINDER: Yes.

21 THE COURT: The Defendant as to the enhancement
22 provision, the Defendant's sentenced from instead of 18
23 to life --

24 MS. LUZAICH: No, each count there is a sentence
25 of life in prison, with parole eligibility after ten

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1 years has been served, and on each enhancement a life
2 sentence consecutive to the underlying one.

3 THE COURT: Underlying sentences.

4 MS. LUZAICH: With eligibility after ten years.

5 MR. WINDER: Your Honor, because I know my client
6 wants to point this out, you had given him a definite
7 term.

8 THE COURT: 8 to 20 or something.

9 MR. WINDER: Right.

10 MS. LUZAICH: That's vacated?

11 THE COURT: That is vacated.

12 MR. WINDER: And what you are saying is that, you
13 don't believe you can give that definite term even on
14 the underlying sentence?

15 THE COURT: No, I think that that sentence I have
16 already sentenced him on the initial sentence.

17 The only thing I can address is the enhancement.

18 So the enhancement is going to be corrected to
19 reflect life, consecutive with the possibility of parole
20 after ten years on each of the five counts.

21 MS. LUZAICH: Correct.

22 And each count still to run concurrent.

23 THE COURT: They all run concurrent.

24 MR. WINDER: All run concurrent.

25 Your Honor, not that it makes much difference to

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1 this Court, but I want to make sure the Judgment of
2 Conviction is correct because if you look in -- The
3 family has looked on the Nevada State Prison website, it
4 makes it appear that there is about 25 life sentences
5 running consecutive.

6 MS. LUZAICH: No, the JOC is correct.

7 The JOC does not anywhere say consecutive counts,
8 and if it's silent as to concurrent versus consecutive,
9 it is necessarily concurrent.

10 MR. WINDER: I understand that.

11 THE COURT: I was a little puzzled when you said
12 that in your response, but I went back and looked and
13 couldn't see anything else.

14 MR. WINDER: I reread that.

15 It's their website.

16 The other thing, Your Honor, I spoke with Mr.
17 Christensen, Drew Christensen, and I have the order
18 appointing --

19 THE COURT: You talked to him, and I think he
20 already communicated with my clerk, you are appointed
21 for record on this case pursuant to -- or directed by
22 Drew Christensen.

23 What is his office called anyway?

24 MR. WINDER: I don't know.

25 THE COURT: Whatever his title is, he concurred,

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1 you are already on the case, you were on his list, your
2 appointment is fine.

3 MR. WINDER: Your Honor, I have one other quick
4 matter.

5 MS. LUZAICH: I actually have the sign
6 interpreter here to do Bookman.

7 THE COURT: You have one more case real fast?

8 MR. WINDER: Yes.

9 (Proceedings concluded.)

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C E R T I F I C A T E

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2
3
4 STATE OF NEVADA)
5) ss.
6 CLARK COUNTY)
7
8

9 I, Bill Nelson, RMR, CCR 191, do hereby certify
10 that I reported the foregoing proceedings; that the same
11 is true and correct as reflected by my original machine
12 shorthand notes taken at said time and place before the
13 Hon. James M. Bixler, District Court Judge, presiding.

14 Dated at Las Vegas, Nevada this 11th day of
15 November, 2008.

16 *Bill Nelson*
17 Bill Nelson, RMR, CCR 191,
18 Certified Court Reporter
19 Las Vegas, Nevada
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1 TRAN

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4 IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

5
6 STATE OF NEVADA,)
7)
8 Plaintiff,)
9 vs.) Case No. C17-006
10) Dept. No. 24
11 BILL NELSON,)
12)
13 Defendant.

14 Before the Hon. James M. Bixler
15 Day, Month, Year, 2007, Time a.m.
16 Reporter's Transcript of Proceedings

17 APPEARANCES:
18 For the State, Plaintiff Atty, Esq.
19 District Attorney
Las Vegas, Nevada
20 For the Defendant: Defendant Atty, Esq.
21 Deputy Public Defender
22 Las Vegas, Nevada

23 REPORTED BY: BILL NELSON, RMR, CCR No. 191

24 BILL NELSON & ASSOCIATES 702.360.4677
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2008 OCT -8 P 4:17

Edna J. Smith

DISTRICT COURT

CLERK OF THE COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C232494

DEPT. NO. XXIV

NARCUS S. WESLEY
aka Narcus Samone Wesley
#1757866

Defendant.

AMENDED JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS 205.060, 199.480; COUNT 2 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 205.380, 199.480; COUNTS 3 & 11 – BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNTS 4, 6, 7 & 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNTS 5 & 8 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; COUNT 10 – FIRST DEGREE KIDNAPING (Category A Felony) in violation of NRS 200.310,

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CLERK OF DISTRICT COURT

1 200.320, 193.165; COUNTS 12, 13, 14, 15, & 17 – SEXUAL ASSAULT WITH USE OF
2 A DEADLY WEAPON (Category A Felony) in violation of NRS 200.366, 200.364,
3 193.165; COUNT 16 – COERCION WITH USE OF A DEADLY WEAPON (Category B
4 Felony) in violation of NRS 207.190, 193.165; COUNT 18 – OPEN OR GROSS
5 LEWDNESS WITH USE OF A DEADLY WEAPON (Category D Felony) in violation of
6 NRS 201.210, 193.165; and the matter having been tried before a jury and the
7 Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO
8 COMMIT BURGLARY (Gross Misdemeanor) in violation of NRS 205.060, 199.480;
9 COUNT 2 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of
10 NRS 205.380, 199.480; COUNTS 3 & 11 – BURGLARY WHILE IN POSSESSION OF
11 DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNTS 4, 6, 7
12 & 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation
13 of NRS 200.380, 193.165; COUNTS 5 & 8 – ASSAULT WITH A DEADLY WEAPON
14 (Category B Felony) in violation of NRS 200.471, COUNT 10 – SECOND DEGREE
15 KIDNAPING (Category B Felony) in violation of NRS 200.320, 193.165; COUNTS 12,
16 13, 14, 15, & 17 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Category
17 A Felony) in violation of NRS 200.366, 200.364, 193.165; COUNT 16 – COERCION
18 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 207.190,
19 193.165; COUNT 18 – OPEN OR GROSS LEWDNESS WITH USE OF A DEADLY
20 WEAPON (Category D Felony) in violation of NRS; thereafter, on the 3RD day of July,
21 2008, the Defendant was present in court for sentencing with his counsel, DAN
22 WINDER, ESQ., and good cause appearing,
23
24
25
26
27

28 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee

1 including testing to determine genetic markers, and \$3,196.00 Restitution to be paid
2 jointly and severally with co-defendant, the Defendant is SENTENCED as follows: AS
3 TO COUNT 1 - TO TWELVE (12) MONTHS in the Clark County Detention Center
4 (CCDC); AS TO COUNT 2 – TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a
5 MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS, in the Nevada
6 Department of Corrections (NDC); AS TO COUNT 3 - TO A MAXIMUM of ONE
7 HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SEVENTY-
8 TWO (72) MONTHS in the Nevada Department of Corrections (NDC); AS TO COUNT
9 4 - TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM
10 Parole Eligibility of SIXTY (60) MONTHS, plus an EQUAL and CONSECUTIVE term of
11 ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM with a MINIMUM Parole Eligibility
12 of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); AS TO
13 COUNT 5 – TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM
14 Parole Eligibility of TWENTY-FOUR (24) MONTHS in the Nevada Department of
15 Corrections (NDC); AS TO COUNT 6 - TO A MAXIMUM of ONE HUNDRED EIGHTY
16 (180) MONTHS with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS, plus an
17 EQUAL and CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS
18 MAXIMUM with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS in the Nevada
19 Department of Corrections (NDC); AS TO COUNT 7 - TO A MAXIMUM of ONE
20 HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SIXTY (60)
21 MONTHS, plus an EQUAL and CONSECUTIVE term of ONE HUNDRED EIGHTY (180)
22 MONTHS MAXIMUM with a MINIMUM Parole Eligibility of SIXTY (60) MONTHS in the
23 Nevada Department of Corrections (NDC); AS TO COUNT 8 - TO A MAXIMUM of
24 SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR
25
26
27
28

1 (24) MONTHS in the Nevada Department of Corrections (NDC); AS TO COUNT 9 - TO
2 A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole
3 Eligibility of SIXTY (60) MONTHS, plus an EQUAL and CONSECUTIVE term of ONE
4 HUNDRED EIGHTY (180) MONTHS MAXIMUM with a MINIMUM Parole Eligibility of
5 SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); AS TO COUNT
6 10 - TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM
7 Parole Eligibility of SEVENTY-TWO (72) MONTHS, plus an EQUAL and
8 CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM and
9 SEVENTY-TWO (72) MONTHS MINIMUM for the Use of a Deadly Weapon in the
10 Nevada Department of Corrections (NDC); AS TO COUNT 11 - TO A MAXIMUM of
11 ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of
12 SEVENTY-TWO (72) MONTHS in the Nevada Department of Corrections (NDC); AS
13 TO COUNT 12 - TO LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS, plus a
14 CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM and EIGHT (8) YEARS
15 MINIMUM for the Use of a Deadly Weapon in the Nevada Department of Corrections
16 (NDC); AS TO COUNT 13 - TO LIFE with a MINIMUM Parole Eligibility of TEN (10)
17 YEARS, plus a CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM and EIGHT
18 (8) YEARS MINIMUM for the Use of a Deadly Weapon in the Nevada Department of
19 Corrections (NDC); AS TO COUNT 14 - TO LIFE with a MINIMUM Parole Eligibility of
20 TEN (10) YEARS, plus a CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM
21 and EIGHT (8) YEARS MINIMUM for the Use of a Deadly Weapon in the Nevada
22 Department of Corrections (NDC); AS TO COUNT 15 - TO LIFE with a MINIMUM
23 Parole Eligibility of TEN (10) YEARS, plus a CONSECUTIVE term of TWENTY (20)
24 YEARS MAXIMUM and EIGHT (8) YEARS MINIMUM for the Use of a Deadly Weapon

1 in the Nevada Department of Corrections (NDC); AS TO COUNT 16 - TO A MAXIMUM
2 of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR
3 (24) MONTHS, plus an EQUAL and CONSECUTIVE term of SEVENTY-TWO (72)
4 MAXIMUM and TWENTY-FOUR (24) MONTHS MINIMUM for the Use of a Deadly
5 Weapon in the Nevada Department of Corrections (NDC); AS TO COUNT 17 - TO LIFE
6 with a MINIMUM Parole Eligibility of TEN (10) YEARS, plus a CONSECUTIVE term of
7 TWENTY (20) YEARS MAXIMUM and EIGHT (8) YEARS MINIMUM for the Use of a
8 Deadly Weapon in the Nevada Department of Corrections (NDC); AS TO COUNT 18 -
9 TO TWELVE (12) MONTHS in the Clark County Detention Center (CCDC), COUNTS 1
10 - 18 to run CONCURRENT; with ONE HUNDRED EIGHTY FIVE (185) DAYS credit for
11 time served.
12

13
14 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION is
15 imposed to commence upon release from any term of imprisonment, probation or
16 parole.
17

18 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in
19 accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any release
20 from custody.
21

22 SUBSEQUENTLY, on the 23rd day of September, 2008, the Defendant appeared
23 in court with his counsel, DAN WINDER, ESQ., and pursuant to a hearing regarding the
24 State's Motion to Correct an Illegal Sentence, and good cause appearing;

25 IT IS ORDERED that the Defendant's sentence be corrected as to Counts 12,
26 13, 14, 15 and 17 as follows: as to COUNT 12 - to LIFE with a MINIMUM Parole
27 Eligibility of TEN (10) YEARS, plus an EQUAL and CONSECUTIVE term of LIFE with a
28 MINIMUM Parole Eligibility of TEN (10) YEARS for the Use of a Deadly Weapon in the

1 Nevada Department of Corrections (NDC); as to COUNT 13 - to LIFE with a MINIMUM
2 Parole Eligibility of TEN (10) YEARS, plus an EQUAL and CONSECUTIVE term of LIFE
3 with a MINIMUM Parole Eligibility of TEN (10) YEARS for the Use of a Deadly Weapon
4 in the Nevada Department of Corrections (NDC); as to COUNT 14 - to LIFE with a
5 MINIMUM Parole Eligibility of TEN (10) YEARS, plus an EQUAL and CONSECUTIVE
6 term of LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS for the Use of a
7 Deadly Weapon in the Nevada Department of Corrections (NDC); as to COUNT 15 - to
8 LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS, plus an EQUAL and
9 CONSECUTIVE term of LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS for
10 the Use of a Deadly Weapon in the Nevada Department of Corrections (NDC); and as
11 to COUNT 17 - to LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS, plus an
12 EQUAL and CONSECUTIVE term of LIFE with a MINIMUM Parole Eligibility of TEN
13 (10) YEARS for the Use of a Deadly Weapon in the Nevada Department of Corrections
14 (NDC). The previously imposed enhancement of Eight to Twenty years for Counts 12,
15 13, 14, 15 and 17 is vacated.
16
17
18

19
20 DATED this gh day of October, 2008
21

22
23
24 JAMES BIXLER
25 DISTRICT JUDGE
26
27
28

1 PPOW
2

3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 Narcus S Wesley,

6 Petitioner,

7 vs.

8 State of Nevada,

9 Respondent,
10

Case No: A-20-824615-W
Department 18

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
12 November 12, 2020. The Court has reviewed the Petition and has determined that a response would assist
13 the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and
14 good cause appearing therefore,

15 **IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of this Order,
16 answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS
17 34.360 to 34.830, inclusive.

18 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's
19 Calendar on the 14th day of January, 2021, at the hour of
20 9:00 o'clock for further proceedings.
21

22
23 Dated this 12th day of November, 2020

24 *Mary Kay Holthus*
25

26 District Court Judge
27 B38 B45 3EC2 262E
28 Mary Kay Holthus
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Narcus Wesley, Plaintiff(s)

CASE NO: A-20-824615-W

7 vs.

DEPT. NO. Department 18

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case.

13
14 If indicated below, a copy of the above mentioned filings were also served by mail
15 via United States Postal Service, postage prepaid, to the parties listed below at their last
known addresses on 11/13/2020

16 Narcus Wesley

#1022289

P.O. Box 650 HDSP

17 Indian Springs, NV, 89070
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AA 001236

Alvin B. Smith
CLERK OF THE COURT

PP 1 NARCUS WESLEY # 1022289
DA 2 P.O. BOX 650
3 INDIAN SPRINGS, NV 89070
4 PRO. SE.

6 DISTRICT COURT A-20-824615-W
7 CLARK COUNTY, NEVADA 07C232494-2

8
9 NARCUS WESLEY
PETITIONER
CASE NO: C232494
DEPT NO: XXIV

10
11 VS-
12 THE STATE OF NEVADA
RESPONDENTS.

13
14 PETITION FOR WRIT OF HABEAS CORPUS
15 CHALLENGING THE ERRONEOUS JURY INSTRUCTION
16 PURSUANT TO NRS. 193.165 AND NRS. 34.360

17
18 COMES NOW, PETITIONER NARCUS WESLEY IN PRO SE.

19 AND PURSUANT TO N.R.S. 193.165; N.R.S. 202.265; N.R.S. 202.253;
20 N.R.S. 202.320; N.R.S. 202.350, BERRY V. STATE, 125 NEV. 265, 212 P.3d.
21 1089 (2009); BROWN V. STATE, 2016 NEV. UNPUB LEXIS 488 (NEV. FEB. 12, 2016)

22 THIS PETITION IS MADE AND BASED UPON ALL THE PAPERS

23 AND PLEADINGS ON FILE HEREIN, THE ATTACHED POINTS AND AUTHORITIES
24 IN SUPPORT OF, AND ORAL ARGUMENTS AT THE HEARING IF DEEMED
25 NECESSARY BY THIS HONORABLE COURT.

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NOV 19 2020
CLERK OF THE COURT

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JURISDICTION

Jurisdiction is invoked pursuant to the provisions of N.R.S. 34.360 et. seq.

N.R.S. 34.360 states: "Every person unlawfully committed, detained, confined, or restrained of his/her liberty under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint."

Petitioner asserts that he was erroneously convicted and sentenced for the committing the crimes of and consisting of (1) with the use of a deadly weapon pursuant to N.R.S. 165.41(1); N.R.S. 202.265; N.R.S. 202.320; N.R.S. 350; N.R.S. 202.263.

POINTS AND AUTHORITIES

STATEMENT OF CASE

Narcus Wesley (hereinafter Petitioner) has been in the custody of the Nevada Department of Corrections (N.D.C.) pursuant to an information consisting of an 18, count sequence, being Conspiracy, Burglary, Robbery, Assault, Kidnapping, Sexual Assault, Coercion, and Open or Gross Lewdness, all with the use of a deadly weapon.

ARGUMENT

On February 7, 2007, Petitioner Wesley was arrested for committing multiple crimes cited above and found guilty of those said crimes, based upon the jury instructions given to the jury for consideration.

I. Insufficient Evidence For The Deadly Weapon

Petitioner argues that there was insufficient evidence

1 that a firearm was used in the commission of the crimes
2 charged for the Petitioner to be sentenced under N.R.S.
3 193.165, the deadly weapon enhancement.

4 Petitioner claims that the State failed to establish
5 that the object portrayed as a gun that was not produced
6 at trial could fire a projectile by force of an explosion or
7 combustion, See N.R.S. 202.253(2), or that it was capable of firing
8 a metal projectile. See N.R.S. 202.265(5)(b).

9 In *Berry v. State*, 125 Nev. at 271, 212 P3d. at 1089 (requiring
10 the State to prove the weapon is a 'deadly weapon' as de-
11 fined in N.R.S. 193.165(6)), the Supreme Court of Nevada
12 concluded that the failure warrants reversal of the ag-
13 gravated sentence for burglary while in possession of a
14 deadly weapon (125 Nev. 278) and the deadly weapon en-
15 hancement sentence for the robbery conviction.

16 In this case the victims could not definitively state
17 that the weapon claimed by the State was a gun.

18 The Court went on to state that in order to meet its
19 burden of proof, the State had to established the ob-
20 ject Wilson or Wesley possessed during, and used in, the com-
21 mission of the crimes was indeed a "deadly weapon" under
22 N.R.S. 193.165. According to the applicable statutes, the States
23 claimed gun would have been a deadly weapon if it was
24 (1) designed to cause substantial bodily harm or death,
25 N.R.S. 193.165(6)(a); (2) used in a manner which, under the
26 circumstances, could cause substantial bodily harm or death
27 pursuant to N.R.S. 193.165(6)(b); (3) capable of expelling a
28 metal projectile by use of spring, gas, air, or ~~AA1001239~~ pur-

1 pursuant to N.R.S. 202.265(5)(b); (c) designed to expel a pro-
2 jectile by the force of an explosion pursuant to N.R.S. 202.253
3 (2). The record does not reveal any evidence presented by the
4 State that suggests that the claimed gun at issue was speci-
5 fically designed to cause substantially harm or death, see
6 N.R.S. 193.165(6)(a) that Wilson or Wesley used the claimed
7 gun in a manner that could cause substantial bodily harm or
8 death, see N.R.S. 193.165(6)(b) or that the claimed gun was
9 designed to expel projectiles by force of an explosion, see N.R.S.
10 202.253(2).

11

12 **II THE DISTRICT ERRED BY INSTRUCTING THE JURY THAT**
13 **A DEADLY WEAPONS CAPABILITIES IS NOT REQUIRED AS A**
14 **MATTER OF LAW**

15 Petitioner Narais Wesley argues that the district
16 erred in instructing the jury that "A FIREARM IS A DEADLY
17 WEAPON AND PROOF OF ITS DEADLY CAPABILITIES IS NOT RE-
18 QUIRED," for the purposes of a sentencing enhancement under
19 N.R.S. 193.165. He contends that a firearm is a deadly weapon as
20 a matter of law, and the determination as to whether the
21 claimed firearm (that was not present at trial as evidenced,
22 should have been left to the jury. Because Wesley failed to
23 object to the district courts deadly weapon instruction at
24 trial, the instruction is to be reviewed for plain error affect-
25 ing his substantial rights. Green v. State, 119 Nev. 542, 545, 80
26 Pzd. 93, 95 (2003).

27 At trial, the jury was instructed on the meaning of a
28 "deadly weapon" as follows:

AA 001240

1 "Deadly weapon means any instrument which, if used in
2 the ordinary manner contemplated by its design and construction,
3 will or is likely to cause substantial bodily harm or death, or,
4 any ~~weapon~~, device, instrument, material or substance, which
5 under the circumstances in which it is used, attempted to be
6 used or threatened to be used, is readily capable of causing
7 substantial bodily harm or death.

8 "You are instructed that a firearm is a deadly
9 weapon and PROOF OF ITS DEADLY CAPABILITIES IS NOT RE-
10 QUIRED." (See EXH. 1 JURY INSTRUCTION No. #36)

11 The first sentence of this instruction mirrors the "deadly weapon"
12 definitions provided in N.R.S. 193.165(6), the last sentence er-
13 roneously informs the jury that proof of its deadly capabilities
14 is not required as a matter of law. Neither the deadly weapon
15 enhancement statute, nor the statutes therein referenced, pro-
16 vide that proof of its deadly capabilities is not required for
17 the firearm to be a deadly weapon. See N.R.S. 202.265; N.R.S.
18 193.165(6); N.R.S. 202.320; N.R.S. 202.380. It can only be con-
19 cluded that this instruction is an incorrect statement of
20 law.

21 The Supreme Court of Nevada has clearly stated that when
22 a district court informs a jury with an incorrect statement
23 of law, the erroneous instruction removes from the jury's
24 consideration the factual issue of whether the claimed firearm
25 constituted a deadly weapon. The Supreme Court of the United
26 States has held that any fact, other than a prior conviction
27 that increases the penalty for a crime beyond the statutory
28 maximum must be submitted to a jury and ~~AA-001241~~ depend a

4

1 reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 496, 120
2 S.Ct. 2348, 147 L.Ed. 2d 435 (2000)

3 4 CONCLUSION

5 Based upon the argument and Exhibit 1, presented for
6 this court's consideration, Petitioner request that this
7 Honorable Court vacate and reverse Wesley's deadly weapon
8 enhancements pursuant to N.R.S. 193.165, as the State failed
9 to prove that a deadly weapon was used, and that the
10 district court erred by instructing the jury with an
11 incorrect statement of law as a matter of law.

12
13 DATED this 2nd day of NOVEMBER, 2020.

14
15 Respectfully Submitted

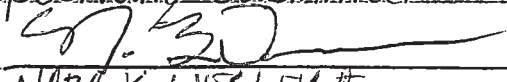
16 By: 
17 MARCUS WESLEY #
18 P.O. Box 650
19 Indian Springs, Nev. 89070
20 IN PRO. SR.

EXHIBIT 1

INSTRUCTION NO. 36

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death, or, any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

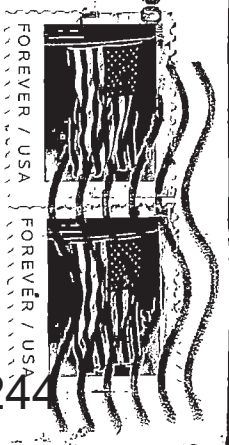
You are instructed that a firearm is a deadly weapon and proof of its deadly capabilities is not required.

1158

AA 001243

NARCUS WESLEY # 1022289
H.D.S.P
P.O. Box 650
INDIAN SPANES, NV 89070

LAS VEGAS NV 890
3 NOV 2020 PM 3



STEVEN D. GRIERSON
CLERK OF THE COURT
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LAS VEGAS, NV 89155-1601

AA 001244

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LEGAL MAIL

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

NARCUS S. WESLEY, aka,
Narcus Samone Wesley #1757866

Defendant.

CASE NO: A-20-824615-W
(07C232494-2)
DEPT NO: XVIII

**STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS
CORPUS CHALLENGING THE ERRONEOUS JURY INSTRUCTION PURSUANT
TO NRS 193.165 AND NRS 34.360**

DATE OF HEARING: JANUARY 14, 2021
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus Challenging the Erroneous Jury Instruction Pursuant to NRS 193.165 and NRS 34.360.

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

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1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On April 20, 2007, the State filed an Information charging Narcus Wesley (hereinafter
4 "Petitioner") and Delarian Kameron Wilson (hereinafter "Wilson") with: Count 1 –
5 Conspiracy to Commit Burglary; Count 2 – Conspiracy to Commit Robbery; Counts 3 and 11
6 – Burglary While in Possession of a Deadly Weapon; Counts 4, 6-7, and 9 – Robbery With
7 Use of A Deadly Weapon; Counts 5 and 8 – Assault with Use of a Deadly Weapon; Count 10
8 – First Degree Kidnapping With Use of a Deadly Weapon; Counts 12-15, and 17 – Sexual
9 Assault With Use of a Deadly Weapon; Count 16 – Coercion With Use of a Deadly Weapon;
10 Count 18 – Open of Gross Lewdness With Use of a Deadly Weapon. The Co-Defendant
11 Wilson later entered into negotiations with the State and plead guilty to two (2) counts of
12 Robbery with Use of a Deadly Weapon and one (1) count of Sexual Assault.

13 Petitioner's jury trial began on April 9, 2008 and concluded on April 18, 2008. On April
14 10, the State filed the Second Amended Information. The jury convicted Petitioner of all
15 eighteen (18) counts contained in the Second Amended Information.

16 On July 3, 2008, Petitioner was adjudged guilty of all eighteen (18) counts and the
17 District Court sentenced as follows¹: as to Counts 1 and 18 – twelve (12) months; as to Counts
18 2, 3, and 11 – twenty-eight (28) to seventy-two (72) months; as to Counts 4, 6, 7, and 9 – sixty
19 (60) to one hundred eighty (180) months plus an equal and consecutive term of sixty (60) to
20 one hundred eighty (180) months for the use of a deadly weapon; as to Counts 5 and 8 –
21 twenty-four (24) to seventy-two (72) months; as to Count 10 – seventy-two (72) to one hundred
22 eighty (180) months plus an equal and consecutive term of seventy-two (72) to one hundred
23 eighty (180) months for the use of a deadly weapon; as to Counts 12 – 15, and 17 – ten (10)
24 years to life plus an equal and consecutive term of ten (10) years to life for the use of a deadly
25 weapon; and as to Count 16 – twenty-four (24) to seventy-two (72) months plus an equal and
26 consecutive term of twenty-four (24) to seventy-two (72) months for the use of a deadly

27 ¹ The State filed a Motion to Correct Illegal Sentence as to Counts 12-15, and 17 as the court had previously given Wesley
28 eight (8) to twenty (20) years instead of ten (10) to twenty (20) as called for under the Statute. 1 AA 132. The court
corrected the sentence at a hearing on September 23, 2008. Defendant was present with counsel during said hearing. The
corrected sentence is listed above.

1 weapon; all counts to run concurrently. The Judgment of Conviction was filed on July 18,
2 2008, and an Amended Judgment of Conviction reflecting a correction in the sentence to
3 Counts 12 – 15, and 17 was filed on October 8, 2008. Petitioner filed a Notice of Appeal from
4 the jury verdict, the sentencing, and all pre-trial and post-trial rulings on July 25, 2008². On
5 March 11, 2010, the Nevada Supreme Court filed an Order affirming Defendant's conviction
6 (Case No.52127). Remittitur was issued on April 8, 2010.

7 On September 9, 2010, Petitioner filed a pro per Petition for Writ of Habeas Corpus
8 and a Motion for Appointment of Counsel and a Request for an Evidentiary Hearing. On
9 December 6, 2010, the State filed a Response to the Petition. On December 7, 2010, the District
10 Court denied the petition. On December 28, 2010, Petitioner filed a Notice of Appeal from the
11 Order denying the petition for post-conviction relief. On January 4, 2011, a Findings of Fact,
12 Conclusions of Law and Order was filed. On March 1, 2011, following an Order of Limited
13 Remand for Appointment of Counsel from this Court regarding appointment of counsel for
14 Petitioner's post-conviction appeal, the District Court appointed Mr. Oram. On January 16,
15 2013 the Nevada Supreme Court issued an Order of Affirmance; Remittitur was issued on
16 February 12, 2013.

17 On November 12, 2020, Petitioner filed the instant "Petition for Writ of Habeas Corpus
18 Challenging the Erroneous Jury Instruction Pursuant to NRS 193.165 and NRS 34.360[.]" The
19 State responds herein.

20 ARGUMENT

21 **I. PETITIONER'S SECOND HABEAS PETITION IS PROCEDURALLY** 22 **BARRED**

23 **A. Petitioner's Claims are Waived.**

24 As an initial matter, claims other than challenges to the validity of a guilty plea and
25 ineffective assistance of trial and appellate counsel must be raised on direct appeal "or they
26 will be considered waived in subsequent proceedings." Franklin v. State, 110 Nev. 750, 752,

27
28 ² For purposes of clarification, Petitioner's trial counsel were Deputy Public Defenders Jeffrey Banks (hereinafter "Mr. Banks") and Casey Landis (hereinafter "Mr. Landis"). Counsel for Petitioner's direct appeal were Dan Winder (hereinafter "Mr. Winder") and Arnold Weinstock (hereinafter "Mr. Weinstock").

1 877 P.2d 1058, 1059 (1994) (disapproved on other grounds by Thomas v. State, 115 Nev. 148,
2 979 P.2d 222 (1999)); See also, NRS 34.724(2)(a); NRS 34.810(1)(b)(2); Evans v. State, 117
3 Nev. 609, 646-47, 29 P.3d 498, 523 (2001). Here, Petitioner offered substantive claims in the
4 instant Second Petition that are now waived due to his failure to raise on direct appeal.
5 Accordingly, his Second Petition must be denied.

6 **B. The Instant Second Petition is Untimely.**

7 NRS 34.726(1) states that “unless there is good cause shown for delay, a petition that
8 challenges the validity of a judgment or sentence must be filed within 1 year after entry of the
9 judgment of conviction or, if an appeal has been taken from the judgment, within 1 year
10 after the Supreme Court issues its remittitur.” The one-year time bar is strictly construed and
11 enforced. Gonzales, 118 Nev. 590, 53 P.3d 901. The Nevada Supreme Court has held that
12 the “clear and unambiguous” provisions of NRS 34.726(1) demonstrate an “intolerance
13 toward perpetual filing of petitions for relief, which clogs the court system and undermines
14 the finality of convictions.” Pellegrini v. State, 117 Nev. 860, 875, 34 P.3d 519, 529 (2001).
15 For cases that arose before NRS 34.726 took effect on January 1, 1993, the deadline for
16 filing a petition extended to January 1, 1994. Id. at 869, 34 P.3d at 525.

17 The one-year time bar of NRS 34.726 is strictly construed. Gonzales v. State, 118 Nev.
18 590, 593-596, 53 P.3d 901, 902-904 (rejected post-conviction petition filed two days late
19 pursuant to the “clear and unambiguous” provisions of NRS 34.726(1)). Further, the District
20 Courts have a duty to consider whether post-conviction claims are procedurally barred. State
21 v. Eighth Judicial District Court (Riker), 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005). The
22 Nevada Supreme Court has found that “[a]pplication of the statutory procedural default rules
23 to post-conviction habeas petitions is mandatory,” noting:

24 Habeas corpus petitions that are filed many years after conviction are an
25 unreasonable burden on the criminal justice system. The necessity for a
26 workable system dictates that there must exist a time when a criminal
conviction is final.

27 Id., at 231, 112 P.3d at 1074. Additionally, the Court held that procedural bars “cannot be
28 ignored when properly raised by the State.” Id., at 233, 112 P.3d at 1075. The Nevada Supreme

1 Court has granted no discretion to the District Courts regarding whether to apply the statutory
2 procedural bars. Moreover, parties in a post-conviction habeas proceeding cannot stipulate to
3 disregard the procedural default rules. State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676,
4 681 (2003).

5 Here, the Judgment of Conviction was filed on July 18, 2008, and an Amended
6 Judgment of Conviction was filed on October 8, 2008. On March 11, 2010, the Nevada
7 Supreme Court filed an Order affirming Petitioner's conviction; Remittitur was issued on April
8 8, 2010. Accordingly, Petitioner had until April 8, 2011 to file a Petition. The instant Petition
9 was not filed until November 12, 2020, over nine (9) years after the deadline. Therefore, absent
10 a showing of good cause and prejudice, the instant Second Petition must be denied as untimely.

11 **C. The Instant Second Petition is Successive and/or an Abuse of the Writ.**

12 Under NRS 34.810(2) "[a] second or successive petition must be dismissed if the judge
13 or justice determines that it fails to allege new or different grounds for relief and that the prior
14 determination was on the merits or, if new and different grounds are alleged, the judge or
15 justice finds that the failure of the petitioner to assert those grounds in a prior petition
16 constituted an abuse of the writ." Second or successive petitions will only be decided on the
17 merits if the petitioner can show good cause and prejudice. NRS 34.810(3); Lozada v. State,
18 110 Nev. 349, 358, 871 P.2d 944, 950 (1994). The Nevada Supreme Court has stated: "Without
19 such limitations on the availability of post-conviction remedies, prisoners could petition for
20 relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive
21 and untimely petitions clog the court system and undermine the finality of convictions."
22 Lozada, 110 Nev. at 358, 871 P.2d at 950. The Nevada Supreme Court recognizes that
23 "[u]nlike initial petitions which certainly require a careful review of the record, successive
24 petitions may be dismissed based solely on the face of the petition." Ford v. Warden, 111 Nev.
25 872, 882, 901 P.2d 123, 129 (1995). In other words, if the claim or allegation was previously
26 available with reasonable diligence, it is an abuse of the writ to wait to assert it in a later
27 petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991). Application of NRS 34.810(2) is
28 mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

1 Here, Petitioner previously filed a Petition on September 9, 2010. To the extent that any
2 claims raised were raised previously, and denied on the merits, said claims are successive and
3 would be governed by res judicata and/or law of the case.³ To the extent that Petitioner is
4 raising new claims, this is an abuse of the Writ as the claims could have been raise in the
5 previous Petition. Therefore, absent a showing of good cause and prejudice, Petitioner's claims
6 are procedurally barred.

7 II. PETITIONER HAS FAILED TO DEMONSTRATE GOOD CAUSE AND 8 PREJUDICE

9 A showing of good cause and prejudice may overcome procedural bars. To show good
10 cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: (1) "[t]hat
11 the delay is not the fault of the petitioner" and (2) that the petitioner will be "unduly
12 prejudice[d]" if the petition is dismissed as untimely. See NRS 34.726(1).

13 "To establish good cause, appellants must show that an impediment external to the
14 defense prevented their compliance with the applicable procedural rule. A qualifying
15 impediment might be shown where the factual or legal basis for a claim was not reasonably
16 available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003)
17 (emphasis added). Moreover, "appellants cannot attempt to manufacture good cause[.]" Id. at
18 621, 81 P.3d at 526; see also Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506-07
19 (2003) (stating that a claim reasonably available to the petitioner during the statutory time
20 period did not constitute good cause to excuse a delay in filing).

21 In addition to establish good cause, a petitioner must also show actual prejudice
22 resulting from the errors of which he complains. In other words, in order to establish prejudice,
23 the defendant must show "not merely that the errors of [the proceedings] created possibility
24 of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the
25 state proceedings with error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952,
26 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct.
27 1584, 1596 (1982)). To find good cause there must be a "substantial reason; one that affords

28 ³ See Exec. Mgmt. v. Tigor Titles Ins. Co., 114 Nev. 823, 834, 963 P.2d 465, 473 (1998); Sealfon v. United States, 332
U.S. 575, 578, 68 S. Ct. 237, 239 (1948); Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975)