

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMIEN ALEXANDER PHILLIPS,
A/K/A TRAVIS ALEXANDER PHILLIPS,
Appellant(s),

vs.

THE STATE OF NEVADA
DEPARTMENT OF CORRECTIONS,
Respondent(s),

Electronically Filed
Mar 29 2022 08:33 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-21-831976-W

Docket No: 84115

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT
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PROPER PERSON
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DISTRICT ATTORNEY
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LAS VEGAS, NV 89155-2212

A-21-831976-W Damien Phillips, Plaintiff(s) vs. Nevada Department of Correction,
Defendant(s)

I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 246
2	247 - 491
3	492 - 736
4	737 - 750

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	3/30/2021	Application to Proceed Informa Pauperis (Confidential)	79 - 83
2	10/13/2021	Application to Proceed Informa Pauperis (Confidential)	481 - 487
3	1/18/2022	Case Appeal Statement	731 - 732
4	3/28/2022	Certification of Copy and Transmittal of Record	
4	3/28/2022	District Court Minutes	748 - 750
2	8/21/2021	Findings of Fact, Conclusions of Law and Order	427 - 450
3	3/22/2022	Findings of Fact, Conclusions of Law and Order (Continued)	733 - 736
4	3/22/2022	Findings of Fact, Conclusions of Law and Order (Continuation)	737 - 739
1	5/25/2021	Motion and Order for Transportation of Inmate for Court Appearance or, in the Alternative for Appearing by Telephonic or Video Conferences	118 - 126
1	8/4/2021	Motion for Amended Habeas Corpus (Post Conviction) (Continued)	138 - 246
2	8/4/2021	Motion for Amended Habeas Corpus (Post Conviction) (Continuation)	247 - 425
2	10/13/2021	Motion for Appointment of Counsel; Request for Evidentiary Hearing	476 - 479
1	3/30/2021	Motion to Appoint Counsel	75 - 78
1	3/30/2021	Motion to Preserve All Evidence on Case #C-18-335500-1 (Federalize)	73 - 74
3	1/13/2022	Notice of Appeal	727 - 730

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
2	8/24/2021	Notice of Entry of Findings of Fact, Conclusions of Law and Order	451 - 475
4	3/23/2022	Notice of Entry of Findings of Fact, Conclusions of Law and Order	740 - 747
1	4/7/2021	Notice of Hearing	91 - 91
1	3/30/2021	Notice of Motion	84 - 84
1	3/30/2021	Notice of Motion	85 - 85
1	5/25/2021	Notice of Motion	117 - 117
1	7/8/2021	Notice of Motion	127 - 137
2	8/4/2021	Notice of Motion	426 - 426
2	10/13/2021	Notice of Motion	480 - 480
1	4/1/2021	Order for Petition for Writ of Habeas Corpus	86 - 87
1	4/28/2021	Order for Production of Inmate Damien Alexander Phillips, aka, Travis Alexander Phillips, BAC #1212760	92 - 94
1	4/1/2021	Order to Proceed In Forma Pauperis (Confidential)	88 - 90
2	10/13/2021	Petition for Writ of Habeas Corpus (Postconviction) (Continued)	488 - 491
3	10/13/2021	Petition for Writ of Habeas Corpus (Postconviction) (Continuation)	492 - 726
1	3/30/2021	Petitioner for Writ of Habeas Corpus (Postconviction)	1 - 72
1	5/25/2021	State's Response to Petition For Writ of Habeas Corpus (Post-Conviction); Motion to Preserve Evidence; and Motion to Appoint Counsel	95 - 116

1 A WEEK LAW LIBRARY COURT ORDER TO BE
2 ABLE TO SEND ANY DOCUMENTS DIRECTLY AT
3 LAW LIBRARY, AND FINISH MY RESEARCH FOR
4 MY REPLY BRIEF, AND TO SEND ME THE
5 MINUTES TO THE JUNE 7TH, 2021 HEARING.
6 SO TO BE CLEAR PETITIONER
7 PHILLIPS # 1212760 BESS THE COURT TO
8 MAKE AN ORDER FOR THE FOLLOWING...

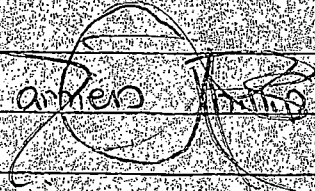
9
10 ① 45 (FORTY-FIVE) DAY EXTENSION
11 FOR REPLY BRIEF

12
13 ② COURT ORDER FOR 7 HOURS A
14 DAY IN LAW LIBRARY (10 HOURS)

15
16 ③ MINUTES TO THE JUNE 7TH, 2021
17 COURT HEARING:

18 - DAMIEN A. PHILLIPS # 1212760
19 CASE # A-21-831976-W
20 DEPT. NO. 21

21
22 I THANK YOU IN ADVANCE FOR YOUR
23 HELP. GOD BLESS!

24 
25

26 DAMIEN A. PHILLIPS
27 1212760

SUPPLEMENTAL MEMORANDUM...

EXHIBIT

A

- PHOTOS OF CIRCUS CIRCUS
MANORS
-

- PHOTOS OF AVIATOR SUITES

1 SUPPLEMENTAL MEMORANDUM EXHIBIT A.

2
3 PHOTOS OF CIRCUS CIRCUS MANORS
4 PARKING LOT NEAR BUILDING C
5 (2880 SOUTH LAS VEGAS BLVD
6 LAS VEGAS, NV. 89109)
7

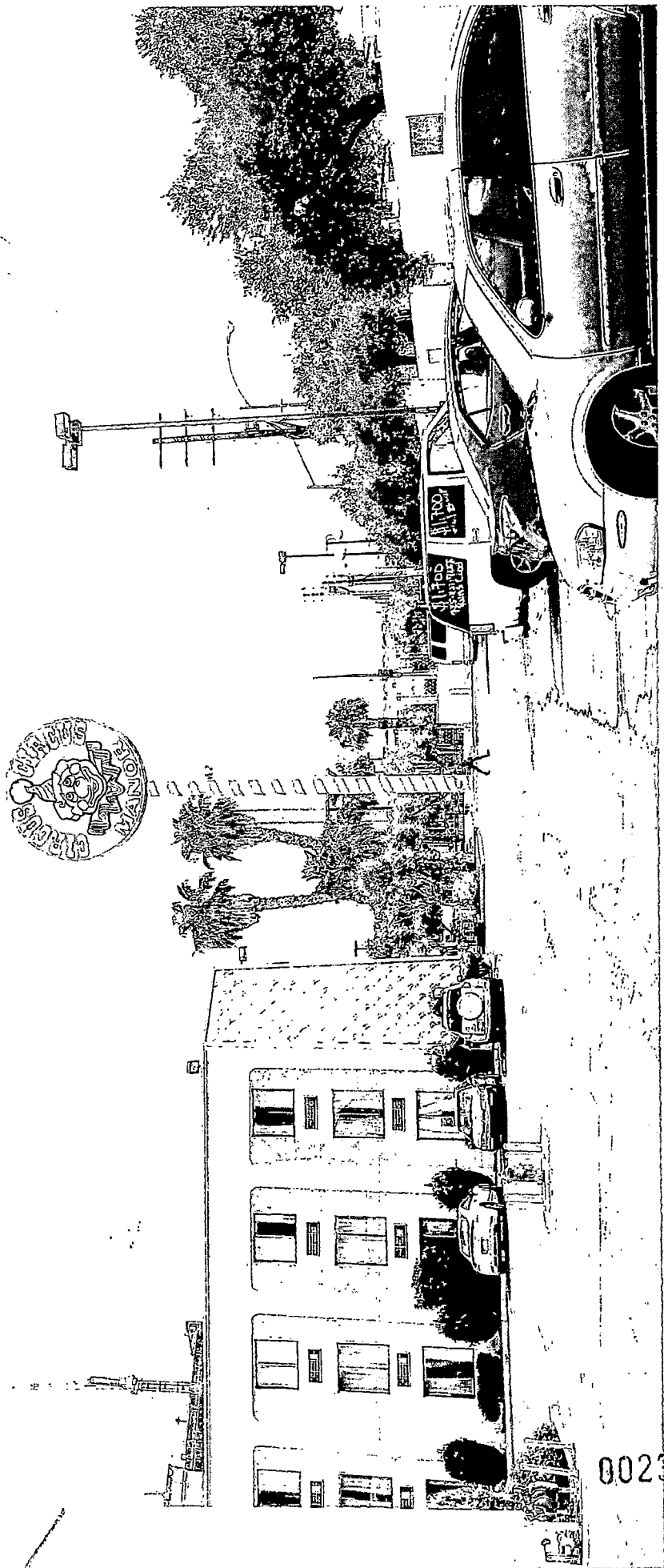
8
9 A.) SECURITY POST

10
11 B.) PRIVATE PROPERTY SIGNS

12
13 C.) BUILDING C

14
15 D.) WALLS
16

17
18 TO PROVE THE POLICE ENCREACHED
19 UPON THIS LOCATION, PLEASE LOOK AT THE
20 PHOTOS OF THE AREA DESCRIBED ABOVE
21 (SEE PAGE 2A). THESE PHOTOS ARE
22 PROVIDED TO MAKE IT EASIER FOR THE
23 JUDGE TO PAINT A CLEAR PICTURE OF
24 THE SITUATION DESCRIBED AND ARGUED
25 IN THE SUPPLEMENTAL MEMORANDUM.
26
27
28



002399

SUPPLEMENTAL MEMORANDUM

EXHIBIT B

SEARCH WARRANTS

- MOBILE TRACKING
DEVICE WARRANT

-
- 8/9/2018 WARRANT

-
- 8/10/2018 WARRANT
TO REMOVE FIREARM

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(MOBILE TRACKING DEVICE)

Exhibit

1A

STATE OF NEVADA)

Event Number: 18-17110

) ss:

COUNTY OF CLARK)

2018 AUG 15 P 1:42

Det. K. Lippisch #1710, being first duly sworn, deposes and states that he is the Affiant herein, and is a Detective with the Henderson Police Department, currently assigned to the Investigative Service Division (ISD), having been employed by the Department for the past 9 years, since October 14, 2008, and having been assigned to (ISD) for the past 3 years.

There is probable cause to believe that certain evidence of criminal activity will be found through the seizure of the specified vehicle currently located within the Court's jurisdiction, to-wit:

a 1994 Mercury Grand Marquis, red in color, currently unregistered, and Vehicle Identification Number (VIN): 2MELM75W6RX655459,

said seizure occurring for the purpose of installing, maintaining and/or removing a tracking device on or from the specified vehicle and the subsequent use of that device to monitor the specified vehicle's movements and locations for a period of time, not to exceed forty-five (45) days.

The seizure of said specified vehicle hereinbefore described, and the continued monitoring of that specified vehicle's location will provide evidence tending to demonstrate that the criminal offenses of Robbery NRS 200.380, have been and continue to be committed, in that the specified vehicle is being used by certain subjects to facilitate said crimes and that particular activities concerning this offense will be obtained through installation and monitoring of the specified vehicle's movements and locations.

**APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(MOBILE TRACKING DEVICE)**

In support of Affiant's assertion of probable cause, the following facts are offered:

On 07/31/2018 at approximately 1143 hours HPD Units were dispatched to the Bank of the West located at 701 North Valle Verde Drive (N3) reference a reported robbery. Dispatch advised that 2 black male adults (one dressed as a female) had robbed the location and then fled, running out of sight through the business complex to the rear of the bank. Patrol Units arrived in the area, secured the scene, and attempted to locate the suspects in the area. ISD was contacted and I, Detective K. Lippisch, Detective Ozawa, and CSA M. Bone responded to assume the investigation.

Upon arrival Detectives made contact with the Patrol Units on scene and they provided details which included the fact that the two bma's had approached both (2) bankers that were assisting customers and after the suspects produced notes both bankers gave the suspects cash from their drawers. After being advised of the details of the call, the bank staff was contacted.

The two bankers (and victims), Nur Begum (DOB 12/15/195) and Grace Mones (DOB 06/19/1972), were then contacted and interviewed. Nur stated the following: She had been helping customers at her banker station when the two suspects entered the bank. She completed helping the guests in front of her and then Nur called the two suspects to her location and one of the suspects sat in front of her while the other suspect stood. The suspect seated in front of her then produced a piece of paper which he held up for her to read and on the paper was written: Do what the note says, we have a weapon, give me all your money, do not try anything funny. Nur placed all of the 1's, 5's and 10's from her drawer on the counter (which it was later determined totaled \$686.00) and the suspect took the money. The suspect then stood and walked to the door where he waited for the second suspect, who had moved to the second banker as Nur was emptying her drawer.

Grace stated the following: She had been helping a customer when the suspects had entered and she had not noticed them until she had completed helping the customer and the second suspect, who was the one that was dressed as a female, stood in front of her counter. The suspect who stood in front of Grace's counter was a bma and he was dressed to appear to be a female. The suspect was wearing a wig which made it appear as if he had long blonde hair and he placed a purse on Grace's counter. The suspect unzipped the purse and produced a piece of paper from the bag which he showed to Grace and she was able to read: You give me all of your money, I have a bomb tied in my bag, before the suspect put the paper back into the purse. Grace removed all of the cash from her drawer, placed it on the counter, and the suspect placed the money in the purse. Grace stated that she gave the suspect all of the 1's, 5's, 10's, and 20's in her drawer which totaled \$1900.00.

The two suspects were described as dark skinned black males in their mid 20's to early 30's, approximately 5'5" - 5'7" (with one slightly taller than the other), and average build. One of

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT (MOBILE TRACKING DEVICE)

the subjects was wearing a ball cap, a white scarf around his neck, a long sleeve dark shirt, and dark pants. The other subject was wearing the wig that was dark colored on the very top and then had long blonde hair, a short sleeved dress, leggings, and carrying a purse. The employees did not notice anything distinct about the suspects that would assist with identifying the individuals, to include their speech.

After completing the investigation at the bank detectives located several businesses in the area with exterior surveillance cameras and contact was made. Video surveillance from the business complex directly behind (north) of the Bank of the West was collected and the suspects are observed arriving in an unregistered 1994 red Mercury Grand Marquis. The vehicle is observed to have oxidized paint, a black trailer hitch, a possible temporary moving permit in the rear window, and additional cosmetic blemishes. The suspects are observed exiting the vehicle, from passenger doors, and walking out of view in the direction of the bank. It appears that there is a third suspect driving the vehicle and this suspect remains in the driver seat. The suspects are then seen running back from the direction of the bank, entering passenger doors of the vehicle, and then the vehicle quickly drives away.

At this time it is determined that the suspects are related to and are the same suspects from two recent US Bank robberies (HPD DR#'s 18-15877 and 18-15420) due to their physical descriptions, similar clothing items, and identical MO. HPD DR#18-15877 is a robbery that occurred on 07/23/2018 at the US Bank located at 10565 S. Eastern Avenue in which two bma's enter, present a note almost identical to the first not listed above, receive cash, and then flee on foot northbound through the shopping center and into a nearby apartment complex. HPD DR#18-15420 is a robbery that occurred on 07/17/2018 at the US Bank located at 1440 Paseo Verde Parkway in which a single bma enters, presents a note (again, almost identical to the first note described), receives cash, and then flees on foot northbound out of sight into a shopping center. The bma from 18-15420 has been involved in all three robberies and the second bma was involved in the two incidents that now include two suspects.

A search of multiple law enforcement databases returned to reveal that an unregistered 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459) had been stopped 4 times by LVMPD Officers and upon viewing the bodycam footage of the vehicle stops I was able to determine that the vehicle was the same as the suspect vehicle from the Bank of the West robbery based on the previously described details of the vehicle. A subject/driver was contacted in all four of the stops and he was identified as Anthony Barr (DOB 03/11/1990). A search of Anthony's criminal history returned to reveal that he had multiple criminal convictions to include robbery and aggravated robbery convictions in the state of Texas, as well as aggravated robbery in the state of Minnesota. Anthony provided LVMPD Officers with a Las Vegas address as his current residence, 870 N. Sloan #201.

**APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(MOBILE TRACKING DEVICE)**

A fourth robbery was committed by the same suspects on 08/06/2018 (HPD DR#18-16972) at the US Bank located at 55 S. Valle Verde (inside the Smith's). This time the same two suspects entered the Smith's, approached the tellers at the US Bank, displayed notes demanding money, and fled on foot through the shopping center with an undisclosed amount of cash. The suspects fled southbound and out of sight prior to HPD Patrol Units arriving.

Due to the fact that the same suspect(s) have committed 4 robberies and the fact that in all of the robberies the suspects have fled the immediate area on foot and into areas that a layoff vehicle could be parked and then used to flee the area, it is believed that the suspect vehicle has been utilized in all four of the robberies although video evidence of this was not available from all of the robberies.

Due to the following facts: that the same suspects have committed 4 robberies and the fact that in all of the robberies the suspects have fled the immediate area on foot, the fact that outlying surveillance provided images of the suspects fleeing to a waiting vehicle in the third robbery, and the fact that the vehicle used in the third robbery matches the vehicle operated by Anthony Barr, as well as, the fact that I believe the suspects will continue on the crime spree until finally brought to justice, a GPS tracking device would greatly assist in the furtherance of this investigation by allowing Detectives to track the locations of further criminal activities.

Furthermore, your Affiant prays this Court authorize a night service clause for installation, maintenance, removal and subsequent tracking / monitoring of said device for the following reasons: that there is currently an ongoing criminal investigation of an active suspect who operates at unscheduled and varied hours of the day and night. Therefore, contact with the listed specified vehicle and installation of equipment is completely dependent on the movements of the suspect. Installation often involves law enforcement personnel secreting themselves under a subject's vehicle to affix the tracking equipment. Safe and timely access to the subject's vehicle is crucial for any and all installations. For obvious safety concerns, this is often done under the cover of darkness. Furthermore, any surveillance is reliant upon the movements, methods and opportunities of the suspect. An ongoing surveillance may extend outside the hours of 0700 hours and 1900 hours based upon the actions and activities of the suspect. Termination of such surveillance could result in the loss of critical evidence, to include but not exclusive of: crimes in progress, casing of future criminal targets and the hidden storage of any evidence. In addition to possible criminal activities, the continuous 24/7 access, tracking and monitoring of the equipment is necessary for the safeguard of a valuable piece of law enforcement equipment.

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT (MOBILE TRACKING DEVICE)

Your Affiant also requests the ability to perform maintenance on the tracking device, if required. Battery operated equipment has a limited operational lifespan based on several factors to include law enforcement monitoring of said equipment coupled with the actual amount of movement of the specified vehicle in question. Therefore, as the length of an investigation extends, it is foreseeable that the equipment's battery may need to be changed or the equipment itself may need to be switched with matching equipment containing a full battery life due to a malfunction of the equipment. Safe and timely access to the specified vehicle for said battery switch and/or maintenance is completely reliant upon the movements of the suspect. That opportunity cannot be passed up based upon the time of day or night. As such, cover of darkness is often utilized for the safety of officers as well as the suspect and surrounding public by minimizing the chance for any possible confrontation with the suspect during such battery changes and/or maintenance. Therefore, your Affiant further prays that this Court authorize any additional contact with listed specified vehicle for reasons of changing batteries and/or performing maintenance at any time of day or night.


Furthermore, your Affiant requests the authorization to monitor the tracking device in the event the specified vehicle leaves the geographic boundaries of the State of Nevada, consistent with United States Code (18 USC § 3117). Specifically, your Affiant requests authorization to monitor the tracking device while outside the Court's jurisdictional boundary, so long as the device was installed and is being monitored within the Court's jurisdictional boundary.

Due to the currently ongoing criminal investigation involving a person believed to be connected to the specified vehicle described herein, the release of information in this Affidavit at the time of Search Warrant service would compromise the integrity of the investigation and surveillances associated therewith. Affiant therefore requests delay of the notification requirements of the person from whose premises or the place from which the specified vehicle was seized, as set forth in NRS 179.075, until conclusion of the investigation or further order of the Court. For the same reasons, Affiant prays that this Affidavit be sealed by the order of the Court.

WHEREFORE, Affiant requests that a Search Warrant be issued authorizing law enforcement officials, or their authorized representatives, including but not limited to other law enforcement agents and officers and technicians assisting in the above-described investigation, to surreptitiously maintain, service, repair, and ultimately remove a mobile tracking device in or on the "specified vehicle," and to surreptitiously enter the specified vehicle to effect said activities; and to monitor the signals from that tracking device, for a period of forty-five (45)

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
(MOBILE TRACKING DEVICE)

days, on a 24-hour basis, following the issuance of this Court's order, including signals produced from inside private garages and other locations not open to public or visual surveillance, and to continue to monitor the signals produced during that time period.


DET. K. LIPPISCH #1710, AFFIANT

SUBSCRIBED and SWORN to before me by Jeep Wiese

this 8 day of August, 2018, at 1030 hours.

Jeep A. Wiese
DISTRICT COURT JUDGE (Print Name)


DISTRICT COURT JUDGE (Signature)

Reviewed for Probable Cause by:

Jacqueline Runtz
Clark County District Attorney's Office (Print Name)

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

John A. Blum
CLERK OF THE COURT

SW 18-1140
SEARCH WARRANT
(MOBILE TRACKING DEVICE)

FILED

STATE OF NEVADA

) 2018 AUG 15 P 1:42 Event Number: 18-17110

COUNTY OF CLARK

) ss: [Signature]
CLERK

The State of Nevada, to any Peace Officer in the County of Clark, proof by Affidavit having been made before me by Det. K. Lippisch #1710, said Affidavit attached hereto and incorporated herein by reference, that there is probable cause to believe evidence of criminal activity will be found through the seizure of property currently located within the Court's jurisdiction, to-wit:

a 1994 Mercury Grand Marquis, red in color, currently unregistered, and Vehicle Identification Number (VIN): 2MELM75W6RX655459,

and as I am satisfied that said seizure, occurring for the purpose of installing, maintaining, and/or removing a tracking device on or from the specified vehicle, and the subsequent use of that device to monitor the specified vehicle's movements and locations for a period of time not to exceed forty-five (45) days, constitutes sufficient grounds, issuance of this search warrant IS HEREBY ORDERED.

Officers, agents and employees of the Police Department are authorized to:

1. Enter upon areas open to the public for purposes of installing, maintaining and/or removing a tracking device on or from the specified vehicle; and
2. Surreptitiously install, maintain and /or remove a tracking device on or from the specified vehicle, including repair, replacement of power source, or replacement of the device as necessary *at anytime day or night*; and
3. Use that device to monitor the vehicle's movements and locations twenty-four (24) hours daily, seven (7) days per week commencing from the time and date of this Order and continuing for a period of time contemplated by this order;

**SEARCH WARRANT
(MOBILE TRACKING DEVICE)**

4. Retrieve the covert monitoring device at the conclusion of any time period contemplated by this order.

IT IS FURTHER ORDERED that the installation, maintenance and monitoring pursuant to this order shall be executed as soon as practicable, but in no event more than ten (10) days from the Court's signing of this order.

IT IS FURTHER ORDERED that officers are authorized to monitor the signals from the tracking device, including those signals produced from inside any private garage or other location not open to public or visual surveillance, and, in the event the specified vehicle travels outside Nevada, consistent with United States Code (18 USC § 3117), those signals produced outside Nevada but within the United States, so long as the monitoring takes place within the Court's jurisdiction.

IT IS FURTHER ORDERED that the officer executing the warrant must within ten (10) days of the installation of the tracking device file the Application and Affidavit for Search Warrant, the Warrant and the Initial Inventory with the Clerk of the Court.

IT IS FURTHER ORDERED that the Initial Inventory shall include:

1. A complete description of the vehicle; and,
2. The exact date and time the warrant was executed.

The Court finds that contemporaneous disclosure of the existence of this Order and Affidavit would jeopardize the criminal investigation.

IT IS THEREFORE ORDERED upon good cause shown that, to avoid potential prejudice to the criminal investigation, search warrant notice requirements will be delayed and that law enforcement officers are authorized not to disclose or cause a disclosure of this Order or Affidavit to any person other than those of its agents and employees who require this information to accomplish the purposes of the search.

**SEARCH WARRANT
(MOBILE TRACKING DEVICE)**

IT IS FURTHER ORDERED that monitoring of the tracking device must cease no later than forty-five (45) days after this Court executes this Warrant, unless an application to extend the monitoring period, supported by good cause to do so, has been signed by this Court prior to the expiration of the initial and/or previous forty-five (45) day monitoring period.

IT IS FURTHER ORDERED that at the conclusion of the period authorized for tracking that the tracking device:

1. Be immediately turned off and/or disabled so it cannot transmit any further data concerning the location of said vehicle; and
2. Be removed, as quickly as is practicable, from said vehicle.

IT IS FURTHER ORDERED THAT within ten (10) days after the use of the tracking device has ended and the retrieval of said tracking device, the officer executing this warrant or his designee, must cause a final Inventory to be filed with the Clerk of the Court, which shall contain the following:

1. A complete description of the specified vehicle;
2. The exact date and time of any maintenance and/or replacement of the tracking device;
3. A statement that indicates the exact date and time that the police began monitoring location information for the specified vehicle mentioned above and the exact date and time the monitoring concluded;
4. The exact date and time the tracking device was turned off and/or disabled; and;
5. The exact date and time the device was removed from the specified vehicle.

IT IS FURTHER ORDERED THAT the Affidavit for this Order, this Order and any and all Inventories which must be filed pursuant to NRS 179.075 are to be placed in the custody of the

**SEARCH WARRANT
(MOBILE TRACKING DEVICE)**

Clerk of Court, to remain sealed until further Order of the Court, or until the filing of charges arising from the investigation. This Order will take effect from the date and time of issuance.

IT IS SO ORDERED this

8

day of

August

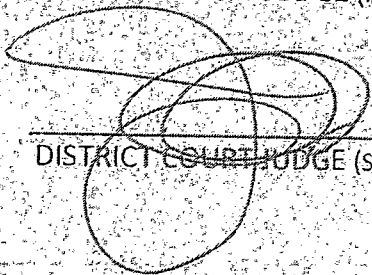
, 2018 at

1030

hours.

TERESA A WISE

DISTRICT COURT JUDGE (Print Name)


DISTRICT COURT JUDGE (Signature)

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

AUG 15 2018

SEARCH WARRANT
(MOBILE TRACKING DEVICE)

Event Number: 18-17110

2018 AUG 15 P 1:42

RETURN

(Initial Inventory for Search Warrant No.)

The Mobile Tracking Device Warrant authorizing a search and seizure and the installation of a tracking device occurred on the following described vehicle:

1994 RO Mercury Grand Marquis, checkered, UNREGISTERED,
VIN: 2MELM7SW6RX655459

said installation occurring at the following geographic location(s):

Circus Circus Marine, 2860 S. Las Vegas Blvd, Las Vegas, NV 89109
IN THE PARKING LOT NEAR BUILDING C.

and was executed on:

8/3/18 at 1509 hrs
(exact date and time)

A tracking device was installed upon the specified vehicle described above and nothing was taken from said as a result of the seizure.

This return was made by:

Witnessed by:

Witnessed by:

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

CLERK OF THE COURT

SEARCH WARRANT
(MOBILE TRACKING DEVICE)

Event Number: 18-17110

RETURN

(Final Inventory for Search Warrant No.:

2018 AUG 15 P 1:02

The Mobile Tracking Device Warrant authorizing a search and seizure and the removal of a tracking device occurred on the following described vehicle:

1994 Red Mercury Grand Marquis, currently unregistered,
(w/ VIN: 2MELE775WLRX655459)

said tracking device removal occurring at the following geographic location(s):

Henderson Police Department Main Station, 223 East St, Henderson
NV 89015 in the basement where parked.

and was executed on:

08/10/18 At 1700 Hrs
(exact date and time)

A tracking device was removed from the specified vehicle described above and nothing was taken from said as a result of the seizure.

Monitoring of the aforementioned tracking device began on 08/08/18 at 1509
hours and concluded on 08/10/18 at 1700 hours.
(Date) (Time) (Date) (Time)

The following is a summary of the police activity concerning this specified vehicle pursuant to the Mobile Tracking Order (including maintenance and/or device replacement dates and times, as well as additional relevant information):

Tracking was completed during the dates listed above and
no additional maintenance/activity occurred.

This return was made by: [Signature] #1710

Witnessed by: [Signature] 1531

Witnessed by: [Signature] 1358

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

[Signature]
CLERK OF THE COURT

APPLICATION AND AFFIDAVIT
for
SEARCH WARRANT

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

Detective Dennis Ozawa, being first sworn deposes and states that he is the affiant herein and is a Police Officer with the City of Henderson Police Department. Currently assigned to the Criminal Investigations Division. That I have been employed with the Henderson Police Department since April 29, 2007.

There is probable cause to believe that certain property hereinafter described will be found at the following described premise(s), to wit:

- ① 4244 N. Las Vegas Boulevard Apartment 242 Las Vegas, NV 89115
-Described as a two story/multi family residence. The building is red stucco with tan colored doors and has tan wrought iron fencing on the second floor. The building has tile roofing and Apartment 242 is located on the second floor. The Apartment number 242 is gold in color and affixed on the tan door.
2. 4244 N. Las Vegas Boulevard Apartment 142 Las Vegas, NV 89115
-Described as a two story/multi family residence. The building is red stucco with tan colored doors and has tan wrought iron fencing on the second floor. The building has tile roofing and Apartment 142 is located on the first floor directly below Apartment 242. The Apartment number 142 is gold in color and affixed on the tan door.
3. Circus Circus Manor Building C room# 2404 2880 S. Las Vegas Boulevard LV, NV 89109
- Described as a hotel with numerous hotel rooms. The Manors are a part of the Hotel and are on the north end of the property. Building C consists of white stucco and white brick. On the east side of building C is a dark colored placard with a white "C" on it. Room 2404 is on the third floor of building C and has a brown door that faces north. Affixed to the wall to the right of the door is a black placard with gold colored numbers "2404"
4. Unregistered 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459)
- ⑤ Silver Mazda Protégé 5 Hatchback with Black driver's door, Plate and VIN unknown parked in front of Apartment 142.

I HEREBY CERTIFY THAT
THIS IS A TRUE COPY
OF THE COMPUTERIZED
RECORD ON FILE AT

HENDERSON POLICE DEPARTMENT

BY: [Signature]

RECEIVED BUREAU

DATE: 5-30-16

The property referred to and sought to be seized consists of the following:

- Clothing Items that were worn during the robberies
 - Black Shirt with the Character Gizmo picture on it
 - Light colored hat with design on the front
 - Aviator style sunglasses
 - White jacket with red stripe in the middle
 - Black hat
 - Red and white plaid long sleeve button up shirt
 - Black do-rag
 - Camouflage hat with blue bill
 - Wig (two tone black and white on bottom)
 - Gray and white long sleeve shirt
 - Black wire frame glasses
- Electronic Storage Hardware
 - To include but not limited to computers, laptops, surveillance digital video recorders, digital cameras, gaming systems, tablets, Internet routers (with storage capabilities), internal / external data storage devices (i.e. HDD, SSD, USB, etc.), and any related components belonging to the aforementioned items.
- Cellular Phones
 - Any and all cellular phones, including any inserted data storage cards, power cords and/or charging materials, regardless of the phone's connection or service status.
- Forensic Search
 - That Affiant requests permission to forensically search the aforementioned electronic storage device(s) or media for all digital data files, records, documents and materials or otherwise evidence described in the warrant. Such search may be conducted on-scene or at an off-site location. Namely Affiant requests that a bit by bit image of all data storage devices be made by a forensic examiner to be searched through at a later date. All of the components could be seized and taken into the custody of the Henderson Police Department; if evidence relating to a felony is located the equipment may be seized as per the NRS.
 - A forensic search of the collected evidence may require a range of data analysis techniques, therefore affiant requests permission to use whatever data analysis techniques appear necessary to locate and retrieve the evidence described in this affidavit.
- Any and all written correspondences, notes, letters, diaries, or other materials that pertain to this case.
- Any papers, documents or other documentation which may lead to other storage places where evidence of this crime could be stored.

I HEREBY CERTIFY THAT

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RECORD ON FILE AT

HENDERSON POLICE DEPARTMENT

BY: Jen 41930

RECORDS BUREAU

DATE: 6-30-16

- Limited items of personal property showing identity of persons having possessory interest or to establish or clarify who all the occupants in premises searched are, such as, but not limited to rent and utility receipts, addressed envelopes and photographs. Such located information is at the discretion to be collected or photographed.
- Processing of the scene to include photographs.
- US currency believed to be associated with the crime.

The property herein before described constitutes evidence, which tends to demonstrate that the criminal offense of Robbery (NRS 200.380) and Burglary (NRS 205.060.2). In support of your Affiant's assertion to constitute the existence of probable cause, the following facts are offered:

Through the investigation it has been found that four separate robberies have been committed in the city of Henderson. The first robbery occurred on 07-17-2018 at US Bank located at 1440 Paseo Verde Parkway under DR# 18-15420. The second robbery occurred on 07-23-2018 at US Bank located at 10565 S. Eastern Avenue under DR# 18-15877. The third robbery occurred on 07-31-2018 at the Bank of the West located at 701 N. Valle Verde Drive under DR # 18-16535. The fourth robbery occurred on 08/06/2018 at the US Bank located inside a Smith's grocery store with an address of 55 S. Valle Verde under DR# 18-16972.

On the first robbery incident (DR# 18-15420) there was only one black male adult, described as 5'10" to 6' in height, skinny build approximately 155-165 lbs in weight, wearing a hat, Aviator sunglasses and having a goatee that entered the US Bank, showed a note to a teller demanding money and committed a robbery. On the next three robbery incidents (DR# 18-15877, 18-16535 and 18-16972) two black male adults entered two US Banks and one Bank of the West and showed a note demanding money and committed a robbery. The black male adult from the first robbery incident (DR# 18-15420) has been observed on video surveillance at three (DR# 18-15420, 18-15877 and 18-16972) of the four robbery incidents. The second black male suspect has been described as 5'9" to 5'11" in height, skinny build approximately 150-165 lbs in weight, wearing a hat and having a mustache and goatee. The second black male has been observed on video surveillance on three (DR# 18-15877, 18-16535 and 18-16972) of the four robbery incidents.

On robbery incident 18-16535, both suspects that entered the Bank of the West ran out of the bank towards the rear of the bank. A canvass for video surveillance, produced surveillance footage from a neighboring business showing the suspects arrive and leave in an unregistered 1994 red Mercury Grand Marquis. The red Mercury Grand Marquis was very distinct looking and was observed to have oxidized paint, a black trailer hitch, a possible temporary moving permit in the rear window, and additional cosmetic blemishes on it.

A search of multiple law enforcement databases returned to reveal that an unregistered 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459) had been stopped 4

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HENDERSON POLICE DEPARTMENT
BY: JEM #1230
RECORDS BUREAU
DATE: 8-30-18

times by LVMPD Officers and upon viewing the bodycam footage of the vehicle stops it was confirmed that the vehicle was the same as the suspect vehicle from the Bank of the West robbery based on the previously described details of the vehicle. A subject/driver was contacted in all four of the stops and he was identified as Anthony Barr (DOB 03/11/1990). Also stopped in the vehicle was Anthony's girlfriend identified as Sabrina Henderson (DOB 07-29-1988).

A search of Anthony's criminal history returned to reveal that he had multiple criminal convictions to include robbery and aggravated robbery convictions in the state of Texas, as well as aggravated robbery in the state of Minnesota.

Additionally, during the processing of each incident, latent prints were lifted. Results were obtained from a latent print comparison from incident 18-16535 (Bank of the West), which came back to a black male named Damien Alexander Phillips (DOB 09-28-1988). Photos obtained for Damien Alexander Phillips revealed that he matched the suspect that has been observed in video surveillance in three of the four robberies.

After it was confirmed that the 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459) vehicle that Anthony Barr has been seen driving was the suspect vehicle seen leaving the robbery incident that occurred at the Bank of the West, a tracking device warrant was authored by Detective Lippisch to place a tracking device on the 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459) when located.

Further research conducted on Damien Phillips and Anthony Barr revealed a possible location that Damien Phillips was currently living at the Aviator Suites located at 4244 N. Las Vegas Boulevard Las Vegas, NV 89115. Active Surveillance was set up on 4244 N. Las Vegas Boulevard on 08-08-2018. At approximately 1220 hrs, the 1994 red Grand Marquis pulled into the parking lot near room number 242 and 142.

Active Sur v.
where the
warrants
that's fishing
and is illegal

Anthony Barr then gets out of the driver's door of the vehicle and a black female, identified as Sabrina Henderson, with short haired gets out of the passenger side and they both go to apartment 242. Anthony knocks on door to room 242 and the door opens and the two of the go in. A short time later, Anthony comes out of room 242 and with bins of clothes and other unknown items and load them into the Grand Marquis vehicle.

After few more moments pass, Damien Phillips comes out of room 242 with a bin full of items loads the items into Grand Marquis and then goes to Room 142 and tries to immediately open the door but it doesn't open. Damien then knocks on the door to 142 and the door opens and Damien walks into room 142. A short time later, Damien comes out with items and loads them into another vehicle, a silver colored Mazda Protégé 5.

After Damien loads items into the Mazda Protégé 5, a black female with long hair comes out of room 242 and they both get into the Grand Marquis vehicle with Anthony as the driver and the Grand Marquis drives away. During the time, Damien, Anthony and the black female with short hair are seen going back and forth to room 242 and 142 a male juvenile was observed exiting and entering room 242.

Damien was observed wearing a gray shirt black and red checkered pants and Anthony was observed wearing a black shirt and jeans. It was later confirmed by Aviator Suites

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Invasion of my
privacy. The suit is by
is private property.

267

here is the warrant DATE:

08-30-18

testimony
the officer says
we all got out
the car

they still didn't
gain anything
relevant to the
burglary in
the robbery

Management that apartment number 242 is registered to Damien Phillips and apartment number 142 is registered to Vidal Holman. It was also advised that Damien has paid rent for apartment room number 242 and 142 at the same time, which shows that Damien is connected to both apartments. *who advised I paid for both apartments? No press that I did either of them.*

When the red Grand Marquis vehicle leaves the apartment, Detectives with the Henderson Police Department began surveillance on the Grand Marquis and followed the vehicle. At approximately 1430 hrs the Grand Marquis vehicle pulls into the Circus Circus Manor located at 2880 S. Las Vegas Boulevard LV, NV 89109 near Building C. When the Grand Marquis parks, Anthony, Damien, Sabrina and the other female exit out of the vehicle and enter building C and are seen taking items out of the Grand Marquis and going into Building C with the items. It was later confirmed that room number #2404 in Building C was the room rented to Anthony's girlfriend (Sabrina Henderson).

After everyone entered Building C, Detectives from the Henderson Police Department Intel Division placed a tracking device on the 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459).

On 08-09-2018, Detective Lippisch and I received an alert that the 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459) was moving and Detectives from the Henderson Police Department Investigative Services Division began to conduct surveillance on the vehicle and located the 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459) parked in an alley way north of Garces Avenue and near US Bank located at 801 E. Charleston Boulevard Las Vegas, NV 89104. Detectives then observed an unknown black female get out of the Grand Marquis and walk into the US Bank located at 801 E. Charleston Boulevard and then exit shortly after and walk back to the Grand Marquis.

After the female walked back to the Grand Marquis, Damien Phillips and Anthony Barr were observed exiting out of the Grand Marquis and walking into the US Bank located at 801 E. Charleston Boulevard. After a short period of time, Anthony and Damien were observed running out of the US Bank and got into the Grand Marquis. A traffic stop was conducted on the Grand Marquis vehicle, and Anthony and Damien were taken into custody. Also inside the vehicle were two black adult females, which were the same females that were seen at 4244 N. Las Vegas Boulevard Las Vegas, NV 89115. Evidence was recovered that showed Anthony and Damien had just committed a robbery at the US Bank.

Affiant contacted Deputy District Attorney Jacqueline Bluth and advised her of the details of the investigation verbally over the phone. DDA Bluth approved the above affidavit for warrant.

Due to the aforementioned facts and circumstances, Affiant request a search warrant be issued for the above premises mentioned and that the aforementioned occurred in the City of Henderson, County of Clark and State of Nevada.

I HEREBY CERTIFY THAT
THIS IS A TRUE COPY
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RECORD ON FILE AT
HENDERSON POLICE DEPARTMENT

BY: John #12135DATE: 8-30-18

That this affidavit does not contain each and every fact known to your affiant related to this investigation but rather includes that information related to the probable cause pertaining to the search of the location referred to above.

Affiant requests that a Search Warrant issued directing a search for and seizure of the aforementioned items at the location set forth herein between the hours of 0700 and 1900 hours.


I declare under penalty of perjury that the foregoing information is true and correct.

 1531
Dennis Ozawa, AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME
THIS DAY OF August 9, 2018.


Judge

I HEREBY CERTIFY THAT
THIS IS A TRUE COPY
OF THE COMPUTERIZED
RECORD ON FILE AT
MEMPHIS POLICE DEPARTMENT

BY:  #1920

RECORDS BUREAU

DATE: 8-30-18

SEARCH WARRANT

STATE OF NEVADA)

SS:

COUNTY OF CLARK)

State of Nevada to any Peace Officer in the County of Clark, Proof by Affidavit having been made before me by Detective Dennis Ozawa, said Affidavit attached hereto and incorporated herein by reference, that there is probable cause to believe that certain property namely,

The property referred to and sought to be seized consists of the following:

- Clothing Items that were worn during the robberies
 - Black Shirt with the Character Gizmo picture on it
 - Light colored hat with design on the front
 - Aviator style sunglasses
 - White jacket with red stripe in the middle
 - Black hat
 - Red and white plaid long sleeve button up shirt
 - Black do-rag
 - Camouflage hat with blue bill
 - Wig (two tone black and white on bottom)
 - Gray and white long sleeve shirt
 - Black wire frame glasses
- Electronic Storage Hardware
 - To include but not limited to computers, laptops, surveillance digital video recorders, digital cameras, gaming systems, tablets, Internet routers (with storage capabilities), internal / external data storage devices (i.e. HDD, SSD, USB, etc.), and any related components belonging to the aforementioned items.
- Cellular Phones
 - Any and all cellular phones, including any inserted data storage cards, power cords and/or charging materials, regardless of the phone's connection or service status.
- Forensic Search
 - That Affiant requests permission to forensically search the aforementioned electronic storage device(s) or media for all digital data files, records, documents and materials or otherwise evidence described in the warrant. Such search may be conducted on-scene or at an off-site location. Namely Affiant requests that a bit by bit image of all data storage devices be made by a forensic examiner to be searched through at a later date. All of the components could be seized and taken into the custody of the Henderson

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HENDERSON POLICE DEPARTMENT

BY: JEM #4930

RECORDED & INDEXED

Police Department; if evidence relating to a felony is located the equipment may be seized as per the NRS.

- A forensic search of the collected evidence may require a range of data analysis techniques, therefore affiant requests permission to use whatever data analysis techniques appear necessary to locate and retrieve the evidence described in this affidavit.
- Any and all written correspondences, notes, letters, diaries, or other materials that pertain to this case.
- Any papers, documents or other documentation which may lead to other storage places where evidence of this crime could be stored.
- Limited items of personal property showing identity of persons having possessory interest or to establish or clarify who all the occupants in premises searched are, such as, but not limited to rent and utility receipts, addressed envelopes and photographs. Such located information is at the discretion to be collected or photographed.
- Processing of the scene to include photographs.
- US currency believed to be associated with the crime.

Is presently located at or in the custody of:

1. 4244 N. Las Vegas Boulevard Apartment 242 Las Vegas, NV 89115
-Described as a two story/multi family residence. The building is red stucco with tan colored doors and has tan wrought iron fencing on the second floor. The building has tile roofing and Apartment 242 is located on the second floor. The Apartment number 242 is gold in color and affixed on the tan door.
2. 4244 N. Las Vegas Boulevard Apartment 142 Las Vegas, NV 89115
-Described as a two story/multi family residence. The building is red stucco with tan colored doors and has tan wrought iron fencing on the second floor. The building has tile roofing and Apartment 142 is located on the first floor directly below Apartment 242. The Apartment number 142 is gold in color and affixed on the tan door.
3. Circus Circus Manor Building C 2880 S. Las Vegas Boulevard LV, NV 89109
- Described as a hotel with numerous hotel rooms. The Manors are a part of the Hotel and are on the north end of the property. Building C consists of white stucco and white brick. On the east side of building C is a dark colored placard with a white "C" on it. Room 2404 is on the third floor of building C and has a brown door that faces north. Affixed to the wall to the right of the door is a black placard with gold colored numbers "2404"

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BY: JBN 4930

RECORDS BUREAU

DATE: 8-30-18

4. Unregistered 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459)
5. Silver Mazda Protégé 5 Hatchback with Black driver's door, Plate and VIN unknown parked in front of Apartment 142.

The place to be searched includes the main residence and all attached and unattached rooms, attics, storage areas, floor, wall, combination safes, lockers, briefcases, containers, trash areas, surrounding grounds and outbuildings assigned to or part of the particular residence the time of the execution of this search warrant.

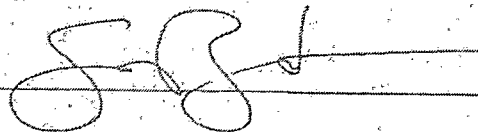
And as I am satisfied that there is probable cause to believe that the said property is located as set forth above and that based upon the Affidavit attached hereto there are sufficient grounds for the issuance of the Search Warrant.

You are hereby commanded to search forthwith said premises for said premises, serving this warrant between 0700 and 1900 hours, and if the property is there, to seize it, prepare a written inventory of the property seized and make a return for me within ten days.

08-09-2018

Date

Judge



I HEREBY CERTIFY THAT
THIS IS A TRUE COPY
OF THE COMPUTERIZED
RECORD ON FILE AT
HENDERSON POLICE DEPARTMENT
BY: JEM #12930
RECORDS BUREAU
DATE: 8-30-18

HENDERSON POLICE DEPARTMENT
SEARCH WARRANT RETURN
 (Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

4244 N. LAS VEGAS BLVD APT. #242

LAS VEGAS, NEVADA 89115

was executed on

08/09/2018
 (month, day, year)

A copy of this inventory was left with

DEPARTMENT
 (name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

SILVER/PINK SAMSUNG CELL PHONE IN BLACK PAPER CASE

PINK LG CELL PHONE

SILVER HP LAPTOP S/N: 8CG72906 PY

\$235 IN US CURRENCY

This inventory was made by:

P. CHRISTOPHER #116

[Signature] #1339

(at least two officers including affiant if present. If person from whom property is taken is present include that person)

ORIGINAL - Return to Issuing Court YELLOW - With HPD Report PINK - With Suspect or Place of Search

I HEREBY CERTIFY THAT
 OF THE COMPUTERIZED
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HENDERSON POLICE DEPARTMENT

BY: JEM #1480

RECORDS BUREAU

DATE: 8-30-18

HENDERSON POLICE DEPARTMENT

SEARCH WARRANT RETURN

(Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

4244 N LAS VEGAS BLVD APT 242

was executed on

8/9/18
(month, day, year)

A copy of this inventory was left with

AT PLACE OF SEARCH
(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

NO ITEMS TAKEN

This inventory was made by:

W. NIKKIS

(at least two officers including affiant if present. If person from whom property is taken is present include that person)

ORIGINAL - Return to Issuing Court YELLOW - With HPD Report PINK - With Suspect or Place of Search

I HEREBY CERTIFY THAT
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HENDERSON POLICE DEPARTMENT

BY: JEM #123

RECORDS BUREAU

DATE: 8-30-18

HENDERSON POLICE DEPARTMENT
SEARCH WARRANT RETURN
(Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

UNREGISTERED 1994 RED MERCURY GRAND MARQUIS

VIN# 2MELM75W6RX655459

was executed on

8/10/2018
(month, day, year)

A copy of this inventory was left with

PLACE OF SEARCH
(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant.

PHOTOS

10EA PHONES

1EA IPAD

I HEREBY CERTIFY THAT
THIS IS A TRUE COPY
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RECORD ON FILE AT

HENDERSON POLICE DEPARTMENT
BY [Signature]
RECORDS BUREAU
DATE 10-30-18

This inventory was made by

(at least two officers including affiant if present. If person from whom property is taken is present include that person)

ORIGINAL - Return to Issuing Court YELLOW - With HPD Report PINK - With Suspect or Place of Search

HENDERSON POLICE DEPARTMENT

SEARCH WARRANT RETURN

(Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

2860 S. LAS VEGAS BLVD BLD #6 ROOM #2404LAS VEGAS, NV 89109

was executed on

AUGUST 9th 2018

(month, day, year)

A copy of this inventory was left with

AT THE PLACE OF SEARCH

(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

- MISC MAKEUP
- 2 PAIRS OF JEANS
- GOLD GALAXY S/L CELL PHONE
- BLACK L/L CELL PHONE
- CIRCUS CIRCUS ROOM RECEIPT
- 1 WHITE SHIRT

This inventory was made by:

DET N. CALVANO #1339

(at least two officers including affiant if present. If person from whom property is taken is present include that person)

ORIGINAL - Return to Issuing Court

YELLOW - With HPD Report

PINK - With Suspect or Place of Search

BY: JBM #1330DATE: 8-30-18

HENDERSON POLICE DEPARTMENT
SEARCH WARRANT RETURN
 (Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

MAZDA HATCHBACK VIN (JM1BJ245X3119468)

was executed on _____

8/9/18
 (month, day, year)

A copy of this inventory was left with _____

AT PLACE OF SEARCH
 (name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

NO ITEMS TAKEN

This inventory was made by: W. Nichols

[Signature] #1339

(at least two officers including affiant if present. If person from whom property is taken is present include that person)

ORIGINAL - Return to Issuing Court YELLOW - With HPD Report PINK - With Suspect or Place of Search

I HEREBY CERTIFY THAT
 OF THE COMPUTERIZED
 RECORDS FILE AT:

HENDERSON POLICE DEPARTMENT

BY: [Signature] #2107

DATE: 8-30-18

The first male had been observed at 3 of 4 robberies

a note to a teller demanding money and committed a robbery. On the next three robbery incidents (DR# 18-15877, 18-16535 and 18-16972) two black male adults entered two US Banks and one Bank of the West and showed a note demanding money and committed a robbery. The black male adult from the first robbery incident (DR# 18-15420) has been observed on video surveillance at three (DR# 18-15420, 18-15877 and 18-16972) of the four robbery incidents. The second black male suspect has been described as 5'9" to 5'11" in height, skinny build approximately 150-165 lbs in weight, wearing a hat and having a mustache and goatee. The second black male has been observed on video surveillance on three (DR# 18-15877, 18-16535 and 18-16972) of the four robbery incidents.

First clue

On robbery incident 18-16535, both suspects that entered the Bank of the West ran out of the bank towards the rear of the bank. A canvass for video surveillance, produced surveillance footage from a neighboring business showing the suspects arrive and leave in an unregistered 1994 red Mercury Grand Marquis. The red Mercury Grand Marquis was very distinct looking and was observed to have oxidized paint, a black trailer hitch, a possible temporary moving permit in the rear window, and additional cosmetic blemishes on it.

A search of multiple law enforcement databases returned to reveal that an unregistered 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459) had been stopped 4 times by LVMPD Officers and upon viewing the bodycam footage of the vehicle stops it was confirmed that the vehicle was the same as the suspect vehicle from the Bank of the West robbery based on the previously described details of the vehicle. A subject/driver was contacted in all four of the stops and he was identified as Anthony Barr (DOB 03/11/1990). Also stopped in the vehicle was Anthony's girlfriend identified as Sabrina Henderson (DOB 07-29-1988).

First suspect

A search of Anthony's criminal history returned to reveal that he had multiple criminal convictions to include robbery and aggravated robbery convictions in the state of Texas, as well as aggravated robbery in the state of Minnesota.

Additionally, during the processing of each incident, latent prints were lifted. Results were obtained from a latent print comparison from incident 18-16535 (Bank of the West), which came back to a black male named Damien Alexander Phillips (DOB 09-28-1988). Photos obtained for Damien Alexander Phillips revealed that he matched the suspect that has been observed in video surveillance in three of the four robberies.

Nothing to do with Damien at all

After it was confirmed that the 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459) vehicle that Anthony Barr has been seen driving was the suspect vehicle seen leaving the robbery incident that occurred at the Bank of the West, a tracking device warrant was authored by Detective Lippisch to place a tracking device on the 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459) when located.

Still trying to gain info on him (Damien Phillips)

Further research conducted on Damien Phillips and Anthony Barr revealed a possible location that Damien Phillips was currently living at the Aviator Suites located at 4244 N. Las Vegas Boulevard Las Vegas, NV 89115. Active Surveillance was set up on 4244 N. Las Vegas Boulevard on 08-08-2018. At approximately 1220 hrs, the 1994 red Grand Marquis pulled into the parking lot near room number 242 and 142.

where is warrant for surveillance at Damien's place of residence. what is probable cause for surveillance.

what connect Damien & Anthony?

OF THE COMPUTERIZED RECORDS ON FILE AT THE HENDERSON POLICE DEPARTMENT

BY: JEM #430

DATE: 8-30-18

Antony they can place

Anthony Barr then gets out of the driver's door of the vehicle and a black female, identified as Sabrina Henderson, with short haired gets out of the passenger side and they both go to apartment 242. Anthony knocks on door to room 242 and the door opens, and the two of the go in. A short time later, Anthony comes out of room 242 and with bins of clothes and other unknown items and load them into the Grand Marquis vehicle.

After few more moments pass, Damien Phillips comes out of room 242 with a bin full of items loads the items into Grand Marquis and then goes to Room 142 and tries to immediately open the door but it doesn't open. Damien then knocks on the door to 142 and the door opens and Damien walks into room 142. A short time later, Damien comes out with items and loads them into another vehicle, a silver colored Mazda Protégé 5.

Damien was observed wearing a gray shirt black and red checkered pants and Anthony was observed wearing a black shirt and jeans. It was later confirmed by Aviator Suites Management that apartment number 242 is registered to Damien Phillips and apartment number 142 is registered to Vidal Holman. It was also advised that Damien has paid rent for apartment room number 242 and 142 at the same time, which shows that Damien is connected to both apartments.

When the red Grand Marquis vehicle leaves the apartment, Detectives with the Henderson Police Department began surveillance on the Grand Marquis and followed the vehicle. At approximately 1430 hrs the Grand Marquis vehicle pulls into the Circus Circus Manor located at 2880 S. Las Vegas Boulevard LV, NV 89109 near Building C. When the Grand Marquis parks, Anthony, Damien, Sabrina and the other female exit out of the vehicle and enter building C and are seen taking items out of the Grand Marquis and going into Building C with the items. It was later confirmed that room number #2404 in Building C was the room rented to Anthony's girlfriend (Sabrina Henderson).

After everyone entered Building C, Detectives from the Henderson Police Department Intel Division placed a tracking device on the 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459).

On 08-09-2018, Detective Lippisch and I received an alert that the 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459) was moving and Detectives from the Henderson Police Department Investigative Services Division began to conduct surveillance on the vehicle and located the 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459) parked in an alley way north of Garces Avenue and near US Bank located at 801 E. Charleston Boulevard Las Vegas, NV 89104. Detectives then observed a black female, later identified as Melissa Summlears, get out of the Grand Marquis and walk into the US Bank located at 801 E. Charleston Boulevard and then exit shortly after and walk back to the Grand Marquis.

After the female walked back to the Grand Marquis, Damien Phillips and Anthony Barr were observed exiting out of the Grand Marquis and walking into the US Bank located at 801 E. Charleston Boulevard. After a short period of time, Anthony and Damien were observed running out of the US Bank and got into the Grand Marquis. A traffic stop was conducted on the Grand Marquis vehicle, and Anthony and Damien exited out of the vehicle and ran away from Officers and evaded Police custody. After a short foot

BY: JEM

RECORDS BUREAU

DATE: 8-30-18

pursuit, they were taken into custody. During the foot pursuit, a yellow bag with US Currency was dropped on the ground and recovered by Officers.

Additionally inside the vehicle were Sabrina and Melissa, which were the same females that were seen at 4244 N. Las Vegas Boulevard Las Vegas, NV 89115. When Sabrina and Melissa were taken out of the vehicle, a black handgun was observed on the rear driver's side passenger floor board of the Grand Marquis vehicle. After Anthony, Damien, Sabrina and Melissa were detained, it was discovered that Anthony and Damien had just committed a robbery with the use of a firearm at the US Bank located at 801 E. Charleston Boulevard.

Details of the Robbery that occurred at the US Bank located at 801 E. Charleston Boulevard were Damien and Anthony entered the US Bank and walked up to the teller window and Anthony produced a black handgun and pointed it at the Teller window and demanded money. Anthony and Damien were given US Currency from the Tellers cash drawer and both ran out of the US Bank.

Affiant contacted Deputy District Attorney Jacqueline Bluth and advised her of the details of the investigation verbally over the phone. DDA Bluth approved the above affidavit for warrant.

Due to the aforementioned facts and circumstances, Affiant request a search warrant be issued for the above premises mentioned and that the aforementioned occurred in the City of Henderson, County of Clark and State of Nevada.

That this affidavit does not contain each and every fact known to your affiant related to this investigation but rather includes that information related to the probable cause pertaining to the search of the location referred to above.

Affiant requests that a Search Warrant issued directing a search for and seizure of the aforementioned items at the location set forth herein between the hours of 0700 and 1900 hours.

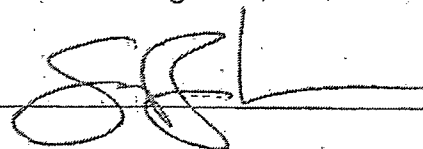
I declare under penalty of perjury that the foregoing information is true and correct.



Dennis Ozawa, AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME
THIS DAY OF August 10, 2018.

Judge



I HEREBY CERTIFY THAT
THIS IS A TRUE COPY
OF THE COMPUTERIZED
RECORD ON FILE AT

HENDERSON POLICE DEPARTMENT

BY: JEM #1930

RECORDS BUREAU

DATE: 8-30-18

SEARCH WARRANT

STATE OF NEVADA)

SS:

COUNTY OF CLARK)

State of Nevada to any Peace Officer in the County of Clark, Proof by Affidavit having been made before me by Detective Dennis Ozawa, said Affidavit attached hereto and incorporated herein by reference, that there is probable cause to believe that certain property namely,

The property referred to and sought to be seized consists of the following:

- Any and all firearms, or firearm parts, ammunition, firearm accessories, and/or documents related to firearm possession or ownership which tend to establish ownership or possession of firearms.
- Any and all cartridges, expended bullets, expended cartridge cases or other firearms evidence present.
- Forensic Processing of the scene to complete a robbery investigation including DNA Swabbing and photographs.

Is presently located at or in the custody of:

1. Unregistered 1994 red Mercury Grand Marquis (VIN: 2MELM75W6RX655459)
Parked at the Henderson Police Main Station garage 223 Lead Street Henderson, NV 89015.

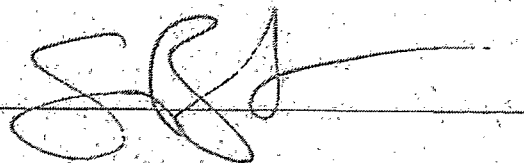
And as I am satisfied that there is probable cause to believe that the said property is located as set forth above and that based upon the Affidavit attached hereto there are sufficient grounds for the issuance of the Search Warrant.

You are hereby commanded to search forthwith said premises for said premises, serving this warrant between 0700 and 1900 hours, and if the property is there, to seize it, prepare a written inventory of the property seized and make a return for me within ten days.

08-10-2018

Date

Judge



I HEREBY CERTIFY THAT
THIS IS A TRUE COPY
OF THE COMPUTERIZED
RECORD ON FILE AT

RECORDS BUREAU

BY: Jen #4980

DATE: 8-30-18

HENDERSON POLICE DEPARTMENT
SEARCH WARRANT RETURN
(Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

UNREGISTERED 1994 RED Mercury GRAND MARQUIS
VIN# 2MELM75W6RX655459

was executed on 8/10/2018
(month, day, year)

A copy of this inventory was left with PLAC OF SEARCH
(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant.

SIG SAUR X-5(FIVE) P226S CO2 BBGUN.
S/N# 60631954

I HEREBY CERTIFY THAT
THIS IS A TRUE COPY
OF THE COMPUTERIZED
RECORD ON FILE AT

HENDERSON POLICE DEPARTMENT
BY [Signature] # 2107
RECORDS BUREAU
DATE 8-30-18

This inventory was made by: [Signature]

(at least two officers including affiant if present. If person from whom property is taken is present include that person)

ORIGINAL - Return to Issuing Court YELLOW - With HPD Report PINK - With Suspect or Place of Search

SUPPLEMENTAL MEMORANDUM

SME:
EXHIBIT - C

EXHIBIT C

VICTIM TESTIMONY (TRIAL)

- SUNNY SHAY COURINER
- ALEX ORELLANA
- ALLYSON SANTAMAURO
- CHELSEY GRITTON
- REGINA COLEMAN
- KARL LIPPISCH # 1710

SUNNY STAY COURTNER

TRIAL TESTIMONY

CROSS-EXAMINATION

BY MR. HUGHES:

Q Ma'am, do you remember whether the individuals who allegedly robbed you that day had any tattoos?

A Yes. I do recall seeing some on one of their faces. I don't remember what's on there, but I do remember seeing that.

Q Do you remember any facial piercings?

A I don't.

Q Do you remember giving a statement to the police that very same day?

A Yes.

Q I'm going to show you page 6 of that statement, lines 9 and 10, and ask you to read that to yourself. Let me know when you're done.

A Okay.

Q I'd ask you again, did you tell the police that you saw any tattoos on either of the individuals that day?

A No -- yes, I did not see any.

Q So you told the police no, there were no tattoos?

A Yes.

Q And now you say there is tattoos?

A Yes.

Q Did you see the video that we just watched anytime prior to today?

JD Reporting, Inc.

1 A Yes.

2 Q When did you see it?

3 A A couple weeks ago, a couple days ago.

4 Q And where were you -- where did you see it?

5 A In the branch.

6 Q And were you shown any photo array of possible
7 suspects by the police?

8 A Yes.

9 Q You were? When would that have been?

10 A Well, not the police.

11 Q Oh. By whom?

12 A I can't recall but I remember seeing a photo.

13 Q A photo?

14 A Seeing the photos.

15 Q Tell me about the photos.. Was there one photo?

16 A There was two, if I remember correctly.

17 Q And who showed you these photos?

18 A I can't -- I don't -- I don't remember.

19 Q Well, let's see if we can narrow it down. Was it mom
20 or dad?

21 A No.

22 Q Was it somebody you worked with?

23 A Possibly.

24 Q Did this come up in casual conversation or --

25 A No.

JD Reporting, Inc.

1 Q -- was there a meeting for you to look at these
2 photos?

3 A A meeting. I remember that part.

4 Q You don't remember where the meeting was at?

5 A No.

6 Q Do you remember how many people were there?

7 A Most likely just me.

8 Q And whoever provided you with the photos?

9 A Yes.

10 Q But you can't remember who showed you the photos?

11 A (No audible response.)

12 Q And how long ago did this happen?

13 A A couple weeks ago probably.

14 Q And while you saw these photos, did they say anything
15 to you about who the photos were of?

16 A They just showed us -- there was a picture of our
17 branch?

18 Q They showed us. Was there somebody else with you
19 that they showed it to?

20 A I meant myself.

21 Q There was a picture of your branch.

22 A And the robbery happening and then the close-up.

23 Q So the photos were a close-up of the video that we
24 saw?

25 A Yeah. There's a camera right in front at the stand.

1 Q Was that the first time you ever saw the --

2 A Yes.

3 Q -- the close-up? However, the day that this
4 supposedly happened, the man who robbed you was standing
5 directly in front of you?

6 A Yes.

7 Q And you didn't see the photos that day?

8 A No, no.

9 Q But you say you saw some tattoos in the photos you
10 were shown a few weeks ago; is --

11 A Yes.

12 Q -- that true? But you don't remember who showed you
13 the photos or where it was?

14 A No.

15 Q Okay.

16 MR. HUGHES: All right. Thank you.

17 THE COURT: Any redirect?

18 MR. SCOW: Yes, Judge.

19 REDIRECT EXAMINATION

20 BY MR. SCOW:

21 Q So a couple weeks ago, Barbara and I met with you at
22 your new branch location; is that right?

23 A Yes.

24 Q Okay. And we went over -- talked to you about what
25 happened to you August 6th at the South Valle Verde location;

JD Reporting, Inc.

1 right?

2 A Yes.

3 Q And you reviewed surveillance video at that time; is
4 that right?

5 A Yes.

6 Q We didn't show any pictures when we met with you;
7 right?

8 A Yes.

9 THE COURT: Is that the meeting that you were telling
10 Mr. Hughes about?

11 THE WITNESS: Yes.

12 THE COURT: Or is there some other different meeting
13 that wasn't at your bank with Mr. Scow over here and
14 Ms. Schifalacqua? Was that the meeting?

15 THE WITNESS: (Indiscernible.)

16 THE COURT: The meeting you just told Mr. Scow about,
17 is that the same meeting that you were telling Mr. Hughes
18 about?

19 THE WITNESS: No, I don't remember seeing a video
20 that day, that couple of weeks. I don't remember seeing any
21 pictures.

22 THE COURT: Okay. But is it one meeting or is it
23 more than one meeting?

24 THE WITNESS: I actually may be talking about when --
25 the last court date.

JD Reporting, Inc.

1 THE COURT: Okay. So you had two meetings?

2 THE WITNESS: Yes.

3 THE COURT: Okay.

4 MR. SCOW: So I'm just going to clarify that.

5 BY MR. SCOW:

6 Q So you met with us a couple weeks ago. Did you meet
7 with anyone else about this case outside of court?

8 A No.

9 Q Other than when we met with you in the branch at the
10 separate location?

11 A No.

12 Q Okay. But you came to court and testified back in
13 October; is that right?

14 A Yes.

15 Q Is that the time that you remember seeing some photos
16 or images?

17 A Yes.

18 Q Okay. Is that what you're talking about --

19 A Yes.

20 Q -- that you were asked about by Mr. Hughes?

21 A Yes.

22 Q That you saw what you think were two photos of what
23 happened at your branch?

24 A Yes.

25 MR. SCOW: And just for the record, Judge, the clerk

JD Reporting, Inc.

1 is handing me exhibits from the preliminary hearing from
2 October 4th and October 10th.

3 THE COURT: All right.

4 MR. SCOW: If Mr. Brower and Mr. Hughes want to
5 confirm that, they should.

6 MR. BROWER: Judge, may I approach Mr. Scow?

7 THE COURT: Sure.

8 MR. SCOW: And just for the record, the clerk just
9 tore the do-not-tamper tape on that exhibit envelope.

10 THE CLERK: Mr. Scow, it's 10 and 11.

11 MR. BROWER: And I witnessed that tearing as well.

12 THE COURT: All right. So it's been unsealed in open
13 court.

14 THE CLERK: Exhibits 10 and 11.

15 MR. SCOW: I'm just saying everything for the record
16 just so it's clear what's happening. I'm just taking off the
17 staple because all of the images admitted at the preliminary
18 hearing are stapled together.

19 Approaching the witness. I now have what's marked as
20 next in line as well. What's the next --

21 THE CLERK: 391 and 392.

22 BY MR. SCOW:

23 Q I'm showing you what will be marked as State's 391
24 and 392. Do you recognize these?

25 A Yes.

JD Reporting, Inc.

1 Q What are they?

2 A The day we got robbed, the two black males that came
3 up to our teller window.

4 Q And these are still images or photos of that?

5 A Yes.

6 Q And this is from the surveillance video?

7 A Yes.

8 Q Are these the images that you were referring to that
9 you were shown previously?

10 A Yes. I think there was a close-up, if I remember.

11 Q Okay.

12 MR. SCOW: Move for admission of these two.

13 MR. BROWER: I'll submit it, Judge.

14 MR. HUGHES: Submitted.

15 THE COURT: All right. Those will be admitted.

16 (State's Exhibit Number 391-392 admitted)

17 MR. SCOW: I'm displaying both as well. This is --
18 it's 390 and 391?

19 THE CLERK: 391 and 392.

20 BY MR. SCOW:

21 Q Okay. This is 392. It's one of the further back
22 shots; is that right?

23 A Yes.

24 Q And 391. So, again, the far back shot with the note
25 being held?

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1 A Yes.

2 Q Now I'm going to show you portions of the actual
3 video and let me know if you see anything on here as being one
4 of the other images that you saw. Okay?

5 A Okay.

6 Q And as this is coming up, the image -- the close-up
7 image that you saw, was it of the individual that approached
8 you or that approached Meghan?

9 A That approached me.

10 Q Okay.

11 MR. BROWER: Judge, I apologize. Just for note
12 keeping, what video is he playing? Do we know?

13 THE COURT: What exhibit is this?

14 MR. SCOW: Exhibit 59.

15 MR. BROWER: Thank you.

16 MR. SCOW: And this is labeled, within that disk,
17 Clip 2, right teller.

18 MR. BROWER: Thank you.

19 THE WITNESS: That was the close-up I was talking
20 about.

21 BY MR. SCOW:

22 Q Okay. I was just trying to get to the beginning of
23 that.

24 But what we're seeing there, that was a close-up
25 image of what you had seen?

JD Reporting, Inc.

1 A Yes.

2 Q All right. Was it something like this?

3 A Yes.

4 Q It was from this surveillance video?

5 A Yes.

6 Q And the camera that's picking up this -- these
7 images, where is that located in reference to where you were
8 standing?

9 A On top of the counter where he was at. It's a little
10 bit higher.

11 Q So it sits on top of the counter?

12 A Yes.

13 Q And is this something -- was this the image that
14 you're talking about that you had seen a tattoo or something
15 like that?

16 A No.

17 Q Okay. So in the questions by Mr. Hughes, I was --
18 from what I heard, I thought he was asking about where you had
19 seen a possible tattoo.

20 A It was -- I probably -- probably didn't even see it.

21 Q So is that something -- I just want to make sure it's
22 clear. Do you remember seeing a tattoo on that day when you
23 were robbed on August 6th?

24 A No.

25 Q And when you were asked by the police whether you saw

1 tattoos or marks or anything like that, you told them no; is
2 that correct?

3 A Yes.

4 Q And do you see any marks or tattoos in this image
5 right here?

6 A No.

7 MR. SCOW: Okay. I have no more questions, Judge.

8 THE COURT: All right. Mr. Brower, anything?

9 MR. BROWER: No, Judge.

10 THE COURT: Mr. Hughes?

11 MR. HUGHES: No, I think that covers it. No
12 questions.

13 THE COURT: Any juror questions?

14 All right. I see no additional questions.

15 Thank you for your testimony. Please do not discuss
16 your testimony with anybody else who may be a witness in this
17 case. Thank you, and you are excused and just follow him back
18 in the courtroom.

19 THE MARSHAL: Right this way, ma'am.

20 THE COURT: And the State may call its next witness.

21 MS. SCHIFALACQUA: Thank you, Your Honor. The State
22 calls Randi Newbold.

23 THE MARSHAL: Randi Newbold. And then stand and
24 raise your right hand and face the clerk.

25 **RANDI NEWBOLD**

JD Reporting, Inc.

ALEX ORELLANA

TRIAL TESTIMONY

1 THE CLERK: Thank you.

2 THE COURT: You may proceed.

3 MR. SCOW: Thank you, Judge.

4 DIRECT EXAMINATION

5 BY MR. SCOW:

6 Q How are you currently employed?

7 A My occupation?

8 Q Yes.

9 A Universal banker.

10 Q Where do you work?

11 A I work at U.S. Bank.

12 Q How long have you been in the banking industry?

13 A About three years, going on four.

14 Q I'm going to direct your attention back to July
15 23rd, 2018. Were you working as a universal banker at that
16 time?

17 A Correct.

18 Q At what location?

19 A At the Anthem location off of Eastern and Horizon
20 Ridge.

21 Q Okay. And is the address for that location 10565
22 Eastern Avenue?

23 A Correct.

24 Q And that's in Henderson, Clark County, Nevada?

25 A Correct.

1 Q At about 10:00 a.m., shortly before 10:00 a.m., what
2 was going on inside the bank?

3 A There was a lot of activity going on, customers, the
4 daily kind of thing, which is customers coming in, making
5 deposits, customers wanting to open accounts, so on and so on;
6 just an every day kind of, you know, workday.

7 Q Okay. And as we are going through your discussion
8 of the bank, your location and what happened there, do you see
9 that Anthem branch on this photograph?

10 A Correct.

11 Q Okay.

12 MR. SCOW: And actually I showed it prematurely.
13 I'd move for admission of State's Proposed 28.

14 MR. BROWER: Submitted, Judge.

15 MR. HUGHES: Submitted.

16 THE COURT: All right.

17 MR. SCOW: It's admitted?

18 THE COURT: It's admitted.

19 MR. SCOW: Thank you.

20 [State's Exhibit 28 admitted]

21 BY MR. SCOW:

22 Q So that's the branch down in the right-hand corner?

23 A Correct.

24 Q And then the cross streets, Eastern is on the
25 northeast side and what's on the other close cross street?

1 A Horizon Ridge.

2 Q Okay. And there's a couple of business to the left

3 here, Seafood City and At Home?

4 A Correct.

5 Q So your branch was -- there were customers inside

6 the bank. You said it was a fairly busy morning?

7 A Correct. Uh-huh.

8 Q What did you notice? What happened as that morning

9 unfolded at about 10:00 a.m.?

10 A Like I said, it just, you know, started off. I was

11 actually with a customer at my desk, which is located right

12 by the door. There's four desks and one of them is facing

13 straight to the door. And I was sitting there with a customer

14 just talking to him and, you know, getting to know the

15 customer, doing my job, essentially just getting to know him

16 and he wanted to open a checking account. And there was, like

17 I said, there was two customers that were in front of -- you

18 know, that were waiting in line, you know, just waiting to do

19 their business and there were two tellers that were doing the

20 transactions, which was deposits and whatever the customer

21 pleaded, you know, needed to do. While I was opening the

22 account --

23 Q Let me interrupt just to kind of break things up a

24 little bit. Your desk that you were at, that's near the front

25 door of the bank branch?

1 A Well, it's kind of weirdly shaped. There's a desk
2 right by the door and then there's two desks -- there's four
3 desks on one of the whole wall side. And my desk is pretty
4 much in-between in the middle, so I get a perfect view of the
5 whole entire lobby. I see the actual -- the center console
6 and I see the door, so I see the whole entire thing.

7 Q And just to help orient the jury and everyone else
8 as we talk about these things, I'm showing you three proposed
9 exhibits, 29, 32 and 33. Just look at these and let me know
10 if you recognize them.

11 A I do. Yes. Yeah, I do.

12 Q Do each of these, 29, 32 and 33, do they accurately
13 depict your bank branch at that Paseo -- or the Eastern
14 location?

15 A Correct.

16 MR. SCOW: Move for admission of these proposed
17 exhibits.

18 MR. BROWER: Submitted.

19 MR. HUGHES: Submitted.

20 THE COURT: All right. Those will all be admitted.

21 [State's Exhibits 29, 32 and 33 admitted]

22 BY MR. SCOW:

23 Q Showing you first 29, is that the exterior of that
24 bank branch?

25 A Correct.

1 Q Does it show the front door?
2 A Yeah. It would be by these pillars right here.
3 Q Okay. And that mouse that's in front of you --
4 A Oh, okay.
5 Q -- you can use that and the cursor will go where
6 you're --
7 A Right there.
8 Q Okay. Now showing 32, let us know what we're
9 looking at in this one.
10 A This is our whole entire lobby. My desk is right
11 here. Oh, this is -- right here. This is the closest desk
12 but my desk is right here.
13 Q Okay. And is that viewpoint from at or near the
14 front door?
15 A Pointed at the door. So I can see this whole entire
16 lobby right here.
17 Q Okay. And then 33, what is this showing?
18 A This is just showing the picture from the door's
19 aspect. So when you walk in through the door, this is the
20 first thing you see, which is the chairs, the teller desk and
21 the actual console right here.
22 Q Okay. So what's at the end of that picture, those
23 are the teller desks?
24 A Correct.
25 Q And that console, is that like an island, a check-

1 writing island or counter?

2 A Correct. Uh-huh.

3 Q And that check-writing counter you can see also in

4 Number 32?

5 A Yeah. I can see it right there. My desk is right

6 here. I can see that and I can see everything else from here.

7 Q So from your -- like you said, from your desk you

8 have a good vantage point of the bank?

9 A Correct.

10 Q Okay. Let's go back to July 23rd. As you're there

11 you were helping a customer. Is it kind of routine for you

12 as people come in you're kind of watching to see who comes in?

13 A All the time.

14 Q All the time?

15 A Yeah.

16 Q Pretty much everybody that comes in?

17 A Correct. Uh-huh.

18 Q Is that -- is there training for that or is that

19 just your --

20 A Yeah, I was -- so technically I used to be a

21 security guard, so I kind of know about this stuff. So I

22 just, you know, was always looking out and I was always

23 watching my surroundings and everything. And especially

24 working at a bank, you know, I just, you know, always kept

25 an eye out and everything. I always wanted to make sure,

1 you know, everything seemed in place and everything seemed
2 [unintelligible], so I just kept my eye out.

3 Q And this back area here where your desk -- does my
4 hand show it --

5 A Yeah.

6 Q -- this back area here, is there somebody else that
7 sits at one of those desks as well next to you?

8 A Correct. Uh-huh. My co-worker banker, which is
9 Matthew, he works on this area here.

10 Q Is that Matthew Pedroza?

11 A Correct.

12 Q All right. So as you're helping customers, watching
13 people come in, what do you observe?

14 A On this instance, like I said, I was with a customer
15 and then I was noticing that there was two customers that were
16 waiting in line, patiently waiting. Then after that I noticed
17 that, you know, two customers came in that actually didn't
18 fit the picture, what it was, actually. I noticed that my --
19 call it intuition or not, but my red flags, you know, woke up.
20 It was just, you know, I just noticed something really odd
21 about it.

22 When they first walked in I noticed that and then
23 I sent a message to my, you know, my -- because they were
24 sitting -- they were waiting in line but at the same time it
25 just didn't seem very -- what's the right word -- they just

1 didn't fit to the scene. Typically the customers that we get
2 on a day-to-day basis in that branch is mostly retired people
3 or people that have -- you know, that they're working hard
4 and just coming in to cash their checks on their lunch time
5 or people going to work or people in their gym shorts. When
6 I saw the -- when I saw the, well, the accusers (sic) come
7 into the branch, I saw them come in and they were -- they
8 stuck out to me just from the fact nobody really dresses up
9 that way in our branch.

10 So right away I messaged my manager. We have a
11 little messaging system that we -- all bankers, you know,
12 and all tellers communicate. And I said, hey, heads up,
13 you know, heads up -- you know, just heads up, I'm with a
14 customer. So she got up --

15 Q Let me just pause you right there.

16 A Yeah.

17 Q I just kind of want to clear up some things that
18 you talked about. First -- and you described how they didn't
19 fit the picture based on clothing.

20 A Correct.

21 Q And then age, also. You said a lot of retirees
22 bank there --

23 A Correct.

24 Q -- and they didn't seem like retirees?

25 A Uh-uh. Not whatever.

1 Q And then you sent a message to your manager,
2 Chelsey, to say, hey, just my intuition, heads up?

3 A Correct. Uh-huh.

4 Q Okay. You also said something about -- I think you
5 said the word accusers. Do you see the individuals in the
6 courtroom today that went into your branch?

7 A I do, actually.

8 Q Can you point to them and describe what they're
9 wearing in court today?

10 A One of them is wearing khaki pants and one of them
11 is wearing a grey shirt and one of them is wearing a button-up
12 purple shirt.

13 MR. SCOW: Your Honor, can the record reflect
14 identification of the defendants?

15 THE COURT: It will.

16 BY MR. SCOW:

17 Q So those are the individuals you saw that went into
18 the branch and were waiting in the line?

19 A Correct.

20 Q Where does the line form?

21 A The line -- can I use this?

22 Q Yeah, use the mouse. It will kind of --

23 A So the line forms right here. We have a little pole
24 that stands right about here that says please wait while a
25 teller reaches to you. It's just a little wait sign, pretty

1 much. And the line forms from here all the way back here.
2 Q And that's next -- is it fair to say it's right next
3 to that check-writing counter?
4 A Correct. So literally just maybe right here, like
5 around this area right here.
6 Q Okay. And after you sent a message to Chelsey, what
7 happened?
8 A My manager got up and -- well, she sent a message to
9 my other banker as well, which was Matthew Pedroza, which he
10 sits right here. Sends another message --
11 MR. BROWER: Judge, I'm going to object to what
12 somebody else sent. Calls for speculation.
13 THE COURT: Unless you saw her send.
14 THE WITNESS: Oh, well, she --
15 THE COURT: She told you later?
16 THE WITNESS: Yeah.
17 THE COURT: All right.
18 THE WITNESS: Well, I mean, I saw him get up first.
19 When I sent her the message, he got up first, which I'm
20 assuming he --
21 MR. BROWER: Judge, calls for --
22 THE COURT: Lay a foundation how he knows about the
23 message.
24 BY MR. SCOW:
25 Q So we'll just go through what you observed.

1 A Okay.

2 Q If you don't see or hear anything, we don't want
3 you to kind of guess as to what's happening. Just say what
4 you saw.

5 A Okay.

6 Q Okay.

7 A And then --

8 Q That's okay. So after you sent a message to Chelsey,
9 what happened? What do you see?

10 A I see my banker get up and go greet the customers.
11 At this time the other two -- the other two customers that
12 were ahead of them, they actually went to the tellers, each
13 in one of them, which was located at each corner. They were
14 helping them out and they were standing right here. My
15 banker, Matthew, goes up to them and, you know, introduces
16 himself. It's more of a technique that we have in U.S. Bank
17 where, you know, just to deter -- you know, just to deter the
18 actual -- you know, the accuser (sic) that's coming in or, you
19 know, a robber or anybody that comes in to actually -- you
20 know, just to prevent that from happening or just to see, oh,
21 they're all alert.

22 So he goes up there and he introduces himself as
23 Matthew, shakes his hand and everything. And I heard him even
24 offer coffee to them, like, hey, you know, there's some free
25 coffee, you guys can get some coffee if you guys want and

1 everything, and they said they don't need any help. Then
2 after that he goes and he sits back down and that's when I
3 go --
4 Q And just to be clear, when you say "he," who's he?
5 A Matthew. Sorry.
6 Q Matthew goes back to sit down?
7 A Uh-huh. Matthew goes back to sit down and then I
8 see my manager get up. And at this time she goes back into
9 the back counter and then that's when it was their turn to
10 go up.
11 Q Let me pause you again. If you want to use the
12 mouse to like direct where things are occurring, that's fine.
13 A Oh.
14 Q Just show us where Chelsey was when she got up.
15 A When she -- well, she sits right here, and then she
16 got up and she came all the way back here to this location
17 right here.
18 Q Okay. Is there a door to get to that back location
19 or can you just walk back behind --
20 A Correct. It's right here. The door is right here
21 and then there's another back door here, so there's two doors.
22 There's a little small ledge and then there's another door
23 that you actually need a key to get in.
24 Q Okay. So the first one, is that like a swinging
25 door that you kind of push or pull to go through?

1 A Correct. It's a little lock mechanism. You just
2 unlatch it and then just walk to. Anybody could do that.
3 Q Okay. Then behind that is one with a key to get in?
4 A Correct. Uh-huh.
5 Q Okay. So you testified that Chelsey went back there
6 to that door?
7 A Correct.
8 Q What happened then?
9 A After that I kind of lost -- that's when I didn't
10 really focus on what was going on. I was helping the
11 customer. And that's when I see my farthest teller -- on the
12 other image, if you -- on the other image where the teller
13 line shows.
14 Q I'm showing you now 33.
15 A Correct. My other teller, what she was looking at
16 here. That's when I see, you know, the accuser (sic) that
17 was here first. He walks out and then I see her crying and
18 walking out and I see them both here just panicking and then
19 I just see them walking out. And then once I saw that, I kind
20 of got alerted and I was like, what happened? And my customer
21 that was in front of me, he kind of noticed that I was acting
22 really odd and not really focusing on him when I was -- you
23 know, when I was trying to open this account for him.
24 Q So you're focused on what's happening at this
25 point --

1 A Correct.

2 Q -- ignoring your customer?

3 A Correct. Correct, because I saw my teller, which

4 was right here, just run --

5 Q Do you know her name, the teller?

6 A Allyson. Allyson.

7 Q Sorry, I was talking over you. So the one on the

8 far right side of this image 33 was Allyson?

9 A Correct. Allyson right here. I see her, you know,

10 just run, like literally run and then hold her hand on her

11 face and run all the way to the back. That's when I kind of

12 lost focus and I was, what's going on exactly, and then, like

13 I said, that's when I saw them both leave out of the branch.

14 Q So, and then you said that one of the individuals,

15 one of the defendants went to this teller?

16 A Correct. Uh-huh, which her name is Melanie.

17 Q Sorry, what was her name?

18 A Her name is Melanie Terada.

19 Q Melanie Terada?

20 A Uh-huh.

21 Q So just to be clear, though, the two individuals

22 that you pointed out in court today, they're the ones that

23 approached each of those tellers, one on the right, one on

24 the left?

25 A Correct.

1 Q And after a short interaction they both walked out?
2 A Correct.
3 MR. SCOW: And I'm going to publish now, Judge, for
4 the jury some of Exhibit now 27.
5 BY MR. SCOW:
6 Q What do we see here, Alex?
7 A I see the -- I see a customer and I see the front
8 door and I see the camera to the actual lobby and then another
9 one from the door, and then another one pointing at the actual
10 teller line.
11 Q Okay. So we'll start at the top left. Is this
12 showing the teller stations of your branch?
13 A Correct.
14 Q The top right is similar to the pictures that we've
15 been showing. That's the lobby area with the check-writing
16 counter?
17 A Correct.
18 Q The bottom left, is that showing outside the front
19 door?
20 A Yes.
21 Q And then on the bottom right, is that kind of near
22 the door, the locked door to get back behind the tellers?
23 A Correct.
24 Q So as we're -- I'm going to pause it here. The
25 bottom left, we'll focus on that one first. Do you recognize

1 what's in this image here?

2 A Yeah, I do.

3 Q What do we see?

4 A Well, we see the two accusers (sic) coming into the
5 branch.

6 Q Okay. So you said the word again, accusers, do you
7 know what an accuser is?

8 A Well, I mean -- well, I mean, let's just say the
9 defendants. Sorry.

10 Q That's fine. An accuser is one that accuses someone
11 of a crime.

12 A Oh, okay.

13 Q So were these the suspects? Is that --

14 A Correct.

15 Q -- kind of the word that you were looking for?

16 A Yes. Sorry.

17 Q So these are the ones that you had seen walking in
18 the bank?

19 A Correct.

20 Q And these are the defendants you've identified in
21 court as well?

22 A Correct.

23 Q You were in the lobby where you could see everything
24 and you saw them in person?

25 A Correct.

1 Q What you observed that day, did you see them walk in
2 together?

3 A I first saw them, if you look at the -- when you get
4 to this part you see them walking in together, but you see
5 them breaking up into like they don't know each other kind of
6 situation where they both single filely -- you know, they --
7 I don't know if they were talking to each other, but then you
8 see them single-filely just stand in line and not interact
9 with one another. And typically whenever you come in together
10 you're talking to your friend or you're talking to your buddy
11 or, you know, if you know the person you would come together
12 kind of situation. But in this instance, you know, they came
13 in and they single filely stand in line and not even talk to
14 one another.

15 Q So is this part of like -- from what you described
16 before you said you had some flags going off, your own
17 internal flags. Is that part of what was sending flags off
18 for you?

19 A Correct.

20 Q And is this the area where you first noticed them
21 then, by that -- in that line?

22 A Correct. When they first walked in and then I saw
23 -- well, pretty much in this area right here, yeah.

24 Q So I was just wondering if you saw them actually
25 walk in the door together.

1 A Yeah. Correct.
2 Q Okay.
3 A Uh-huh.
4 Q I'm going to have this continue on. And as it goes,
5 just kind of tell us what you observed and what you recognize
6 and who you know.
7 A Okay. As I see, like I said, I was sitting in this
8 area right here and I noticed that they were still -- and then
9 Allyson was still with a customer, which was on this end.
10 Q And if you can speak up a little bit. You said
11 Allyson was on the right side?
12 A Correct. On the far right-hand side right here
13 where my mouse is at. And this is my banker walking up, you
14 know, greeting them. And --
15 Q And that's Matthew?
16 A Correct. And then, like I said, he even offered
17 them coffee and everything. And that's when he walked away.
18 Q From where your desk is at, can you see the customer
19 leaning back in the chair back where you're at over here?
20 A Correct. That's my customer that was there.
21 Q And you're right on the other side of that customer?
22 A Correct.
23 Q So from over there to right here -- I mean, from
24 this camera it's hard to tell distance. How close is that
25 from where you're seated?

1 A Maybe at least ten, ten feet. Around -- yeah, ten
2 feet. Around there pretty -- fairly close, so from like here
3 to like where you're sitting at.

4 Q From me to you?

5 A Correct.

6 MR. SCOW: Marshal, is there an estimate of distance
7 from the stand to me? Do you have any of those?

8 THE MARSHAL: I don't have --

9 MR. SCOW: No?

10 THE MARSHAL: I would say it's 20, 25 feet.

11 MR. SCOW: I don't know if you have measure -- I
12 just wondered if you have measurements.

13 THE MARSHAL: No.

14 BY MR. SCOW:

15 Q Okay. So you approximated ten feet, but somewhere
16 around between me and you?

17 A Correct.

18 Q Now it's playing again and we'll just kind of watch.
19 Who is that that just came out on the left?

20 A That's my manager, Chelsey.

21 Q In the white shirt?

22 A Correct.

23 Q This is when I saw them, yeah, just standing. This
24 is when I kind of took my eyes off. I was trying to focus on
25 the customer. And right here, this is when I kind of saw her

1 running back. And then -- yeah, this is Allyson leaving and
2 then this is the defendant leaving. And that's when I got up.
3 That's when I completely lost focus on what I was doing, which
4 was opening an account and everything.

5 Q Okay. So after -- you've described what you had
6 seen and when we reviewed some of the video you kind of walked
7 us through it again. When they walk out of the branch, out of
8 the front door, can you see outside? Do you know which
9 direction they went?

10 A I did not see that part. Like I said, clearly my
11 focus was at my tellers and, you know, trying to see what just
12 exactly happened. Like I said, I was just like, is everything
13 okay, what's going on? So -- uh-huh.

14 Q So just a couple questions. Did you -- were you
15 ever -- did the police ever show you a lineup or anything like
16 that to identify potential suspects?

17 A No.

18 Q And as you sit here today, how certain are you that
19 these two individuals are the two that you saw in the branch
20 that day?

21 A Very sure.

22 Q Very certain?

23 A Uh-huh.

24 MR. SCOW: Okay. I'll pass the witness, Judge.

25 THE COURT: All right. Mr. Brower, cross?

CROSS-EXAMINATION

BY MR. BROWER:

Q So, Alex, you said today that the typical people that come in your bank are retirees; correct?

A Correct.

Q Or people in gym shorts?

A Typically around there and hard-working people.

Q And so that's what caught your attention to these individuals, they weren't retirees and they weren't in gym shorts?

A Correct. Well, yeah.

Q Well, so didn't you tell the police what caught your attention is that it's kind of weird for skinny black people to come into your branch?

A Not necessarily. I wouldn't say that.

MR. BROWER: Judge, may I approach?

THE COURT: You may.

BY MR. BROWER:

Q I'm just going to ask you to read over that paragraph, okay?

A Which one? The whole thing?

THE COURT: Yeah, just read it --

MR. BROWER: Yeah, just read it to yourself, not out loud.

THE COURT: I'm sorry. Quietly to yourself.

1 MR. BROWER: Sorry, Judge.

2 MS. SCHIFALACQUA: Did you have a page, counsel?

3 I'm sorry.

4 MR. BROWER: It's his statement. The second page.

5 MS. SCHIFALACQUA: Right. A specific page, because
6 he never said that exactly, so I just want to know what you're
7 directing him to.

8 MR. BROWER: I'll bring it back to you.

9 MS. SCHIFALACQUA: Thank you.

10 BY MR. BROWER:

11 Q Are you done with that?

12 A Correct. Okay, I did. Uh-huh.

13 Q So did you tell the police that it was weird and
14 what caught your attention was that when skinny black people
15 come in that's kind of unusual?

16 A I did.

17 Q Okay. Is that what you thought?

18 A At that instance?

19 Q Sure.

20 A Yeah. When that came in, when that happened, like
21 I said, it was just more of the instance when they walked into
22 the branch.

23 Q Well, so you said, "Skinny black people, the way
24 they're dressed, it always picks up my senses. They came in,
25 it was very sketchy."

1 A Correct.

2 Q Okay. Just because they're black?

3 A No.

4 Q Because they're skinny?

5 A No.

6 Q Okay. That would be skinny and black?

7 A No.

8 Q All right. So when you look around the courtroom

9 today, how many skinny black people do you see in court?

10 A I see two of them.

11 Q Two. So that's the only two you could possibly pick

12 out today; correct?

13 A Well, yeah.

14 Q Did you tell the cops that you saw any tattoos?

15 A No, I did not. I don't think I did.

16 Q Did you tell the cops that you saw sweat?

17 A No.

18 Q No? Actually you weren't able to observe whether

19 people were sweating or not; correct?

20 A Correct.

21 Q Okay. So that didn't catch your attention, whether

22 somebody was hot or sweaty, just that they were skinny and

23 black?

24 A Yeah.

25 Q Okay. And I think you actually told the police the

1 only thing you noticed was their clothing; correct?
2 A Correct.
3 Q Okay. So you didn't say anything about facial
4 features or facial hair?
5 A No. None whatsoever.
6 Q Or tattoos --
7 A Uh-uh.
8 Q -- or sweat or anything else, just their clothing?
9 A I might have said the sweat part.
10 Q Actually I think you said you didn't notice it. I
11 can show you the page, but.
12 A Oh.
13 MR. BROWER: Judge, may I approach?
14 THE COURT: Yes. You may move freely.
15 BY MR. BROWER:
16 Q You can look at that highlighted section. Just
17 don't read it out loud.
18 A Okay.
19 Q So you said that you didn't notice whether anybody
20 was sweating, you just noticed clothing; correct?
21 A Correct.
22 MR. BROWER: Court's indulgence.
23 BY MR. BROWER:
24 Q I'm just going to ask one more time, as you look
25 around the courtroom today there's only two people

1 even close the identities that you gave the police; correct?

2 A Correct.

3 MR. BROWER: No further questions, Judge.

4 THE COURT: All right. Mr. Hughes.

5 CROSS-EXAMINATION

6 BY MR. HUGHES:

7 Q Sir, I think you said this, The usual customers in
8 your bank are either retired people or hard-working people.

9 A Correct.

10 Q And I guess the two black people you saw weren't
11 old enough to be retired, in your mind, is that right?

12 A Not necessarily.

13 Q They could have been retired?

14 A Well, I mean --

15 Q How old do you think these two people were that you
16 saw at your bank?

17 A Around -- the defendants, right? Around 20's and
18 30's. Late thirty-ish or mid-ish.

19 Q Late 30's?

20 A Uh-huh.

21 Q Generally do people retire at that age?

22 A No.

23 Q So did you think that the two people you saw in
24 front of you couldn't be hard working?

25 A I don't know.

1 Q But you said this was -- your red flag went up
2 because some people came into your bank that didn't fit the
3 profile, is that right?
4 A Correct.
5 Q And the profile you gave us is retired people and
6 hard-working people; right?
7 A Correct.
8 Q So your red flag going up meant that the people, the
9 two black people that came into your bank were neither retired
10 or hard working?
11 A Correct.
12 Q So you don't know any hard-working black people?
13 A I do.
14 Q What made you think that the two people at your bank
15 weren't hard working?
16 A I don't know. You may call it intuition, I guess,
17 but.
18 Q Was it -- Do you have a lot of experience with black
19 people?
20 A Correct.
21 Q I'm sorry, it was a question.
22 A Yeah.
23 Q Do you have a lot of experience with black people?
24 A I do. I come back -- I come from Long Beach, so
25 I'm very familiar with that kind of demographics. I actually

1 went to a school that kind of dealt with that whole entire
2 demographics, which was Hispanics and, you know, black people
3 and then, you know, a little mixture of Asians back and forth.
4 So I kind of know that whole demographics and how it is and
5 I kind of know when somebody is up to no good kind of
6 situation. I mean, that's just something that I kind of grew
7 when I was living there.

8 Q And this is from your experience at high school?

9 A No. This is just being general, just being out in
10 my day-to-day life. You know, they're going out --

11 Q In Long Beach?

12 A Correct.

13 Q Have you ever had some unhappy experiences with
14 black people?

15 A Can you elaborate that?

16 Q Well, did you ever have a fight with a black person?

17 A Never.

18 Q Has a black person ever stolen something from you?

19 A Never.

20 Q Has a black person ever lied to authorities about
21 you?

22 A Never.

23 Q I'm trying to guess at what would be a problem.
24 Instead of you just saying no, I've never had a problem, you
25 sort of wanted me to elaborate. So I can keep guessing or

1 you could --

2 MR. SCOW: Objection. Judge, I'm just going to
3 object. It's getting --

4 THE COURT: Well, that's sustained.

5 MR. SCOW: Thank you.

6 THE COURT: Just ask the question. You don't need
7 to preface it or --

8 THE WITNESS: Okay. So, never, okay. Never had an
9 issue with that.

10 BY MR. HUGHES:

11 Q Okay. I believe you said that your banker Matthew
12 approached these two individuals in line, is that right?

13 A Correct.

14 Q And you indicated you heard him, you heard the
15 verbal exchange between Matthew and these people?

16 A Correct.

17 Q Does that mean when I go to my bank and the banker
18 approaches me, they're trying to diffuse a potential
19 situation?

20 A What do you --

21 Q Because this has happened to me before. I'll be in
22 line and somebody will approach me and I'll wonder why. I'm
23 kind of offended now.

24 A Uh-huh.

25 Q It wasn't a question.

1 MS. SCHIFALACQUA: Really, Judge? I mean --

2 THE COURT: I think Mr. Hughes just sustained his
3 own objection to his question, so.

4 MR. HUGHES: I even withdrew the question and
5 answer.

6 BY MR. HUGHES:

7 Q What were the two individuals wearing that day in
8 the bank?

9 A That day? Like I said on my description, like I
10 said it was --

11 Q Well, I'm asking you right now.

12 A That day they were wearing black Air Force Ones.
13 They were wearing jeans. One of them was wearing a sweater,
14 was wearing a track sweater, was wearing a doo-rag as well
15 and wearing a hat and wearing glasses and a button-up shirt
16 which was kind of like a flannel kind of style.

17 Q And it's your testimony that from the -- this was
18 in July of this year, the incident at the bank. You haven't
19 -- you were not shown any police lineups. Did you have an
20 opportunity to review any of the bank surveillance?

21 A No.

22 Q So your identification of these two individuals
23 today is based solely upon the time in the bank five months
24 ago?

25 A Correct.

1 Q And at that point in time is it fair to say they
2 were the only two black people in the bank, the day of the
3 incident?

4 A I can't remember.

5 Q But we just saw the video. Did you see any other
6 black people in the bank?

7 A I mean, we reopened again, but I can't remember.

8 Q But it is fair that they are the only two black
9 people in the courtroom today?

10 A Correct.

11 Q And it helps that they're sitting at the table
12 labeled Defendant?

13 A Correct.

14 MR. HUGHES: Thank you.

15 THE COURT: Any redirect?

16 MR. SCOW: Yes, Judge.

17 REDIRECT EXAMINATION

18 BY MR. SCOW:

19 Q So you learned what had unfolded in the bank. This
20 was a pretty startling event for you; right?

21 A Correct.

22 Q The flags that were going off in your mind, they
23 happened to prove correct; right?

24 A Yeah..

25 Q Now, I'm going to clarify because you were asked

1 some mischaracterizing questions that mischaracterizes your
2 statement, so I need to clarify some of those, okay?

3 A Yeah.

4 Q The description that you just gave regarding the
5 clothing, you described glasses, black Air Force Ones, a track
6 jacket, a goatee. Pushed the door open with his forearm. One
7 was wearing a black hat and had a doo-rag underneath. You
8 gave all those descriptors to the police?

9 A Correct.

10 Q And please keep your voice up so we can --

11 A Oh, yeah. Sorry. Correct.

12 Q Have you reviewed the statement that you gave to the
13 police?

14 A Uh --

15 Q Have you seen a copy of that at all?

16 A No, not at all.

17 Q You've never read a transcript of the audio recorded
18 statement you gave to the police; right?

19 A I think so. Yes, I think I did, actually.

20 Q Oh, you did?

21 A Uh-huh.

22 Q Okay. So in this you described when the individuals
23 first came in. You were asked by Mr. Brower if two skinny
24 black guys was what raised your attention and I'm just going
25 to have you read it, all of what raised your attention, so

1 that it's clear.

2 A Okay.

3 Q This is page 3. I'm just going to have you read the
4 whole paragraph and when you're done with the description I'll
5 have you stop.

6 A Okay. So from here; right? Fourteen?

7 Q Yeah. The "A," that's your answer --

8 A Okay.

9 Q -- so why don't you just start from there.

10 A I said, "I know it's kind of funny, but I kind of
11 get a sixth sense with people, especially when you walk in
12 and, you know, you have that vibe. I used to be a security
13 guard so I kind of get those vibes. But they walked in and I
14 used" -- I'm sorry. "They walked in and, I mean, they looked
15 really sketchy, first of all, you know, coming in walking
16 into the branch that way. I'm not trying to racially profile
17 anybody or anything like that, but typically when you see
18 two skinny black people that come -- that coming in like,
19 you know, just that way, just the way they were dressed, it's
20 normally something that I always, you know, know. Always,
21 you know, it always picks on my sense. I'm like, wait a
22 minute, this doesn't feel right. First of all, they came in
23 very sketchy, come in together and at the same time they broke
24 away and then that's when I was like, hey, heads up, you know,
25 this is -- this is not looking very good. So I sent that

1 message to my manager. She was like, Who? I mean, the guys
2 in line."

3 Q So the defense attorney asked about one thing that
4 you said in there and asked if that was the reason that they
5 stood out to you, that they were skinny black people.

6 A Right.

7 Q But you mentioned in there how the way they looked
8 was sketchy and you were talking about the manner of their
9 dress?

10 A Correct.

11 Q And the fact that they walked in together but then
12 stood in line as if they were separate or didn't know each
13 other?

14 A Correct.

15 Q And all of these things stood out to you as far as,
16 hey, I sent a message to my manager saying keep an eye out?

17 A Correct.

18 Q And you also mentioned the fact that you used to
19 work security. You mentioned getting vibes or a sense of when
20 danger might be occurring?

21 A Correct.

22 Q Did any of that have to do with their race?

23 A No.

24 Q You also mentioned in your statement to the police
25 something about that you -- page 4 -- came from Long Beach,

1 as you mentioned here in court, and that you were around that
2 type of crowd all the time. That was your home town, that's
3 where you grew up?

4 A Correct.

5 Q You said, "I used to live in a very ghetto place?"

6 A Correct.

7 Q And as you mentioned, you grew up among Hispanics,
8 African-American, different race?

9 A Yeah.

10 Q What are you, what's your racial background or
11 ethnic background?

12 A Well, I'm Hungarian-Hispanic, I'd say. I guess
13 Hungarian and born here in the USA in California.

14 Q Okay. And you were asked -- the detectives when
15 they interviewed you, you were asked about the one that hit
16 Mel and the one that hit Allyson, and you gave descriptions
17 for each of them; right?

18 A Correct.

19 Q You said one was wearing a track jacket?

20 A Uh-huh.

21 Q One was wearing a doo-rag. Glasses. It looked like
22 prescription glasses.

23 A Correct.

24 Q These are things that you're noticing from your
25 desk?

1 A Correct.

2 Q Black Air Force Ones?

3 A Correct.

4 THE COURT: I think, Mr. Scow, let's take a break.

5 MR. SCOW: Okay.

6 THE COURT: Ladies and gentlemen, we're just going
7 to take a quick final afternoon recess, just about 10 minutes.
8 It will put us a couple minutes in front of four o'clock.

9 During the brief recess you are reminded you're not
10 to discuss the case or anything related to the case with each
11 other or anyone else. You're not to read, watch or listen
12 to any reports of or commentaries on the case or subject
13 matter relating to the case. Do not do any independent
14 research by way of the Internet or any other medium and do
15 not form or express an opinion on the trial.

16 Please place your notepads in your chairs and follow
17 the bailiff through the double doors.

18 And, sir, during our brief recess do not discuss
19 your testimony with anybody else. Okay?

20 THE WITNESS: Okay.

21 [Court recessed from 3:47 p.m. until 4:07 p.m.]

22 [Inside the presence of the jury]

23 THE COURT: All right. The Court is now back in
24 session. And, Mr. Scow, you may resume your redirect
25 examination.

1 MR. SCOW: Thank you, Judge.

2 REDIRECT EXAMINATION (Continued)

3 BY MR. SCOW:

4 Q Alex, I think I was in the middle of going through
5 the description that you gave, the details that you've given
6 of the clothing and the people, the two guys that were in the
7 bank. It's fair to say you gave a lot of descriptors as to
8 articles of clothing, things they were wearing, things about
9 them, is that correct?

10 A Correct.

11 Q You gave details from head to toe?

12 A Correct.

13 Q The shoes they were wearing, things on their head.
14 Facial hair. The type of clothing. You seemed that you were
15 being very observant.

16 A Correct.

17 Q Is that kind of based on your background as a
18 security officer?

19 A Just in general I've always been an observant
20 person. A little bit of me, I was an art student, so I pay
21 attention to very -- types of arts. I'm pretty much a very
22 observant kind of person. Was always a learner with visuals,
23 always looked at things, always managed to remember things
24 like the actual images or pictures or whatever it is.

25 Q Okay. When you were first testifying, when I was

1 first asking you questions, you talked about they didn't fit
2 the picture as far as the type of clothing they were wearing.
3 Your typical customers are retirees or like working class.
4 I don't remember exactly the words you said.

5 A Correct.

6 Q Or if they're not in their work attire, they're in
7 like jogging outfits from working out?

8 A Correct.

9 Q And Mr. Hughes in his questioning of you described
10 your testimony, saying that they didn't look like they were
11 hard-working people. Is that kind of what you meant, that
12 they were hard-working or just like working-class people?
13 I want to know.

14 Q What I meant by that, I meant more of -- what I
15 meant by that is like more of like you see people with your
16 traditional suits that come in there. I'm not saying they
17 weren't hard-working people, but yet you see more people
18 coming in with shirts and ties or polos or, you know, slacks
19 or, you know, you see people coming in having a leisure day
20 which is, you know, gym shorts and whatnot. And as I'm --
21 you know, as I'm looking at this and I know it was in July,
22 one of the things I rang out as I'm reviewing this as well
23 in my mind, it's the middle of July. It's 115 degrees
24 outside. Who's going to wear a track sweater outside at that
25 time? I've never met anybody that's going to be wearing a

1 track suit -- I mean, a track jacket out in the blazing heat
2 of July.

3 Q In Las Vegas?

4 A In Las Vegas.

5 Q And in your statement to the police on page 6 in
6 describing the type of people in your branch, in addition to
7 retired or the blue-collar worker, folks like that, is that
8 kind of what you mean by like blue-collar working type people?

9 A Correct.

10 Q Okay. And you were also asked whether the fact that
11 there's only two African-American men in the court, whether
12 that assisted you in your identification. Did that have
13 anything to do with the fact that when you come in here today
14 and you identified these two individuals as being involved
15 that you saw in the bank that day, does that have anything to
16 do with it or just these are the two guys that you saw?

17 A These are the two guys I saw.

18 MR. SCOW: Okay. I don't have any more questions.
19 Thank you.

20 THE COURT: All right. Any recross?

21 MR. BROWER: Not from me, Judge.

22 THE COURT: Mr. Hughes, any recross?

23 MR. HUGHES: No, Your Honor.

24 THE COURT: Do we have any juror questions for the
25 witness? All right, I see no additional questions. Thank you

1 for your testimony. Please do not discuss your testimony with
2 anybody else who may be a witness in the case.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you, sir, and you are excused.

5 MS. SCHIFALACQUA: And, Your Honor, the State calls
6 Matthew Pedroza.

7 MATTHEW PEDROZA

8 [having been called as a witness and being first duly sworn,
9 testified as follows:]

10 THE CLERK: Thank you. Please have a seat. State
11 and spell both your first and last name for the record.

12 THE WITNESS: Matthew Pedroza. First name M-A-T-T-
13 H-E-W. Last name P-E-D-R-O-Z-A.

14 THE COURT: Thank you.

15 MS. SCHIFALACQUA: May I, Your Honor?

16 THE COURT: You may proceed.

17 MS. SCHIFALACQUA: Thank you.

18 DIRECT EXAMINATION

19 BY MS. SCHIFALACQUA:

20 Q Mr. Pedroza, let the ladies and gentlemen of our
21 jury know how you are currently employed, sir.

22 A I'm employed through U.S. Bank as a personal banker.

23 Q Okay. And how long have you worked at U.S. Bank?

24 A For about four years now.

25 Q Okay. And what location do you currently work?

1 A At the Eastern and Horizon location in Anthem.
2 Q Okay.
3 [Pause in the proceedings]
4 BY MS. SCHIFALACQUA:
5 Q Mr. Pedroza, that's in Henderson, Clark County,
6 Nevada, is it not?
7 A Correct.
8 Q Okay. And I'm showing you what's been previously
9 admitted as State's 28. Let me do this. Do you see the
10 location on that overhead map, sir?
11 A Oh, it's right here.
12 Q Yes.
13 A Yeah, right there.
14 Q Okay. And that mouse, you can actually move it.
15 A Oh.
16 Q So do you want to point out where you work? And
17 now, you said that you've worked at U.S. Bank for four years.
18 How long at that location?
19 A For about two years.
20 Q Okay. And where were you before that?
21 A Right across the street inside the Smith's Grocery
22 Store.
23 Q Okay.
24 A Yeah.
25 Q So you were at an in-store and now you're at a

1 regular, traditional branch?

2 A Correct. Uh-huh.

3 Q Showing you State's 29, what are we looking at
4 there?

5 A This is -- right here this is like the front
6 entrance, so this is where you would go right here for drive-
7 thru ATM and then right here is the front entrance.

8 Q Okay. And then I'm going to show you State's 32
9 that's been previously admitted. What are we looking at
10 there, sir?

11 A This is inside the branch right here, right by the
12 -- when you first walk in.

13 Q Okay. And where are you -- Can you describe or kind
14 of orient the jury as to where you are seated at that branch?

15 A I'm right here. My desk is right here.

16 Q Okay. And on July 23rd of 2018, were you working
17 at that location?

18 A I was.

19 Q And describe approximately at 11:30 in the afternoon
20 what did you observe that happened that has you testifying
21 here today with us?

22 A Well, I witnessed two guys come into the branch
23 and when I saw them come into the branch I went up and I
24 introduced myself to them.

25 Q Okay. Now, let's go back and talk about some of

1 your duties.

2 A Sure.

3 Q What is your current assignment? You indicated, but
4 let's talk about your duties in your current assignment.

5 A Yeah. Well, my duty as a personal banker is not
6 only to, you know, open up accounts, do loans and things like
7 that, but also provide a good customer experience for whoever
8 walks in.

9 Q And so when you saw two gentlemen that walked into
10 your branch on July 23rd of 2018, can you describe the men for
11 our members of our jury, please?

12 A Yeah. They were African-American, about -- a little
13 bit taller than myself.

14 Q How tall are you, sir?

15 A I'm about 5'10".

16 Q Okay.

17 A Yeah.

18 Q So a little bit taller than you?

19 A Uh-huh.

20 Q Is that a yes?

21 A Yes.

22 Q Okay. And did you notice anything else about them?
23 Did they walk in together? What did you notice? Tell our
24 jurors.

25 A Yeah, they walked in together. They came in. They

1 just went to the check-writing stand, which is right there
2 in the middle.

3 Q Okay. I'm going to show State's 32 again so that
4 we can kind of -- you can show them.

5 A Yeah. So they went over there and then they got
6 back in line. That's when I went up and approached them and
7 introduced myself as Matthew, the personal banker. How are
8 you guys doing today? Is there something I can help you out
9 with? One of them said that he was just there to cash a
10 check. So I told him, okay, that's great. Unfortunately
11 that's something I can't help you out with, but one of my
12 tellers will be happy to help you. We've got some of our
13 best ones up there, they'll be with you shortly. I told them
14 there's coffee over there in the corner; help yourself if that
15 sounds good to you.

16 Q Okay. And do you remember if you asked them if they
17 were together?

18 A I did, yeah. After I talked to the individual that
19 was in the front, I asked the person behind him, Are you guys
20 together? And he nodded his head yes, that they were.

21 Q Do you remember anything else about them as you sit
22 here today with regard to your interaction at that time?

23 A What do you mean?

24 Q Did you notice anything about their features? It
25 was July; right?

1 A Yeah.

2 Q What, if anything, did you notice about them?

3 A Uh --

4 Q Do you remember their clothing? Let's go back.

5 Let's start with that. Do you remember their clothing?

6 A Uh, not at this time. I can't remember like exactly

7 what they were wearing.

8 Q Okay.

9 A They weren't like masked or anything like that. You

10 could see their face and everything like that, so.

11 Q Okay. And so with regard to you approaching them

12 as customers, did you ever shake their hand?

13 A I did. Uh-huh.

14 Q Each one?

15 A No. Just the one -- whoever was in the front.

16 Q Okay.

17 A The front of the line.

18 Q That's what you remember?

19 A Yeah.

20 Q And with regard to why you went up to them, describe

21 for the members of our jury why you went up to them as a

22 personal banker.

23 A Oh, okay. So I figured they were customers, just

24 new customers. I hadn't seen in there before, so I just went

25 up to them and, you know, introduced myself and make sure that

1 they have -- part of being a good experience. So when you
2 first walk in the bank, make sure the very first thing is a
3 positive experience.

4 Q When you say to our jurors that you didn't recognize
5 them as customers, specifically at your branch, not the in-
6 store but the branch that's a stand-alone --

7 A Uh-huh.

8 Q -- is it fair to say that you have a regular
9 customer clientele?

10 A Yes.

11 Q Okay. And did you recognize them as anybody who had
12 been in the branch before?

13 A No. They were -- I just knew -- I knew they were
14 there for the first time.

15 Q Okay. And so do you get regular customers that you
16 recognize either them having a bank account or a business
17 account with you and/or just people that come in and cash
18 checks regularly?

19 A Yeah.

20 Q Okay. And so they fit neither of those profiles,
21 if you will?

22 A Correct.

23 Q Okay. Is that something that you were alerted to
24 or were you not alerted at all?

25 A I was not alerted to.

1 Q Okay.

2 A Yeah.

3 Q Let me ask you this. Do you have a messaging system

4 within your branch, sir?

5 A Yes, we do.

6 Q Okay. Through the employees, I mean?

7 A Uh-huh.

8 Q Is that a yes?

9 A Yes, that's correct.

10 Q I'm sorry. They take down everything you say --

11 A Okay.

12 Q -- so you can't -- they won't pick up uh-huh, uh-uhs

13 or anything like that. Mr. Pedroza, with regard to that

14 messaging system, did you remember or did you receive any

15 messages on the date of the robbery while you were at work?

16 A No. I don't remember reading any of them.

17 Q Okay. So for your purposes when you got up to greet

18 the two gentlemen, there wasn't any technique involved as far

19 as some message sent to you, was there?

20 A No. Just come up to them, just to provide a good

21 customer experience for them.

22 Q Okay.

23 A Yeah.

24 MS. SCHIFALACQUA: Court's indulgence. I'll pass the

25 witness, Your Honor.

ALLYSON SANTAMAURO

TRIAL TESTIMONY

1 Q Okay. So on Paseo Verde Drive, you remember that.

2 With regard to the details that are sent out, are you
3 given any information, or do you recall any information -- the
4 juror asked about a weapon. Is that something you recall, or
5 do you just remember whether or not a robbery occurred?

6 A Only a robbery occurred.

7 Q Okay. And so is that kind of your focus that you
8 take note robberies in the area, the location?

9 A Yes.

10 MS. SCHIFALACQUA: Okay. Nothing further, Your
11 Honor. I pass.

12 THE COURT: Okay. Any follow-up, Mr. Brower?

13 MR. BROWER: No, Judge.

14 THE COURT: Any follow-up, Mr. Hughes?

15 MR. HUGHES: No, Your Honor.

16 THE COURT: Any other juror questions?

17 All right. Ma'am, I see no other questions. Thank
18 you for your testimony. Please don't discuss your testimony
19 with anyone else who may be a witness in this case. Thank you
20 and you are excused, and just follow the bailiff from the
21 courtroom.

22 And is the State ready to call its next witness?

23 MR. SCOW: Yes, Judge. Allyson Santomauro.

24 **ALLYSON SANTOMAURO**

25 [having been called as a witness and being first duly sworn,

JD Reporting, Inc.

1 testified as follows:]

2 THE CLERK: Thank you. Please have a seat. State
3 and spell both your first and last name for the record.

4 THE WITNESS: Allyson Santomauro. A-l-l-y-s-o-n,
5 S-a-n-t-o-m-a-u-r-o.

6 THE COURT: All right. Thank you.
7 Mr. Scow.

8 MR. SCOW: Thank you, Judge.

9 DIRECT EXAMINATION

10 BY MR. SCOW:

11 Q Good morning.

12 A Good morning.

13 Q How are you currently employed?

14 A I'm a teller with U.S. Bank.

15 Q How long have you been a teller?

16 A I've been at Anthem for two years today actually.

17 Q Happy anniversary.

18 A Thank you.

19 Q And then in the banking industry?

20 A I've been in the banking industry for about three and
21 a half years.

22 Q Okay. I'm going to direct your attention back to
23 July 23rd, 2018. Were you working at your same branch at
24 10565 Eastern Avenue in Henderson, Clark County, Nevada?

25 A Yes.

JD Reporting, Inc.

1 Q What are some of your duties as a -- I guess what's
2 your current assignment or job title?

3 A A teller. So as a teller I have my cash drawer. I
4 process transactions such as deposits, withdrawals, payments
5 for customers, and then I have to balance my drawer at the end
6 of the day every day.

7 Q So when you say your drawer, is there a specific
8 drawer that you take and put in?

9 A Correct.

10 Q The slot of the cabinet or desk area you said?

11 A Yes.

12 Q And at the end of the day, you take it out and do an
13 accounting of it?

14 A Yes.

15 Q At about 10:00 a.m. on July 23rd, tell us about the
16 circumstances. What was happening in the bank at about that
17 time?

18 A I was -- I was on the teller line. I was assisting
19 customers, and then I called over my next customer, and at that
20 point they had showed me a note instructing me to get them all
21 the money in my drawer.

22 Q Okay. Now, I'm going to show you Exhibit 33. Can
23 you point -- there's a mouse you can use to -- the cursor will
24 move around with the mouse. Can you just point where you were.

25 A Right here is my station all the way at the end.

JD Reporting, Inc.

1 Q And that's the one on the very right-hand side of
2 this photograph?

3 A Yes.

4 Q Describe the individual that approached you at that
5 teller location.

6 A The individual that approached me, African-American
7 male. He had a hat on, a white jacket with a red stripe.

8 Q Okay. And you said you had been helping a customer
9 prior and then called the next person in line.

10 A Yes.

11 Q The one wearing that white jacket with the red
12 stripe, that was the next person that you called?

13 A Correct.

14 Q And they approached your station?

15 A Yes.

16 Q What happened then?

17 A When he approached my station, he had first went over
18 to the coffee station. It's hiding behind -- it's behind where
19 the windows are, but there's a coffee station I guess adjacent
20 to my station. He went over to the coffee station, but did not
21 get coffee, then came over, turned around to my station, held
22 up a note instructing me to give him the money from both
23 drawers.

24 Q Did you see where the note came from? Where he
25 pulled it from?

JD Reporting, Inc.

1 A I believe it came from his pocket, but I do not
2 recall to be honest.

3 Q Okay. And then describe the note and the paper that
4 was on the note as best as you remember.

5 A I'm not -- again, it was back in July. So I don't
6 remember word for word what it said. It just said -- it looked
7 like it was on like a ripped piece of paper, and it said to
8 give him the money from both drawers. I was -- at the point
9 that it happened, I was really in shock that it was happening.
10 So I kind of just skipped, you know, I didn't really read it
11 word for word. I just was kind of in a panic mode and just did
12 what I'm trained to do, to give -- just to comply.

13 Q So as you sit here today, you don't remember exactly
14 word for word what the note says?

15 A No.

16 Q You gave a handwritten statement to the police that
17 same day; correct?

18 A I did.

19 Q And if you wrote in here about what the note says,
20 would that help refresh your recollection?

21 A It would.

22 Q Showing you -- go ahead and read it to yourself, and
23 then when it's refreshed your recollection, look up at me.

24 Does that refresh your recollection?

25 A Yes. Thank you.

JD Reporting, Inc.

1 Q So you know what the note -- you wrote down what the
2 note said?

3 A Yes.

4 Q On this. What did the note say?

5 A The note said to give him both money from both
6 drawers, and then at the end it said, No bullshit.

7 Q Okay. Did the first part of it say, This is a
8 robbery?

9 A Yes.

10 Q Okay. So after you saw the note, the note was
11 presented to you. Did you take the note from the individual?

12 A No. The individual retained the note and put it in
13 his pocket.

14 Q Okay. What happened then?

15 A At that point I stepped back from my station. I was
16 looking for my manager to inform her of what happened. I
17 noticed she was -- she was at the first teller window right
18 here with my teller supervisor. Then when I went over to
19 inform her, then that's when I found out that my teller
20 supervisor had also been robbed at the same time by a different
21 individual.

22 Q Okay. And did you notice another individual or even
23 know if anything else may have been going on?

24 A I did not.

25 Q What's your teller supervisor's name?

JD Reporting, Inc.

1 A Melanie.

2 Q Okay. And the manager?

3 A Chelsey.

4 Q So after you learn about another individual, another
5 robbery occurring with Melanie, what happened? What did you
6 do?

7 A I was -- you know, then my kind of emotion started to
8 kind of kick in. I was still in shock that it had happened
9 because that was the first time in my, you know, banking
10 experience that I've been robbed. So I was shocked that it had
11 actually happened. So I went over to inform my manager. I was
12 very emotional, and so was my teller supervisor, and she was --
13 she said me too, me too, that it happened to her too, and we
14 hugged, and I went over to our break room area just to kind of
15 sit down and just relax.

16 Q So that's in the back.

17 A Correct.

18 Q Can you kind of indicate with the mouse.

19 A So, well, it's hard to see here, but in this area
20 there's a door behind this wall right here, and that's where
21 our break room is.

22 Q So you had gone back there, and that's where you're
23 kind of --

24 A Yes.

25 Q You said very emotional. Were you crying at that

JD Reporting, Inc.

1 point?

2 A I was.

3 Q At the -- so the police were called. The police
4 come, and you write a statement and --

5 A Yes.

6 Q -- speak with the police?

7 A Uh-huh.

8 Q And then that's a yes?

9 A Yes. Sorry.

10 Q Yeah. When they record it, uh-huh and huh-uh sound
11 the same. So --

12 A Gotcha.

13 Q -- yes or no --

14 A Okay. Sorry.

15 Q -- is a little bit better.

16 Was there an accounting done of your drawer from your
17 teller station on the right?

18 A Yes.

19 Q Showing you what's been marked as State's Proposed
20 Exhibit 56. Do you recognize this?

21 A I do, yes.

22 Q What is it?

23 A This is my teller balancing sheet. We fill these out
24 every single day at the end of the day. This in particular one
25 is the balancing sheet from the robbery.

JD Reporting, Inc.

1 Q Okay. And that indicates the date, your name, and
2 then your signature is on here as well?

3 A Correct.

4 MR. SCOW: I move to admit State's Proposed 56.

5 MR. BROWER: Submit it, Judge.

6 THE COURT: Submitted?

7 MR. HUGHES: Submitted.

8 THE COURT: All right. That'll be admitted.

9 (State's Exhibit Number 56 admitted)

10 BY MR. SCOW:

11 Q Showing now 56. From the top, zooming in a little
12 bit, there is the date and then your name. It says 7/4. What
13 happened on that day?

14 A [No audible response.]

15 Q Is that correct?

16 A Yes.

17 Q Okay. And then there's your signature here?

18 A Yes.

19 Q And what's the amount that was taken during that
20 robbery?

21 A \$5,775.

22 Q Okay. Is that what's starred and underlined on the
23 picture?

24 A Yes.

25 Q Or on this document. Okay.

JD Reporting, Inc.

1 Now I'm going to show you portions of the video, and
2 I'll try and move through it quickly because it's been shown
3 with other witnesses previously, but I just want to -- want you
4 to be able to indicate where you and -- so you can indicate
5 where you were and what you observed.

6 A Okay.

7 Q So the jury can understand your perspective here.
8 And as this is happening, you're assisting a customer; is that
9 correct?

10 A Correct.

11 Q So at this point you see some individuals in line; is
12 that correct?

13 A Yes.

14 Q Is one of the two one of the ones you called over?

15 A Yes.

16 Q And is that -- and you recognize that by the
17 clothing?

18 A I do, yes.

19 Q Who's the employee that just walked up to them?

20 A That's Matthew. He's our personal banker. He had
21 went up to greet them as he does with most customers when
22 there's a line to see if there's anything he can help them
23 with.

24 Q Now, as we're looking at this can you see your teller
25 station on this camera view?

JD Reporting, Inc.

1 A No, I don't see it on the teller view.

2 Q Is it over here on the right?

3 A It is.

4 Q And do you see couches or chairs over here that
5 they're kind of getting cut off as well as it goes further
6 down?

7 A Yes.

8 Q So it doesn't quite capture your teller station?

9 A Correct.

10 Q So what's happening there?

11 A So he is at the coffee station how I had mentioned,
12 and then he came over to my station, and then you can see me.
13 It's kind of hard to tell from this angle, but I'm right there.

14 Q Okay. And do you see him pull out a note from
15 somewhere on his person?

16 A Yes.

17 Q And so now would that be you giving money from your
18 drawers?

19 A Correct.

20 Q Did he say anything to you while that was going on?

21 A When I first called him over, I asked him how he was
22 doing today, and he mumbled something. I'm not sure what he
23 said, but he did not say anything as I was giving him the
24 money.

25 Q Okay. I can zoom out or zoom in further.

JD Reporting, Inc.

1 That's the individual that was at your station?

2 A Yes.

3 Q And what you see on there, you indicated a jacket,
4 and he was wearing a hat, and were there glasses hanging on the
5 jacket as well?

6 A Yes.

7 Q And now we're seeing all four camera angles; correct?

8 A Correct.

9 Q And that one that you -- was with you waited at the
10 door.

11 A Uh-huh. Yes.

12 Q And it shows him go off view to the right. Did it
13 show him go off view to the right?

14 A Yes.

15 Q In your drawer, do you know if there is any tracker
16 or bait money or anything like that?

17 A My drawer does not have bait.

18 MR. SCOW: All right. I will pass the witness.

19 THE COURT: All right. Mr. Brower.

20 CROSS-EXAMINATION

21 BY MR. BROWER:

22 Q I'm going to be very brief, I hope.

23 A Okay.

24 Q So you never saw a weapon; correct?

25 A Correct.

JD Reporting, Inc.

1 Q And you don't remember the note that you saw
2 referencing a weapon; correct?

3 A Correct.

4 Q And nobody touched you or physically came in contact
5 with you either; correct?

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

7 THE COURT: All right. Mr. Hughes, any questions?

8 CROSS-EXAMINATION

9 BY MR. HUGHES:

10 Q Ma'am, is it true that you've received training on
11 what to do in a robbery?

12 A Yes, sir.

13 Q And is it true that that training instructed you to
14 comply with demands even if you didn't see a weapon?

15 A Yes, sir.

16 Q And were you also instructed to comply with
17 instructions even if they didn't say they had a weapon?

18 A Yes, sir.

19 Q Okay. Did you receive any notification from your
20 bank that another branch had been robbed in the vicinity?

21 A Prior?

22 Q Yes.

23 A Yes.

24 Q Do you remember whether the note indicated a weapon
25 was seen or used?

JD Reporting, Inc.

1 A When it was me at that time, no. I -- like I had
2 mentioned before, when I first started to read the note and
3 realized what was happening, I kind of skipped over the whole
4 note. So I don't remember exactly what it had said.

5 Q Although you -- you want to comply with all of the
6 instructions you've got to read them?

7 A Yes. Well, that was my first time getting robbed.
8 So being in the moment, I was in shock. So --

9 Q Okay.

10 A Yes.

11 MR. HUGHES: Thank you, ma'am.

12 THE WITNESS: You're welcome.

13 THE COURT: Redirect?

14 MR. SCOW: No, nothing further.

15 THE COURT: Any juror questions for the witness?

16 All right. Counsel, approach.

17 (Conference at the bench not recorded)

18 THE COURT: We have a juror question here. A juror
19 asks, Can you identify the suspect in the courtroom today?

20 THE WITNESS: Yes.

21 THE COURT: All right. And can you point to that
22 person and tell us what he is wearing in court today.

23 THE WITNESS: He's right here, and he's wearing a
24 blue button up shirt, long pants.

25 THE COURT: All right. The person at the end by the

1 bailiff?

2 THE WITNESS: Yes.

3 THE COURT: Okay. Thank you.

4 THE WITNESS: You're welcome.

5 MR. SCOW: And just so the record reflect the
6 identification of Damien Phillips?

7 THE COURT: Yes, it will.

8 MR. SCOW: I don't have anything further.

9 THE COURT: All right. Follow-up by the State?

10 MR. SCOW: No.

11 THE COURT: Any follow-up by Mr. Brower?

12 MR. BROWER: Yes, Judge.

13 FOLLOW-UP EXAMINATION

14 BY MR. BROWER:

15 Q You previously testified at a preliminary hearing;
16 correct?

17 A Correct.

18 Q And you didn't identify Mr. Phillips at that hearing;
19 correct?

20 A Correct.

21 Q And you had an opportunity to see only two people at
22 that hearing, just like there's only two people here today;
23 correct?

24 A Correct.

25 Q And just to be clear, you never identified him at

JD Reporting, Inc.

1 that hearing; correct?

2 A I did not, but I was not explicitly asked to identify
3 him.

4 MR. BROWER: No further questions, Judge.

5 THE COURT: Any follow-up, Mr. Hughes?

6 MR. HUGHES: No follow-up, Your Honor.

7 THE COURT: Anything else?

8 MR. SCOW: Just one or two.

9 THE COURT: Any other -- oh, I'm sorry.

10 MR. SCOW: Is that okay, just one or two questions?

11 THE COURT: Sure.

12 REDIRECT EXAMINATION

13 BY MR. SCOW:

14 Q What happens in a courtroom is you don't just talk
15 about what happened or what you see or know. It's based on us
16 asking you questions and you're responding to those questions?

17 A Correct.

18 Q And as you indicated at that prior hearing, you
19 weren't asked whether you could or couldn't identify the
20 suspect in the courtroom?

21 A Exactly. Yes.

22 Q At that time, if you were asked, would you have been
23 able to identify the suspect?

24 A Definitely.

25 MR. SCOW: Okay. Nothing further.

JD Reporting, Inc.

1 THE COURT: Any follow-up?

2 MR. BROWER: Just briefly.

3 RECROSS-EXAMINATION

4 BY MR. BROWER:

5 Q You were asked to describe the individual at the last
6 hearing; correct?

7 A I believe so, yes.

8 Q And when you were describing that individual, did you
9 point to the person and say he's right there; that's what he
10 looks like; he looked the same?

11 A I don't believe I did.

12 Q Okay. And today you were asked to describe the
13 individual, and you could have done the same thing; correct?

14 A Yes.

15 MR. BROWER: No further questions, Judge.

16 MR. HUGHES: No follow-up.

17 MR. SCOW: Nothing.

18 THE COURT: Any other juror questions?

19 All right. I see no additional questions.

20 Thank you for your testimony. Please don't discuss
21 your testimony with anyone else who may be a witness in this
22 case.

23 THE WITNESS: Okay.

24 THE COURT: Thank you. And you are excused.

25 THE WITNESS: Thank you.

JD Reporting, Inc.

CHELSEY GRITTON

TRIAL TESTIMONY

1 THE COURT: All right. Cross?

2 MR. BROWER: Court's indulgence. Judge, I'm going
3 to pass at this point in time.

4 THE COURT: Okay. Mr. Hughes, do you have any
5 cross?

6 MR. HUGHES: No, Your Honor. I have no questions.

7 THE COURT: All right. Do we have any juror
8 questions for the witness? All right. I see no additional
9 questions. Thank you for your testimony. Please do not
10 discuss your testimony with anyone else who may be a witness
11 in the case.

12 THE WITNESS: Thank you.

13 THE COURT: Thank you, sir. You are excused.

14 THE MARSHAL: Right this way.

15 THE COURT: And the State may call its next witness.

16 MR. SCOW: Chelsey Gritton.

17 THE COURT: And please remain standing and face our
18 court clerk right there.

19 CHELSEY GRITTON

20 [having been called as a witness and being first duly sworn,
21 testified as follows:]

22 THE CLERK: Thank you. Please have a seat. State
23 and spell both your first and last name.

24 THE WITNESS: My name is Chelsey Gritton.

25 C-H-E-L-S-E-Y G-R-I-T-T-O-N.

1 THE CLERK: Thank you.

2 THE COURT: All right. Thank you.

3 You may proceed.

4 MR. SCOW: Thank you, Judge.

5 DIRECT EXAMINATION

6 BY MR. SCOW:

7 Q How are you currently employed?

8 A I work for U.S. Bank as the bank manager.

9 Q Which branch are you the manager of?

10 A I am the manager of 10565 South Eastern Avenue,
11 Henderson, Nevada 89052, the Anthem location.

12 Q Okay. And we just had Matthew leave the courtroom.
13 Did you see him leave the courtroom?

14 A I did.

15 Q Is he one of your employees?

16 A He's my personal banker.

17 Q And Alex Orellana was in here earlier. Did you see
18 him here, too?

19 A I did. He's my universal banker.

20 Q Okay. How long have you been working at that branch
21 location?

22 A I've been at that location for three, almost four
23 years.

24 Q Okay. And how long have you been in the banking
25 industry?

1 A I've been in the banking industry going on fifteen,
2 almost sixteen years.

3 Q I'm going to turn your attention to July 23rd, 2018.
4 At about ten o'clock in the morning what were things like in
5 the bank that day?

6 A So, the branch that I work at is a -- it's a smaller
7 niche market. We're in a retirement type of branch. Our
8 customers are basically retirees. So it was busy. We had
9 customers in line. I was with a customer on the phone. So
10 it was relatively a busy branch, but it wasn't crazy like we
11 wouldn't notice people in the bank.

12 Q Okay. You said you're like a niche market, you have
13 a lot of retirees. Are there other types of clients that come
14 to your bank location or have accounts with that particular
15 branch?

16 A That is correct. So a majority of the clients,
17 we service the Anthem area so there's a lot of retirement
18 communities around my branch. So we service Sun City Anthem,
19 we service some of the different retirement communities there,
20 so we know the majority of our customers that come in.

21 Q Okay. So if someone was going to come in and open
22 an account for the first time, there's a good chance that you
23 would recognize that they haven't been there before?

24 A That is correct.

25 Q So this morning, July 23rd of this year, what

1 happened? Was there anything that came to your attention that
2 something might be off?

3 A So in our branch and throughout the entire U.S. Bank
4 we use a system called Skype, which is instant messaging, and
5 I received a Skype message from my universal banker that said,
6 "Heads up." So we use that type of communication if we feel
7 that maybe something in the branch is not the way it normally
8 is. Like I said, we know our customers that come in, we
9 service them. And so I looked up and I saw two gentlemen
10 standing in the lobby of the branch and I did not recognize
11 them as our normal customers.

12 Q Okay. Who sent you the message saying, "Heads up"?

13 A Alex.

14 Q Okay. What did you do after you got that message?

15 A So I was currently on the phone with a customer, and
16 so one of the things that we do with everyone in the branch
17 is we rely on service, so at that point I wanted to greet the
18 people in the lobby and provide them service because I didn't
19 recognize them in the branch. I had never seen them before.

20 Q Were you able to get up and greet them?

21 A I was still on the phone. I was speaking to a
22 customer on the phone and I was trying to finish up my
23 transaction, so my personal banker, Matthew, actually had
24 gotten up and approached them first before I was able to get
25 over and greet them in the lobby.

1 Q So you're thinking we need to greet them, you're
2 busy, and before you could do anything about it, Matthew had
3 gotten up?

4 A That is correct.

5 Q What happens after Matthew greeted those two?

6 A So Matthew greeted them in the lobby and then he
7 went back to his desk. I had finished my customer on the
8 telephone and I got up and I then -- because I sit in the
9 corner, and so I got up and I proceeded to go back behind the
10 teller line.

11 Q Okay. I'm going to use a couple pictures to help
12 you as you describe what you do and where you go. Showing
13 you first Exhibit 32.

14 A Uh-huh.

15 Q The mouse that's on that desk there in front of you,
16 you can use that and move the cursor and kind of show on the
17 screen.

18 A Okay.

19 Q Can you show first where your desk is located?

20 A My desk is located back here in the corner.

21 Q Okay.

22 A And then my assistant manager's desk is right here.
23 And then Alex, his desk is right here and then Matthew, my
24 personal banker, his desk is right there. This is
25 approximately where they were standing, where Matthew came

1 over and greeted them. And then Melanie, my teller, was
2 standing here, so she is the first window. So when I left my
3 desk I walked over back behind the teller line and stood back
4 by Mel.

5 Q Okay. Is there a door that you have to actually go
6 through to get behind there?

7 A Yeah, it's like a pony wall so it's short, which is
8 like right -- well, it's back behind this check-writing stand.

9 Q Okay. And is there another door that you have to
10 go through as well?

11 A Yes. So there is a pony wall here and then there
12 is a door that's back behind this way that gains access back
13 to the teller line and the break room.

14 Q And so you went through that to stand behind Mel,
15 as you testified to?

16 A That is correct.

17 Q And now 33 might give a better angle as to where
18 we're at now. Can you point on there where you are standing
19 behind Mel, your teller?

20 A So I'm standing back behind her this way. That's
21 where I was standing.

22 Q Okay. And Mel is at that teller station?

23 A Yes. So she was at this teller station here and
24 then these three teller stations there was nobody there and
25 then Allyson, my other teller, was standing over here.

1 Q Okay. Is there -- on the right over here, is there
2 a portion of that that is -- that can't be seen that's blocked
3 or does that get most of that teller station there?

4 A So that gets most of the teller station, if not all
5 of the teller station.

6 Q Okay. And it's about as wide out as where you could
7 see the chair there at the end?

8 A That is correct.

9 Q So what happens and what do you do after you come
10 back there behind Mel?

11 A So I come back behind the teller station and he was
12 standing there and Mel was standing to this side of me.

13 Q Now, let me just pause. You said he was standing
14 there. Who?

15 A Yes. That gentleman right there -- [pointing] --

16 Q Okay.

17 A -- was standing there. And he let us know that he
18 was there to collect the money and he wanted the money in both
19 drawers. And I just wanted to make sure that my team is okay
20 because that's what's most important to us when we work in the
21 bank, so she looked at me and I said yes, and then she started
22 to give him the money. And then while she was handing him and
23 giving him money, the other gentleman was actually standing
24 over here at Allyson's window. So when they went up to the
25 teller line, they split off, and so I had two tellers that

1 were being robbed. And so I went to Mel first because she was
2 closest to me right there at that first station, but then
3 Allyson started to cry and she was very upset. And so --

4 MR. BROWER: Judge, objection as to whether she was
5 upset or not. Calls for speculation.

6 THE COURT: I'm going to overrule.

7 So she appeared upset to you?

8 THE WITNESS: Yes, she appeared upset. Yes.

9 THE COURT: Okay. Go on.

10 BY MR. SCOW:

11 Q And you described to us crying?

12 A Yes. She was crying.

13 Q And what did you do when you saw that?

14 A So when she started to cry, she actually turned to
15 walk towards me and I put her back over in her teller station
16 because as managers in the bank the most important thing is
17 our team safety, and so because we don't know what's ever
18 going to happen, the most important thing is to give them the
19 money so that they leave the branch and then we can take care
20 of the team and if there are any customers.

21 So then she gave him the money, the other gentleman
22 the money, and then after she did that she continued to walk
23 towards me. So I then -- so she was walking towards -- so she
24 -- so Mel gave him the money, and then she had the money and
25 then she turns towards me and then she's starting to walk

1 away, and so I pull her -- I put my arm around her and then
2 I pull her back into this area where our break room is just
3 to calm her down, so she's not on the platform anymore.

4 Q Okay. And did you see the two individuals leave
5 the bank?

6 A So they -- I had come around and she was over here
7 and then I came back around because -- and you see them
8 leaving. They were in front of me and then I locked the door
9 behind them.

10 Q So you came from back there to walk to the front
11 door?

12 A Uh-huh. Yes.

13 Q And you locked it?

14 A Yes.

15 Q Did you see what direction they had gone after they
16 walked out the front door?

17 A So our front door of our building is kind of angled,
18 like it kind of comes to a point, and so once they go around
19 the corner I did not see them. And we're trained that you
20 never go outside, you never look, you always stay inside the
21 building.

22 Q From your vantage point -- and it looked like you
23 motioned to the right?

24 A Yeah.

25 Q They went to the right?

1 A So it's glass so you can see, but that's what it
2 looked like, yes.

3 Q Showing you what's been marked as State's Proposed
4 Exhibit 30, do you recognize this?

5 A Yes. That's the front of our building.

6 Q Okay. And is the entrance off to the right?

7 A It's over here, yes.

8 MR. SCOW: I'd move for admission of State's
9 Proposed 30.

10 THE COURT: Any objection to 30?

11 MR. HUGHES: Submitted.

12 MR. BROWER: Submitted, Judge.

13 THE COURT: All right, 30 is admitted.

14 [State's Exhibit 30 admitted]

15 BY MR. SCOW:

16 Q Showing you first already admitted Exhibit 29, is
17 this the front of the bank?

18 A Yes.

19 Q And the front entry is in here?

20 A Yes.

21 Q Okay. And then from there where did you see them
22 veer off to the right, what you described?

23 A This way.

24 Q Okay. And does Exhibit 30 show that area?

25 A Yes.

1 Q And then again, can you show the direction you had
2 seen them go?

3 A So it's out this way here.

4 Q And then you lose sight of them going to the right
5 in that direction?

6 A Correct.

7 Q As far as going this way, I mean?

8 A Yeah, I can't see. And like I said, once I locked
9 the door, that's as far as I can go.

10 Q And the building prevents you from seeing them?

11 A Correct.

12 Q Somebody called the police from your branch?

13 A Yes.

14 Q And the police eventually respond?

15 A Yes.

16 MR. SCOW: Court's brief indulgence.

17 BY MR. SCOW:

18 Q Okay. I'm going to do a couple things now. First
19 I'm going to pull up some video, but as this is coming up I
20 just wanted to clarify a couple things or just kind of follow
21 through. You didn't call the police, but at some point did
22 you get on the phone with the 911 operator or the police to
23 kind of get more updates than what the first person could
24 give?

25 A That is correct.

1 Q Okay. And then did you do a search for U.S. Bank
2 records to see if Damien Phillips or Anthony Barr had accounts
3 with U.S.. Bank?
4 A We did.
5 Q And you were given their identifying information?
6 A We were.
7 Q Did they have accounts with U.S. Bank?
8 A They do not.
9 Q And as the branch manager, do you have access to
10 surveillance video at your branch location?
11 A So we -- for surveillance video we do have cameras
12 in our branch, but we don't have access to it directly. It
13 has to be requested for corporate security.
14 Q Corporate security?
15 A Yes.
16 Q So like a regional security director would need to
17 do that?
18 A That is correct.
19 MR. SCOW: Do you know what to do if a computer says
20 not responding?
21 THE WITNESS: I just turn it off and turn it back on.
22 MR. SCOW: Turn it off and turn it back on. I'll
23 try that.
24 THE COURT: That usually works, right?
25 MR. SCOW: Let's try again.

1 THE WITNESS: Or ask someone else.
2 MR. SCOW: That's what I usually do.
3 THE COURT: I find a younger person.
4 MS. SCHIFALACQUA: That's what he was doing, right?
5 BY MR. SCOW:
6 Q Okay. So now just orient us as to what you know
7 about the bank location. Is this part of your branch, these
8 different --
9 A That's my entrance. Yes.
10 Q Okay. And then these other four camera angles show
11 the interior of the bank?
12 A That is correct.
13 Q What's -- let me pause it real quick. This camera
14 shows what?
15 A So that would be looking over approximately from
16 where Matthew's desk is. So he gets a little bit of the
17 teller line and then he gets the lobby, part of the lobby.
18 Q Okay. So the teller line, who is this teller here
19 again?
20 A That's Melanie.
21 Q And in the back?
22 A Is Allyson.
23 Q And from what you describe in the picture in one of
24 the exhibit, the one closest to Matthew's desk, that one is
25 teller station one?

1 A Yes. That's Melanie.
2 Q Okay. And is this a view from the front entry?
3 A That is correct.
4 Q And this -- right here in the back, who's that?
5 A That's Matthew Pedroza.
6 Q Okay. So I'll let it play now and I might pause
7 here and there to ask you questions. The people that you see
8 right now customer-wise, do you recognize them?
9 A I don't recognize them from this angle, no.
10 Q Okay. Do you see anything that you recognize from
11 that particular day?
12 A I recognize the two gentlemen coming in, just going
13 in through the entrance.
14 Q Okay. From where you were seated, you couldn't see
15 the exterior like that?
16 A I'm sorry, what?
17 Q That was a bad question. From where you were
18 seated, you couldn't see the front doors or outside the front
19 doors?
20 A No, I cannot, because my desk is in the corner.
21 Q You could just see after they're in and starting to
22 walk into the bank?
23 A Correct. So once they get to where the middle part
24 of the credenza is there, then I can see them because I looked
25 this way.

1 Q So are you talking about like the middle of this
2 credenza?
3 A Yes, sir.
4 Q Okay. So at this point right here you couldn't see
5 them, still?
6 A No, I cannot.
7 Q So we'll go to that view. So about right --
8 A So the gentlemen -- yes, now I can see them --
9 Q Okay.
10 A -- because now they're in the line. So, yes,
11 they're in my scope of view.
12 Q And just to kind of help fill things through, is it
13 about this time that you're receiving a message from Alex?
14 A That is correct, yes.
15 Q So they were already in this line, from your
16 observations, when you got that message?
17 A Yes.
18 Q And we'll want to focus on your actions, but you see
19 right here, who's that?
20 A That's Matthew. He's going up to greet them and ask
21 them, I'm assuming, if they need help today, just like we're
22 told.
23 Q Just let us know when you see yourself.
24 A There I am.
25 Q Can you use the mouse just to identify yourself?

1 A Oh, sorry. That's me.
2 Q Is then when you go to kind of stand behind Mel?
3 A That is correct.
4 Q The little pony wall?
5 A Correct.
6 Q And then there's a door in the back?
7 A Yes.
8 Q Now, when you were standing right there and as you
9 make your way over towards --
10 A Allyson.
11 Q -- Allyson --
12 A Uh-huh.
13 Q -- the individuals that are on the other side of
14 those teller stations, how far away is that?
15 A The teller station is probably -- it's probably
16 similar, actually, to this, so it's fairly close. We have a
17 computer that looks similar to like this and a keyboard, so
18 it's relatively close distance.
19 Q Okay. And so you're standing behind Mel, so you're
20 pretty close to them?
21 A That is correct.
22 Q And this is still you in the background here?
23 A That is correct. Yep. And that's where she is
24 coming back and then I take her back around that corner.
25 Q Okay. And was she crying then at that point?

1 A She is.
2 Q And what are you doing here?
3 A So I'm going to lock the front door.
4 Q And is that where you see them going -- losing sight
5 of them, going to the right of the building?
6 A Yes.
7 Q Do you know if your bank location uses trackers or
8 bait money?
9 A So they do. Not every drawer carries bait and not
10 every -- the drawers have trackers, but not -- not all the
11 branches use them. So in my particular location we do not
12 use bait money.
13 Q Okay. Earlier when you were testifying and as you
14 were describing the individuals that were in the store or your
15 branch at that time that had walked up to your tellers and you
16 were indicating that -- you were pointing to them. They're
17 in the courtroom?
18 A They are, yes.
19 Q And can you point to them in the courtroom and
20 describe an article of clothing they're wearing?
21 A What they're wearing now?
22 Q Right now. Yes.
23 A So one gentleman is wearing khaki pants and the
24 other gentleman is wearing a purple shirt.
25 Q Which one is in the khaki pants? I can't see --

1 A Oh, I'm sorry. This gentleman right here in the
2 glasses.

3 MR. SCOW: Okay. Your Honor, can the record reflect
4 identification of the defendants?

5 THE COURT: It will.

6 MR. SCOW: Damien Phillips with the glasses and
7 Anthony Barr in the purple shirt.

8 THE COURT: All right.

9 BY MR. SCOW:

10 Q And you had indicated one went to one station and
11 one went to the other. Can you help clarify that for us?
12 Do you know which one went to which window?

13 A Oh, yes. So that gentleman went to Melanie and I
14 believe that gentleman went to Allyson, I believe.

15 THE COURT: And the first gentleman that you said
16 "that gentleman," are you talking about the person in the
17 glasses and the khaki pants?

18 THE WITNESS: I think so.

19 THE COURT: Okay. That wasn't clear because she
20 was pointing.

21 MR. SCOW: Yeah. I was going to try to clarify.

22 THE COURT: All right. Sorry.

23 BY MR. SCOW:

24 Q So when you say you think so, is that -- are you as
25 positive about which one was where as the fact that these are

1 the two individuals that were there?

2 A I know that those are the two individuals. I'm just
3 not 100 percent sure who went to who. It's very fast when it
4 happens.

5 Q Okay. So you're not sure which one went to which,
6 but how sure are you that these are the two guys that were --

7 A I am 100 percent sure.

8 MR. SCOW: Okay. I have no more questions.

9 THE COURT: All right. Mr. Brower, cross.

10 MR. BROWER: Just very brief.

11 CROSS-EXAMINATION

12 BY MR. BROWER:

13 Q Did you notice any tattoos on any faces, hands,
14 necks, anything like that?

15 A I did not.

16 Q Okay. And did you see any weapons?

17 A I did not.

18 MR. BROWER: No further questions, Judge.

19 THE COURT: Mr. Hughes.

20 CROSS-EXAMINATION

21 BY MR. HUGHES:

22 Q Ma'am, you say there was two individuals in the bank
23 that day. One of them was at the window directly in front of
24 you; right?

25 A Yes.

1 Q Mere feet from you; correct?
2 A Yes.
3 Q And the other individual was at the other end of the
4 teller windows, for want of a better description. Is that
5 right?
6 A Yes.
7 Q So you got a much closer look at one of these
8 individuals than the other; correct?
9 A Yes.
10 Q Yet you seem unsure about which one of the
11 individuals was in front of you?
12 A Correct.
13 Q How do you explain that?
14 A Because when you're being robbed the most important
15 thing is the safety of your team members.
16 Q Agreed.
17 A And so my point is to get them out of the branch.
18 So I recognize them because they were standing close to us,
19 but it's the best I can say.
20 Q Okay. So it is fair to say that you are unsure as
21 to which of these individuals was face-to-face with you and
22 which one was further away?
23 A Yes.
24 Q But you are sure that you saw no weapon that day,
25 is that right?

1 A I did not. No.

2 MR. HUGHES: Thank you.

3 THE COURT: All right. Any redirect from the State?

4 MR. SCOW: I'm just going to ask maybe one or two
5 questions.

6 THE COURT: All right.

7 MR. SCOW: And I'm just getting the video cued up
8 to do that.

9 REDIRECT EXAMINATION

10 BY MR. SCOW:

11 Q I'm just going to have you look at the screen. I'm
12 probably just going to ask two things. This is the overview
13 lobby area; correct?

14 A Yes.

15 Q Is this about how close you were to that individual
16 as you were standing behind Melanie?

17 A Yes.

18 Q Okay. You didn't stay over there, though; right?

19 A I'm sorry, what?

20 Q Sorry. You didn't stay over there, like you see
21 yourself --

22 A No. I walked towards Allyson.

23 Q Okay. And about --relatively speaking, are you
24 about the same distance from the other guy when you're over
25 there on the right as to where you were on the left to the

1 other guy?
2 A Yes.
3 Q The distance is about the same?
4 A Yes.
5 Q But as you described, when you're in a robbery
6 situation you're trying to focus on the safety of the
7 employees --
8 A That is correct.
9 Q -- and you're not trying to distinguish, okay, which
10 guy is where, you just know that these two are those guys in
11 the video?
12 A That is correct.
13 MR. SCOW: All right. I don't have anything else.
14 THE COURT: Any recross?
15 MR. BROWER: No, Judge.
16 MR. HUGHES: No.
17 THE COURT: Any juror questions for the witness?
18 All right. Ma'am, I see no questions. Thank you for your
19 testimony.
20 THE WITNESS: Thank you.
21 THE COURT: Please don't discuss your testimony with
22 anyone else who may be called as a witness in this case.
23 THE WITNESS: Thank you.
24 THE COURT: Thank you, and you are excused.
25 And it's almost 5:00, so we should probably take

REGINA COLEMAN

TRIAL TESTIMONY

1 MR. SCOW: Okay. All right. Thank you.

2 THE WITNESS: You're welcome.

3 MR. SCOW: No more questions.

4 THE COURT: Anything else?

5 MR. BROWER: Nothing further, Judge.

6 MR. HUGHES: Nothing.

7 THE COURT: Any juror questions for this witness?

8 All right, ma'am, I see no other questions. Thank
9 you for your testimony. Please do not discuss your testimony
10 with anyone else who may be a witness in this case. Thank you
11 and you are excused.

12 THE WITNESS: Thank you.

13 THE COURT: And the State may call its next witness.

14 MS. SCHIFALACQUA: Your Honor, the State calls Regina
15 Coleman.

16 MR. BROWER: And, Judge, may we approach very briefly
17 while they're --

18 THE COURT: Sure.

19 MR. BROWER: -- their witness in?

20 (Conference at the bench not recorded)

21 THE COURT: And, ma'am, please remain standing and
22 face that lady right there.

23 REGINA COLEMAN

24 [having been called as a witness and being first duly sworn,
25 testified as follows:]

JD Reporting, Inc.

1 THE CLERK: Thank you. Please have a seat. State
2 spell both your first and last name for the record.

3 THE WITNESS: My name is Regina Coleman.
4 R-e-g-i-n-a, C-o-l-e-m-a-n.

5 THE COURT: All right. Thank you.

6 Ms. Schifalacqua.

7 MS. SCHIFALACQUA: Thank you.

8 DIRECT EXAMINATION

9 BY MS. SCHIFALACQUA:

10 Q Ms. Coleman, can you let the members of our jury know
11 how you're employed.

12 A I work for Bank of the West. I am a teller.

13 Q Okay. And how long have you worked at Bank of the
14 West?

15 A About six months.

16 Q Okay. And so you were working there how long on July
17 31st of 2018?

18 A Probably my third week.

19 Q Oh, my goodness. So on your third week at Bank of
20 the West --

21 MS. SCHIFALACQUA: Thank you --

22 BY MS. SCHIFALACQUA:

23 Q Where is that located in town?

24 A It's on Valle Verde and Sunset.

25 Q Okay. And I'm going to show you what's been admitted

JD Reporting, Inc.

1 as State's 106. Do you see -- I keep doing that.

2 Do you see the branch depicted in this overhead map?

3 A I see something. Yeah, in the middle there.

4 Q Okay. Have you got yourself oriented now?

5 A Yeah.

6 Q I'm sorry. It's kind of hard to --

7 A Yes.

8 Q You have a mouse in front of you, Ms. Coleman, and so
9 you can kind of point to where the branch is.

10 Are you aware of what's around the branch, or are you
11 not -- when you're new to a location, are you aware what
12 businesses are around the branch, et cetera?

13 A Oh, yeah. New to the bank, not to the area.

14 Q Okay. Not the area, just to the bank. Okay. Is
15 there a church that's nearby?

16 A Yes.

17 Q Okay. Let me pull this, zoom this map out? Is
18 that -- can you see the church on this overhead map?

19 A No. It's --

20 Q If I direct your attention further higher up on the
21 map, do you see it?

22 A Because of the way it's in the back of us. So it's
23 kind of a --

24 Q Okay. So when you say it's in the back of us, where
25 the branch is located, is it fair to say for our jurors that if

JD Reporting, Inc.

1 obviously if they've not been there, it's kind of located
2 further down below, and the church goes up --

3 A Right.

4 Q -- towards a hill; is that right?

5 A So we're towards the street, and then the church is
6 here.

7 Q Okay. You'd only been working for Bank of the West a
8 couple of weeks, and then on July 31st of 2018, were you
9 present or at work when the branch got robbed?

10 A Yes.

11 Q Okay. With regard to that day, about 11:30 in the
12 morning or so, describe for the members of our jury what it is
13 you were doing, what were your duties, and kind of your day
14 when this occurred.

15 A I had just got to work. I was running late. So I
16 was agitated. I was logging on to my computer. I hadn't even
17 put my purse away or anything like that --

18 Q Let me back up and stop you for a second. I'm going
19 to show you State's 113.

20 A Okay.

21 Q You said that, you know, obviously you work as a
22 teller.

23 A Uh-huh.

24 Q On State's 113, does that show the teller stations at
25 the branch?

1 A Yes.

2 Q Okay. And when you say you were logging on and you
3 hadn't even put your purse, what do you do to log -- log on?
4 Tell the jurors like these steps to get yourself set up.

5 A Well, I come in, and I put my purse down on the desk,
6 and then I will put in all my codes on the computer and wait
7 for it to log up, and then it opens the screen, and then you
8 have to go in there, and there's, like, four more steps to get
9 to where I can actually do any transactions.

10 Q Okay. So prior to that, if a customer approaches
11 you, can you help them?

12 A No.

13 Q On this particular occasion, on July 31st of 2018,
14 you were talking about just kind of just getting in a little
15 late, you know, logging on, and what happens? Describe for me.

16 A A woman approached me to my desk and just stand
17 there, and like I said, I was running late. So I was agitated,
18 and I said, I did not call you over here.

19 Q You're kind of laughing now. Is it fair to say as
20 far as the branch goes, for customer service industry, normally
21 that's not a type of thing that you would say?

22 A No.

23 Q But nonetheless, it might have been irritating to
24 you, I take it, for a person physically to walk up when they
25 weren't called to your window?

JD Reporting, Inc.

1 A Yes.

2 Q Okay. And that's what happened?

3 A Yes.

4 Q Okay. After you told that individual that you didn't
5 call them, what did you do next?

6 A We had a staring match because she didn't leave.

7 Q Okay.

8 A And I said, I think it's best that you get back in
9 line. So when the next teller is available they can help you
10 because I can't do anything for you.

11 Q And as you explain to our jurors, I mean, physically
12 you could not have done a transaction; is that fair?

13 A No. I didn't even have a cash drawer yet.

14 Q Okay. When you say that you saw a woman, describe
15 this woman.

16 A The wig was black and white, two tone, black and
17 white, something that looked like it could have been like a
18 half jacket vest for I don't know, blue or black leggings, a
19 long burgundy dress, gold sandals.

20 Q Okay. And could you identify the person actually as
21 the gender of female?

22 A No.

23 Q No. So describe that for our jury.

24 A It appeared to be a man dressed as a woman.

25 Q Okay. And, in fact, your characterization, is it

JD Reporting, Inc.

1 fair to say, of that woman was maybe not so nice? What was
2 your characterization of that woman?

3 A A very ugly woman.

4 Q I'm going to -- and it's what you observed; right?
5 You first thought a woman had approached you. You looked up,
6 and you see it's --

7 A It's a guy.

8 Q It's a guy. Is that fair?

9 A Yeah.

10 Q Okay. And, in fact, that's what you told police;
11 right?

12 A Uh-huh.

13 Q When they eventually interviewed --

14 A Yes.

15 Q Okay. So this man that had on the dress, the
16 leggings, et cetera, is the one that you end up kind of having
17 the staring match with?

18 A Yes.

19 Q Eventually does that man that's dressed as a female
20 get back in line?

21 A He doesn't go all the way back. So this would be my
22 desk.

23 Q Okay.

24 A And he probably went as far as this end of this desk
25 right here.

JD Reporting, Inc.

1 Q Okay.

2 A And just stood there.

3 Q Did he say anything?

4 A No, never said a word.

5 Q Okay. After that, did you -- were you able to
6 observe where he went?

7 A He went next to Grace.

8 Q Okay.

9 A So he just went and sat down with Grace.

10 Q So directing your attention to the teller kind of
11 windows that are up on the screen, if I zoom into this,
12 where -- with that mouse, where was your teller station? If
13 you can point it out for our jurors.

14 A So my station is normally next to Grace, which is
15 Grace right here, and this is normally my station. So my
16 station had been down. So I had to use Serena's, which is the
17 station is here.

18 Q So you weren't directly next to Grace. You were one
19 more over at Serena's station?

20 A Yes.

21 Q And then when the man dressed as a woman couldn't get
22 service from you, you watched him go over to Grace's window?

23 A Yes.

24 Q Did you --

25 A So we were here.

JD Reporting, Inc.

1 Q Okay. Did you keep an eye on what happened? Or
2 describe for the jurors kind of what you did next in your day.

3 A I finished logging on, and then by that time,
4 everything had happened.

5 Q Okay. Where did you go after when you say everything
6 has happened? Were you alerted that a robbery had occurred?

7 A Yes.

8 Q Who alerted you?

9 A Grace.

10 Q Okay. Did you also work with Nur on that day?

11 A Yes. Nur was there too.

12 Q Okay. And were you alerted to the robbery that
13 occurred with her?

14 A Yes. So first Nur was standing by Grace right here,
15 and then Grace stood up, and then Nur said, I was just robbed,
16 and then Grace said, Me too.

17 Q Were they both upset?

18 A Yeah. More Nur than Grace.

19 Q Okay. When they said that, had the individual
20 addressed that the male already left?

21 A Yes. Ran out the door.

22 Q Did you see if he was with anybody else?

23 A There was a gentleman on the outer door holding the
24 door.

25 Q Okay. And did you observe that gentleman holding the

JD Reporting, Inc.

1 door for the man dressed as the female?

2 A Yes.

3 Q Okay. And then what, if anything, did you see? When
4 that man dressed as a female went to leave, did you see was it
5 in a hurry? Was it leisurely? Describe that for our jury,
6 please.

7 A Ran. They ran out the front door.

8 Q Okay.

9 A And we could see because we had windows. So you
10 could see them run, and then we could see them go up the hill
11 by the church.

12 Q Okay. So where --- that map that we just talked about
13 of up that hill, you observed the two men running up that way;
14 is that fair?

15 A Yes.

16 Q With regard to the man that held the door for the man
17 dressed as a woman, can you describe that man for our jurors,
18 please.

19 A He had on a baseball cap, little Afro, all black.
20 He had a towel around his neck and you would just think because
21 maybe it was wet because it was hot. And like he might have
22 had tattoos on his neck on something on his face.

23 Q Okay. And that's -- and I never asked you, but was
24 he white, black, Hispanic or Asian?

25 A Black.

JD Reporting, Inc.

1 Q Okay. Also, with regard to the man dressed as a
2 woman, was he white, black, Hispanic or Asian?

3 A Black.

4 Q Okay. And they both ran out together; is that right?

5 A Yes.

6 Q Or after the one held the door?

7 A Yeah, the door, out together.

8 Q When that happened, did you hit any alarms, or what
9 was your procedure?

10 A I hit the -- well, I was fairly new so I didn't
11 really know, but working at the bank before I hit the alarm,
12 and then I called 9-1-1.

13 Q Okay. And you called 9-1-1 and gave them the
14 information; is that correct?

15 A Yes.

16 MS. SCHIFALACQUA: Court's brief indulgence.

17 With regard to State's Proposed 104, I'm going to
18 play a portion of that 9-1-1 with your permission, Your Honor,
19 for identification purposes.

20 THE COURT: All right.

21 MS. SCHIFALACQUA: Thank you.

22 BY MS. SCHIFALACQUA:

23 Q At some point, before we get that up and running,
24 Ms. Coleman, at some point when you are on 9-1-1, does Manny
25 take over the 9-1-1 call?

1 A Yes.

2 Q Okay. You're familiar with his voice?

3 A Manny's, yes.

4 Q As well.

5 Okay. And you work with him?

6 A Yes.

7 (Publishing State's Proposed Exhibit Number 104.)

8 BY MS. SCHIFALACQUA:

9 Q Do you recognize your voice, Ms. Coleman?

10 A Yeah. Yeah, that's that -- that's me.

11 Q Okay. That's you. That's you calling 9-1-1 after
12 the bank was robbed?

13 A Yes.

14 Q Is that a fair and accurate depiction of your voice
15 as you hear it --

16 A Yes.

17 Q -- when you made the call?

18 MS. SCHIFALACQUA: I would move for admission, Your
19 Honor, of State's 104.

20 MR. BROWER: I'll submit it, Judge.

21 MR. HUGHES: Submitted.

22 THE COURT: All right. That will be admitted.

23 (State's Exhibit Number 104 admitted)

24 (Publishing State's Exhibit Number 104.)

25 / / /

JD Reporting, Inc.

1 BY MS. SCHIFALACQUA:

2 Q Regina, you recognized your voice and Manny's voice
3 on that 9-1-1 call; is that right?

4 A Yes.

5 Q Okay. Let's go back and talk about some things.
6 Manny, as you heard, talked about the two gentlemen that had
7 committed the robberies running out to the left. Did you
8 actually watch them go up towards the church area?

9 A Yes.

10 Q Okay. So you knew that that was off to the right of
11 the building if you will?

12 A Yes.

13 Q Let's talk about -- it looks -- well, we heard you
14 trying to get Nur or Mary Grace on the phone, and you said they
15 couldn't speak. Describe their demeanor. What did you observe
16 them acting like that they couldn't get on the phone at the
17 time?

18 A Nur was crying, and Grace was just really shaky and
19 nervous.

20 Q Okay. Were you nervous?

21 A Yeah.

22 Q Okay.

23 A Because I've never been in that situation or worked
24 with people where it's happened.

25 Q Okay. With regard to the second male, the male that

JD Reporting, Inc.

1 you described with the towel around his head and potentially.
2 some sort of neck tattoos and/or something on his face, let's
3 go back and make sure the jurors understand. Where did you see
4 him in relation -- I mean, you talked about -- and I'm sorry.
5 I'm kind of jumping ahead, but you talked about the male
6 approaching you that was dressed as a female. Where was the
7 male that you observed that had that towel and the potential
8 something on his neck or face?

9 A In the lobby. So when you first come in, there is
10 the new accounts area.

11 Q Okay. Let me back up. I'm going to show you while
12 you're talking about new accounts --

13 A Okay.

14 Q -- and kind of the lobby. I'm going to show you
15 State's 114 that's been previously admitted.

16 A Okay.

17 Q What's that area?

18 A This is the door to come in is right here.

19 Q Okay. And when you say new accounts area, is that
20 where Manny sits?

21 A Yes.

22 Q Okay. So showing you State's 112, is this depicting
23 that new accounts area?

24 A Yes.

25 Q Okay. So continue on. Where did you observe the

1 male with a towel and the potential either tattoos or something
2 on his face?

3 A In this area. He was looking at this. He asked Nur
4 if we did foreign wires.

5 Q Okay.

6 A So he hung out right here.

7 Q Okay.

8 A And this is where I saw him.

9 Q Okay. Then I want to go back to where the teller
10 stations are. If you saw him over here, the teller stations
11 are further to the left of what we were just looking at; is
12 that right?

13 A Yeah. Right.

14 Q So how did you see him over there, and then like were
15 you over at that area and then walked back over to your area or
16 what? Describe for the jury.

17 A Coming in to work.

18 Q So when you made entry into --

19 A Yeah. He was already in there.

20 Q Got it. And later on do you ever observe him? And
21 showing you State's 113. Do you ever observe him and/or the
22 man with the dress on at the -- that -- I don't know what kind
23 of station is this called --

24 A The check writing stand.

25 Q Yes.

JD Reporting, Inc.

1 A Just the man dressed like a woman.

2 Q Okay. Where were you then at that time?

3 A Over by the desk, my desk.

4 Q Okay. Were you focusing on the other man, or were
5 you just focusing on the man dressed as a woman at that time by
6 the time you got to your station?

7 A The man dressed as a woman.

8 Q Okay. So that conduct of the other man, the one with
9 the towel, were you focused on that after the man dressed as a
10 woman approached you at all?

11 A No.

12 Q Okay. Your focus, is it fair to say, was just on the
13 man dressed as a woman?

14 A Yes.

15 Q Describe -- you said that you thought you saw
16 something on the face of the man that had the towel. Can you
17 describe what you thought you saw.

18 A Maybe like moles.

19 Q Moles.

20 A You know, you have the cluster moles.

21 Q Okay. Do you remember describing it to police as
22 potentially also pimples or something like that?

23 A Yeah.

24 Q Is that a yes?

25 A Yes. Sorry.

JD Reporting, Inc.

1 MS. SCHIFALACQUA: Okay. Court's indulgence.

2 I'd pass the witness, Your Honor.

3 THE COURT: All right. Mr. Brower.

4 CROSS-EXAMINATION

5 BY MR. BROWER:

6 Q I guess it's good afternoon now. So --

7 A Yes, it is.

8 Q You've probably been here for a while. You said that
9 the people that came in they sat down at the tellers next to
10 you?

11 A The first guy sat down.

12 Q Okay. And was that the male or the female?

13 A The female sat down after she left my window.

14 Q Okay. And they both sat down with the other tellers;
15 correct?

16 A One sat down with Grace. One sat down with Nur.

17 Q And did you give a description to the police at an
18 interview on the date that this occurred?

19 A When all the police came in --

20 Q Yes --

21 A -- or on the phone?

22 Q -- did you give an interview?

23 A When they came -- yes.

24 Q Okay.

25 A I believe so.

JD Reporting, Inc.

1 Q And do you recall describing the person who you said
2 was a male as being very dark, very dark skin, but he had on a
3 hat?

4 A I know I said he had on a hat. I don't know about
5 dark skin, but --

6 MR. BROWER: May I approach, Judge?

7 THE WITNESS: -- dark.

8 BY MR. BROWER:

9 Q Ma'am, I have a highlighted sentence. If you can
10 just look, and don't read it out loud. Just look at it and see
11 if that refreshes your recollection as to what you may have
12 said to the police?

13 A He had dark skin, yes.

14 Q Well, I'm not there yet. I'll ask you in a minute.

15 A Dark skin.

16 Q So did that refresh your recollection as to what you
17 may -- you said to the police?

18 A A little bit.

19 Q Okay. And you said dark, and I think you said very
20 dark. I'm just curious. How do you describe complexions of
21 people? Like the two gentlemen sitting over here, are they
22 dark skinned to you or light skinned or --

23 A Yeah, they're dark.

24 Q They're dark. Okay.

25 A Yeah, they're dark skinned.

JD Reporting, Inc.

1 Q Okay.

2 A I don't have no light complected --

3 Q Okay. [Unintelligible] --

4 A -- brown people.

5 Q Light complected or dark skinned?

6 A No. I said I don't have a light-complected black
7 person in here to show you the difference.

8 Q Okay.

9 A They're dark.

10 Q I'm just trying to get an idea of your description,
11 not, you know -- because I --

12 Okay. And you described the one male that came in I
13 think as about -- hold on. Let me find it -- 5-foot 2; is that
14 correct?

15 A No. No.

16 Q Okay. Oh, wait. You said you were 5-foot 2, and
17 they were a little taller. I misread that. You said they were
18 a little taller, about 5-foot 6, or 5-foot 7; correct?

19 A Anything taller than me, yes.

20 Q Okay. And you never saw any weapons; correct?

21 A No.

22 Q And you never saw anything physical occur, like
23 somebody getting hit or punched or anything like that?

24 A No.

25 Q Okay. And I think you didn't even know anything was

1 occurring until afterwards; correct?

2 A Right.

3 Q Okay. So it wasn't really noisy? There's no yelling
4 or screaming?

5 A No.

6 Q This was unusual for you though; correct?

7 A Very.

8 Q And that's because I think you testified you've
9 worked at a bank before that had all kinds of bulletproof glass
10 and stuff; right?

11 A I've been in banking for 14 years.

12 MR. BROWER: Court's indulgence, Judge. I just need
13 to --

14 BY MR. BROWER:

15 Q And you don't remember seeing any tattoos or
16 anything; correct?

17 A On who?

18 Q On anybody, either of the two people that we talked
19 about, the female or the male?

20 A Remember, I said I could see the things on their face
21 and --

22 Q Right. But no actual tattoos, nothing, like --

23 A Not a physical like --

24 Q -- you know, I love mom or --

25 A -- I couldn't tell you if it was a dove or anything

JD Reporting, Inc.

1 like that.

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

3 THE COURT: Mr. Hughes.

4 CROSS-EXAMINATION

5 BY MR. HUGHES:

6 Q Ma'am, as I understand your testimony, you were
7 running late to work that day?

8 A Sure.

9 Q And when you -- when you arrived at the bank, it's
10 your testimony that both of these individuals, the one dressed
11 as a woman and the one with a towel were already in the bank?

12 A No. There was one in the bank, and that was the
13 gentleman with the hat on.

14 Q Only the gentleman with the hat on?

15 A Yes. That is what I said.

16 Q So it's -- now I understand that both the gentleman
17 with a towel and the gentleman with the long wig came into the
18 bank after you had arrived?

19 A No. The gentleman with the towel was already in the
20 bank when I got there. By the time I got to my station, the
21 woman came in and approached me.

22 Q So therefore the one dressed as a woman must have
23 been the second of the two to arrive. Is that my
24 understanding?

25 A Okay. Yes.

JD Reporting, Inc.

1 Q When you enter your bank, do you come in the front
2 entrance, or do you have an employee entrance?

3 A No, I come through the front door. I can do that.

4 Q And when you walked from the front door to your
5 station, you passed by the man with the hat as you described
6 him; is that right?

7 A Yes.

8 Q And you -- you looked at him and noticed these
9 things. Is that your testimony?

10 A Yes.

11 Q But you were late; is that right?

12 A Uh-huh.

13 Q You weren't rushing to your station?

14 A No.

15 Q You would have casually walked through and observed
16 things?

17 A I do every day.

18 Q No hurry?

19 A I walk in, pass Manny. Hi, Manny. Hi, Nur. Hi,
20 Grace. Hey, Barbara, then I go to my station every day. I
21 don't have to punch a clock. So --

22 Q Okay. But you said you were late --

23 A Yeah.

24 Q -- so in your mind you must have been running late?

25 A No, but I don't have to rush because I don't have to

1 punch a clock. If I had to punch a clock, then, yes, I will be
2 coming through with a rush, but I don't have to punch a clock.

3 THE COURT: So you don't get in trouble for being a
4 little bit late?

5 THE WITNESS: No.

6 BY MR. HUGHES:

7 Q How close did you get to the man with the hat when
8 you walked by?

9 A If he was standing where the second chair is, I will
10 walk through the front door, pass him, come past the teller
11 line and go into my station. So I would've passed him.

12 Q When you say pass him, could you have reached out and
13 touched him?

14 A Would've walked right by him.

15 Yeah, if I wanted to.

16 Q Okay.

17 A Yes, I could've.

18 MR. HUGHES: Thank you, ma'am. That's all I have.

19 THE COURT: All right. Ms. Schifalacqua.

20 MS. SCHIFALACQUA: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. SCHIFALACQUA:

23 Q Ms. Coleman, let's talk a little bit about what
24 Mr. Brower asked you questions about. He showed you a
25 statement, and he said -- he characterized that you said that

JD Reporting, Inc.

1 the individual was very dark. As you sit here today, do you
2 remember just talking about him being dark skinned?

3 A Yes --

4 Q Okay. You didn't actually say.

5 A -- I did say dark skinned.

6 Q -- very dark; right?

7 A I don't remember the very dark --

8 Q If I approach --

9 A -- but I did say dark.

10 Q -- with --

11 MS. SCHIFALACQUA: Page 9, Counsel:

12 BY MS. SCHIFALACQUA:

13 Q -- showing you a transcript of your statement, I'm
14 going to direct your attention to line 11. Go ahead and look
15 at that, and when you're done reading that sentence, if you
16 want to look up at me.

17 A Okay.

18 Q Did you say very dark, or did you say very and have a
19 pause and then continue to describe him as African American?

20 A That's it because that's what we are.

21 Q Okay. And so you're -- for the record, you're
22 African American?

23 A Yes.

24 Q Okay. And how would you describe yourself as far as
25 complexion?

1 A Dark.

2 Q Okay.

3 A Dark skinned.

4 Q So there's not -- I mean, I'm white. Obviously I
5 don't have a medium or light-skinned tone --

6 A And I wouldn't say you were white either. So --

7 Q Right. Okay. So there you go. Right.

8 But you were trying to give a description as best you
9 could to police; is that fair to say?

10 A Yes.

11 Q Right?

12 A Yes.

13 Q Okay. And so in your own terms of describing the
14 men, they were dark complected; is that right?

15 A Yes.

16 Q Okay. Additionally, when you talked about the man
17 with the towel around his neck, you know, Mr. Brower talked
18 about with you that you couldn't really see tattoos, but you
19 described them as tattoos?

20 A Yeah, that's what they looked like.

21 Q Okay. So it looked like that. Fair to you that you
22 might not have known what they were of? Is that right?

23 A No.

24 Q Okay. But you could kind of see something was there?

25 A Yes.

JD Reporting, Inc.

1 Q Okay. With regard to the face, I believe to police
2 you indicated there was something, maybe pimples or something
3 like that. How would you describe, as you sit here today and
4 remember what occurred, how would you describe what was on the
5 person's face?

6 A It just -- it just looked like there was something
7 there, like either moles. You guys know those cluster moles
8 that people have.

9 Q Okay.

10 A Like, that were teardrops, you know, you know how you
11 do the teardrops.

12 Q Okay. And so you got -- that's what you describe as
13 the male with the towel around his neck; is that right?

14 A Yes. Yes.

15 Q With regard to the timing or the entry of the person
16 dressed a female and of the male with the towel around his
17 neck, were you guarding the door, I mean, of the branch of who
18 entered when?

19 A No.

20 Q Is that ano, Regina?

21 A No.

22 Q Okay. And, I mean, because there was kind of this
23 big deal of who you assumed entered when. Can you sit here
24 today and tell this jury, hey, no, this guy entered first, and
25 this guy entered second? I mean, were you paying attention to

1 the order?

2 A No, not the order.

3 Q Okay. When you observed them, you personally first
4 observed the man with the towel; is that fair?

5 A Yes.

6 Q Okay. So you talked with him first then?

7 A Yes.

8 Q And then you observed the man dressed as a female?

9 A Yes.

10 Q Okay. And so in that way in your mind is it fair to
11 say that that's kind of the order?

12 A That is the order.

13 Q If I showed you video surveillance that showed the
14 opposite of the entry into the branch, would that surprise you
15 at all?

16 A No.

17 Q No. Because that wasn't your focus?

18 A No.

19 Q Okay. With regard to the gentleman, do you think you
20 can identify them?

21 A Yeah.

22 Q Is that a yes?

23 A Yes. I'm sorry.

24 Q Do you see them here today in court?

25 A Yes.

JD Reporting, Inc.

1 Q Can you please point to them and identify something
2 they're wearing today.

3 A The gentleman with a towel has on a white shirt, and
4 my -- my lady has on a blue shirt.

5 MS. SCHIFALACQUA: And, Your Honor, for the record,
6 let it reflect that the witness has identified Defendant Barr
7 as the man with the towel and Defendant Phillips as the man
8 dressed as a female.

9 THE COURT: Yes, the record will reflect that
10 Mr. Barr is wearing the blue shirt today, and Mr. Phillips is
11 wearing the white shirt today -- oh, I'm sorry. I misspoke.

12 MS. SCHIFALACQUA: Yes. I --

13 THE COURT: Mr. Phillips --

14 MS. SCHIFALACQUA: Is wearing the blue shirt.

15 THE COURT: -- is wearing the blue shirt.

16 MS. SCHIFALACQUA: Correct.

17 THE COURT: And Mr. Barr is wearing the white shirt.

18 BY MS. SCHIFALACQUA:

19 Q And, Regina, let me make this clear for our record.
20 The man wearing the blue shirt today in court, that was the man
21 dressed as the woman?

22 A Yes. He didn't have the facial hair though.

23 Q Any didn't have facial hair on that day?

24 A No.

25 Q Do you observe facial hair today?

JD Reporting, Inc.

1 A Yes.

2 Q And did you get close to him when he was, well,
3 frankly like I am walking up to your teller station wanting to
4 be assisted?

5 A Yeah. I mean --

6 Q How close?

7 A -- it was closer because his handbag he put down on
8 the counter.

9 Q Let me stand to where he was. Was he this close to
10 you, ma'am?

11 A [No audible response.]

12 Q Closer?

13 A Yes.

14 Q This close?

15 A Yes, because he was on my desk --

16 Q His hands touched your desk?

17 MR. BROWER: Judge, this is leading?

18 THE WITNESS: Yes.

19 MS. SCHIFALACQUA: Okay.

20 THE COURT: And just it is a little bit leading.

21 MS. SCHIFALACQUA: I'm sorry.

22 THE COURT: But for the record --

23 MS. SCHIFALACQUA: For the record --

24 THE COURT: -- Ms. Schifalacqua --

25 MS. SCHIFALACQUA: -- I'm standing --

JD Reporting, Inc.

1 THE COURT: -- is standing at the end edge of the
2 witness stand. And what is that, about 3 feet?

3 MS. SCHIFALACQUA: I would say about that.

4 THE COURT: Does that sound; right?

5 MR. BROWER: I'm not going to object to your
6 measurements, Judge.

7 THE COURT: Okay.

8 BY MS. SCHIFALACQUA:

9 Q Let me -- let me make this clear, Ms. Coleman. If
10 you could describe for the jury, could you touch him if he
11 reached out your arm?

12 A Yes.

13 Q Okay. With regard to the man that had the towel
14 around his neck, that is the man that you've identified in the
15 white shirt here today?

16 A Yes.

17 MS. SCHIFALACQUA: Okay. Nothing further, Your
18 Honor.

19 THE COURT: All right. Any recross, Mr. Brower?

20 MR. BROWER: I just have to ask one thing about her
21 statement on page 9.

22 THE COURT: That's fine.

23 RECROSS-EXAMINATION

24 BY MR. BROWER:

25 Q So I don't have the benefit of an audio, and you were

1 just asked to read this a moment ago. It says dark, and then
2 there's a period in here, but I don't have the audio right now,
3 and then it says very. When you were saying dark, did you mean
4 very dark, or did you just mean dark? And what is the very
5 about? Because then there's a break.

6 A I was trying to just get to the point of saying
7 African American instead of basing it on color of skin.

8 Q Okay. I'm just --

9 A So --

10 Q I'm not -- all I can see is what's written on this
11 paper, and it doesn't always translate to what you were --

12 A So dark skinned, dark complected.

13 Q Okay.

14 A That's my terminology of my color, their color.

15 MR. BROWER: Okay. That's fine. All right. Thank
16 you.

17 THE COURT: Mr. Hughes.

18 MR. HUGHES: Yeah, briefly.

19 I'm asking Mr. Scow if he would reup the video of the
20 two individuals entering this bank branch.

21 (Pause in the proceedings)

22 RECROSS-EXAMINATION

23 BY MR. HUGHES:

24 Q And, ma'am, is this once again the video that we saw
25 earlier of the entry of your branch?

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1 A I didn't see this video.

2 Q Oh.

3 MS. SCHIFALACQUA: She can't see the video.

4 MR. HUGHES: I'm sorry. Excuse me. Freeze that.

5 THE COURT: Oh, and just look --

6 MS. SCHIFALACQUA: For the record --

7 THE COURT: -- at the monitor there.

8 (Pause in the proceedings)

9 BY MR. HUGHES:

10 Q Ma'am, does that look like the entry of your branch?

11 A It is.

12 Q And does that look like the individual you keep
13 referring to as a man with a wig entering?

14 A Yes.

15 MR. HUGHES: Okay. Would you play it some more,
16 please.

17 MR. SCOW: Just tell me when to pause.

18 BY MR. HUGHES:

19 Q So that individual is now in your bank; right?

20 A Yes.

21 MR. HUGHES: Will you pause it.

22 BY MR. HUGHES:

23 Q Is that the man with the towel?

24 A Yes.

25 Q Is he entering the bank before or after the woman

1 with the wig -- or the man with the wig?

2 A He's entering after, but that has nothing to do with
3 when I saw him.

4 Q But you indicated that the man with the wig wasn't
5 there when you went in. You only noticed the man with the hat.

6 A When I walked in, I noticed the man with the hat when
7 I walked in the branch.

8 Q So bear with me for just a minute. You walk into a
9 bank branch, and do you see a black male adult with a hat and a
10 towel, and also in the same lobby there is a black male adult
11 with a long blond and black wig wearing a dress, and the one
12 that you notice is the one with the hat?

13 A Because he's by the door right where I walked in.
14 The first person I see is the gentleman with the hat. I go --

15 Q I thought you saw Manny first.

16 A Yeah, but we're talking about the two right here.

17 Q Well, as you described earlier, you said you walk in.
18 There's a grand entrance, and you wish good morning to all your
19 coworkers around you, and you're looking around --

20 A Right.

21 Q -- and despite looking around and seeing all these
22 people, you don't notice a large black man and a blonde wig and
23 a dress?

24 A He may not have been in line.

25 Q Okay.

JD Reporting, Inc.

KARL LIPPISCH

PRE-TRIAL

TESTIMONY

56PM 1 what I understand your testimony to be and correct me
2 if I'm wrong, multiples times that Chiraq and Damien
3 had come back talking about having done a lick?
4 A. Yes.
57PM 5 Q. Or that they were talking about going to
6 do a lick?
7 A. Yes.
8 Q. And did they talk about robbing a bank?
9 A. Damien did, yes.
57PM 10 Q. And was that in connection with when you
11 confronted him about the picture you saw on the news?
12 A. Yes, it was.
13 Q. Did he deny that it was him in the picture
14 you saw on the news?
57PM 15 A. No, he did not.
16 Q. And looking at these pictures, based on
17 the clothing or the actual person that you see you're
18 certain that this is Chiraq and Damien?
19 A. Yes, I am.
57PM 20 Q. In the pictures that we've shown you
21 today?
22 A. Yes.
23 Q. And at some point in connection with
24 talking about or bragging about robberies or licks --
58PM 25 MR. BROWER: Judge, I'm going to object to

2:58PM 1 the term bragging.
2 THE COURT: What? I was wondering about
3 licks. What the crap is hit a lick? I'm sorry. I've
4 been out of the way awhile. I don't know what that
2:58PM 5 means.
6 BY MR. SCOW:
7 Q. Can you answer the judge's question?
8 THE COURT: What is hit a lick?
9 THE WITNESS: Basically go like rob
2:58PM 10 something or make money.
11 THE COURT: Okay. That makes sense.
12 MR. SCOW: I will rephrase my question
13 too based on the objection.
14 THE COURT: Okay.
2:58PM 15 BY MR. SCOW:
16 Q. But when they'd come back and talk about
17 hitting a lick, did Damien ever make a comment about
18 not wanting to stop or not being afraid of the police?
19 A. Yes, he did. He said that he wasn't
2:58PM 20 scared, that everything is going to be okay, that, you
21 know, nobody should really do nothing but just stay low
22 and let it all blow over and then he was going to get
23 us a spot with the money that he did have at the time.
24 Q. And about the police, did he say anything
2:59PM 25 about the police?

59PM 1 A. No, he did not.
2 Q. Did Damien ever ask you to call him P?
3 A. Oh, yes. Stands for Pistol.
4 Q. And he wanted you to call him P because it
59PM 5 stood for Pistol?
6 A. (No oral response.)
7 Q. Your nodding your head. Is that a yes?
8 A. Yes.
9 THE COURT: Who is calling who P?
59PM 10 THE WITNESS: I'm calling him P.
11 BY MR. SCOW:
12 Q. And that was to Damien?
13 A. Yes.
14 MR. SCOW: I'll pass the witness.
59PM 15
16 RE CROSS EXAMINATION
17 BY MR. BROWER:
18 Q. So real quick. So a lick to you does not
19 mean necessarily do a robbery, correct?
59PM 20 A. No.
21 Q. So it means make money?
22 A. Yes. Illegally.
23 Q. Well, okay. But it doesn't necessarily
24 mean do a robbery, correct?
59PM 25 A. Correct.

3:00PM 1 Q. And it doesn't necessarily mean go stick a
2 gun in someone's face or anything else, correct?
3 A. Correct.
4 Q. Does your boyfriend have a nickname?
3:00PM 5 A. Yes.
6 Q. What is it?
7 A. Slowpoke.
8 Q. Loco?
9 A. Slowpoke.
3:00PM 10 Q. Flowco?
11 THE COURT: Slowpoke.
12 THE WITNESS: Slowpoke.
13 BY MR. BROWER:
14 Q. What does Slowpoke stand for?
3:00PM 15 A. It means that he's really fast. It's just
16 the opposite.
17 Q. Well, I was really slow a minute ago so
18 we're doing good. Is your boyfriend a music producer?
19 A. Yes.
3:00PM 20 Q. And has he called Mr. Phillips Pistol
21 because that's his rap name?
22 A. Yes.
23 Q. So that's actually a rap name, correct?
24 A. Yes, it is.
3:01PM 25 MR. BROWER: I have no further questions,

06PM 1 both tasked with investigating a series of bank
2 robberies that occurred in Henderson, Nevada?
3 A. Yes.
4 Q. Did those start on July 17th through
06PM 5 August 9th?
6 A. Yes.
7 Q. And originally were you the first case
8 agent on the July 17th investigation for a robbery?
9 A. No, I was not.
06PM 10 Q. Okay. Who was?
11 A. Detective Ozawa was.
12 Q. And then there was another robbery that
13 occurred on July 23rd of 2018 that was investigated
14 by the City of Henderson; is that correct?
07PM 15 A. Yes.
16 MR. BROWER: Judge, I have to do it again.
17 I don't mind the investigation for a robbery claim, but
18 I'm going to object to him saying it was actually a
19 robbery that occurred.
07PM 20 THE COURT: Okay. Robbery claim.
21 MS. SCHIFALACQUA: An investigation for
22 the crimes of robbery.
23 THE COURT: Actually they can say they
24 were investigating a robbery.
07PM 25 MR. BROWER: I'm just making my objection,

08PM 1 previous two investigations that had taken place with
2 regard to Detective Ozawa?
3 A. Yes.
4 Q. Obviously with part of investigating the
08PM 5 same did you see similarities between some of the
6 cases?
7 A. Yes, I did.
8 Q. Did you have occasion at some point to
9 review video surveillance with regard to the Bank of
08PM 10 the West investigation?
11 A. Yes.
12 Q. With regard to that video did you ever
13 have a vehicle that became of interest to you and to
14 the City of Henderson's detective bureau?
09PM 15 A. Yes. There was video located depicting
16 that vehicle.
17 Q. With regard to that vehicle can you
18 describe it for the Court, please.
19 A. It was a 1994 red Grand Marquis, a Mercury
09PM 20 Grand Marquis and there were specifics about the
21 vehicle. It had oxidized paint, had a trailer hitch
22 and then just little distinctive aspects to it.
23 Q. In the midst of this investigation what
24 were the similarities that you had seen throughout
09PM 25 these robbery investigations?

3:07PM 1 Judge.
2 THE COURT: What would you call it?
3 MR. BROWER: She said were you
4 investigating a robbery and he said yes and so I think
3:07PM 5 that's ultimately a question for a jury down the road.
6 I'm just making sure for any claims that I'm doing for
7 any potential appeal issues.
8 THE COURT: I understand. So the record
9 is made. I'm allowing the question.
3:07PM 10 MS. SCHIFALACQUA: Thank you, your Honor.
11 THE COURT: Go ahead.
12 BY MS. SCHIFALACQUA:
13 Q. With regard to the July 23rd, 2018
14 investigation for robbery were you the lead on that
3:07PM 15 case?
16 A. No.
17 Q. Turning your attention to July 31st of
18 2018 did you have occasion to investigate a robbery at
19 the Bank of West?
3:08PM 20 A. Yes.
21 Q. Bank of the West, excuse me, is that a
22 yes?
23 A. Yes.
24 Q. When you started your investigation on
3:08PM 25 that particular date, did you have information of the

3:09PM 1 A. Similarities include notes that were...
2 provided every time that the two suspects -- or the
3 suspects would come in the notes would always reference
4 a weapon or a gun and would say to give the money.
3:10PM 5 Every single one of them that they would use a
6 notebook -- the subject would use a note.
7 In addition, the subjects were always
8 identified as black male adults. Similar descriptors
9 were provided in terms of like height and weight to
3:10PM 10 these people as well as similar clothing through most
11 of them.
12 Q. Okay. Did it come a time then after the
13 July 31st incident that another robbery investigation
14 on August 6th occurred?
3:10PM 15 A. Yes.
16 Q. And did that match the same modus operandi
17 that you're describing previously?
18 A. Yes, it did.
19 Q. With that information and with the video
3:10PM 20 surveillance with regard to that 1994 Mercury Grand
21 Marquis that was red or maroon in color did you have
22 occasion to try to investigate that vehicle?
23 A. Yes, I did.
24 Q. And what did you do? Walk us through the
3:11PM 25 steps that you took with regard to that vehicle

14PM 1 also has multiple tattoos.
 2 Q. Where are those tattoos located?
 3 A. His tattoos on his face and neck.
 4 MS. SCHIFALACQUA: Your Honor, let the
 14PM 5 record reflect the witness has identified Anthony Barr.
 6 THE COURT: It shall so reflect.
 7 BY MS. SCHIFALACQUA:
 8 Q. With regard to a person later identified
 9 as you said Melissa Summerleas, and for the record that
 15PM 10 is S-U-M-M-E-R-L-E-A-S, I'm showing you what's been
 11 previously admitted as State's Exhibit 17. Do you
 12 recognize her?
 13 A. Yes.
 14 Q. Did you also do a statement with her and
 15PM 15 speak to her in person?
 16 A. Yes, I did.
 17 Q. And that is Melissa?
 18 A. Yes, it is.
 19 Q. You observed her get out of the vehicle on
 15PM 20 August 8, 2018 as well as the defendants?
 21 A. Yes.
 22 Q. And I'm going to show you now State's
 23 Admitted Exhibit 19. You indicated that you'd also
 24 seen Sabrina Henderson. Is she depicted in State's
 15PM 25 Exhibit 19?

3:15PM 1 A. Yes.
 2 Q. Did you also observe her getting out of
 3 the Mercury Grand Marquis on August 8th, 2018?
 4 A. Yes.
 3:15PM 5 Q. With regard to going back to when that
 6 tracker warrant was placed on the vehicle, was that
 7 placed on the vehicle by one of the detectives that did
 8 mobile surveillance with yourself on August 8th of
 9 2018?
 3:16PM 10 A. Yes.
 11 MR. BROWER: Judge, I'm going to object to
 12 that. I don't know if he has any personal knowledge of
 13 how it was placed.
 14 MR. HUGHES: I will join that.
 3:16PM 15 THE COURT: Lay a foundation.
 16 Q. Okay. You worked with a number of
 17 detectives on August 8th, 2018?
 18 A. Yes.
 19 Q. You observed the defendants as well as
 3:16PM 20 Sabrina Henderson and Melissa Summerleas exit the
 21 vehicle?
 22 A. Yes.
 23 Q. At which point did you continue to have
 24 eyes on the vehicle?
 3:16PM 25 A. At that point the vehicle ultimately, when

16PM 1 it finally was empty, it moved to a position where I
 2 did not have eyes on the vehicle.
 3 Q. Okay. Were you in communications with
 4 officers in real time during this placement of the
 16PM 5 tracker?
 6 A. Yes, I was.
 7 Q. Were persons updating their steps as they
 8 completed them in real time?
 9 A. Yes.
 17PM 10 MR. BROWER: Judge, that would be hearsay.
 11 THE COURT: I don't think it's hearsay if
 12 they were updating their -- she hasn't asked what they
 13 said.
 14 MR. BROWER: I will reserve it for the
 17PM 15 placement of the tracker if he heard it.
 16 BY MS. SCHIFALACQUA:
 17 Q. Let's be clear. At some point are you
 18 responsible for a tracker that actually comes live?
 19 A. For getting the tracks, yes.
 17PM 20 Q. Okay. And were you with the person that
 21 placed the tracker on?
 22 A. Yes.
 23 Q. On August 8th?
 24 A. Yes.
 17PM 25 Q. Thereafter are you tasked with actually

3:17PM 1 having the electronic information from that tracker via
 2 a computer?
 3 A. Yes, I am.
 4 Q. Okay. And so your position after the
 3:17PM 5 placement is to track that device?
 6 A. Yes.
 7 Q. Did you do so?
 8 A. Yes.
 9 Q. Thank you. Let me turn your attention to
 3:18PM 10 August 9th. Did that tracker, that you were
 11 responsible then for tracking, if you will, the
 12 electronic information alert on August 9th?
 13 A. Yes, it did.
 14 Q. When it alerted where were you?
 3:18PM 15 A. I was at our main police station.
 16 Q. Did you give that information to other
 17 detectives?
 18 A. Yes, I did.
 19 Q. In real time?
 3:18PM 20 A. Yes, I did.
 21 Q. Did that include the detectives, at least
 22 Christopher Worley?
 23 A. Yes, it did.
 24 MS. SCHIFALACQUA: That he will be -- I
 3:18PM 25 will reserve, your Honor, obviously to testify.

23PM 1 when they may be armed without arresting them first?
 2 MR. BROWER: Judge, I'm going to object to
 3 Mr. Hughes' question based on the fact that he's
 4 indicating that the individuals have already entered.
 23PM 5 Apparently the way I read the question was whether --
 6 THE COURT: I'll sustain it as to your
 7 client.
 8 MR. BROWER: Thank you, Judge.
 9 MR. HUGHES: Let me rephrase it.
 23PM 10 MS. SCHIFALACQUA: Ask away.
 11 MR. HUGHES: I'm going to withdraw that.
 12 MS. SCHIFALACQUA: Ask away. Fantastic.
 13 MR. HUGHES: No. I withdraw that.
 14 Officer, that's all I have.
 24PM 15 THE COURT: Anything else from the State?
 16
 17 REDIRECT EXAMINATION
 18 BY MS. SCHIFALACQUA:
 19 Q. Detective Lippisch, when you talk about
 24PM 20 having probable cause to arrest, the defense now has
 21 opened the door to some of the additional information
 22 that you had received prior to getting that tracker
 23 warrant. Did some of that information include, since
 24 we're talking about your knowledge, in order to have
 24PM 25 probable cause, did that include latent print analysis

3:24PM 1 that was returned to you?
 2 A. Yes, it did.
 3 Q. And what latent prints were returned from
 4 some of the robberies, who did they come back as known
 3:24PM 5 prints to?
 6 MR. BROWER: Judge, I'm going to object as
 7 hearsay as to the reports that were given to the
 8 officer as far as latent prints.
 9 THE COURT: What she's asking is what
 3:24PM 10 she's basing -- the question was brought up -- the door
 11 was opened by the defense. And I'm going to overrule
 12 the objection.
 13 THE WITNESS: Yes, I was provided
 14 information that led me to Damien Phillips as the
 3:25PM 15 person that was identified in latent prints.
 16 BY MS. SCHIFALACQUA:
 17 Q. And was that from one or more than one of
 18 the locations of the robberies prior to the tracker
 19 warrant?
 3:25PM 20 A. At this time, prior to the tracker
 21 warrant, it was from one location.
 22 MS. SCHIFALACQUA: If I may approach?
 23 THE COURT: You may.
 24 BY MS. SCHIFALACQUA:
 3:25PM 25 Q. We did talk about this Grand Marquis,

25PM 1 Detective Lippisch, and I wanted to show you what has
 2 been previously admitted as State's Exhibit 4. Do you
 3 recognize the vehicle depicted in that photograph?
 4 A. Yes.
 25PM 5 Q. And in fact is that a still photo from
 6 video surveillance that you had observed from the
 7 January 31st incident?
 8 A. From July 31st?
 9 Q. Excuse me. I said January, I apologize.
 25PM 10 I meant the July 31st incident.
 11 A. Yes.
 12 MS. SCHIFALACQUA: Nothing further, your
 13 Honor.
 14
 26PM 15 RECROSS EXAMINATION
 16 BY MR. BROWER:
 17 Q. Officer, you just testified that latent
 18 prints led you to deem or gave you suspicions as to
 19 Damien Phillips, correct?
 26PM 20 A. Yes.
 21 Q. You're also aware that latent prints can
 22 be left at any time by any person, correct, meaning I
 23 can leave latent prints on this table today and it
 24 doesn't mean that I was there three weeks from now or
 26PM 25 three weeks ago, correct?

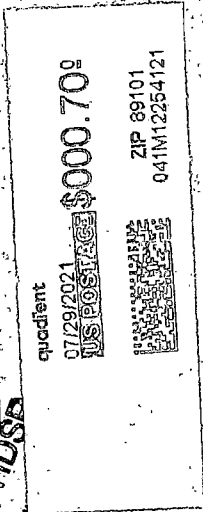
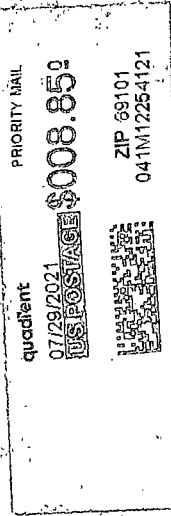
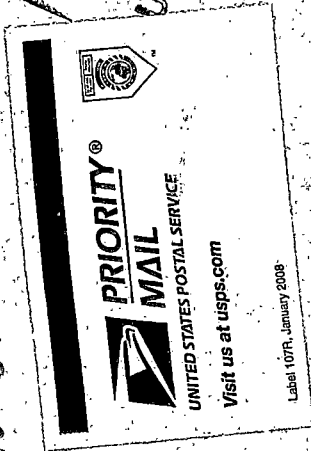
3:26PM 1 A. I'm not a latent print expert.
 2 Q. So you don't know that those latent prints
 3 actually relate to a robbery, correct?
 4 A. The process of recovering those latent
 3:26PM 5 prints was to watch the -- or have the video
 6 surveillance which showed specifically where the person
 7 had placed his hands during the course of the robbery.
 8 Q. You did not recover the prints, correct?
 9 A. I did not.
 3:26PM 10 Q. And you don't know that there weren't
 11 other prints that were in that same area that were also
 12 recovered, correct?
 13 A. I would have to review the report.
 14 Q. I'm more than happy to let you review your
 3:27PM 15 report.
 16 A. I don't have that latent print report in
 17 front of me.
 18 Q. You've been shown a copy by the State and
 19 follow-up of Exhibit 4; is that correct?
 3:27PM 20 A. Yes.
 21 Q. When was that photograph taken?
 22 A. That's from video which was from the day
 23 of the robbery.
 24 Q. Which day of the robbery? We have
 3:27PM 25 multiple robberies that we've been talking about.

32PM 1 forgot. Could we please -- and I wanted to make a
 2 record about this and I apologize, your Honor --- we're
 3 requesting at this time that the Court order that the
 4 defendants not have any contact with Jaszmin Moorehead
 32PM 5 by themselves or third-party individuals. Obviously
 6 she was already given threats but it's my
 7 understanding, and we'll have this borne out if need be
 8 by testimony, that after she walked by Damien Phillips,
 9 he motioned to her with a kiss and then up to the sky
 32PM 10 motion after her testimony. I take very seriously this
 11 witness preventing witnesses from testifying and/or
 12 being called to do so because it's done by Court order
 13 and not by their choice. But I would just think it's
 14 important at this point now, specifically given the
 33PM 15 relationship between the parties, that they be ordered
 16 not to contact her by themselves or third parties.
 17 THE COURT: I will order that the
 18 defendants not have any contact with Jaszmin Moorehead
 19 either personally, telephonically, through any people
 33PM 20 you know, electronically by any means.
 21 MR. BROWER: That specifically goes to
 22 them, not our investigators.
 23 THE COURT: Not you. Just to the two
 24 individuals.
 33PM 25 MS. SCHIFALACQUA: Yes, not any

3:33PM 1 investigators.
 2 THE COURT: Court is re-adjournd.
 3
 4 (The proceedings continued.)
 3:33PM 5
 6 * * * * *
 7
 8 ATTEST: Full, true and accurate
 9 transcript of proceedings.
 3:33PM 10
 11 /S/Lisa Brenske
 12 LISA BRENSKE, CSR No. 186
 13
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DAMIEN A. PHILLIPS #1312760

HDSP
P.O. BOX 650
INDIAN SPRINGS, NV. 89155



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Heather S. Hemin
CLERK OF THE COURT

Case No. A-21-831976-W

Dept. No. 21

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

DAMEN A. PHILLIPS

PETITIONER

vs.

THE WARDEN, HDSP

RESPONDENT

A-21-831976-W
Dept. XXIII

Case No. A-21-831976-W

Dept No. 21

Docket _____

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that PETITIONER, DAMEN A. PHILLIPS #1212760

will come on for hearing before the above-entitled Court on the _____ day of _____, 20____
at the hour of _____ o'clock _____ M. In Department _____, of said Court.

CC:FILE

DATED: this 20 day of JULY, 2021.

BY:



DAMEN A. PHILLIPS #1212760
/In Propria Personam

CLERK OF THE COURT

AUG 02 2021

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Heather L. Smith

CLERK OF THE COURT

FCL
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

DAMIEN ALEXANDER PHILLIPS,
#8437103

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-831976-W

DEPT NO: XXIII

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

DATE OF HEARING: June 9, 2021
TIME OF HEARING: 11:00 AM

THIS CAUSE having come before the Honorable JASMIN LILLY-SPELLS, District Court Judge, on the 9th day of June, 2021, Petitioner not being present, not being represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and the Court having reviewed the matter, including briefs, transcripts, and documents on file herein; now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On October 23, 2018, DAMIEN ALEXANDER PHILLIPS (hereinafter "Petitioner") was charged by way of Information with CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor - NRS 205.060, 199.480); CONSPIRACY TO COMMIT ROBBERY (Category

1 B Felony - NRS 200.380, 199.480); BURGLARY WHILE IN POSSESSION OF A DEADLY
2 WEAPON (Category B Felony – NRS 205.060); ROBBERY WITH USE OF A DEADLY
3 WEAPON (Category B Felony – NRS 200.380, 193.165); ASSAULT WITH A DEADLY
4 WEAPON (Category B Felony – NRS 200.471); and ASSAULT WITH A DEADLY
5 WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony – NRS 200.471,
6 193.167) for actions on or between July 17, 2018 and August 6, 2018.

7 On December 3, 2018, Petitioner's case proceeded to trial before a jury. After eight (8)
8 days of trial, the jury its Verdict as follows: Count 1 – Guilty of Conspiracy to Commit
9 Burglary; Count 2 – Guilty of Conspiracy to Commit Robbery; Count 3 – Guilty of Burglary
10 While in Possession of a Deadly Weapon; Count 4 – Guilty of Robbery with Use of a Deadly
11 Weapon; Count 5 – Guilty of Burglary While in Possession of a Deadly Weapon; Count 6 –
12 Guilty of Robbery with Use of a Deadly Weapon; Count 7 – Guilty of Robbery with Use of a
13 Deadly Weapon; Count 8 – Guilty of Burglary While in Possession of a Deadly Weapon;
14 Count 9 – Guilty of Robbery with Use of a Deadly Weapon; Count 10 – Guilty of Robbery
15 with Use of a Deadly Weapon; Count 11 – Guilty of Burglary While in Possession of a Deadly
16 Weapon; Count 12 – Guilty of Robbery with Use of a Deadly Weapon; Count 13 – Guilty of
17 Robbery with Use of a Deadly Weapon; Count 14 – Guilty of Burglary While in Possession
18 of a Deadly Weapon; Count 15 – Guilty of Burglary While in Possession of a Deadly Weapon;
19 Count 16 – Guilty of Robbery with Use of a Deadly Weapon; Count 17 – Guilty of Robbery
20 with Use of a Deadly Weapon; Count 18 – Guilty of Assault with a Deadly Weapon; Count
21 19 – Guilty of Assault with a Deadly Weapon; Count 20 – Guilty of Assault with a Deadly
22 Weapon; and Count 21 – Guilty of Assault with a Deadly Weapon, Victim 60 Years of Age
23 or Older.

24 On January 29, 2019, Petitioner was sentenced as follows: Count 1 – three hundred
25 sixty-four (364) days in the Clark County Detention Center ("CCDC"); Count 2 – twelve (12)
26 to forty-eight (48) months in the Nevada Department of Corrections ("NDC"), concurrent with
27 Count 1; Count 3 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count
28 2; Count 4 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six

(36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 3; Count 5 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 3; Count 6 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, consecutive to Count 4; Count 7 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, consecutive to Count 6; Count 8 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 5; Count 9 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, consecutive to Count 7; Count 10 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 9; Count 11 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 8; Count 12 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 10; Count 13 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 12; Count 14 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 11; Count 15 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 14; Count 16 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 13; Count 17 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 16; Count 18 – twelve (12) to forty-eight (48) months, concurrent with Count 15; Count 19 – twelve (12) to forty-eight (48) months, concurrent with Count 18; Count 20 – twelve (12) to forty-eight (48) months, concurrent with Count 19; and Count 21 – twelve (12) to forty-eight (48) months, with a consecutive twelve (12) to forty-eight (48) months for the victim 65 years of age or older, concurrent with Count 17. Petitioner's total aggregate sentence was

1 announced as twenty-four (24) to eighty (80) years, with one hundred seventy-four (174) days
2 credit for time served. Petitioner's Judgment of Conviction was filed on February 27, 2019.
3 The Court filed an Amended Judgment of Conviction on May 6, 2020, to correct a clerical
4 error in Petitioner's Judgment of Conviction.

5 On February 28, 2019, Petitioner filed a Notice of Appeal from his Judgment of
6 Conviction. On March 18, 2020, the Nevada Supreme Court filed its Order of Affirmance.
7 Remittitur issued on April 15, 2020.

8 On March 30, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus
9 (Postconviction), as well as a Motion to Preserve All Evidence in Case # C-18-335500, and a
10 Motion to Appoint Counsel. The State filed its Response to Petitioner's Petition on May 25,
11 2021. Also on May 25, 2021, Petitioner filed a "Motion and Order for Transportation of
12 Inmate."

13 The matter came before this Court on June 9, 2021, at which time this Court did not
14 entertain argument, but made the following findings and conclusions on the briefs:

15 ANALYSIS

16 I. PETITIONER IS NOT ENTITLED TO A WRIT OF HABEAS CORPUS

17 A. Petitioner Fails to Demonstrate Ineffective Assistance of Counsel

18 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal
19 prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his
20 defense." The United States Supreme Court has long recognized that "the right to counsel is
21 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,
22 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
23 (1993).

24 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
25 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of
26 Strickland, 466 U.S. at 686-87, 104 S.Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
27 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation
28 fell below an objective standard of reasonableness, and second, that but for counsel's errors,

1 there is a reasonable probability that the result of the proceedings would have been different.
2 466 U.S. at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100
3 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). “[T]here is
4 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the
5 same order or even to address both components of the inquiry if the defendant makes an
6 insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S.Ct. at 2069.

7 The Court begins with the presumption of effectiveness and then must determine
8 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
9 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
10 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
11 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
12 537 P.2d 473, 474 (1975).

13 Counsel cannot be ineffective for failing to make futile objections or arguments. See
14 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
15 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
16 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
17 (2002). Further, a defendant who contends his attorney was ineffective because he did not
18 adequately investigate must show how a better investigation would have rendered a more
19 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

20 Based on the above law, the role of a court in considering allegations of ineffective
21 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
22 whether, under the particular facts and circumstances of the case, trial counsel failed to render
23 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
24 (1978). This analysis does not mean that the court should “second guess reasoned choices
25 between trial tactics nor does it mean that defense counsel, to protect himself against
26 allegations of inadequacy, must make every conceivable motion no matter how remote the
27 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
28 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel

1 cannot create one and may disserve the interests of his client by attempting a useless charade.”
2 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

3 The decision not to call witnesses is within the discretion of trial counsel and will not
4 be questioned unless it was a plainly unreasonable decision. See, Rhyne, 118 Nev. 1, 38 P.3d
5 163; Dawson, 108 Nev. 112, 825 P.2d 593. Strickland does not enact Newton’s third law for
6 the presentation of evidence, requiring for every prosecution expert an equal and opposite
7 expert from the defense. In many instances cross-examination will be sufficient to expose
8 defects in an expert’s presentation. When defense counsel does not have a solid case, the best
9 strategy can be to say that there is too much doubt about the State’s theory for a jury to convict.
10 Harrington v. Richter, 131 S.Ct. 770, 791, 578 F.3d 944 (2011). “Strategic choices made by
11 counsel after thoroughly investigating the plausible options are almost unchallengeable.”
12 Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992).

13 Even if a defendant can demonstrate that his counsel’s representation fell below an
14 objective standard of reasonableness, he must still demonstrate prejudice and show a
15 reasonable probability that, but for counsel’s errors, the result of the trial would have been
16 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
17 Strickland, 466 U.S. at 687, 104 S.Ct. at 2064). “A reasonable probability is a probability
18 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-
19 89, 694, 104 S.Ct. at 2064-65, 2068).

20 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
21 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
22 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
23 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
24 be supported with specific factual allegations, which if true, would entitle the petitioner to
25 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
26 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
27 34.735(6) states, in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
28

1 in the petition[.]...Failure to allege specific facts rather than just conclusions may cause [the]
2 petition to be dismissed.” (Emphasis added).

3 Petitioner raises thirteen (13) separate allegations against the effectiveness of counsel:
4 that counsel allegedly (1) failed to investigate all the counts against Petitioner, (2) failed to put
5 forth a “meaningful defense” at trial, (3) failed to seek severance from Petitioner’s co-
6 defendants, (4) failed to seek DNA testing, (5) failed to have the alleged weapon fingerprinted,
7 (6) failed to “thoroughly” explain guilty plea offers, (7) failed to challenge the Criminal
8 Complaint, (8) failed to object to the “reasonable doubt” jury instruction, (9) failed to object
9 to the erroneous Judgment of Conviction, (10) failed to present alibi witnesses, (11) failed to
10 show Petitioner the discovery, (12) failed to investigate Petitioner’s Fourth Amendment
11 claims, and (13) failed to object to the prosecution’s leading questions. Petition at 5-6.
12 However, this Court finds that Petitioner’s claims are belied by the record, or are otherwise
13 without merit; therefore, this Court concludes that Petitioner is not entitled to relief on his
14 claims of ineffective assistance of counsel.

15 *1. Investigate Criminal Complaint (sub-claim (a))*

16 Petitioner first claims that counsel should have noticed that certain claims on the
17 Criminal Complaint did not pertain to Petitioner, and therefore, should have challenged the
18 Criminal Complaint. However, this Court concludes that Petitioner cannot show he is entitled
19 to relief on this allegation, as he was not prejudiced by the inclusion of claims against his co-
20 defendant. McNelson, 115 Nev. at 403, 990 P.2d at 1268.

21 This Court finds that a review of Petitioner’s Criminal Complaint shows that Petitioner
22 was not named in conjunction with the charges Petitioner now claims were erroneous. Instead,
23 only Petitioner’s co-defendant was named. Furthermore, the jury was not asked to return a
24 verdict against Petitioner on those charges, and Petitioner was not sentenced for any such
25 charges.

26 Because the allegedly-erroneous charges clearly named Petitioner’s co-defendant, not
27 Petitioner, and because Petitioner was not held to account for those charges in any way, this
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1 Court concludes that Petitioner cannot demonstrate that he was prejudiced by those claims,
2 much less that the outcome of his trial would have differed had those claims been removed.

3 **2. *Alibi Defense at Trial (sub-claims (b) and (j))***

4 Petitioner next claims that counsel should have presented alibi witnesses at trial Petition
5 at 7, 14. However, this Court concludes that Petitioner fails to substantiate this claim with any
6 support; as such, this claim is bare and naked and insufficient to warrant relief. Hargrove, 100
7 Nev. at 502, 686 P.2d at 225.

8 While Petitioner claims that there were “alibi witnesses” that would have changed the
9 result at trial, this Court finds that Petitioner fails to offer any specific information about these
10 witnesses, or what their testimony would be. See Petition at 7, 14. Instead, Petitioner directs
11 this Court to an “Exhibit ‘A’” that is not attached to his Petition. Id. at 14. Therefore, this Court
12 finds that the lack of specificity and/or any substantive support for Petitioner’s alibi assertions
13 renders Petitioner’s claim suitable only for dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at
14 225; NRS 34.735(6).

15 Moreover, this Court finds that Petitioner’s claim that counsel had some “duty” to
16 present witnesses on Petitioner’s behalf is contrary to Nevada law. See, Rhyne, 118 Nev. 1,
17 38 P.3d 163; Dawson, 108 Nev. 112, 825 P.2d 593. Petitioner’s failure to allege the content of
18 the witnesses’ testimony, much less demonstrate their willingness and/or ability to testify at
19 Petitioner’s trial leaves Petitioner’s claim insufficient to overcome the presumption that
20 counsel’s performance was reasonable. Means, 120 Nev. at 1011, 103 P.3d at 32.

21 Because Petitioner’s claim lacks specificity, and is insufficient to overcome the
22 presumption of counsel’s reasonableness, this Court concludes that Petitioner’s claim is bare
23 and naked and insufficient to warrant relief.

24 **3. *Seek Severance (sub-claim (c))***

25 Petitioner also claims that counsel should have moved to sever his trial from his co-
26 defendants. Petition at 8. This Court concludes that, because Petitioner does not set forth the
27 standard for severance, much less argue according to that standard, Petitioner’s allegation
28

1 amounts to a mere conclusory assertion of innocence, insufficient to meet Petitioner's burden.
2 Id.

3 This Court finds that Petitioner's position has been specifically rejected by the Nevada
4 Supreme Court. In Marshall v. State, 118 Nev. 642, 647, 56 P.3d 376, 379 (2002), the Nevada
5 Supreme Court explained, "[t]o establish that joinder was prejudicial requires more than
6 simply showing that severance made acquittal more likely; misjoinder requires reversal only
7 if it has a substantial and injurious effect on the verdict." (citing Middleton v. State, 114 Nev.
8 1089, 1108, 968 P.2d 296, 309 (1998)).

9 Because Petitioner fails to do more than allege severance would have made acquittal
10 more likely, this Court finds that Petitioner's claim is belied by Nevada precedent. Therefore,
11 this Court concludes that Petitioner fails to overcome the presumption of counsel's
12 effectiveness, and Petitioner is not entitled to relief.

13 **4. *Seek DNA Testing (sub-claim (d))***

14 Petitioner proceeds to claim that DNA testing would show that the "clothing,
15 sunglasses, [and] hats" were not worn by him, and therefore would have "proved [Petitioner's]
16 innocence." Petition at 9. This Court again concludes that Petitioner relies on conclusory
17 allegations, without any citations to the record or to relevant legal support. As such, Petitioner
18 is not entitled to relief.

19 This Court finds that Petitioner does not allege that DNA was used as evidence to
20 convict him, nor does he argue that the items he now alleges should have been tested were
21 crucial in the jury's verdict. Petition at 9. Therefore, this Court finds that Petitioner fails to
22 establish that the lack of his DNA on those specific items would have changed the result at
23 trial. McNelson, 115 Nev. at 403, 990 P.2d at 1268.

24 This Court further finds that the Nevada Supreme Court, in affirming Petitioner's
25 conviction, explained that there was sufficient evidence to convict Petitioner of each count.
26 See Order of Affirmance (filed on March 18, 2020 in Supreme Court Case No. 78270)
27 ("Affirmance") at 2-5. As such, Petitioner's claim is limited to potentially undermining the
28 prosecution's argument of guilt, but this Court finds that such a strategy was squarely within

1 counsel's purview. See, Rhyne, 118 Nev. 1, 38 P.3d 163; Dawson, 108 Nev. 112, 825 P.2d
2 593 (strategic choices are virtually unchallengeable).

3 Because Petitioner fails to offer more than conclusory allegations to support his claim,
4 this Court concludes that Petitioner's claim is bare and naked, and suitable only to dismissal
5 pursuant to NRS 34.735(6) and Hargrove, 100 Nev. at 502, 686 P.2d at 225.

6 **5. *Seek Fingerprint Analysis (sub-claim (e))***

7 Petitioner next raises a similar claim – that fingerprint analysis of the recovered BB gun
8 would have been negative for Petitioner's fingerprints. Petition at 9-10. Petitioner also poses
9 a few questions, seemingly aimed at undermining the validity of the deadly weapon
10 enhancements for Petitioner's crimes. Id. at 10. However, this Court concludes that
11 Petitioner's claim is again bare and naked, and is further based on a lack of understanding of
12 the deadly weapon enhancement.

13 This Court finds that Petitioner makes conclusory allegations, and asks suggestive
14 questions, rather than raising any substantive support for his allegation that counsel should
15 have undermined the evidence of the deadly weapon. Petition at 9-10. As there is no
16 substantive or legal support for Petitioner's claim, this Court concludes the same is suitable
17 for dismissal as bare and naked. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

18 This Court further finds that the Nevada Supreme Court has previously determined that
19 a BB gun may be considered a deadly weapon for the purposes of enhancement. Manning v.
20 State, 107 Nev. 337, 810 P.2d 1216 (1991). Furthermore, the Nevada Supreme Court, in
21 affirming Petitioner's conviction, made the specific determination that the jury was shown
22 sufficient evidence to convict Petitioner of the use of a deadly weapon. Affirmance at 3-4
23 ("...the evidence as a whole supports the deadly weapon enhancement."). Therefore, because
24 the questions of whether a deadly weapon was used, and/or whether there was sufficient
25 evidence to link Petitioner to a deadly weapon, have already been asked – and answered – this
26 Court finds that Petitioner cannot demonstrate that any objection or further inquiry by counsel
27 would have changed the result at trial. McNelson, 115 Nev. at 403, 990 P.2d at 1268.

1 Because Petitioner's claim amounts only to conclusory allegations, and fails to
2 demonstrate that any proposed action would have changed the result at trial, this Court
3 concludes that Petitioner is not entitled to relief on this claim.

4 **6. Explain Guilty Plea Offers (sub-claim (f))**

5 Petitioner continues with conclusory assertions regarding counsel's communication –
6 or lack thereof – regarding guilty plea offers. Petition at 11. Again, Petitioner fails to include
7 any specific facts, much less specifically assert that he would have accepted any of the
8 allegedly-withheld plea offers. Id. As such, this Court concludes that Petitioner's claim fails.

9 This Court finds that Petitioner's allegations are vague and conclusory, asserting
10 generalities rather than any specific supporting facts. Petition at 11. Petitioner fails to note any
11 of the *specific* deals that were allegedly withheld by counsel, and fails to describe how counsel
12 explained the plea offers, much less substantiate any of these descriptions. Id. As such, this
13 Court concludes that Petitioner's allegations are bare and naked, and suitable only for
14 dismissal. NRS 34.735(6); Hargrove. 100 Nev. at 502, 686 P.2d at 225.

15 Further, this Court finds that Petitioner's allegations are belied by the record. Before
16 the preliminary hearing on the twenty-one (21) counts against Petitioner, counsel placed on
17 the record the State's offer, along with a description of the circumstances surrounding the plea
18 negotiations:

19 MR. BROWER: Judge, I do want to put on the record there was an offer that
20 was conveyed to the individuals, but it was a contingent offer so even if one
21 client was inclined to take this, if the other one was not, *it is not an offer that has*
22 *been varied on.* So it was for a robbery with use, a robbery, two burglaries and
23 a conspiracy. I just want to put on the record that there is no point in actually
going forward if both people did not want to change that, *the State is not*
wavering on that. My client had been inclined to contemplate waiving up on that
offer, but again *it's not being extended to him alone.*

24 Recorder's Transcript of Preliminary Hearing, dated October 4, 2018 (filed October 31, 2018),
25 at 9:4-15 (emphases added). Therefore, this Court finds that, contrary to Petitioner's assertions
26 about "several deals," and their availability to Petitioner *alone*, counsel was clear that the *only*
27 offer that was extended was a contingent offer that Petitioner's co-defendants were not
28 interested in. Id.

1 This Court, therefore, concludes that because this claim is belied by the record, and
2 because it consists only of vague and conclusory allegations, it cannot entitle Petitioner to
3 relief.

4 **7. Challenge Criminal Complaint (sub-claim (g))**

5 Petitioner contests the allegedly “fatally flawed complaint,” and insists that counsel
6 should have challenge the Complaint based on its (1) failure to give notice, (2) double
7 jeopardy, and (3) violation of separation of powers. Petition at 11-12. This Court finds that
8 Petitioner does nothing more than list these alleged deficiencies. *Id.* Therefore, this Court
9 concludes that Petitioner again leaves his claim bare and naked under Hargrove.

10 This Court finds that Petitioner does not set forth the standard for charging documents
11 in Nevada, much less specifically argue how the Complaint against him failed to meet such a
12 standard. Petition at 11-12. Instead, Petitioner merely alleges, without a word more, three
13 general theories of deficiency. *Id.* This Court finds that such allegations are insufficient to
14 meet Petitioner’s burden to show that counsel was ineffective, as Petitioner fails to even show
15 that the Complaint was deficient. Means, 120 Nev. at 1011, 103 P.3d at 32. This Court further
16 finds that the lack of specific factual support for these theories leaves Petitioner’s claim bare
17 and naked, and ripe for dismissal. NRS 34.735(6); Hargrove, 100 Nev. at 502, 686 P.2d at 225.

18 Because Petitioner merely lists his contentions, absent legal support or cogent
19 argument, this Court concludes that this claim must be dismissed.

20 **8. “Reasonable Doubt” Jury Instruction (sub-claim (h))**

21 Petitioner next challenges counsel’s failure to object to the jury instruction given on
22 “reasonable doubt.” Petition at 12. This Court concludes that Petitioner cannot demonstrate
23 counsel was ineffective, as the jury instruction conformed with the applicable statutes, and
24 counsel cannot be ineffective for failing to make futile objections. Ennis, 122 Nev. at 706, 137
25 P.3d at 1103.

26 Petitioner’s jury instruction No. 41 explained as follows:
27
28

1 A reasonable doubt is one based on reason. It is not mere possible doubt but is
2 such a doubt as would govern or control a person in the more weighty affairs of
3 life. If the minds of the jurors, after the entire comparison and consideration of
4 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.

5 See Petition, Exhibit 'C.' This Court finds that NRS 175.211(1), which contains the sole
6 definition that may be given to juries in Nevada, contains the *exact same* language as the jury
7 instruction. While there was expository language in the jury instruction concerning the State's
8 burden of proof, this Court finds that such language did not in any way affect the stated
9 definition of "reasonable doubt." See Petition, Exhibit 'C.' As such, this Court finds that any
10 objection to that jury instruction would have been futile.

11 Because counsel may not be deemed ineffective for failing to raise futile objections,
12 This Court concludes that Petitioner cannot demonstrate ineffective assistance for counsel's
13 failure to challenge this jury instruction.

14 **9. *Erroneous Judgment of Conviction (sub-claim (i))***

15 Petitioner proceeds to note the errors in his original Judgment of Conviction, and asserts
16 ineffectiveness for counsel's failure to notify all parties of the error. Petition at 12-14. This
17 Court finds that Petitioner appears to conflate his Information and his original Judgment of
18 Conviction. Id. Further, this Court finds that certain representations in Petitioner's claim are
19 belied by the record. Additionally, this Court finds that Petitioner cannot demonstrate
20 prejudice; therefore, this Court concludes that Petitioner cannot succeed on this claim.

21 While Petitioner asserts his claim treats his original Judgment of Conviction, Petitioner
22 asserts that he was prejudiced *at trial* by the inclusion of the two allegations against his co-
23 defendant. See Petition at 13. He also asserts that he was sentenced for those two counts. Id.
24 This Court finds that these assertions are belied by the record. This Court finds that the
25 Information specifically charged Petitioner's *co-defendant* with the counts Petitioner
26 references in this claim. Further, this Court finds that the jury's Verdict form did not include
27 sections for dispositions on those counts, as they did not pertain to Petitioner. Therefore, This
28 Court concludes that Petitioner cannot show that he was prejudiced at trial.

1 Moreover, the Court Minutes for Petitioner's sentencing hearing reveal that Petitioner
2 was sentenced only on the twenty-one (21) counts against him, *not including* the two counts
3 now complained of by Petitioner. See Court Minutes – Sentencing, dated January 29, 2019.
4 Indeed, directly contrary to Petitioner's claim, this Court finds that the original Judgment of
5 Conviction does not include any pronounced sentence for those two counts. See original
6 Judgment of Conviction at 5. Therefore, while the original Judgment of Conviction does *list*
7 those two counts as having been found against Petitioner, this Court concludes that the record
8 as a whole demonstrates that the inclusion of the counts was merely a clerical error, and did
9 not in any way prejudice Petitioner.

10 Furthermore, the record reflects that Mr. Brower withdrew as counsel, and Ms. Stewart
11 was appointed as appellate counsel, before Petitioner's original Judgment of Conviction was
12 filed. Therefore, this Court concludes that Petitioner cannot raise a claim against Mr. Brower
13 for events occurring after Mr. Brower's representation of Petitioner ended.

14 Because this claim is belied by the record, and because Mr. Brower was no longer
15 counsel of record at the time the original Judgment of Conviction was filed, this Court
16 concludes that Petitioner is not entitled to relief.

17 ***10. Show Petitioner the Discovery (sub-claim (k))***

18 Petitioner then alleges that he was unable to contribute to his defense because counsel
19 failed to provide the discovery to Petitioner. Petition at 14-15. This Court concludes that this
20 claim is also belied by the record.

21 This Court finds that, at the calendar call for Petitioner's trial, counsel informed the
22 Court that counsel had reviewed the discovery with Petitioner, and that Petitioner had made
23 the determination that he still wished to invoke his right to a speedy trial. Court Minutes,
24 11/29/18. Therefore, this Court concludes that Petitioner's allegations that he was not able to
25 review the discovery with counsel is expressly belied by the record, and cannot entitle
26 Petitioner to relief.

27 //

28 //

1 **11. Investigate Fourth Amendment Claims (sub-claim (l))**

2 Petitioner next claims that counsel was ineffective for failing to challenge the manner
3 in which a GPS device was installed on a vehicle and the information that GPS device
4 subsequently provided. Petition at 15-16. This Court finds that, again, Petitioner provides only
5 generalities, absent specific factual support for his claim; therefore, this Court concludes that
6 this claim is bare and naked and does not entitle Petitioner to relief. Hargrove, 100 Nev. at
7 502, 686 P.2d at 225.

8 Petitioner acknowledges a warrant that allowed for GPS to be installed on a vehicle,
9 then asserts that officers “encroached on private property to install the GPS.” Petition at 15.
10 This Court finds that thereafter, however, Petitioner does not substantiate his claim regarding
11 the circumstances of the installation of the GPS, precluding meaningful review of Petitioner’s
12 claim, as the Nevada Supreme Court’s determinations have been fact-specific. See, e.g.,
13 Osburn v. State, 118 Nev. 323, 44 P.3d 523 (2002) (no objective expectation of privacy for
14 vehicle parked in plain view of street).

15 Because Petitioner fails to include the facts necessary to make an analysis, much less
16 demonstrate the merits of Petitioner’s assertion, this Court concludes Petitioner cannot
17 demonstrate that counsel was ineffective, as counsel cannot be ineffective for failing to make
18 futile arguments. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

19 **12. Prosecution’s Leading Questions (sub-claim (m))**

20 Petitioner’s final allegation of ineffectiveness simply states “TBD.” Therefore, this
21 Court concludes that this single-sentence title does not entitle Petitioner to relief.

22 **B. PETITIONER’S SUBSTANTIVE CLAIMS ARE WAIVED**

23 The Nevada Supreme Court has held that “challenges to the validity of a guilty plea and
24 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-
25 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be
26 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*”
27 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
28 (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)).

1 “A court must dismiss a habeas petition if it presents claims that either were or could have
2 been presented in an earlier proceeding, unless the court finds both cause for failing to present
3 the claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v.
4 State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other grounds by Lisle v.
5 State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims are beyond the
6 scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at 646-47, 29 P.3d
7 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

8 As part of his Petition, Petitioner includes a number of substantive claims, including
9 allegations of Brady violations, claims against the validity of the Criminal Complaint (or,
10 Information), a standalone claim against the “reasonable doubt” jury instruction, and another
11 standalone claim regarding the alleged Fourth Amendment violations. See Petition at 18-19,
12 20-23, 28-30, 35-36. However, this Court finds that these substantive claims are beyond the
13 limited scope of habeas review. NRS 34.724(2)(a); Evans, 117 Nev. at 646-47, 29 P.3d at 523.
14 Moreover, this Court finds that each of these claims was available at the time Petitioner filed
15 his direct appeal; therefore, this Court concludes that these claims *must* be dismissed. Evans,
16 117 Nev. at 646-47, 29 P.3d at 523.

17 C. ACTUAL INNOCENCE IS NOT ITSELF A CLAIM FOR RELIEF

18 Petitioner also includes various allegations of actual innocence. Petition at 24-27.
19 However, this Court finds that actual innocence, itself, does not provide grounds for relief.
20 Further, while Petitioner titles his claim as “actual innocence,” this Court finds that Petitioner
21 is arguing insufficient evidence, a claim that has already been rejected by the Nevada Supreme
22 Court.

23 Actual innocence is a stringent standard, designed to be applied only in the most
24 extraordinary situations. Pellegrini v. State, 117 Nev. 860, 876, 34 P.3d 519, 530 (2001)
25 (abrogated on other grounds by Rippo v. State, 134 Nev. 411, 423 P.3d 1084 (2018)). The
26 Eighth Circuit Court of Appeals, for instance, has “rejected free-standing claims of actual
27 innocence as a basis for habeas review stating, ‘[c]laims of actual innocence based on newly
28 discovered evidence have never been held to state a ground for federal habeas relief absent an

1 independent constitutional violation occurring in the underlying state criminal proceeding.”
2 Meadows v. Delo, 99 F.3d 280, 283 (8th Cir. 1996) (citing Herrera v. Collins, 506 U.S. 390,
3 400, 113 S.Ct. 853, 860 (1993)). A defendant claiming actual innocence must demonstrate that
4 it is more likely than not that *no reasonable juror* would have convicted him absent a
5 constitutional violation. Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Once a defendant has
6 made such a showing, he may then use the claim of actual innocence as a “gateway” to present
7 his constitutional challenges to the court and require the court to decide them on the merits.
8 Schlup v. Delo, 513 U.S. 298, 315, 115 S.Ct. 851, 861 (1995). Furthermore, the newly
9 discovered evidence suggesting the defendant’s innocence must be “so strong that a court
10 cannot have confidence in the outcome of the trial.” Id. at 316, 115 S.Ct. at 861.

11 This Court finds that Petitioner does not allege that he has any “newly discovered
12 evidence,” nor does he specify what procedural bars he seeks to overcome with his allegations
13 of actual innocence. Petition at 24-27. Instead, this Court finds that Petitioner is simply arguing
14 insufficient evidence supports his convictions. See id. However, this claim was already raised
15 – and rejected – as part of Petitioner’s direct appeal. See generally, Affirmance.

16 Because actual innocence is not, itself, a ground for relief, and because the substance
17 of Petitioner’s claims has already been rejected by the Nevada Supreme Court, this Court
18 concludes that this claim cannot entitle Petitioner to relief.

19 **D. PETITIONER FAILS TO DEMONSTRATE CRUEL AND UNUSUAL** 20 **PUNISHMENT**

21 Petitioner also titles a claim “Cruel & Unusual Punishment,” yet this Court finds that
22 the substance thereof instead contests the validity of Petitioner’s convictions with the deadly
23 weapon enhancements. Petition at 31-32. This Court further finds that the substance of this
24 claim has been rejected by the Nevada Supreme Court. Therefore, this Court concludes that
25 this claim cannot entitle Petitioner to relief.

26 This Court finds that Petitioner challenged the deadly weapon enhancements on direct
27 appeal, upon which the Nevada Supreme Court made the following determination:

28 As to the deadly weapon enhancement on counts 3-14, this court has broadly
construed NRS 193.165(1), *see State v. Dunckhurst*, 99 Nev. 696, 697, 669 P.2d

243, 243 (1983), and explained that a defendant need not activate a weapon during the crime to receive a deadly weapon enhancement, *see Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979). Even where the victim does not actually see the weapon, a deadly weapon enhancement will be warranted if the evidence overall suggests the defendant used a deadly weapon to facilitate the crime. *See Bartle v. Sheriff*, 92 Nev. 459, 460, 552 P.2d 1099, 1099 (1976). Here, although the victims in the first four robberies did not observe a weapon, the evidence as a whole supports the deadly weapon enhancement. Phillips and Barr threatened the bank tellers with use of a weapon, generally a gun, to facilitate those robberies, and during one robbery Phillips placed a bag on the counter and indicated it contained a bomb. During the burglary at the Smith's, officers observed that Barr had a bulge in his waistband and immediately after leaving the Smith's, Phillips and Barr robbed a bank at gunpoint. Officers found guns in the getaway car and in another car owned by Phillips. This is sufficient evidence by which the jury could determine that Phillips used a gun or other deadly weapon during each of the robberies.

Affirmance at 3-4.

Because Petitioner's challenge to the deadly weapon enhancements has already been rejected, this Court concludes that Petitioner is not entitled to relief on this claim.

E. PETITIONER'S FIRST AMENDMENT CLAIM CHALLENGES HIS CONDITIONS OF CONFINEMENT, NOT HIS CONVICTION

Petitioner also includes a claim alleging restricted or insufficient access to the law library. 33-34. However, this Court finds that this claim concerns Petitioner's conditions of confinement, rather than the validity of Petitioner's conviction; therefore, this claim is more appropriately responded to by the Nevada Office of the Attorney General. NRS 34.730(2)(a).

As this claim is more appropriately responded to by the Attorney General, this Court concludes that Petitioner is not entitled to relief on this claim, because the Attorney General was not given notice and/or an opportunity to respond.

F. PETITIONER FAILS TO DEMONSTRATE CUMULATIVE ERROR

Petitioner finally includes a single-paragraph assertion of cumulative error. Petition at 37. However, this Court concludes that Petitioner's contention does not entitle Petitioner to relief.

The Nevada Supreme Court has yet to endorse application of its direct appeal cumulative error standard to post-conviction Strickland claims. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Such an analysis should not apply on post-conviction review. Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006) ("[A] habeas petitioner cannot

1 build a showing of prejudice on series of errors, none of which would by itself meet the
2 prejudice test.”).

3 Nevertheless, even where cognizable, a finding of cumulative error in the Strickland
4 context is extraordinarily rare and requires an extensive aggregation of errors. See, e.g., Harris
5 By and Through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). It is only logical that
6 there can be no finding of cumulative error where a defendant fails to demonstrate a single
7 violation of Strickland. See, Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007) (“where
8 individual allegations of error are not of constitutional stature or are not errors, there is ‘nothing
9 to cumulate.’”) (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)). Therefore, as
10 this Court has concluded that Petitioner has failed to demonstrate that any claim warrants relief
11 under Strickland, this Court now finds that there is nothing to cumulate.

12 Furthermore, even under Nevada’s direct appeal cumulative error standard, this Court
13 concludes that Petitioner is not entitled to relief. In addressing cumulative error, the proper
14 analysis considers (1) whether the issue of guilt is close; (2) the quantity and character of the
15 error; and (3) the gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845,
16 854-55 (2000). While Petitioner was convicted of significant crimes indeed, this Court finds
17 that the other two factors weigh strongly against a finding of cumulative error. The evidence
18 of Petitioner’s guilt has been expressly affirmed by the Nevada Supreme Court. See generally,
19 Affirmance. Furthermore, even assuming, *arguendo*, that Petitioner could demonstrate some
20 error, this Court finds that Petitioner has not demonstrated any errors that denied him a
21 reasonable likelihood of a better outcome.

22 Because Petitioner’s conviction and sentence have already been affirmed by the Nevada
23 Supreme Court, this Court concludes that Petitioner’s cumulative error argument lacks merit
24 and cannot entitle Petitioner to relief.

25 **II. THE STATE DID NOT OPPOSE THE MOTION TO PRESERVE EVIDENCE**

26 Alongside his Petition, Petitioner filed a Motion to Preserve All Evidence. In Response,
27 the State recognized its duty to preserve material evidence, and did not oppose Petitioner’s
28

1 Motion. Therefore, this Court concludes that Petitioner's Evidence Motion should be granted
2 as unopposed.

3 **III. PETITIONER IS NOT ENTITLED TO THE APPOINTMENT OF COUNSEL**

4 Petitioner also filed a boilerplate Motion to Appoint Counsel to accompany his Petition
5 and his Evidence Motion. This Court finds that Petitioner's Motion to Appoint does not
6 specifically address Petitioner's case, much less specifically assert *why* counsel is necessary.

7 While Petitioner's Motion to Appoint references the standard for appointment of
8 counsel in postconviction cases, this Court finds that Petitioner's quotation is incomplete. NRS
9 34.750 reads:

10 A petition may allege that the Defendant is unable to pay the costs of the
11 proceedings or employ counsel. If the court is satisfied that the allegation of
12 indigency is true and the petition is not dismissed summarily, the court may
appoint counsel at the time the court orders the filing of an answer and a return.
In making its determination, the court may consider whether:

- 13 (a) The issues are difficult;
14 (b) The Defendant is unable to comprehend the proceedings; or
(c) Counsel is necessary to proceed with discovery.

15 Under NRS 34.750, it is clear that the court has discretion in determining whether to
16 appoint counsel. The Nevada Supreme Court has observed that a petitioner "must show that
17 the requested review is not frivolous before he may have an attorney appointed." Peterson v.
18 Warden, Nevada State Prison, 87 Nev. 134, 136, 483 P.2d 204, 205 (1971) (citing former
19 statute NRS 177.345(2)).

20 Indeed, under the United States Constitution, the Sixth Amendment provides no right
21 to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111
22 S.Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258
23 (1996), the Nevada Supreme Court similarly observed, "[t]he Nevada Constitution...does not
24 guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
25 Constitution's right to counsel provision as being coextensive with the Sixth Amendment to
26 the United States Constitution." McKague specifically held that, with the exception of NRS
27 34.820(1)(a) (entitling appointed counsel when petitioner is under a sentence of death), one
28

1 does not have “any constitutional or statutory right to counsel at all” in post-conviction
2 proceedings. Id. at 164, 912 P.2d at 258.

3 More recently, the Nevada Supreme Court examined whether a district court
4 appropriately denied a defendant’s request for appointment of counsel based upon the factors
5 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-
6 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,
7 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the petitioner
8 filed a pro se habeas corpus petition and requested counsel be appointed. Id. The district court
9 ultimately denied both the petition and the request for appointment of counsel. Id. In reviewing
10 the district court’s decision, the Renteria-Novoa Court examined the NRS 34.750 factors and
11 concluded the district court’s decision should be reversed and remanded. Id. The Court
12 explained the petitioner was indigent, his petition could not be summarily dismissed, and he
13 had, in fact, satisfied the statutory factors. Id. at 76, 391 P.3d at 760-61. As for the first factor,
14 the Court concluded that, because petitioner represented he had issues with understanding the
15 English language—which was corroborated by his use of an interpreter at his trial—that was
16 enough to indicate the petitioner could not comprehend the proceedings. Id. Moreover, the
17 petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85) year
18 sentence—were severe and his petition may have been the only vehicle for which he could
19 raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, the petitioner’s ineffective assistance
20 of counsel claims may have required additional discovery and investigation beyond the record.
21 Id.

22 This Court finds that Petitioner does not meet the NRS 34.750 factors. First, this Court
23 finds that the issues raised by Petitioner are not difficult. As set forth more fully in Section I,
24 *supra*, this Court has concluded that Petitioner’s claims are belied by the record, completely
25 devoid of specific allegations and/or factual support, or have been expressly rejected as part
26 of Petitioner’s direct appeal.

27 //

28 //

1 Second, this Court finds that Petitioner can formulate and organize claims to raise in
2 his postconviction efforts. Therefore, Petitioner sufficiently comprehends the proceedings and
3 counsel is not necessary.

4 Lastly, this Court finds that Petitioner has not alleged that further discovery is
5 necessary. See generally, Petition. While Petitioner has filed a Motion to Preserve Evidence,
6 this Court finds that Petitioner has not alleged, much less shown, that *more* discovery must be
7 conducted. Instead, this Court has found that Petitioner's individual claims may be adjudicated
8 with no further discovery, as set forth more fully in Section I, *supra*.

9 Because Petitioner fails to meet the statutory or precedential factors for discretionary
10 appointment of counsel, this Court concludes that Petitioner is not entitled to counsel in this
11 case.

12 ORDER

13 THEREFORE, IT IS HEREBY ORDERED, Petitioner Damien Phillips's Petition for
14 Writ of Habeas Corpus shall be, and is, DENIED, excepting only Petitioner's claim regarding
15 the conditions of Petitioner's confinement;

16 IT IS FURTHER ORDERED, Petitioner's conditions of confinement claim (his "Law
17 Library" claim) shall be DEFERRED for a response from the State of Nevada Office of the
18 Attorney General;

19 IT IS FURTHER ORDERED, Petitioner's Motion to Preserve Evidence shall be, and
20 is, GRANTED as unopposed;

21 IT IS FURTHER ORDERED, Petitioner's Motion to Appoint Counsel shall be, and is,
22 DENIED;

23 //

24 //

25 //

26 //

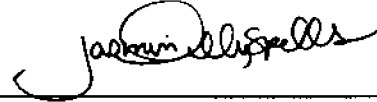
27 //

28 //

1 IT IS FURTHER ORDERED, Petitioner's Request for Transport shall be, and is,
2 DENIED.

3 DATED this _____ day of July, 2021.

Dated this 21st day of August, 2021



DISTRICT COURT JUDGE
B2B 296 5641 6A5C
Jasmin Lilly-Spells
District Court Judge

6 Respectfully submitted,

7 STEVEN B. WOLFSON
8 Clark County District Attorney
9 Nevada Bar #1565

10 BY /s/Alexander Chen
11 ALEXANDER CHEN
12 Chief Deputy District Attorney
13 Nevada Bar #10539

14
15
16 CERTIFICATE OF MAILING

17 I hereby certify that service of Findings of Fact, Conclusions of Law And Order, was
18 made this 7TH day of July, 2021, by Mail to:

19 DAMIEN A. PHILLIPS
20 121760
21 P.O. BOX 659 (HDSP)
INDIAN SPRINGS NV 89018

22
23 
24 Secretary for the District Attorney's Office

25
26
27 18FH1708A/mcb/L-%
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
4

5
6 Damien Phillips, Plaintiff(s)

CASE NO: A-21-831976-W

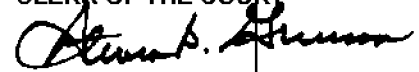
7 vs.

DEPT. NO. Department 23

8 Nevada Department of
9 Correction, Defendant(s)
10

11 **AUTOMATED CERTIFICATE OF SERVICE**

12 Electronic service was attempted through the Eighth Judicial District Court's
13 electronic filing system, but there were no registered users on the case. The filer has been
14 notified to serve all parties by traditional means.
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1 NEFF

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 DAMIEN PHILLIPS,

6 Petitioner,

7 vs.

8 NEVADA DEPARTMENT OF CORRECTION,

9 Respondent,

Case No: A-21-831976-W

Dept No: XXIII

**NOTICE OF ENTRY OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

11 **PLEASE TAKE NOTICE** that on August 21, 2021, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed
to you. This notice was mailed on August 24, 2021.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

17 Amanda Hampton, Deputy Clerk

18
19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 24 day of August 2021, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

23 Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:

25 Damien Phillips # 1212760
26 P.O. Box 650
Indain Springs, NV 89070

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

Heather L. Smith
CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #10539
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DAMIEN ALEXANDER PHILLIPS,
#8437103

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-21-831976-W

DEPT NO: XXIII

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

DATE OF HEARING: June 9, 2021
TIME OF HEARING: 11:00 AM

THIS CAUSE having come before the Honorable JASMIN LILLY-SPILLS, District Court Judge, on the 9th day of June, 2021, Petitioner not being present, not being represented by counsel, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and the Court having reviewed the matter, including briefs, transcripts, and documents on file herein; now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On October 23, 2018, DAMIEN ALEXANDER PHILLIPS (hereinafter "Petitioner") was charged by way of Information with CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor - NRS 205.060, 199.480); CONSPIRACY TO COMMIT ROBBERY (Category

1 B Felony - NRS 200.380, 199.480); BURGLARY WHILE IN POSSESSION OF A DEADLY
2 WEAPON (Category B Felony – NRS 205.060); ROBBERY WITH USE OF A DEADLY
3 WEAPON (Category B Felony – NRS 200.380, 193.165); ASSAULT WITH A DEADLY
4 WEAPON (Category B Felony – NRS 200.471); and ASSAULT WITH A DEADLY
5 WEAPON, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony – NRS 200.471,
6 193.167) for actions on or between July 17, 2018 and August 6, 2018.

7 On December 3, 2018, Petitioner's case proceeded to trial before a jury. After eight (8)
8 days of trial, the jury its Verdict as follows: Count 1 – Guilty of Conspiracy to Commit
9 Burglary; Count 2 – Guilty of Conspiracy to Commit Robbery; Count 3 – Guilty of Burglary
10 While in Possession of a Deadly Weapon; Count 4 – Guilty of Robbery with Use of a Deadly
11 Weapon; Count 5 – Guilty of Burglary While in Possession of a Deadly Weapon; Count 6 –
12 Guilty of Robbery with Use of a Deadly Weapon; Count 7 – Guilty of Robbery with Use of a
13 Deadly Weapon; Count 8 – Guilty of Burglary While in Possession of a Deadly Weapon;
14 Count 9 – Guilty of Robbery with Use of a Deadly Weapon; Count 10 – Guilty of Robbery
15 with Use of a Deadly Weapon; Count 11 – Guilty of Burglary While in Possession of a Deadly
16 Weapon; Count 12 – Guilty of Robbery with Use of a Deadly Weapon; Count 13 – Guilty of
17 Robbery with Use of a Deadly Weapon; Count 14 – Guilty of Burglary While in Possession
18 of a Deadly Weapon; Count 15 – Guilty of Burglary While in Possession of a Deadly Weapon;
19 Count 16 – Guilty of Robbery with Use of a Deadly Weapon; Count 17 – Guilty of Robbery
20 with Use of a Deadly Weapon; Count 18 – Guilty of Assault with a Deadly Weapon; Count
21 19 – Guilty of Assault with a Deadly Weapon; Count 20 – Guilty of Assault with a Deadly
22 Weapon; and Count 21 – Guilty of Assault with a Deadly Weapon, Victim 60 Years of Age
23 or Older.

24 On January 29, 2019, Petitioner was sentenced as follows: Count 1 – three hundred
25 sixty-four (364) days in the Clark County Detention Center ("CCDC"); Count 2 – twelve (12)
26 to forty-eight (48) months in the Nevada Department of Corrections ("NDC"), concurrent with
27 Count 1; Count 3 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count
28 2; Count 4 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six

(36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 3; Count 5 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 3; Count 6 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, consecutive to Count 4; Count 7 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, consecutive to Count 6; Count 8 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 5; Count 9 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, consecutive to Count 7; Count 10 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 9; Count 11 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 8; Count 12 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 10; Count 13 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 12; Count 14 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 11; Count 15 – thirty-six (36) to one hundred twenty (120) months, concurrent with Count 14; Count 16 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 13; Count 17 – thirty-six (36) to one hundred twenty (120) months, with a consecutive thirty-six (36) to one hundred twenty (120) months for the deadly weapon enhancement, concurrent with Count 16; Count 18 – twelve (12) to forty-eight (48) months, concurrent with Count 15; Count 19 – twelve (12) to forty-eight (48) months, concurrent with Count 18; Count 20 – twelve (12) to forty-eight (48) months, concurrent with Count 19; and Count 21 – twelve (12) to forty-eight (48) months, with a consecutive twelve (12) to forty-eight (48) months for the victim 65 years of age or older, concurrent with Count 17. Petitioner's total aggregate sentence was

1 announced as twenty-four (24) to eighty (80) years, with one hundred seventy-four (174) days
2 credit for time served. Petitioner's Judgment of Conviction was filed on February 27, 2019.
3 The Court filed an Amended Judgment of Conviction on May 6, 2020, to correct a clerical
4 error in Petitioner's Judgment of Conviction.

5 On February 28, 2019, Petitioner filed a Notice of Appeal from his Judgment of
6 Conviction. On March 18, 2020, the Nevada Supreme Court filed its Order of Affirmance.
7 Remittitur issued on April 15, 2020.

8 On March 30, 2021, Petitioner filed the instant Petition for Writ of Habeas Corpus
9 (Postconviction), as well as a Motion to Preserve All Evidence in Case # C-18-335500, and a
10 Motion to Appoint Counsel. The State filed its Response to Petitioner's Petition on May 25,
11 2021. Also on May 25, 2021, Petitioner filed a "Motion and Order for Transportation of
12 Inmate."

13 The matter came before this Court on June 9, 2021, at which time this Court did not
14 entertain argument, but made the following findings and conclusions on the briefs:

15 ANALYSIS

16 I. PETITIONER IS NOT ENTITLED TO A WRIT OF HABEAS CORPUS

17 A. Petitioner Fails to Demonstrate Ineffective Assistance of Counsel

18 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal
19 prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his
20 defense." The United States Supreme Court has long recognized that "the right to counsel is
21 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,
22 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
23 (1993).

24 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
25 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of
26 Strickland, 466 U.S. at 686-87, 104 S.Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
27 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation
28 fell below an objective standard of reasonableness, and second, that but for counsel's errors,

1 there is a reasonable probability that the result of the proceedings would have been different.
2 466 U.S. at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100
3 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). “[T]here is
4 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the
5 same order or even to address both components of the inquiry if the defendant makes an
6 insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S.Ct. at 2069.

7 The Court begins with the presumption of effectiveness and then must determine
8 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
9 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
10 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
11 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
12 537 P.2d 473, 474 (1975).

13 Counsel cannot be ineffective for failing to make futile objections or arguments. See
14 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
15 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
16 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
17 (2002). Further, a defendant who contends his attorney was ineffective because he did not
18 adequately investigate must show how a better investigation would have rendered a more
19 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

20 Based on the above law, the role of a court in considering allegations of ineffective
21 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
22 whether, under the particular facts and circumstances of the case, trial counsel failed to render
23 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
24 (1978). This analysis does not mean that the court should “second guess reasoned choices
25 between trial tactics nor does it mean that defense counsel, to protect himself against
26 allegations of inadequacy, must make every conceivable motion no matter how remote the
27 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
28 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel

1 cannot create one and may disserve the interests of his client by attempting a useless charade.”
2 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

3 The decision not to call witnesses is within the discretion of trial counsel and will not
4 be questioned unless it was a plainly unreasonable decision. See, Rhyne, 118 Nev. 1, 38 P.3d
5 163; Dawson, 108 Nev. 112, 825 P.2d 593. Strickland does not enact Newton’s third law for
6 the presentation of evidence, requiring for every prosecution expert an equal and opposite
7 expert from the defense. In many instances cross-examination will be sufficient to expose
8 defects in an expert’s presentation. When defense counsel does not have a solid case, the best
9 strategy can be to say that there is too much doubt about the State’s theory for a jury to convict.
10 Harrington v. Richter, 131 S.Ct. 770, 791, 578 F.3d 944 (2011). “Strategic choices made by
11 counsel after thoroughly investigating the plausible options are almost unchallengeable.”
12 Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992).

13 Even if a defendant can demonstrate that his counsel’s representation fell below an
14 objective standard of reasonableness, he must still demonstrate prejudice and show a
15 reasonable probability that, but for counsel’s errors, the result of the trial would have been
16 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
17 Strickland, 466 U.S. at 687, 104 S.Ct. at 2064). “A reasonable probability is a probability
18 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-
19 89, 694, 104 S.Ct. at 2064-65, 2068).

20 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the
21 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of
22 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,
23 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must
24 be supported with specific factual allegations, which if true, would entitle the petitioner to
25 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”
26 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS
27 34.735(6) states, in relevant part, “[Petitioner] *must* allege specific facts supporting the claims
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1 in the petition[.]...Failure to allege specific facts rather than just conclusions may cause [the]
2 petition to be dismissed.” (Emphasis added).

3 Petitioner raises thirteen (13) separate allegations against the effectiveness of counsel:
4 that counsel allegedly (1) failed to investigate all the counts against Petitioner, (2) failed to put
5 forth a “meaningful defense” at trial, (3) failed to seek severance from Petitioner’s co-
6 defendants, (4) failed to seek DNA testing, (5) failed to have the alleged weapon fingerprinted,
7 (6) failed to “thoroughly” explain guilty plea offers, (7) failed to challenge the Criminal
8 Complaint, (8) failed to object to the “reasonable doubt” jury instruction, (9) failed to object
9 to the erroneous Judgment of Conviction, (10) failed to present alibi witnesses, (11) failed to
10 show Petitioner the discovery, (12) failed to investigate Petitioner’s Fourth Amendment
11 claims, and (13) failed to object to the prosecution’s leading questions. Petition at 5-6.
12 However, this Court finds that Petitioner’s claims are belied by the record, or are otherwise
13 without merit; therefore, this Court concludes that Petitioner is not entitled to relief on his
14 claims of ineffective assistance of counsel.

15 *1. Investigate Criminal Complaint (sub-claim (a))*

16 Petitioner first claims that counsel should have noticed that certain claims on the
17 Criminal Complaint did not pertain to Petitioner, and therefore, should have challenged the
18 Criminal Complaint. However, this Court concludes that Petitioner cannot show he is entitled
19 to relief on this allegation, as he was not prejudiced by the inclusion of claims against his co-
20 defendant. McNelson, 115 Nev. at 403, 990 P.2d at 1268.

21 This Court finds that a review of Petitioner’s Criminal Complaint shows that Petitioner
22 was not named in conjunction with the charges Petitioner now claims were erroneous. Instead,
23 only Petitioner’s co-defendant was named. Furthermore, the jury was not asked to return a
24 verdict against Petitioner on those charges, and Petitioner was not sentenced for any such
25 charges.

26 Because the allegedly-erroneous charges clearly named Petitioner’s co-defendant, not
27 Petitioner, and because Petitioner was not held to account for those charges in any way, this
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1 Court concludes that Petitioner cannot demonstrate that he was prejudiced by those claims,
2 much less that the outcome of his trial would have differed had those claims been removed.

3 **2. *Alibi Defense at Trial (sub-claims (b) and (j))***

4 Petitioner next claims that counsel should have presented alibi witnesses at trial Petition
5 at 7, 14. However, this Court concludes that Petitioner fails to substantiate this claim with any
6 support; as such, this claim is bare and naked and insufficient to warrant relief. Hargrove, 100
7 Nev. at 502, 686 P.2d at 225.

8 While Petitioner claims that there were “alibi witnesses” that would have changed the
9 result at trial, this Court finds that Petitioner fails to offer any specific information about these
10 witnesses, or what their testimony would be. See Petition at 7, 14. Instead, Petitioner directs
11 this Court to an “Exhibit ‘A’” that is not attached to his Petition. Id. at 14. Therefore, this Court
12 finds that the lack of specificity and/or any substantive support for Petitioner’s alibi assertions
13 renders Petitioner’s claim suitable only for dismissal. Hargrove, 100 Nev. at 502, 686 P.2d at
14 225; NRS 34.735(6).

15 Moreover, this Court finds that Petitioner’s claim that counsel had some “duty” to
16 present witnesses on Petitioner’s behalf is contrary to Nevada law. See, Rhyne, 118 Nev. 1,
17 38 P.3d 163; Dawson, 108 Nev. 112, 825 P.2d 593. Petitioner’s failure to allege the content of
18 the witnesses’ testimony, much less demonstrate their willingness and/or ability to testify at
19 Petitioner’s trial leaves Petitioner’s claim insufficient to overcome the presumption that
20 counsel’s performance was reasonable. Means, 120 Nev. at 1011, 103 P.3d at 32.

21 Because Petitioner’s claim lacks specificity, and is insufficient to overcome the
22 presumption of counsel’s reasonableness, this Court concludes that Petitioner’s claim is bare
23 and naked and insufficient to warrant relief.

24 **3. *Seek Severance (sub-claim (c))***

25 Petitioner also claims that counsel should have moved to sever his trial from his co-
26 defendants. Petition at 8. This Court concludes that, because Petitioner does not set forth the
27 standard for severance, much less argue according to that standard, Petitioner’s allegation
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1 amounts to a mere conclusory assertion of innocence, insufficient to meet Petitioner's burden.
2 Id.

3 This Court finds that Petitioner's position has been specifically rejected by the Nevada
4 Supreme Court. In Marshall v. State, 118 Nev. 642, 647, 56 P.3d 376, 379 (2002), the Nevada
5 Supreme Court explained, "[t]o establish that joinder was prejudicial requires more than
6 simply showing that severance made acquittal more likely; misjoinder requires reversal only
7 if it has a substantial and injurious effect on the verdict." (citing Middleton v. State, 114 Nev.
8 1089, 1108, 968 P.2d 296, 309 (1998)).

9 Because Petitioner fails to do more than allege severance would have made acquittal
10 more likely, this Court finds that Petitioner's claim is belied by Nevada precedent. Therefore,
11 this Court concludes that Petitioner fails to overcome the presumption of counsel's
12 effectiveness, and Petitioner is not entitled to relief.

13 **4. *Seek DNA Testing (sub-claim (d))***

14 Petitioner proceeds to claim that DNA testing would show that the "clothing,
15 sunglasses, [and] hats" were not worn by him, and therefore would have "proved [Petitioner's]
16 innocence." Petition at 9. This Court again concludes that Petitioner relies on conclusory
17 allegations, without any citations to the record or to relevant legal support. As such, Petitioner
18 is not entitled to relief.

19 This Court finds that Petitioner does not allege that DNA was used as evidence to
20 convict him, nor does he argue that the items he now alleges should have been tested were
21 crucial in the jury's verdict. Petition at 9. Therefore, this Court finds that Petitioner fails to
22 establish that the lack of his DNA on those specific items would have changed the result at
23 trial. McNelson, 115 Nev. at 403, 990 P.2d at 1268.

24 This Court further finds that the Nevada Supreme Court, in affirming Petitioner's
25 conviction, explained that there was sufficient evidence to convict Petitioner of each count.
26 See Order of Affirmance (filed on March 18, 2020 in Supreme Court Case No. 78270)
27 ("Affirmance") at 2-5. As such, Petitioner's claim is limited to potentially undermining the
28 prosecution's argument of guilt, but this Court finds that such a strategy was squarely within

1 counsel's purview. See, Rhyne, 118 Nev. 1, 38 P.3d 163; Dawson, 108 Nev. 112, 825 P.2d
2 593 (strategic choices are virtually unchallengeable).

3 Because Petitioner fails to offer more than conclusory allegations to support his claim,
4 this Court concludes that Petitioner's claim is bare and naked, and suitable only to dismissal
5 pursuant to NRS 34.735(6) and Hargrove, 100 Nev. at 502, 686 P.2d at 225.

6 **5. *Seek Fingerprint Analysis (sub-claim (e))***

7 Petitioner next raises a similar claim – that fingerprint analysis of the recovered BB gun
8 would have been negative for Petitioner's fingerprints. Petition at 9-10. Petitioner also poses
9 a few questions, seemingly aimed at undermining the validity of the deadly weapon
10 enhancements for Petitioner's crimes. Id. at 10. However, this Court concludes that
11 Petitioner's claim is again bare and naked, and is further based on a lack of understanding of
12 the deadly weapon enhancement.

13 This Court finds that Petitioner makes conclusory allegations, and asks suggestive
14 questions, rather than raising any substantive support for his allegation that counsel should
15 have undermined the evidence of the deadly weapon. Petition at 9-10. As there is no
16 substantive or legal support for Petitioner's claim, this Court concludes the same is suitable
17 for dismissal as bare and naked. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

18 This Court further finds that the Nevada Supreme Court has previously determined that
19 a BB gun may be considered a deadly weapon for the purposes of enhancement. Manning v.
20 State, 107 Nev. 337, 810 P.2d 1216 (1991). Furthermore, the Nevada Supreme Court, in
21 affirming Petitioner's conviction, made the specific determination that the jury was shown
22 sufficient evidence to convict Petitioner of the use of a deadly weapon. Affirmance at 3-4
23 (“...the evidence as a whole supports the deadly weapon enhancement.”). Therefore, because
24 the questions of whether a deadly weapon was used, and/or whether there was sufficient
25 evidence to link Petitioner to a deadly weapon, have already been asked – and answered – this
26 Court finds that Petitioner cannot demonstrate that any objection or further inquiry by counsel
27 would have changed the result at trial. McNelson, 115 Nev. at 403, 990 P.2d at 1268.

1 Because Petitioner's claim amounts only to conclusory allegations, and fails to
2 demonstrate that any proposed action would have changed the result at trial, this Court
3 concludes that Petitioner is not entitled to relief on this claim.

4 **6. Explain Guilty Plea Offers (sub-claim (f))**

5 Petitioner continues with conclusory assertions regarding counsel's communication –
6 or lack thereof – regarding guilty plea offers. Petition at 11. Again, Petitioner fails to include
7 any specific facts, much less specifically assert that he would have accepted any of the
8 allegedly-withheld plea offers. *Id.* As such, this Court concludes that Petitioner's claim fails.

9 This Court finds that Petitioner's allegations are vague and conclusory, asserting
10 generalities rather than any specific supporting facts. Petition at 11. Petitioner fails to note any
11 of the *specific* deals that were allegedly withheld by counsel, and fails to describe how counsel
12 explained the plea offers, much less substantiate any of these descriptions. *Id.* As such, this
13 Court concludes that Petitioner's allegations are bare and naked, and suitable only for
14 dismissal. NRS 34.735(6); *Hargrove*. 100 Nev. at 502, 686 P.2d at 225.

15 Further, this Court finds that Petitioner's allegations are belied by the record. Before
16 the preliminary hearing on the twenty-one (21) counts against Petitioner, counsel placed on
17 the record the State's offer, along with a description of the circumstances surrounding the plea
18 negotiations:

19 MR. BROWER: Judge, I do want to put on the record there was an offer that
20 was conveyed to the individuals, but it was a contingent offer so even if one
21 client was inclined to take this, if the other one was not, *it is not an offer that has*
22 *been varied on.* So it was for a robbery with use, a robbery, two burglaries and
23 a conspiracy. I just want to put on the record that there is no point in actually
going forward if both people did not want to change that, *the State is not*
wavering on that. My client had been inclined to contemplate waiving up on that
offer, but again *it's not being extended to him alone.*

24 Recorder's Transcript of Preliminary Hearing, dated October 4, 2018 (filed October 31, 2018),
25 at 9:4-15 (emphases added). Therefore, this Court finds that, contrary to Petitioner's assertions
26 about "several deals," and their availability to Petitioner *alone*, counsel was clear that the *only*
27 offer that was extended was a contingent offer that Petitioner's co-defendants were not
28 interested in. *Id.*

1 This Court, therefore, concludes that because this claim is belied by the record, and
2 because it consists only of vague and conclusory allegations, it cannot entitle Petitioner to
3 relief.

4 **7. Challenge Criminal Complaint (sub-claim (g))**

5 Petitioner contests the allegedly “fatally flawed complaint,” and insists that counsel
6 should have challenge the Complaint based on its (1) failure to give notice, (2) double
7 jeopardy, and (3) violation of separation of powers. Petition at 11-12. This Court finds that
8 Petitioner does nothing more than list these alleged deficiencies. *Id.* Therefore, this Court
9 concludes that Petitioner again leaves his claim bare and naked under *Hargrove*.

10 This Court finds that Petitioner does not set forth the standard for charging documents
11 in Nevada, much less specifically argue how the Complaint against him failed to meet such a
12 standard. Petition at 11-12. Instead, Petitioner merely alleges, without a word more, three
13 general theories of deficiency. *Id.* This Court finds that such allegations are insufficient to
14 meet Petitioner’s burden to show that counsel was ineffective, as Petitioner fails to even show
15 that the Complaint was deficient. *Means*, 120 Nev. at 1011, 103 P.3d at 32. This Court further
16 finds that the lack of specific factual support for these theories leaves Petitioner’s claim bare
17 and naked, and ripe for dismissal. NRS 34.735(6); *Hargrove*, 100 Nev. at 502, 686 P.2d at 225.

18 Because Petitioner merely lists his contentions, absent legal support or cogent
19 argument, this Court concludes that this claim must be dismissed.

20 **8. “Reasonable Doubt” Jury Instruction (sub-claim (h))**

21 Petitioner next challenges counsel’s failure to object to the jury instruction given on
22 “reasonable doubt.” Petition at 12. This Court concludes that Petitioner cannot demonstrate
23 counsel was ineffective, as the jury instruction conformed with the applicable statutes, and
24 counsel cannot be ineffective for failing to make futile objections. *Ennis*, 122 Nev. at 706, 137
25 P.3d at 1103.

26 Petitioner’s jury instruction No. 41 explained as follows:
27
28

1 A reasonable doubt is one based on reason. It is not mere possible doubt but is
2 such a doubt as would govern or control a person in the more weighty affairs of
3 life. If the minds of the jurors, after the entire comparison and consideration of
4 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.

5 See Petition, Exhibit 'C.' This Court finds that NRS 175.211(1), which contains the sole
6 definition that may be given to juries in Nevada, contains the *exact same* language as the jury
7 instruction. While there was expository language in the jury instruction concerning the State's
8 burden of proof, this Court finds that such language did not in any way affect the stated
9 definition of "reasonable doubt." See Petition, Exhibit 'C.' As such, this Court finds that any
10 objection to that jury instruction would have been futile.

11 Because counsel may not be deemed ineffective for failing to raise futile objections,
12 This Court concludes that Petitioner cannot demonstrate ineffective assistance for counsel's
13 failure to challenge this jury instruction.

14 **9. *Erroneous Judgment of Conviction (sub-claim (i))***

15 Petitioner proceeds to note the errors in his original Judgment of Conviction, and asserts
16 ineffectiveness for counsel's failure to notify all parties of the error. Petition at 12-14. This
17 Court finds that Petitioner appears to conflate his Information and his original Judgment of
18 Conviction. Id. Further, this Court finds that certain representations in Petitioner's claim are
19 belied by the record. Additionally, this Court finds that Petitioner cannot demonstrate
20 prejudice; therefore, this Court concludes that Petitioner cannot succeed on this claim.

21 While Petitioner asserts his claim treats his original Judgment of Conviction, Petitioner
22 asserts that he was prejudiced *at trial* by the inclusion of the two allegations against his co-
23 defendant. See Petition at 13. He also asserts that he was sentenced for those two counts. Id.
24 This Court finds that these assertions are belied by the record. This Court finds that the
25 Information specifically charged Petitioner's *co-defendant* with the counts Petitioner
26 references in this claim. Further, this Court finds that the jury's Verdict form did not include
27 sections for dispositions on those counts, as they did not pertain to Petitioner. Therefore, This
28 Court concludes that Petitioner cannot show that he was prejudiced at trial.

1 Moreover, the Court Minutes for Petitioner's sentencing hearing reveal that Petitioner
2 was sentenced only on the twenty-one (21) counts against him, *not including* the two counts
3 now complained of by Petitioner. See Court Minutes – Sentencing, dated January 29, 2019.
4 Indeed, directly contrary to Petitioner's claim, this Court finds that the original Judgment of
5 Conviction does not include any pronounced sentence for those two counts. See original
6 Judgment of Conviction at 5. Therefore, while the original Judgment of Conviction does *list*
7 those two counts as having been found against Petitioner, this Court concludes that the record
8 as a whole demonstrates that the inclusion of the counts was merely a clerical error, and did
9 not in any way prejudice Petitioner.

10 Furthermore, the record reflects that Mr. Brower withdrew as counsel, and Ms. Stewart
11 was appointed as appellate counsel, before Petitioner's original Judgment of Conviction was
12 filed. Therefore, this Court concludes that Petitioner cannot raise a claim against Mr. Brower
13 for events occurring after Mr. Brower's representation of Petitioner ended.

14 Because this claim is belied by the record, and because Mr. Brower was no longer
15 counsel of record at the time the original Judgment of Conviction was filed, this Court
16 concludes that Petitioner is not entitled to relief.

17 **10. *Show Petitioner the Discovery (sub-claim (k))***

18 Petitioner then alleges that he was unable to contribute to his defense because counsel
19 failed to provide the discovery to Petitioner. Petition at 14-15. This Court concludes that this
20 claim is also belied by the record.

21 This Court finds that, at the calendar call for Petitioner's trial, counsel informed the
22 Court that counsel had reviewed the discovery with Petitioner, and that Petitioner had made
23 the determination that he still wished to invoke his right to a speedy trial. Court Minutes,
24 11/29/18. Therefore, this Court concludes that Petitioner's allegations that he was not able to
25 review the discovery with counsel is expressly belied by the record, and cannot entitle
26 Petitioner to relief.

27 //

28 //

1 **11. Investigate Fourth Amendment Claims (sub-claim (l))**

2 Petitioner next claims that counsel was ineffective for failing to challenge the manner
3 in which a GPS device was installed on a vehicle and the information that GPS device
4 subsequently provided. Petition at 15-16. This Court finds that, again, Petitioner provides only
5 generalities, absent specific factual support for his claim; therefore, this Court concludes that
6 this claim is bare and naked and does not entitle Petitioner to relief. Hargrove, 100 Nev. at
7 502, 686 P.2d at 225.

8 Petitioner acknowledges a warrant that allowed for GPS to be installed on a vehicle,
9 then asserts that officers “encroached on private property to install the GPS.” Petition at 15.
10 This Court finds that thereafter, however, Petitioner does not substantiate his claim regarding
11 the circumstances of the installation of the GPS, precluding meaningful review of Petitioner’s
12 claim, as the Nevada Supreme Court’s determinations have been fact-specific. See, e.g.,
13 Osburn v. State, 118 Nev. 323, 44 P.3d 523 (2002) (no objective expectation of privacy for
14 vehicle parked in plain view of street).

15 Because Petitioner fails to include the facts necessary to make an analysis, much less
16 demonstrate the merits of Petitioner’s assertion, this Court concludes Petitioner cannot
17 demonstrate that counsel was ineffective, as counsel cannot be ineffective for failing to make
18 futile arguments. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

19 **12. Prosecution’s Leading Questions (sub-claim (m))**

20 Petitioner’s final allegation of ineffectiveness simply states “TBD.” Therefore, this
21 Court concludes that this single-sentence title does not entitle Petitioner to relief.

22 **B. PETITIONER’S SUBSTANTIVE CLAIMS ARE WAIVED**

23 The Nevada Supreme Court has held that “challenges to the validity of a guilty plea and
24 claims of ineffective assistance of trial and appellate counsel must first be pursued in post-
25 conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be
26 pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*”
27 Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added)
28 (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)).

1 “A court must dismiss a habeas petition if it presents claims that either were or could have
2 been presented in an earlier proceeding, unless the court finds both cause for failing to present
3 the claims earlier or for raising them again and actual prejudice to the petitioner.” Evans v.
4 State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other grounds by Lisle v.
5 State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims are beyond the
6 scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at 646-47, 29 P.3d
7 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

8 As part of his Petition, Petitioner includes a number of substantive claims, including
9 allegations of Brady violations, claims against the validity of the Criminal Complaint (or,
10 Information), a standalone claim against the “reasonable doubt” jury instruction, and another
11 standalone claim regarding the alleged Fourth Amendment violations. See Petition at 18-19,
12 20-23, 28-30, 35-36. However, this Court finds that these substantive claims are beyond the
13 limited scope of habeas review. NRS 34.724(2)(a); Evans, 117 Nev. at 646-47, 29 P.3d at 523.
14 Moreover, this Court finds that each of these claims was available at the time Petitioner filed
15 his direct appeal; therefore, this Court concludes that these claims *must* be dismissed. Evans,
16 117 Nev. at 646-47, 29 P.3d at 523.

17 C. ACTUAL INNOCENCE IS NOT ITSELF A CLAIM FOR RELIEF

18 Petitioner also includes various allegations of actual innocence. Petition at 24-27.
19 However, this Court finds that actual innocence, itself, does not provide grounds for relief.
20 Further, while Petitioner titles his claim as “actual innocence,” this Court finds that Petitioner
21 is arguing insufficient evidence, a claim that has already been rejected by the Nevada Supreme
22 Court.

23 Actual innocence is a stringent standard, designed to be applied only in the most
24 extraordinary situations. Pellegrini v. State, 117 Nev. 860, 876, 34 P.3d 519, 530 (2001)
25 (abrogated on other grounds by Rippo v. State, 134 Nev. 411, 423 P.3d 1084 (2018)). The
26 Eighth Circuit Court of Appeals, for instance, has “rejected free-standing claims of actual
27 innocence as a basis for habeas review stating, ‘[c]laims of actual innocence based on newly
28 discovered evidence have never been held to state a ground for federal habeas relief absent an

1 independent constitutional violation occurring in the underlying state criminal proceeding.”
2 Meadows v. Delo, 99 F.3d 280, 283 (8th Cir. 1996) (citing Herrera v. Collins, 506 U.S. 390,
3 400, 113 S.Ct. 853, 860 (1993)). A defendant claiming actual innocence must demonstrate that
4 it is more likely than not that *no reasonable juror* would have convicted him absent a
5 constitutional violation. Pellegrini, 117 Nev. at 887, 34 P.3d at 537. Once a defendant has
6 made such a showing, he may then use the claim of actual innocence as a “gateway” to present
7 his constitutional challenges to the court and require the court to decide them on the merits.
8 Schlup v. Delo, 513 U.S. 298, 315, 115 S.Ct. 851, 861 (1995). Furthermore, the newly
9 discovered evidence suggesting the defendant’s innocence must be “so strong that a court
10 cannot have confidence in the outcome of the trial.” Id. at 316, 115 S.Ct. at 861.

11 This Court finds that Petitioner does not allege that he has any “newly discovered
12 evidence,” nor does he specify what procedural bars he seeks to overcome with his allegations
13 of actual innocence. Petition at 24-27. Instead, this Court finds that Petitioner is simply arguing
14 insufficient evidence supports his convictions. See id. However, this claim was already raised
15 – and rejected – as part of Petitioner’s direct appeal. See generally, Affirmance.

16 Because actual innocence is not, itself, a ground for relief, and because the substance
17 of Petitioner’s claims has already been rejected by the Nevada Supreme Court, this Court
18 concludes that this claim cannot entitle Petitioner to relief.

19 **D. PETITIONER FAILS TO DEMONSTRATE CRUEL AND UNUSUAL** 20 **PUNISHMENT**

21 Petitioner also titles a claim “Cruel & Unusual Punishment,” yet this Court finds that
22 the substance thereof instead contests the validity of Petitioner’s convictions with the deadly
23 weapon enhancements. Petition at 31-32. This Court further finds that the substance of this
24 claim has been rejected by the Nevada Supreme Court. Therefore, this Court concludes that
25 this claim cannot entitle Petitioner to relief.

26 This Court finds that Petitioner challenged the deadly weapon enhancements on direct
27 appeal, upon which the Nevada Supreme Court made the following determination:

28 As to the deadly weapon enhancement on counts 3-14, this court has broadly
construed NRS 193.165(1), *see State v. Dunckhurst*, 99 Nev. 696, 697, 669 P.2d

243, 243 (1983), and explained that a defendant need not activate a weapon during the crime to receive a deadly weapon enhancement, *see Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979). Even where the victim does not actually see the weapon, a deadly weapon enhancement will be warranted if the evidence overall suggests the defendant used a deadly weapon to facilitate the crime. *See Bartle v. Sheriff*, 92 Nev. 459, 460, 552 P.2d 1099, 1099 (1976). Here, although the victims in the first four robberies did not observe a weapon, the evidence as a whole supports the deadly weapon enhancement. Phillips and Barr threatened the bank tellers with use of a weapon, generally a gun, to facilitate those robberies, and during one robbery Phillips placed a bag on the counter and indicated it contained a bomb. During the burglary at the Smith's, officers observed that Barr had a bulge in his waistband and immediately after leaving the Smith's, Phillips and Barr robbed a bank at gunpoint. Officers found guns in the getaway car and in another car owned by Phillips. This is sufficient evidence by which the jury could determine that Phillips used a gun or other deadly weapon during each of the robberies.

Affirmance at 3-4.

Because Petitioner's challenge to the deadly weapon enhancements has already been rejected, this Court concludes that Petitioner is not entitled to relief on this claim.

E. PETITIONER'S FIRST AMENDMENT CLAIM CHALLENGES HIS CONDITIONS OF CONFINEMENT, NOT HIS CONVICTION

Petitioner also includes a claim alleging restricted or insufficient access to the law library. 33-34. However, this Court finds that this claim concerns Petitioner's conditions of confinement, rather than the validity of Petitioner's conviction; therefore, this claim is more appropriately responded to by the Nevada Office of the Attorney General. NRS 34.730(2)(a).

As this claim is more appropriately responded to by the Attorney General, this Court concludes that Petitioner is not entitled to relief on this claim, because the Attorney General was not given notice and/or an opportunity to respond.

F. PETITIONER FAILS TO DEMONSTRATE CUMULATIVE ERROR

Petitioner finally includes a single-paragraph assertion of cumulative error. Petition at 37. However, this Court concludes that Petitioner's contention does not entitle Petitioner to relief.

The Nevada Supreme Court has yet to endorse application of its direct appeal cumulative error standard to post-conviction Strickland claims. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Such an analysis should not apply on post-conviction review. Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006) ("[A] habeas petitioner cannot

1 build a showing of prejudice on series of errors, none of which would by itself meet the
2 prejudice test.”).

3 Nevertheless, even where cognizable, a finding of cumulative error in the Strickland
4 context is extraordinarily rare and requires an extensive aggregation of errors. See, e.g., Harris
5 By and Through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). It is only logical that
6 there can be no finding of cumulative error where a defendant fails to demonstrate a single
7 violation of Strickland. See, Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007) (“where
8 individual allegations of error are not of constitutional stature or are not errors, there is ‘nothing
9 to cumulate.’”) (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)). Therefore, as
10 this Court has concluded that Petitioner has failed to demonstrate that any claim warrants relief
11 under Strickland, this Court now finds that there is nothing to cumulate.

12 Furthermore, even under Nevada’s direct appeal cumulative error standard, this Court
13 concludes that Petitioner is not entitled to relief. In addressing cumulative error, the proper
14 analysis considers (1) whether the issue of guilt is close; (2) the quantity and character of the
15 error; and (3) the gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845,
16 854-55 (2000). While Petitioner was convicted of significant crimes indeed, this Court finds
17 that the other two factors weigh strongly against a finding of cumulative error. The evidence
18 of Petitioner’s guilt has been expressly affirmed by the Nevada Supreme Court. See generally,
19 Affirmance. Furthermore, even assuming, *arguendo*, that Petitioner could demonstrate some
20 error, this Court finds that Petitioner has not demonstrated any errors that denied him a
21 reasonable likelihood of a better outcome.

22 Because Petitioner’s conviction and sentence have already been affirmed by the Nevada
23 Supreme Court, this Court concludes that Petitioner’s cumulative error argument lacks merit
24 and cannot entitle Petitioner to relief.

25 **II. THE STATE DID NOT OPPOSE THE MOTION TO PRESERVE EVIDENCE**

26 Alongside his Petition, Petitioner filed a Motion to Preserve All Evidence. In Response,
27 the State recognized its duty to preserve material evidence, and did not oppose Petitioner’s
28

1 Motion. Therefore, this Court concludes that Petitioner's Evidence Motion should be granted
2 as unopposed.

3 **III. PETITIONER IS NOT ENTITLED TO THE APPOINTMENT OF COUNSEL**

4 Petitioner also filed a boilerplate Motion to Appoint Counsel to accompany his Petition
5 and his Evidence Motion. This Court finds that Petitioner's Motion to Appoint does not
6 specifically address Petitioner's case, much less specifically assert *why* counsel is necessary.

7 While Petitioner's Motion to Appoint references the standard for appointment of
8 counsel in postconviction cases, this Court finds that Petitioner's quotation is incomplete. NRS
9 34.750 reads:

10 A petition may allege that the Defendant is unable to pay the costs of the
11 proceedings or employ counsel. If the court is satisfied that the allegation of
12 indigency is true and the petition is not dismissed summarily, the court may
appoint counsel at the time the court orders the filing of an answer and a return.
In making its determination, the court may consider whether:

- 13 (a) The issues are difficult;
14 (b) The Defendant is unable to comprehend the proceedings; or
(c) Counsel is necessary to proceed with discovery.

15 Under NRS 34.750, it is clear that the court has discretion in determining whether to
16 appoint counsel. The Nevada Supreme Court has observed that a petitioner "must show that
17 the requested review is not frivolous before he may have an attorney appointed." Peterson v.
18 Warden, Nevada State Prison, 87 Nev. 134, 136, 483 P.2d 204, 205 (1971) (citing former
19 statute NRS 177.345(2)).

20 Indeed, under the United States Constitution, the Sixth Amendment provides no right
21 to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111
22 S.Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258
23 (1996), the Nevada Supreme Court similarly observed, "[t]he Nevada Constitution...does not
24 guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada
25 Constitution's right to counsel provision as being coextensive with the Sixth Amendment to
26 the United States Constitution." McKague specifically held that, with the exception of NRS
27 34.820(1)(a) (entitling appointed counsel when petitioner is under a sentence of death), one
28

1 does not have “any constitutional or statutory right to counsel at all” in post-conviction
2 proceedings. Id. at 164, 912 P.2d at 258.

3 More recently, the Nevada Supreme Court examined whether a district court
4 appropriately denied a defendant’s request for appointment of counsel based upon the factors
5 listed in NRS 34.750. Renteria-Novoa v. State, 133 Nev. 75, 391 P.3d 760 (2017). In Renteria-
6 Novoa, the petitioner had been serving a prison term of eighty-five (85) years to life. Id. at 75,
7 391 P.3d at 760. After his judgment of conviction was affirmed on direct appeal, the petitioner
8 filed a pro se habeas corpus petition and requested counsel be appointed. Id. The district court
9 ultimately denied both the petition and the request for appointment of counsel. Id. In reviewing
10 the district court’s decision, the Renteria-Novoa Court examined the NRS 34.750 factors and
11 concluded the district court’s decision should be reversed and remanded. Id. The Court
12 explained the petitioner was indigent, his petition could not be summarily dismissed, and he
13 had, in fact, satisfied the statutory factors. Id. at 76, 391 P.3d at 760-61. As for the first factor,
14 the Court concluded that, because petitioner represented he had issues with understanding the
15 English language—which was corroborated by his use of an interpreter at his trial—that was
16 enough to indicate the petitioner could not comprehend the proceedings. Id. Moreover, the
17 petitioner had demonstrated that the consequences he faced—a minimum eighty-five (85) year
18 sentence—were severe and his petition may have been the only vehicle for which he could
19 raise his claims. Id. at 76-77, 391 P.3d at 761-62. Finally, the petitioner’s ineffective assistance
20 of counsel claims may have required additional discovery and investigation beyond the record.
21 Id.

22 This Court finds that Petitioner does not meet the NRS 34.750 factors. First, this Court
23 finds that the issues raised by Petitioner are not difficult. As set forth more fully in Section I,
24 *supra*, this Court has concluded that Petitioner’s claims are belied by the record, completely
25 devoid of specific allegations and/or factual support, or have been expressly rejected as part
26 of Petitioner’s direct appeal.

27 //

28 //

1 Second, this Court finds that Petitioner can formulate and organize claims to raise in
2 his postconviction efforts. Therefore, Petitioner sufficiently comprehends the proceedings and
3 counsel is not necessary.

4 Lastly, this Court finds that Petitioner has not alleged that further discovery is
5 necessary. See generally, Petition. While Petitioner has filed a Motion to Preserve Evidence,
6 this Court finds that Petitioner has not alleged, much less shown, that *more* discovery must be
7 conducted. Instead, this Court has found that Petitioner's individual claims may be adjudicated
8 with no further discovery, as set forth more fully in Section I, *supra*.

9 Because Petitioner fails to meet the statutory or precedential factors for discretionary
10 appointment of counsel, this Court concludes that Petitioner is not entitled to counsel in this
11 case.

12 ORDER

13 THEREFORE, IT IS HEREBY ORDERED, Petitioner Damien Phillips's Petition for
14 Writ of Habeas Corpus shall be, and is, DENIED, excepting only Petitioner's claim regarding
15 the conditions of Petitioner's confinement;

16 IT IS FURTHER ORDERED, Petitioner's conditions of confinement claim (his "Law
17 Library" claim) shall be DEFERRED for a response from the State of Nevada Office of the
18 Attorney General;

19 IT IS FURTHER ORDERED, Petitioner's Motion to Preserve Evidence shall be, and
20 is, GRANTED as unopposed;

21 IT IS FURTHER ORDERED, Petitioner's Motion to Appoint Counsel shall be, and is,
22 DENIED;

23 //

24 //

25 //

26 //

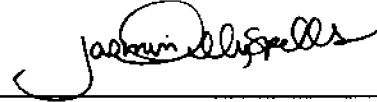
27 //

28 //

1 IT IS FURTHER ORDERED, Petitioner's Request for Transport shall be, and is,
2 DENIED.

3 DATED this _____ day of July, 2021.

Dated this 21st day of August, 2021



DISTRICT COURT JUDGE
B2B 296 5641 6A5C
Jasmin Lilly-Spells
District Court Judge

6 Respectfully submitted,

7 STEVEN B. WOLFSON
8 Clark County District Attorney
9 Nevada Bar #1565

10 BY /s/Alexander Chen
11 ALEXANDER CHEN
12 Chief Deputy District Attorney
13 Nevada Bar #10539

14
15
16 CERTIFICATE OF MAILING

17 I hereby certify that service of Findings of Fact, Conclusions of Law And Order, was
18 made this 7TH day of July, 2021, by Mail to:

19 DAMIEN A. PHILLIPS
20 121760
21 P.O. BOX 659 (HDSP)
INDIAN SPRINGS NV 89018

22
23 
24 Secretary for the District Attorney's Office

25
26
27 18FH1708A/mcb/L-%
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
4

5
6 Damien Phillips, Plaintiff(s)

CASE NO: A-21-831976-W

7 vs.

DEPT. NO. Department 23

8 Nevada Department of
9 Correction, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 Electronic service was attempted through the Eighth Judicial District Court's
13 electronic filing system, but there were no registered users on the case. The filer has been
14 notified to serve all parties by traditional means.
15
16
17
18
19
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27
28

..ST 9.
Case No. **A-21-831976-W**
Dept. 9

Dept. No. _____

FILED
OCT 13 2021

Alvin L. Blum
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK.

DAMIEN A. PHILLIPS
Petitioner,

MOTION FOR THE APPOINTMENT
OF COUNSEL

-VS-

THE WARDEN, HDSP
Respondents.

REQUEST FOR EVIDENTIARY HEARING

COMES NOW, the Petitioner, DAMIEN PHILLIPS, proceeding pro se, within the
above entitled cause of action and respectfully requests this Court to consider the appointment of counsel
for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of
Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and
documents on file within this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

This action commenced by Petitioner DAMIEN PHILLIPS, in state custody,
pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).

II. STATEMENT OF THE FACTS

To support the Petitioner's need for the appointment of counsel in this action, he states the
following:

1. The merits of claims for relief in this action are of Constitutional dimension, and
Petitioner is likely to succeed in this case.

2. Petitioner is incarcerated at the _____ Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
4. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
5. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
6. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
8. While the Petitioner does have the assistance of a prison law clerk, he is not an attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the Court. Under Chapter 34.750 the Court may request an attorney to represent any

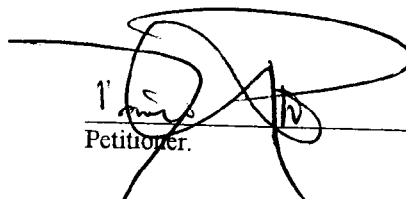
such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

III. CONCLUSION

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

Dated this 25 day of SEPTEMBER, 20 21

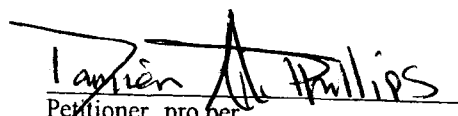


Petitioner.

VERIFICATION

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

Dated this 25 day of SEPTEMBER, 20 21



Petitioner, pro per.

CERTIFICATE OF SERVICE BY MAIL

I, DAMIAN A. PHILLIPS, hereby certify pursuant to N.R.C.P.
5(b), that on this 25 day of SEPTEMBER, of the year 2021, I mailed a true and
correct copy of the foregoing Motion for Leave to Proceed in Forma Pauperis; Affidavit in Support of
Motion for Leave to Proceed in Forma Pauperis; Motion for the Appointment of Counsel; and Request for
Evidentiary Hearing, addressed to:

CLERK OF COURT
Name

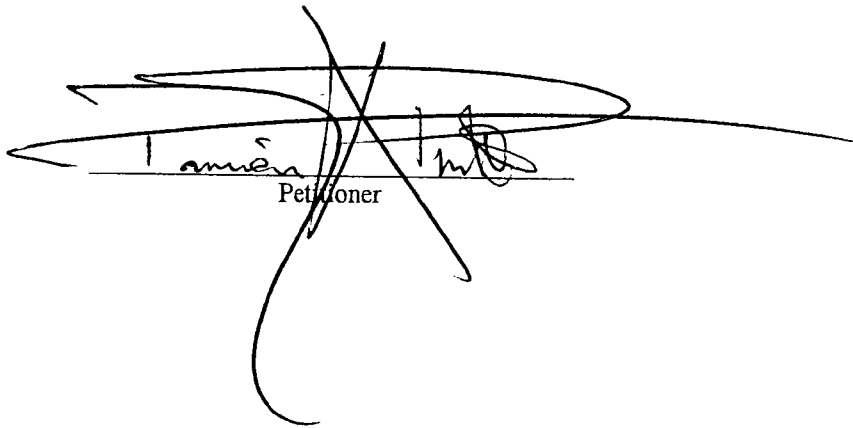
THE WARDEN
DISTRICT ATTORNEY
Name

ATTORNEY GENERAL
Name

200 LEWIS AVE
3RD FLOOR
LAS VEGAS, NV. 89155
Address

P.O. BOX 650
INDIAN SPRINGS
NV. 89070
Address

100 N. CARSON ST
CARSON CITY, NV. 89701
Address


Petitioner

1 Damien Phillips
1212760 In Propria Personam
2 Post Office Box 650 [HDSP]
3 Indian Springs, Nevada 89018

FILED
OCT 13 2021

John L. Phillips
CLERK OF COURT

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

8 Damien A. Phillips
9 Plaintiff

10 vs.

11 THE WARDEN, HDSP
12 Respondent

Case No. **A-21-831976-W**
Dept. 9
Dept No. _____
Docket _____

14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE, that** Damien Alexander
16 Phillips

17 will come on for hearing before the above-entitled Court on the ____ day of _____, 20____
18 at the hour of ____ o'clock ____ M. In Department ____, of said Court.

20 CC:FILE

22 DATED: this 25 day of SEPTEMBER, 2021

24 BY:

Damien A. Phillips
Damien A Phillips # 1212760
/In Propria Personam

26 **RECEIVED**

OCT 11 2021

CLERK OF THE COURT

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
481 - 487
WILL FOLLOW VIA
U.S. MAIL

Case No. . A-21-831976-W
Dept. No.. Dept. 9

FILED
OCT 13 2021

IN THE 8TH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF

John J. Phillips
CLERK OF COURT

DAMIAN A. PHILLIPS
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

THE WARDEN, HDSR
Respondent.

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: HIGH DESERT STATE PRISON
2. Name and location of court which entered the judgment of conviction under attack: CLARK COUNTY DISTRICT COURT
3. Date of judgment of conviction: MAY 6TH, 2020
4. Case number: C-18-335500-1
5. (a) Length of sentence: TWENTY FOUR TO EIGHTY YEARS

(b) If sentence is death, state any date upon which execution is scheduled:....

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes No ☒

If "yes," list crime, case number and sentence being served at this time:

7. Nature of offense involved in conviction being challenged:

8. What was your plea? (check one)

(a) Not guilty ☒

(b) Guilty

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury ☒

(b) Judge without a jury

11. Did you testify at the trial? Yes No ☒

12. Did you appeal from the judgment of conviction? Yes ☒ No

13. If you did appeal, answer the following:

(a) Name of court: NEVADA SUPREME COURT

(b) Case number or citation: 78270

(c) Result: AFFIRMED

(d) Date of result: APRIL 14TH, 2020

(Attach copy of order or decision, if available.)

1 14. If you did not appeal, explain briefly why you did not:

2
3
4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes No

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: CLARK COUNTY DISTRICT COURT

8 (2) Nature of proceeding: POST CONVICTION HABEAS PETITION

9
10 (3) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL

11
12
13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No X...

14 (5) Result: DENIED

15 (6) Date of result: ~~APR~~ AUGUST 21, 2021

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:
17

18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court:

20 (2) Nature of proceeding:

21 (3) Grounds raised:

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No

23 (5) Result:

24 (6) Date of result:

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:
26

27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list
28 them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes No X.....

Citation or date of decision:

(2) Second petition, application or motion? Yes No

Citation or date of decision:

(3) Third or subsequent petitions, applications or motions? Yes No

Citation or date of decision:

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

GROUND(S) WERE DISMISSED AS BARE AND NAKED CLAIMS. SO I GOT THE EVIDENCE AND RE-FILED.

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: FOURTH AMENDMENT VIOLATION

INEFFECTIVE ASSISTANCE OF COUNSEL FAILURE TO INVESTIGATE.

(b) The proceedings in which these grounds were raised: HABEAS PETITION POST

CONVICTION

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

CLAIMS WERE DENIED AS BARE AND NAKED SO I GOT THE SPECIFICS AND REFILED.

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

**PLEADING
CONTINUES
IN NEXT
VOLUME**