

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3
4 KEANDRE VALENTINE,)
5 Petitioner,)

6 vs.)

7)
8 THE EIGHTH JUDICIAL DISTRICT)
9 COURT OF THE STATE OF NEVADA,)
10 IN AND FOR THE COUNTY OF CLARK,)
11 AND THE HONORABLE JACQUELINE)
 BLUTH, DISTRICT JUDGE,)

12 Respondents,)

13 and)

14 THE STATE OF NEVADA,)

15 Real Party in Interest.)

16)
17)

18 **PETITIONER'S APPENDIX VOLUME I – PAGES 001-231**

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Case No.
(C-16-316081-1)

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MOT

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

KEANDRE VALENTINE,

Defendant,

CASE NO. C-16-316081-1

DEPT. NO. VI

DATE: May 3, 2022
TIME: 9:30 a.m.

**MOTION SEEKING AN ORDER GRANTING A NEW TRIAL BASED ON
VIOLATIONS OF DUE PROCESS, PROSECUTORIAL MISCONDUCT, AND THE
RIGHT TO A SPEEDY APPEAL AND/OR TRIAL**

COMES NOW, the Defendant, KEANDRE VALENTINE, by and through Deputy Public Defenders TYLER C. GASTON and SHARON G. DICKINSON, and asks this Court to order a new trial based on violations of due process, prosecutorial misconduct, and rights to a speedy appeal and/or trial.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 19th day of April, 2022.

By: /s/ Tyler C. Gaston
TYLER C. GASTON, #13488
Chief Deputy Public Defender

By: /s/ Sharon G. Dickinson
SHARON G. DICKINSON, #3710
Chief Deputy Public Defender

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1 POINTS AND AUTHORITIES

2 I. FACTS

3 On 06/29/16, the State filed an Indictment charging Keandre Valentine with 14 felony
4 counts involving crimes of robbery with use of a deadly weapon, attempt robbery with deadly
5 weapon, burglary while in possession of a firearm, possession of personal identifying
6 information, and possession of credit cards without consent.

7 Keandre's 10-day jury trial began on 07/24/17 and concluded on 08/04/17 with the jury
8 returning guilty verdicts on all counts.

9 On 09/28/17, District Court, Department II, sentenced Keandre to an aggregate term of
10 18 to 48 years. *Exhibit A: Judgment; Amended Judgment.*

11 Upon direct appeal, on 12/19/19, the Nevada Supreme Court reversed counts 4 and 9 and
12 remanded Keandre's case to District Court for an evidentiary hearing for the court to review his
13 fair cross-section challenge. *Exhibit B: Opinion.* The remittitur issued on 01/13/20. *Exhibit C:*
14 *Remittitur.*

15 Now, 04/18/22, more than two years after the issuance of the remittitur, the evidentiary
16 hearing on Keandre's fair cross-section challenge remains incomplete. *Exhibit D: Court docket.*

17 The District Court, Department VI, held a partial evidentiary hearing on 02/07/22 but has
18 yet to schedule a date for the completion of the hearing. *Exhibit E: Transcript of 02/02/22*
19 *hearing on file.* Defense counsels submitted available dates to the court for the hearing as
20 requested and have not received a hearing date. Thus, Keandre, a defendant whose convictions
21 were vacated by the Nevada Supreme Court on 12/19/19, is in custody without a pending court
22 date or a trial date.

23 Keandre's rights were further violated by the court's 02/07/22 discovery order. After
24 Keandre's expert testified on 02/07/22, the court ordered the Defense to use the master list given
25 to all parties from the jury commissioner to create a sub-list for the prosecutor to use during her
26 cross-examination of the expert. *See Exhibit E: pp.165-178.* The Defense followed the court's
27 directive but objected that it was being forced to give the prosecutor its work-product. *See*
28 *Exhibit F: Notice.*

ARGUMENT

A. Due Process violations and prosecutorial misconduct have denied Keandre the right to a fair evidentiary hearing.

At the close of the partial evidentiary hearing on 02/07/22, the court ordered the Defense to prepare, create, and deliver discovery to the prosecutor for the State to use during its cross-examination of Defense expert Jeffrey Martin.

The court's order arose from the prosecutor's request that Mr. Martin prepare a nuanced master list for her to use during her cross-examination of him. *Exhibit E, pp. 166-178*. The prosecutor did not want to rely on the master list she already had in her possession, the one compiled by the jury commissioner based on the information obtained in 2020. Instead, the prosecutor wanted Mr. Martin to give her a document or CD with the portions of the master list that he used in his analysis for 2017.

Mr. Gaston told the court: [W]e're not sending anything unless the Court specifically orders us to. There's no new list, there's no nothing. It's just his analysis [from the original master list which the prosecutor already has in her possession]. *Exhibit E: p. 165*.

The prosecutor, Ms. Botelho, responded: "What I'm really requesting – I understand there's not a list...But what I am saying is I don't even know the numbers...he's working all of this mathematical, you know, analysis on." *Exhibit E: p. 167*. Ms. Botelho said she needed Mr. Martin to prepare a list for her so she could "properly prepare for cross, I would like to get that as soon as possible." *Exhibit E: p. 168*.

Court overruled Keandre's objection to preparing discovery for the prosecutor and ordered that he deliver the information the prosecutor wanted by the end of the week. As such, Keandre was forced to provide the prosecutor with his work product so that she could use it against him during her cross-examination of Mr. Martin. *Exhibit E: pp. 168-9; 175-76*. Keandre submitted the information under protest.¹ *See Exhibit F*.

There are no rules regarding discovery for an evidentiary hearing but the discovery rules for trials are instructive.

¹ Keandre will bring a copy of the CDs to the court hearing for the court to file as a court exhibit under seal.

1 NRS 174.234(2) requires a defendant file an expert notice, 21 days before trial. The
2 written notice must contain:

- 3 (a) A brief statement regarding the subject matter on which the expert witness is
4 expected to testify and the substance of the testimony;
5 (b) A copy of the curriculum vitae of the expert witness; and
(c) A copy of all reports made by or at the direction of the expert witness.

6 The notice Keandre filed complied with NRS 174.234 (2).

7 The fact that Mr. Martin did not prepare a report is not uncommon. When an expert
8 testifies at trial, NRS 50.305 allows the expert to testify without preparing a written report and
9 without disclosing the underlying facts or data he/she relied on in making his opinion. NRS
10 50.305 states:

11 The expert may testify in terms of opinion or inference and give his or her reasons
12 therefor without prior disclosure of the underlying facts or data, unless the judge
13 requires otherwise. The expert may in any event be required to disclose the
underlying facts or data on cross-examination.

14 Keandre provided the prosecutor with the underlying facts or data that Mr. Martin relied on, as
15 obtained from the jury commissioner and DETR, prior to the hearing.

16 After Mr. Martin's direct examination, the court ordered Mr. Martin to create a new list,
17 consisting of the names he included when conducting his analysis, and directed the Defense to
18 give this information to the prosecutor. In so doing, the court ordered the Defense to provide the
19 State with work product to assist the prosecutor in her cross-examination of Mr. Martin.

20 NRS 174.245 prohibits the prosecutor from obtaining access to work product information
21 because it is privileged. The rationale behind the work product doctrine is to prohibit one party
22 from preparing his case by using the investigative work of his adversary when the same or
23 similar discovery is available through ordinary techniques. *Southern Bell Tel. & Tel. Co. v.*
24 *Deason*, 632 So.2d 1377, 1384 (Fla. 1994).

25 The United States Supreme Court identifies the work product doctrine as the framework
26 within the court system that allows an attorney to prepare his client's case without the fear that
27 the opposing party will intrude. *Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947). "[D]efense
28 counsel's selection and compilation of documents in preparation for pretrial discovery fall within

1 the highly-protected category of opinion work product.” *United States v. Horn*, 811 F.Supp. 739
2 (D.N.H. 1992), *rev'd in part*, 29 F.3d 754 (1st Cir. 1994). The work of an agent or an expert
3 hired by the party to assist in preparation of the case is also the attorney’s work product. *Skinner*
4 *v. State*, 532, 538 (Court of Criminal Appeals of Texas 1997).

5 The situation in this case is similar to what occurred in *Horn*. In *Horn*, the prosecutor
6 arranged for the defense attorneys and the defense expert to view over 10,000 documents of
7 discovery being held by a private company under contract with the government housed in a
8 Department of Justice Building. Unbeknownst to the defense, the prosecutor directed an
9 employee to make an extra copy of the documents that the defense and its expert requested be
10 copied when reviewing the discovery. The extra copy was for the prosecutor. When the defense
11 learned of the copying arrangement, they asked the prosecutor to stop and asked that all copies
12 be returned. The prosecutor refused.

13 After the defense filed a motion to seal the documents pending a court decision, the
14 prosecutor obtained the documents, reviewed them, and showed them to other prosecutors and
15 witnesses. The prosecutor also made copies of the documents despite a court’s order directing
16 the prosecutor not to do so.

17 The *Horn* court found the selectivity used by the defense in copying a few documents,
18 upon consultation with its expert, showed the defense attorney’s thought process and amounted
19 to work product. *Horn at 747*.

20 The same analysis as used in *Horn* applies in this case.

21 Here, the jury commissioner’s master list consists of thousands of entries much like the
22 *Horn* discovery consisted of 10,000 documents. Here, the defense expert went through the
23 thousands of entries and determined which ones would be eliminated or included in his analysis
24 – much like the expert did in *Horn* when selecting certain documents to be copied. In *Horn*, the
25 prosecutor was able to convince the private company to copy documents the defense wanted to
26 use and give her the copies. Here, the prosecutor asked, and the court ordered, the defense
27 expert reveal the names and entries he used, much like the prosecutor did in *Horn* by directing
28

1 the employee to copy documents. Upon review, the *Horn* Court found that the prosecutor
2 improperly obtained work product information.

3 This court should come to the same conclusion in this case.

4 Although the prosecutor in this case obtained a court order for the discovery, the
5 prosecutor lacked candor with the court when asking for the new list to be created. The
6 prosecutor could have hired an expert to review the jury commissioner's master list and answer
7 her questions. Instead, she chose to ask the court to direct the defense expert to provide her with
8 the information she felt she needed for her preparation.

9 The *Horn* Court further found serious prosecutorial misconduct based on the prosecutor's
10 lack of candor to the court, found actual prejudice to the defendants, and ordered sanctions. The
11 court should find the same in this instance because the prosecutor lack candor in her request and
12 the defendant is prejudiced because he needed to use his paid expert to create documents for the
13 State. As a sanction, the court should order a new trial.

14 Additionally, the court's order directing Keandre to create discovery violated his right to
15 due process at the evidentiary hearing because he was required to provide discovery for the State
16 to use against him during the cross-examination of his expert.

17 All parties had the underlying master list. Mr. Martin used the master list he obtained in
18 2020, as given to him by the jury commissioner, and formulated an opinion as to the composition
19 of the prospective jurors who would have been on the 2017 master list at the time of his trial. He
20 then further used this analysis to render an opinion that the list lacked minorities as represented
21 in the census figures. Accordingly, the CD Keandre gave to the prosecutor was part of Mr.
22 Martin's and Keandre's attorneys' thought process and analysis upon reviewing the master list
23 obtained in 2020 – it was work product.

24 **B. Unreasonable delay denied Keandra the right to a timely appeal and trial.**

25 Although Keandre's case is in the district court, it remains in appeal status because it was
26 remanded to the district court from the Nevada Supreme Court based on an issue arising on
27 direct appeal. If the district court holds the evidentiary hearing and rules against Keandre then
28 an amended judgment of conviction will be filed and the second appeal will begin.

1 Since the issuance of opinion on 12/19/19 and the remittitur on 01/13/20, the district
2 court minutes reflect numerous continuances based on several reasons.

- 3 • March of 2020 until March of 2021 – continuances due to difficulty obtaining
4 discovery from the Jury Commissioner: 02/20/20, 05/20/20, 11/09/20, 01/25/21,
5 02/16/21, 03/11/21.
- 6 • March of 2020 to September of 2021 – difficulty setting evidentiary hearing
7 because case was transferred to other courtrooms: 01/28/21, 09/07/21.
- 8 • March 21, 2021, to September 2021 – difficulty obtaining a hearing date:
9 03/21/21, 04/15/21, 09/02/21.
- 10 • September of 2021 to November 2021 - Matter taken off calendar by court:
11 09/16/21, 09/23/21, 10/05/21, 10/19/21, 11/04/21, 11/18/21, 11/23/21
- 12 • Although Department VI conducted a partial hearing on 02/07/22, a further
13 hearing has not been scheduled.

14 *See Exhibit D; Exhibit G: Court minutes; Exhibit H: Transcripts of court hearings - 05/20/20;*
15 *02/20/20; 11/09/20; 12/07/20; 01/25/21; 02/16/21; 02/16/21; 03/16/21; 04/15/21; 04/29/21;*
16 *07/29/21;08/03/21; 09/02/21;12/03/21; 12/28/21.*

17 An evidentiary hearing has only been set three times after the discovery issues were
18 resolved in March of 2021. The first evidentiary hearing was set for 09/10/21 but needed to be
19 continued because Defense Counsel was in trial. Judge Holthus was unable to reschedule the
20 evidentiary hearing in November because the Chief Judge transferred Keandre's case to
21 Department VI. At the second evidentiary hearing date on 12/03/21, after much argument, the
22 court granted the State a continuance. The next date for the hearing was 02/07/22. The
23 evidentiary hearing has not been completed at this time and we have yet to be given a court date
24 to continue the hearing.

25 Nevada recognizes the right to a speedy appellate process. *Rawson v. Ninth Judicial*
26 *Dist. Court in & for County of Douglas*, 133 Nev. 309, 314, 396 P.3d 842, 846 (2017) (A right to
27 an appeal is generally an “adequate and speedy legal remedy” that precludes [pre-trial] writ
28 relief”). The Nevada Supreme Court will reverse a conviction based on a violation of due

1 process if the delay in the appellate process results in severe prejudice. *Bergendahl v. Davis*, 102
2 Nev. 258, 259-60, 720 P.2d 694, 694-95 (1986)(due process violated due to a delay in the filing
3 of the JOC and missing transcript resulting in a seven year delay)

4 Due process requires an appellate system that works quickly so individual appellants are
5 not imprisoned for substantial periods without an adequate opportunity to challenge their
6 convictions. Peter D. Marshall, *A Comparative Analysis of the Right to Appeal*, 22 Duke J.
7 Comp. & Int'l L. 1, 44 (2011). "[I]f an appeal is allowed, appellate delay risks prejudicing the
8 fairness of any retrial that is ordered." *Id.*

9 Although there is no specific guideline for a violation of due process based on a delay in
10 the appellate process in the Nevada statutes, due process violations have been recognized for a
11 delay in a parole or probation hearing. *Morrissey v. Brewer*, 408 U.S. 471, 485 (1972) (due
12 process requires a prompt hearing for a parole-revocation case); *Gagnon v. Scarpelli*, 411 U.S.
13 778, 782 (1973) (defendant entitled to prompt hearing for probation violation); also see *Anaya v.*
14 *State*, 96 Nev. 119 (1980). Accordingly, the same protections of promptness should apply to a
15 defendant being held in custody from a remand back from the Nevada Supreme Court for an
16 evidentiary hearing. The only remedy available at this point would be for the court to order a
17 new trial because holding the hearing would only further delay the appellate process.

18 Nevada also recognizes a defendant's constitutional right to a speedy trial as discussed in
19 *Barker v. Wingo*, 407 U.S. 514 (1972) and *Doggett v. U.S.*, 505 U.S. 647 (1992). The four
20 factors the court examines when deciding if the Sixth Amendment right to a speedy trial has been
21 violated are: (1) the length of the delay; (2) who is responsible for the delay; (3) whether the
22 defendant asserted his right to a speedy trial; and (4) the prejudice to the defendant.

23 More than two years have passed since the Nevada Supreme Court ordered an evidentiary
24 hearing and an evidentiary hearing has not been completed. On 03/16/21, Keandre requested a
25 trial date be set, State objected, and court denied his request. *Exhibit H:03/16/21*. Thus, the
26 delay has been significant and Keandre asserted his right to a speedy trial as soon as the
27 discovery issues were resolved.

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1 It is important to note that much of the delay in holding the hearing was due to the Eighth
2 Judicial District Court's jury commissioner delay in giving Keandre the discovery he requested.
3 Keandre began requesting discovery in March of 2020, had to file a motion to compel discovery
4 in January of 2021, and then had to litigate further when the jury commissioner objected to the
5 order to compel. Also, the Eighth Judicial Court's Chief Judge transferred his case three times
6 thereby making the setting of a hearing date difficult. And Department VI took the case off
7 calendar numerous times.

8 Keandre is prejudiced because he remains in custody without a court date. He is losing
9 valuable credits that he could be obtaining if the court had denied his motion for a new trial and
10 placed him in the prison system. On the other hand, he is also losing valuable time needed to
11 prepare for a new trial if the court were to find that the State violated his right under the fair
12 cross-section provision of the United States Constitution.

13 **CONCLUSION**

14 Based on the above, Keandre asks this court to order him a new trial.

15 DATED this 19th day of April, 2022.

16 DARIN F. IMLAY DARIN F. IMLAY
17 CLARK COUNTY PUBLIC DEFENDER CLARK COUNTY PUBLIC DEFENDER

18 By: /s/Tyler C. Gaston
19 TYLER C. GASTON, #13488
20 Deputy Public Defender

By: /s/Sharon G. Dickinson
SHARON G. DICKINSON, #3710
Deputy Public Defender

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Exhibit A

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Steven D. Oriesen

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C-16-316081-1

-vs-

KEANDRE VALENTINE
#5090875

DEPT. NO. II

Defendant.

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165, COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060, COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165, COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165, COUNT 5 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 7 - ROBBERY WITH USE OF

1 A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165;
2 COUNT 8 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B
3 Felony) in violation of NRS 200.380, 193.330, 193.165; COUNT 9 - ROBBERY WITH
4 USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380,
5 193.165; COUNT 10 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON
6 (Category B Felony) in violation of NRS 205.060; COUNT 11 - ROBBERY WITH USE
7 OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165;
8 COUNT 12 - POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING
9 INFORMATION (Category E Felony) in violation of NRS 205.465; COUNT 13 -
10 POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT
11 (Category D Felony) in violation of NRS 205.690 and COUNT 14 - POSSESSION OF
12 CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D
13 Felony) in violation of NRS 205.690; and the matter having been tried before a jury and
14 the Defendant having been found guilty of the crimes of COUNT 1 - ROBBERY WITH
15 USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380,
16 193.165, COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON
17 (Category B Felony) in violation of NRS 205.060, COUNT 3 - ROBBERY WITH USE
18 OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165;
19 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in
20 violation of NRS 200.380, 193.165, COUNT 5 - BURGLARY WHILE IN POSSESSION
21 OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 6 -
22 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of
23 NRS 200.380, 193.165; COUNT 7 - ROBBERY WITH USE OF A DEADLY WEAPON
24 (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 8 - ATTEMPT

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1 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of
2 NRS 200.380, 193.330, 193.165; COUNT 9 - ROBBERY WITH USE OF A DEADLY
3 WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 10 -
4 BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony)
5 in violation of NRS 205.060; COUNT 11 - ROBBERY WITH USE OF A DEADLY
6 WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 12 -
7 POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION
8 (Category E Felony) In violation of NRS 205.465; COUNT 13 - POSSESSION OF
9 CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D
10 Felony) in violation of NRS 205.690 and COUNT 14 - POSSESSION OF CREDIT OR
11 DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D Felony) in violation
12 of NRS 205.690; thereafter, on the 28th day of September, 2017, the Defendant was
13 present in court for sentencing with counsel Tegan Machnich, Deputy Public Defender,
14 and good cause appearing.

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18 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
19 addition to the \$25.00 Administrative Assessment Fee, \$1,000.00 Restitution and
20 \$150.00 DNA Analysis Fee including testing to determine genetic markers plus \$3.00
21 DNA Collection Fee, the Defendant is SENTENCED to the Nevada Department of
22 Corrections (NDC) as follows: COUNT 1 - a MAXIMUM of FIVE (5) YEARS with a
23 MINIMUM Parole Eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE
24 (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly
25 Weapon, total 3-8 years; COUNT 2 - a MAXIMUM of EIGHT (8) YEARS with a
26 MINIMUM parole eligibility of THREE (3) YEARS, to run CONCURRENT with COUNT
27 1; and COUNT 3 - a MAXIMUM of FIVE (5) YEARS with a MINIMUM Parole Eligibility
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1 of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS with a
2 MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, to run
3 CONSECUTIVE to Count 1, total 3-8 years; **COUNT 4** - a MAXIMUM of FIVE (5)
4 YEARS with a MINIMUM Parole Eligibility of TWO (2) YEARS, plus a CONSECUTIVE
5 term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the
6 Use of a Deadly Weapon, to run CONSECUTIVE to Count 1 and 3, total 3-8 years;
7 **COUNT 5** - a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility of
8 THREE (3) YEARS, to run CONCURRENT with Counts 1, 2, 3 and 4; **COUNT 6** - a
9 MAXIMUM of FIVE (5) YEARS with a MINIMUM Parole Eligibility of TWO (2) YEARS,
10 plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of
11 ONE (1) YEAR for the Use of a Deadly Weapon, to run CONSECUTIVE to Count 1, 3
12 and 4, total 3-8 years; **COUNT 7** - a MAXIMUM of FIVE (5) YEARS with a MINIMUM
13 Parole Eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS
14 with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, to
15 run CONSECUTIVE to Counts 1, 3, 4, and 6; total 3-8 years; **COUNT 8** - a MAXIMUM
16 of EIGHT (8) YEARS with a MINIMUM parole eligibility of THREE (3) YEARS, to run
17 CONCURRENT with Counts 1, 2, 3, 4, 5, 6 and 7; **COUNT 9** - a MAXIMUM of FIVE (5)
18 YEARS with a MINIMUM Parole Eligibility of TWO (2) YEARS, plus a CONSECUTIVE
19 term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the
20 Use of a Deadly Weapon, to run CONSECUTIVE to Count 1, 3, 4, 6 AND 7, total 3-8
21 years; **COUNT 10** a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility
22 of THREE (3) YEARS, to run CONCURRENT with Counts 1, 2, 3, 4, 5, 6, 7, 8 and 9;
23 **COUNT 11** - a MAXIMUM of FIVE (5) YEARS with a MINIMUM Parole Eligibility of
24 TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM
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1 parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, total 3-8 years, to
2 run CONCURRENT with Counts 1, 3, 4, 6 7, 8, 9 and 10.; **COUNT 12** – a MAXIMUM
3 OF THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR, to run
4 concurrent WITH Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11; **COUNT 13** - a MAXIMUM
5 OF THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR, to run
6 concurrent WITH Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; **COUNT 14** - a
7 MAXIMUM OF THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR,
8 to run concurrent WITH Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 11, 12 and 13; with FOUR
9 HUNDRED AND EIGHTY-NINE (489) DAYS credit for time served. The AGGREGATE
10 TOTAL sentence is FORTY-EIGHT (48) YEARS MAXIMUM with a MINIMUM PAROLE
11 ELIGIBILITY OF EIGHTEEN (18) YEARS.
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14 DATED this 16th day of October, 2017
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RICHARD SCOTTI
DISTRICT COURT JUDGE

Steven D. Grierson

1 AJOC

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

KEANDRE VALENTINE
#5090875

Defendant.

CASE NO. C-16-316081-1

DEPT. NO. II

AMENDED JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165, COUNT 2 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060, COUNT 3 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165, COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165, COUNT 5 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS

1 200.380, 193.165; COUNT 7 - ROBBERY WITH USE OF A DEADLY WEAPON (Category
2 B Felony) in violation of NRS 200.380, 193.165; COUNT 8 - ATTEMPT ROBBERY WITH
3 USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.330,
4 193.165; COUNT 9 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony)
5 in violation of NRS 200.380, 193.165; COUNT 10 - BURGLARY WHILE IN POSSESSION
6 OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 11 -
7 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS
8 200.380, 193.165; COUNT 12 - POSSESSION OF DOCUMENT OR PERSONAL
9 IDENTIFYING INFORMATION (Category E Felony) in violation of NRS 205.465; COUNT
10 13 - POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S
11 CONSENT (Category D Felony) in violation of NRS 205.690 and COUNT 14 - POSSESSION
12 OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D
13 Felony) in violation of NRS 205.690; and the matter having been tried before a jury and the
14 Defendant having been found guilty of the crimes of COUNT 1 - ROBBERY WITH USE OF
15 A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165, COUNT 2
16 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in
17 violation of NRS 205.060, COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON
18 (Category B Felony) in violation of NRS 200.380, 193.165, COUNT 4 - ROBBERY WITH
19 USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165,
20 COUNT 5 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B
21 Felony) in violation of NRS 205.060; COUNT 6 - ROBBERY WITH USE OF A DEADLY
22 WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 7 - ROBBERY
23 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380,
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1 193.165; COUNT 8 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON
2 (Category B Felony) in violation of NRS 200.380, 193.330, 193.165; COUNT 9 - ROBBERY
3 WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380,
4 193.165; COUNT 10 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (
5 Category B Felony) in violation of NRS 205.060; COUNT 11 - ROBBERY WITH USE OF A
6 DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 12 -
7 POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION (Category
8 E Felony) in violation of NRS 205.465; COUNT 13 - POSSESSION OF CREDIT OR DEBIT
9 CARD WITHOUT CARDHOLDER'S CONSENT (Category D Felony) in violation of NRS
10 205.690 and COUNT 14 - POSSESSION OF CREDIT OR DEBIT CARD WITHOUT
11 CARDHOLDER'S CONSENT (Category D Felony) in violation of NRS 205.690; thereafter,
12 on the 28th day of September, 2017, the Defendant was present in court for sentencing with
13 counsel Tegan Machnich, Deputy Public Defender, and good cause appearing.
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17 THE DEFENDANT WAS ADJUDGED guilty of said offenses and, in addition to the
18 \$25.00 Administrative Assessment Fee, \$1,000.00 Restitution and \$150.00 DNA Analysis Fee
19 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant
20 SENTENCED to the Nevada Department of Corrections (NDC) as follows: COUNT 1 - a
21 MAXIMUM of FIVE (5) YEARS with a MINIMUM Parole Eligibility of TWO (2) YEARS,
22 plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of
23 ONE (1) YEAR for the Use of a Deadly Weapon, total 3-8 years; COUNT 2 - a MAXIMUM of
24 EIGHT (8) YEARS with a MINIMUM parole eligibility of THREE (3) YEARS, to run
25 CONCURRENT with COUNT 1; and COUNT 3 - a MAXIMUM of FIVE (5) YEARS with a
26 MINIMUM Parole Eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3)
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1 YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly
2 Weapon, to run CONSECUTIVE to Count 1, total 3-8 years; COUNT 4 - a MAXIMUM of
3 FIVE (5) YEARS with a MINIMUM Parole Eligibility of TWO (2) YEARS, plus a
4 CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1)
5 YEAR for the Use of a Deadly Weapon, to run CONSECUTIVE to Count 1 and 3, total 3-8
6 years; COUNT 5 - a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility
7 of THREE (3) YEARS, to run CONCURRENT with Counts 1, 2, 3 and 4; COUNT 6 - a
8 MAXIMUM of FIVE (5) YEARS with a MINIMUM Parole Eligibility of TWO (2) YEARS.
9 plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of
10 ONE (1) YEAR for the Use of a Deadly Weapon, to run CONSECUTIVE to Count 1, 3 and 4,
11 total 3-8 years; COUNT 7 - a MAXIMUM of FIVE (5) YEARS with a MINIMUM Parole
12 Eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS with a
13 MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, to run
14 CONSECUTIVE to Counts 1, 3, 4, and 6; total 3-8 years; COUNT 8 - a MAXIMUM of
15 EIGHT (8) YEARS with a MINIMUM parole eligibility of THREE (3) YEARS, to run
16 CONCURRENT with Counts 1, 2, 3, 4, 5, 6 and 7; COUNT 9 - a MAXIMUM of FIVE (5)
17 YEARS with a MINIMUM Parole Eligibility of TWO (2) YEARS, plus a CONSECUTIVE
18 term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use
19 of a Deadly Weapon, to run CONSECUTIVE to Count 1, 3, 4, 6 AND 7, total 3-8 years;
20 COUNT 10 a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility of
21 THREE (3) YEARS, to run CONCURRENT with Counts 1, 2, 3, 4, 5, 6, 7, 8 and 9; COUNT
22 11 - a MAXIMUM of FIVE (5) YEARS with a MINIMUM Parole Eligibility of TWO (2)
23 YEARS, plus a CONCURRENT term of THREE (3) YEARS with a MINIMUM parole
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1 eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, total 3-8 years, to run
2 CONCURRENT with Counts 1, 3, 4, 6 7, 8, 9 and 10; **COUNT 12** - a MAXIMUM OF
3 THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR, to run concurrent
4 WITH Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11; **COUNT 13** - a MAXIMUM OF THREE (3)
5 YEARS with a MINIMUM parole eligibility of ONE (1) YEAR, to run concurrent WITH
6 Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; **COUNT 14** - a MAXIMUM OF THREE (3)
7 YEARS with a MINIMUM parole eligibility of ONE (1) YEAR, to run concurrent WITH
8 Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 11, 12 and 13; with FOUR HUNDRED AND EIGHTY-NINE
9 (489) DAYS credit for time served. The AGGREGATE TOTAL sentence is FORTY-EIGHT
10 (48) YEARS MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF EIGHTEEN (18)
11 YEARS.
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14 THEREAFTER, upon inquiry of the Nevada Department of Corrections, the Amended
15 Judgment of Conviction reflects the following: **COUNT 11** - a MAXIMUM of FIVE (5)
16 YEARS with a MINIMUM Parole Eligibility of TWO (2) YEARS, plus a **CONCURRENT**
17 term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use
18 of a Deadly Weapon, total 3-8 years, to run CONCURRENT with Counts 1, 3, 4, 6 7, 8, 9 and
19 10.
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21 DATED this 16th day of ~~October~~, 2019.
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25 RICHARD SCOTTI
26 DISTRICT COURT JUDGE
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Exhibit B

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135 Nev., Advance Opinion 62
IN THE SUPREME COURT OF THE STATE OF NEVADA

KEANDRE VALENTINE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74468

FILED

DEC 19 2000

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

Appeal from a judgment of conviction, pursuant to a jury verdict, of seven counts of robbery with the use of a deadly weapon, three counts of burglary while in possession of a deadly weapon, two counts of possession of credit or debit card without cardholder's consent, and one count each of attempted robbery with the use of a deadly weapon and possession of document or personal identifying information for the purpose of establishing a false status or identity. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Vacated and remanded.

Darin F. Imlay, Public Defender, and Sharon G. Dickinson, Deputy Public Defender, Clark County,
for Appellant.

Aaron D. Ford, Attorney General, Carson City; Steven B. Wolfson, District Attorney, Krista D. Barrie, Chief Deputy District Attorney, and Michael R. Dickerson, Deputy District Attorney, Clark County,
for Respondent.

BEFORE HARDESTY, STIGLICH and SILVER, JJ.

OPINION

By the Court, STIGLICH, J.:

A defendant has the right to a jury chosen from a fair cross section of the community, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. This court has addressed the showing a defendant must make to establish a prima facie violation of this right. We have said little, however, about when an evidentiary hearing may be warranted on a fair-cross-section claim. Faced with that issue in this case, we hold that an evidentiary hearing is warranted on a fair-cross-section challenge when a defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation of the fair-cross-section requirement. Because the defendant in this matter made specific factual allegations that could be sufficient to establish a prima facie violation of the fair-cross-section requirement and those allegations were not disproved, the district court abused its discretion by denying Valentine's request for an evidentiary hearing. None of Valentine's other claims warrant a new trial. We therefore vacate the judgment of conviction and remand for further proceedings as to the fair-cross-section challenge.

BACKGROUND

Appellant Keandre Valentine was convicted by a jury of multiple crimes stemming from a series of five armed robberies in Las Vegas, Nevada. Before trial, Valentine objected to the 45-person venire and claimed a violation of his right to a jury selected from a fair cross section of the community. He argued that two distinctive groups in the community—African Americans and Hispanics—were not fairly and reasonably represented in the venire when compared with their representation in the community. Valentine asserted that the underrepresentation was caused by systematic exclusion, proffering two theories as to how the system used

in Clark County excludes distinctive groups. His first theory was that the system did not enforce jury summonses; his second theory was that the system sent out an equal number of summonses to citizens located in each postal ZIP code without ascertaining the percentage of the population in each ZIP code. Valentine requested an evidentiary hearing, which was denied. The district court found that the two groups were distinctive groups in the community and that one group—Hispanics—was not fairly and reasonably represented in the venire when compared to its representation in the community. However, the district court found that the underrepresentation was not due to systematic exclusion, relying on the jury commissioner's testimony regarding the jury selection process two years earlier in another case and on this court's resolution of fair-cross-section claims in various unpublished decisions. The court thus denied the constitutional challenge.

DISCUSSION

Fair-cross-section challenge warranted an evidentiary hearing

Valentine claims the district court committed structural error by denying his fair-cross-section challenge without conducting an evidentiary hearing. We review the district court's denial of Valentine's request for an evidentiary hearing for an abuse of discretion. *See Berry v. State*, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015) (reviewing denial of request for an evidentiary hearing on a postconviction petition for a writ of habeas corpus); *accord United States v. Schafer*, 625 F.3d 629, 635 (9th Cir. 2010) (reviewing denial of request for an evidentiary hearing on a motion to dismiss an indictment); *United States v. Terry*, 60 F.3d 1541, 1544 n.2 (11th Cir. 1995) (reviewing denial of request for an evidentiary hearing on fair-cross-section challenge to statute exempting police officers from jury service).

"Both the Fourteenth and the Sixth Amendments to the United States Constitution guarantee a defendant the right to a trial before a jury selected from a representative cross-section of the community." *Evans v. State*, 112 Nev. 1172, 1186, 926 P.2d 265, 274 (1996). While this right does not require that the jury "mirror the community and reflect the various distinctive groups in the population," it does require "that the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof." *Id.* at 1186, 926 P.2d at 274-75 (internal quotation marks omitted). "Thus, as long as the jury selection process is designed to select jurors from a fair cross section of the community, then random variations that produce venires without a specific class of persons or with an abundance of that class are permissible." *Williams v. State*, 121 Nev. 934, 940, 125 P.3d 627, 631 (2005).

A defendant alleging a violation of the right to a jury selected from a fair cross section of the community must first establish a prima facie violation of the right by showing

(1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

Evans, 112 Nev. at 1186, 926 P.2d at 275 (quoting *Duren v. Missouri*, 439 U.S. 357, 364 (1979)). To determine "[w]hether a certain percentage is a fair representation of a group," this court uses "the absolute and comparative disparity between the actual percentage in the venire and the percentage of the group in the community." *Williams*, 121 Nev. at 940 n.9,

125 P.3d at 631 n.9. And to determine whether systematic exclusion has been shown, we consider if the underrepresentation of a distinctive group is "inherent in the particular jury-selection process utilized." *Evans*, 112 Nev. at 1186-87, 926 P.2d at 275 (internal quotation marks omitted). Only after a defendant demonstrates a prima facie violation of the right does "the burden shift[] to the government to show that the disparity is justified by a significant state interest." *Id.* at 1187, 926 P.2d at 275.

Here, Valentine asserted that African Americans and Hispanics were not fairly and reasonably represented in the venire. Both African Americans and Hispanics are recognized as distinctive groups. *See id.*; see also *United States v. Esquivel*, 88 F.3d 722, 726 (9th Cir. 1996). And the district court correctly used the absolute and comparative disparity between the percentage of each distinct group in the venire and the percentage in the community to determine that African Americans were fairly and reasonably represented in the venire but that Hispanics were not. *See Williams*, 121 Nev. at 940 n.9, 125 P.3d at 631 n.9 ("Comparative disparities over 50% indicate that the representation of [a distinct group] is likely not fair and reasonable."). The district court denied Valentine's challenge as to Hispanics based on the third prong—systematic exclusion.

We conclude the district court abused its discretion in denying Valentine's request for an evidentiary hearing. Although this court has not articulated the circumstances in which a district court should hold an evidentiary hearing when presented with a fair-cross-section challenge, it has done so in other contexts. For example, this court has held that an evidentiary hearing is warranted on a postconviction petition for a writ of habeas corpus when the petitioner has "assert[ed] claims supported by specific factual allegations [that are] not belied by the record [and] that, if true, would entitle him to relief." *Mann v. State*, 118 Nev. 351, 354, 46 P.3d

1228, 1230 (2002); see also *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Most of those circumstances are similarly relevant when deciding whether an evidentiary hearing is warranted on a defendant's fair-cross-section challenge, given the defendant's burden of demonstrating a prima facie violation. In particular, it makes no sense to hold an evidentiary hearing if the defendant makes only general allegations that are not sufficient to demonstrate a prima facie violation or if the defendant's specific allegations are not sufficient to demonstrate a prima facie violation as a matter of law. See *Terry*, 60 F.3d at 1544 n.2 (explaining that no evidentiary hearing is warranted on a fair-cross-section challenge if no set of facts could be developed that "would be significant legally"). But unlike the postconviction context where the claims are case specific, a fair-cross-section challenge is focused on systematic exclusion and therefore is not case specific. Because of that systematic focus, it makes little sense to require an evidentiary hearing on a fair-cross-section challenge that has been disproved in another case absent a showing that the record in the prior case is not complete or reliable.¹ With these considerations in mind, we hold that an evidentiary hearing is warranted on a fair-cross-section challenge when a defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation of the fair-cross-section requirement.²

¹For the reasons stated herein, it was error for the district court to rely upon the jury commissioner's prior testimony in denying Valentine's challenge. That is not to say a district court may never rely upon prior testimony when appropriate.

²We note that, in order to meet the burden of demonstrating an evidentiary hearing is warranted, a defendant may subpoena supporting

Applying that standard, we conclude that Valentine was entitled to an evidentiary hearing as to his allegation of systematic exclusion of Hispanics. Valentine did more than make a general assertion of systematic exclusion. In particular, Valentine made specific allegations that the system used to select jurors in the Eighth Judicial District Court sends an equal number of jury summonses to each postal ZIP code in the jurisdiction without ascertaining the percentage of the population in each ZIP code. Those allegations, if true, could establish underrepresentation of a distinctive group based on systematic exclusion. *Cf. Garcia-Dorantes v. Warren*, 801 F.3d 584, 591-96 (6th Cir. 2015) (discussing a prima facie case of systematic exclusion where a computer used a list to determine the percentage of jurors per ZIP code, but because of a glitch, the list included a higher number of persons from certain ZIP codes that had smaller proportions of African Americans than the community at large). And those allegations were not addressed in the jury commissioner's prior testimony that the district court referenced.³ Accordingly, the district court could not

documents and present supporting affidavits. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

³Even if the jury commissioner's previous testimony addressed Valentine's specific allegations of systematic exclusion, reliance on the old testimony would have been misplaced. In particular, the prior testimony mentioned that the system was "moving towards a new improved jury selection process" and legislative amendments regarding the juror selection process were implemented close in time to Valentine's trial. *See* 2017 Nev. Stat., ch. 549, §§ 1-5, at 3880-84. While prior testimony relevant to a particular fair-cross-section challenge may obviate the need for an evidentiary hearing, a district court should be mindful that it not rely upon stale evidence in resolving such challenges.

rely on the prior testimony to resolve Valentine's allegations of systematic exclusion. Having alleged specific facts that could establish the underrepresentation of Hispanics as inherent in the jury selection process, Valentine was entitled to an evidentiary hearing.⁴ Accordingly, the district court abused its discretion by denying Valentine's request for an evidentiary hearing.⁵ We therefore vacate the judgment of conviction and remand to the district court for an evidentiary hearing. *Cf. State v. Ruscetta*, 123 Nev. 299, 304-05, 163 P.3d 451, 455 (2007) (vacating judgment of conviction and remanding where district court failed to make factual findings regarding motion to suppress and where record was insufficient for appellate review). Thereafter, Valentine's fair-cross-section challenge should proceed in the manner outlined in *Evans*, 112 Nev. at 1186-87, 926 P.2d at 275. If the district court determines that the challenge lacks merit, it may reinstate the judgment of conviction, except as provided below.

Sufficiency of the evidence

Valentine argues the State presented insufficient evidence to support his convictions for robbery with the use of a deadly weapon in counts 4 and 9. In considering a claim of insufficient evidence, we "view[] the evidence in the light most favorable to the prosecution" to determine

⁴It is unclear that Valentine's allegations regarding the enforcement of jury summonses would, if true, tend to establish underrepresentation as a result of systematic exclusion. See *United States v. Orange*, 447 F.3d 792, 800 (10th Cir. 2006) ("Discrepancies resulting from the private choices of potential jurors do not represent the kind of constitutional infirmity contemplated by *Duren*."). Accordingly, he was not entitled to an evidentiary hearing as to those allegations.

⁵We reject Valentine's contention that the district court's failure to hold an evidentiary hearing evinced judicial bias resulting in structural error.

whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

NRS 200.380(1) defines the crime of robbery as

[T]he unlawful taking of personal property from the person of another, or in the person's presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person or property, or the person or property of a member of his or her family, or of anyone in his or her company at the time of the robbery.⁶

Additionally, we have held that the State must show that the victim had possession of or a possessory interest in the property taken. *See Phillips v. State*, 99 Nev. 693, 695-96, 669 P.2d 706, 707 (1983).

The challenged robbery counts stem from a similar fact pattern. Beginning with count 4, Valentine was charged with robbing Deborah Faulkner of money; Valentine was also charged with robbing Darrell Faulkner, Deborah's husband, of money in count 3. Valentine was convicted of both counts. However, when viewed in a light most favorable to the prosecution, the evidence produced at trial was insufficient to support a robbery charge as it related to Deborah. While the evidence established that Valentine took \$100 that Darrell removed from his own wallet, the evidence demonstrated that Valentine demanded Deborah to empty her

⁶The Legislature amended NRS 200.380, effective October 1, 2019. 2019 Nev. Stat., ch. 76, § 1, at 408. While the amendments do not affect our analysis in this matter, we have quoted the pre-amendment version of NRS 200.380 that was in effect at the time of the events underlying this appeal. 1995 Nev. Stat., ch. 443, § 60, at 1187.

purse onto the ground but actually took nothing from it. There was no evidence that Deborah had possession of, or a possessory interest in, the money from Darrell's wallet.⁷ Thus, the State presented insufficient evidence for count 4, and the conviction for that count cannot be sustained.

Similarly, in count 9, Valentine was charged with robbing Lazaro Bravo-Torres of a wallet and cellular telephone; Valentine was also charged with robbing Rosa Vasquez-Ramirez, Lazaro's wife, of a purse, wallet, and/or cellular telephone in count 11. Valentine was convicted of both counts. Yet viewing the evidence in a light most favorable to the prosecution, the evidence did not establish that Valentine robbed Lazaro. Specifically, Lazaro testified that he told Valentine he did not have cash or a wallet on him and that his phone, located in the center compartment of the truck, was not taken but was used by the couple after the incident was over. Conversely, Rosa testified that Valentine took her purse along with the items in it. The evidence presented by the State did not establish that Lazaro had possession of, or a possessory interest in, the items taken,⁸ and thus the conviction for count 9 cannot be sustained.

Prosecutorial misconduct regarding DNA evidence

Valentine contends that the State engaged in prosecutorial misconduct during closing argument when discussing the deoxyribonucleic acid (DNA) evidence. In considering a claim of prosecutorial misconduct,

⁷We are unconvinced by the State's argument that the singular fact of Darrell and Deborah being married, without more, demonstrated that the money in Darrell's wallet was community property of the marriage such that Deborah had a possessory interest in it. See NRS 47.230(3).

⁸We again reject the State's argument that the mere fact that Lazaro and Rosa were married demonstrated that Lazaro had a possessory interest in Rosa's purse or the items therein. See *id.*

we determine whether the conduct was improper and, if so, whether the improper conduct merits reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008).

During the trial, the State presented an expert witness to testify about the DNA results from a swab of the firearm found in the apartment where Valentine was discovered. The expert testified generally about the procedures her laboratory uses for DNA analysis. She explained that samples are tested at the same 15 locations, or loci, on the DNA molecule and a DNA profile results from the alleles, or numbers, obtained from each of the 15 locations.⁹ When complete information from each of the 15 locations is obtained, the result is a full DNA profile; anything less produces a partial DNA profile. The results of the DNA testing process appear as peaks on a graph, and it is those peaks that the expert interprets and uses to make her determinations. In considering the information on a graph, the expert indicated that her laboratory uses a threshold of 200—anything over 200 is usable information, while anything below 200 is not used “because it’s usually not reproducible dat[a],” meaning if the sample was tested again, “it’s so low that [she] might get that same information, [she] might not.”¹⁰ The expert maintained that sometimes DNA information is obtained “but it’s not good enough for us to make any determinations on. So in that case we call it inconclusive.”

⁹The expert added that her laboratory also looks at an additional location, the amelogenin, in order to determine the gender of the individual represented in the sample.

¹⁰The expert also testified that anything below 40 indicated that there was no actual DNA profile. She explained that her laboratory uses the thresholds “to make sure that when we say that there is a good, usable DNA profile, that it’s actually a good, useable DNA profile.”

As to the results of the swab from the firearm, the expert testified that she "did not obtain a useable profile, so there was no comparison made." She stated that the laboratory thresholds were not met and thus "the profile was inconclusive." The only conclusion the expert was able to make was that the partial DNA profile obtained from the firearm swab was consistent with a mixture of at least two persons and that at least one of the persons was male.

During the expert's testimony, the State offered three exhibits: one was a summary, side-by-side comparative table of the DNA information collected from the firearm swab and from Valentine; and two were graphs of the specific information collected from the firearm swab and Valentine, both graphs showing peaks of information alongside a scale indicating the laboratory's threshold limits. Valentine objected to the admission of the graphs, arguing that they could be confusing to the jury, that the jurors should not be drawing their own conclusions from the graphs, and that he did not want the jurors to think they could discern something from the graphs that the expert could not. The district court overruled Valentine's objection, finding the graphs relevant to the expert's methodology and reliability.¹¹

Regarding the summary, side-by-side table, the expert testified that every tested location of the firearm swab, save for the location used to

¹¹Valentine argues the district court abused its discretion in admitting the graphs. We cannot say the admission of the graphs to show methodology and reliability was an abuse of discretion. But while the graphs may have been relevant for such purposes, the manner in which the information was used by the State, as discussed below, strongly undermined the district court's reasoning for admitting the evidence. See NRS 47.110 (discussing the limited admissibility of evidence and, upon request, the need for an instruction to restrict the jury's consideration to the proper scope).

determine gender, resulted in either an "NR," meaning no DNA profile was obtained from that particular location, or an asterisk, indicating information was present but "it was so low that [she was] not even going to do any comparisons or say anything."

Regarding the graphs, the State went through the tested locations of the firearm swab and, while continuously commenting that the results were below the laboratory's 200 threshold, asked the expert to identify the alleles for which there were peaks of information. In going through the peaks of information from the firearm swab, the State also intermittently mentioned the corresponding locations and, ostensibly matching, alleles found in Valentine's DNA profile. During cross-examination, the expert repeated the 200 threshold and explained that she does not look at information below that threshold, even if it is close, because it could be incorrect. Valentine asked the expert if she had anything she wanted to add in response to the State's line of questioning regarding each of the locations tested, and the expert reiterated the following:

[T]he profile [from the firearm swab] was inconclusive, and we call it inconclusive because there wasn't enough DNA. . . . [A]nd we call that inconclusive . . . because if I re-ran that exact same sample, I don't know what kind of results I would come up with. It may be the same, it may be different. So that's why we're not saying that the DNA profile definitely came from the defendant, because it's inconclusive to me.

. . . .

[The thresholds] exist for a reason.

. . . .

Because we don't want to present information that may not be correct or overemphasize something, you know, saying yes, this person is there, when it may not be true because our data is

not supporting that it's a strong DNA profile. So we want to be sure when we say there's a match, that it is, in fact, a match.

We don't want to make the wrong conclusions on the item that we're looking at.

....

Despite the expert's testimony, the State pointed to the two graphs and argued that the jurors could assess for themselves whether Valentine's DNA profile matched the DNA profile from the firearm swap. During closing argument, the State made the following comments:

You heard about the DNA evidence in this case. Now, the scientist came in. She told you she could not make any results. The results that she had for the swab of the gun were below the threshold. But we went through every single one. *And that's something you need to also take a look at when you go back there, just to see what you think for yourself.* When we went through and looked at the items *below the 200 threshold*, but above the 40 threshold *this is what we found.* We found that the swab of the handgun revealed a 12 and a 13 allele. Mr. Valentine, a 12 and a 13 allele. The swab also [had] a 28 allele on the next [location]. A 28 allele on that same [location] for Mr. Valentine.

(Emphases added.) Valentine objected and argued that the State's own expert said that such a comparison was improper. The district court overruled the objection, finding the prosecutor was merely arguing that some weight should be given to the evidence and stating it was up to the jury to decide the weight to give the evidence. The State continued:

[I]t's worth taking into consideration. You are here for two weeks. Look at all the evidence. This is part of the evidence. You heard that under each [location] there is a number of alleles. And here, though, yeah, maybe the threshold is under 200,

there's something here. But just consider for yourself.

Next, we have the [location] on the swab of the handgun, 15 and 16. Mr. Valentine also at 15 and 16. Next [location] at 7; Mr. Valentine also at 7. Next [location] at 12 and 13; Mr. Valentine also at 12 and 13. So on and so forth, *matching*.

....

Ladies and gentlemen, it's just worth considering. Take a look at it. *See what you think. Make your own determination.*¹²

(Emphases added.)

Without reservation, we conclude the prosecutor's closing argument was improper. "[A] prosecutor may argue inferences from the evidence and offer conclusions on contested issues" during closing argument, but "[a] prosecutor may not argue facts or inferences not supported by the evidence." *Miller v. State*, 121 Nev. 92, 100, 110 P.3d 53, 59 (2005) (internal quotation marks omitted). Here, the State presented an

¹²In his closing argument, Valentine attempted to rebut the State's presentation of the evidence:

The DNA analysis, she seemed to really know her stuff. State's expert. They put her on. What did she testify to? Well, she testified to a lot with the State and she looked extremely uncomfortable, which was clarified on cross that, a lot of this, well, the peaks, there's a little bit of peak that sort of matches him. She was very uncomfortable about that because as she said on cross, that's not how it works. It's not reliable under a certain level. They can't say inside—for scientific certainty that it's even possible. It's even plausible, because they might get totally different results if they run it again. That's why she was uncomfortable testifying to that.

expert witness to testify as to the DNA results obtained from the swab of the firearm. See *United States v. McCluskey*, 954 F. Supp. 2d 1224, 1253 (D.N.M. 2013) (“[J]urors can understand and evaluate many types of evidence, but DNA evidence is different and a prerequisite to its admission is technical testimony from experts to show that correct scientific procedures were followed.” (internal quotation marks omitted)). The purpose of expert testimony “is to provide the trier of fact [with] a resource for ascertaining truth in relevant areas outside the ken of ordinary laity.” *Townsend v. State*, 103 Nev. 113, 117, 734 P.2d 705, 708 (1987); see also NRS 50.275 (“If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert . . . may testify to matters within the scope of such knowledge.”). But after presenting its expert to testify about a subject outside the ordinary range of knowledge for jurors, the State disregarded that testimony and invited the jury to make inferences that the expert testified were not supported by the DNA evidence. The State asked the jury to consider evidence about which the expert was emphatic she could make no conclusions, save for her overall conclusion that the evidence was consistent with a mixture of at least two persons, at least one of whom was male. The State then asked the jury to compare the unusable profile to Valentine’s DNA profile. This is precisely what the expert said she could not do because it would be unreliable. See *Hallmark v. Eldridge*, 124 Nev. 492, 500, 189 P.3d 646, 651 (2008) (holding that expert witness “testimony will assist the trier of fact only when it is relevant and the product of reliable methodology” (footnote omitted)). No evidence was introduced, statistical or otherwise, regarding the significance or meaning of the data that fell below the 200 threshold. To the contrary, the only evidence presented was that such information produced an unusable profile and was not considered

by the expert. It is hard to imagine what weight could be ascribed to evidence that was described only as inconclusive, unusable, and incomparable. Rather, the State's use of the expert's testimony can better be viewed as taking advantage of the "great emphasis" or the "status of mythic infallibility" that juries place on DNA evidence. *People v. Marks*, 374 P.3d 518, 525 (Colo. App. 2015) (internal quotation marks omitted). Simply put, the prosecution argued facts not in evidence and inferences not supported by the evidence. This was improper.

We nevertheless conclude that the improper argument would not warrant reversal of Valentine's convictions because it did not substantially affect the jury's verdict. *See Valdez*, 124 Nev. at 1188-89, 196 P.3d at 476. There was evidence presented that Valentine handled the gun and multiple victims identified Valentine as the perpetrator. Thus, the error was harmless, and Valentine is not entitled to a new trial based on the prosecutorial misconduct.¹³

CONCLUSION

The district court abused its discretion in denying Valentine's request for an evidentiary hearing on his fair-cross-section challenge. We therefore vacate the judgment of conviction and remand for the district court to conduct an evidentiary hearing and resolve the fair-cross-section challenge. None of Valentine's other arguments require a new trial. Accordingly, if the district court determines on remand that the fair-cross-section challenge lacks merit, it may reinstate the judgment of conviction

¹³We have considered Valentine's remaining contentions of error and conclude no additional relief is warranted.

except as to the convictions for counts 4 and 9, which were not supported by sufficient evidence.¹⁴

Stiglich, J.
Stiglich

We concur:

Hardesty, J.
Hardesty

Silver, J.
Silver

¹⁴This opinion constitutes our final disposition of this appeal. Any future appeal following remand shall be docketed as a new matter.

Exhibit C

000042

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEANDRE VALENTINE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 74468
District Court Case No. C316081

FILED
JAN 21 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: January 13, 2020

Elizabeth A. Brown, Clerk of Court

By: Monique Mercier
Administrative Assistant

cc (without enclosures):

Hon. Richard Scotti, District Judge
Clark County Public Defender
Clark County District Attorney \ Alexander G. Chen, Chief Deputy District
Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JAN 16 2020

[Signature]
Deputy District Court Clerk

RECEIVED
JAN 21 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

RECEIVED
APPEALS

JAN 16 2020

CLERK OF THE COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEANDRE VALENTINE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 74468
District Court Case No. C316081

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"Vacated and remanded."

Judgment, as quoted above, entered this 19th day of December, 2019.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
January 13, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Monique Mercier
Administrative Assistant

Exhibit D

000045

REGISTER OF ACTIONSCASE No. C-16-316081-1

State of Nevada vs Keandre Valentine

Case Type: Felony/Gross Misdemeanor

Date Filed: 06/29/2016

Location: Department 6

Cross-Reference Case Number: C318081

Defendant's Scope ID #: 5090875

Grand Jury Case Number: 16AGJ046X

ITAG Case ID: 2248106

Supreme Court No.: 74468

PARTY INFORMATION

Defendant Valentine, Keandre

Lead Attorneys
Public Defender
Retained
702-455-4685(W)

Plaintiff State of Nevada

Steven B Wolfson
702-671-2700(W)**CHARGE INFORMATION****Charges: Valentine, Keandre**

Charges: Valentine, Keandre	Statute	Level	Date
1. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	Felony	05/28/2016
2. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON	205.060.4	Felony	05/28/2016
3. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	Felony	05/28/2016
4. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	Felony	05/28/2016
5. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON	205.060.4	Felony	05/28/2016
6. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	Felony	05/28/2016
7. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	Felony	05/28/2016
8. ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON	200.380	Felony	05/28/2016
9. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	Felony	05/28/2016
10. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON	205.060.4	Felony	05/28/2016
11. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	Felony	05/28/2016
12. POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION	205.465.4	Felony	05/28/2016
13. POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT	205.690	Felony	05/28/2016
14. POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT	205.690	Felony	05/28/2016

EVENTS & ORDERS OF THE COURT**DISPOSITIONS**

07/07/2016 Plea (Judicial Officer: Scotti, Richard F.)

1. ROBBERY WITH USE OF A DEADLY WEAPON
Not Guilty
2. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON
Not Guilty
3. ROBBERY WITH USE OF A DEADLY WEAPON
Not Guilty
4. ROBBERY WITH USE OF A DEADLY WEAPON
Not Guilty
5. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON
Not Guilty
6. ROBBERY WITH USE OF A DEADLY WEAPON
Not Guilty
7. ROBBERY WITH USE OF A DEADLY WEAPON
Not Guilty
8. ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON
Not Guilty
9. ROBBERY WITH USE OF A DEADLY WEAPON
Not Guilty
10. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON
Not Guilty
11. ROBBERY WITH USE OF A DEADLY WEAPON
Not Guilty
12. POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION
Not Guilty
13. POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT
Not Guilty

000046

	14. POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT Not Guilty
09/28/2017	Disposition (Judicial Officer: Scotti, Richard F.) 1. ROBBERY WITH USE OF A DEADLY WEAPON Guilty 2. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON Guilty 3. ROBBERY WITH USE OF A DEADLY WEAPON Guilty 4. ROBBERY WITH USE OF A DEADLY WEAPON Guilty 5. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON Guilty 6. ROBBERY WITH USE OF A DEADLY WEAPON Guilty 7. ROBBERY WITH USE OF A DEADLY WEAPON Guilty 8. ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON Guilty 9. ROBBERY WITH USE OF A DEADLY WEAPON Guilty 10. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON Guilty 11. ROBBERY WITH USE OF A DEADLY WEAPON Guilty 12. POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION Guilty 13. POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT Guilty 14. POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT Guilty
09/28/2017	Sentence (Judicial Officer: Scotti, Richard F.) 1. ROBBERY WITH USE OF A DEADLY WEAPON Sentenced to Nevada Dept. of Corrections Term: Minimum:2 Years, Maximum:5 Years Consecutive Enhancement:Use of Deadly Weapon, Minimum:1 Year, Maximum:3 Years
09/28/2017	Sentence (Judicial Officer: Scotti, Richard F.) 2. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON Sentenced to Nevada Dept. of Corrections Term: Minimum:3 Years, Maximum:8 Years Concurrent: Charge 1
09/28/2017	Sentence (Judicial Officer: Scotti, Richard F.) 3. ROBBERY WITH USE OF A DEADLY WEAPON Sentenced to Nevada Dept. of Corrections Term: Minimum:2 Years, Maximum:5 Years Consecutive Enhancement:Use of Deadly Weapon, Minimum:1 Year, Maximum:3 Years Consecutive: Charge 1
09/28/2017	Sentence (Judicial Officer: Scotti, Richard F.) 4. ROBBERY WITH USE OF A DEADLY WEAPON Sentenced to Nevada Dept. of Corrections Term: Minimum:2 Years, Maximum:5 Years Consecutive Enhancement:Use of Deadly Weapon, Minimum:1 Year, Maximum:3 Years Consecutive: Charge 1 & 3
09/28/2017	Sentence (Judicial Officer: Scotti, Richard F.) 5. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON Sentenced to Nevada Dept. of Corrections Term: Minimum:3 Years, Maximum:8 Years Concurrent: Charge 1,2,3, & 4
09/28/2017	Sentence (Judicial Officer: Scotti, Richard F.) 6. ROBBERY WITH USE OF A DEADLY WEAPON Sentenced to Nevada Dept. of Corrections Term: Minimum:2 Years, Maximum:5 Years Consecutive Enhancement:Use of Deadly Weapon, Minimum:1 Year, Maximum:3 Years Consecutive: Charge 1,3,4
09/28/2017	Sentence (Judicial Officer: Scotti, Richard F.) 7. ROBBERY WITH USE OF A DEADLY WEAPON Sentenced to Nevada Dept. of Corrections Term: Minimum:2 Years, Maximum:5 Years Consecutive Enhancement:Use of Deadly Weapon, Minimum:1 Year, Maximum:3 Years Consecutive: Charge 1,3,4,8
09/28/2017	Sentence (Judicial Officer: Scotti, Richard F.) 8. ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON Sentenced to Nevada Dept. of Corrections Term: Minimum:3 Years, Maximum:8 Years Concurrent: Charge 1,2,3,4,5,6,7

000047

09/28/2017 **Sentence** (Judicial Officer: Scotti, Richard F.)
9. ROBBERY WITH USE OF A DEADLY WEAPON
Sentenced to Nevada Dept. of Corrections
Term: Minimum:2 Years, Maximum:5 Years
Consecutive Enhancement:Use of Deadly Weapon, Minimum:1 Year, Maximum:3 Years
Consecutive: Charge 1,3,4,6,7

09/28/2017 **Sentence** (Judicial Officer: Scotti, Richard F.)
10. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON
Sentenced to Nevada Dept. of Corrections
Term: Minimum:3 Years, Maximum:8 Years
Concurrent: Charge 1,2,3,4,5,6,7,8,9

09/28/2017 **Sentence** (Judicial Officer: Scotti, Richard F.)
11. ROBBERY WITH USE OF A DEADLY WEAPON
Sentenced to Nevada Dept. of Corrections
Term: Minimum:2 Years, Maximum:5 Years
Consecutive Enhancement:Use of Deadly Weapon, Minimum:1 Year, Maximum:3 Years
Concurrent: Charge 1,2,3,4,5,6,7,8,9,10

09/28/2017 **Sentence** (Judicial Officer: Scotti, Richard F.)
12. POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION
Sentenced to Nevada Dept. of Corrections
Term: Minimum:1 Year, Maximum:3 Years
Concurrent: Charge 1,2,3,4,5,6,7,8,9,10,11

09/28/2017 **Sentence** (Judicial Officer: Scotti, Richard F.)
13. POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT
Sentenced to Nevada Dept. of Corrections
Term: Minimum:1 Year, Maximum:3 Years
Concurrent: Charge 1,2,3,4,5,6,7,8,9,10,11,12

09/28/2017 **Sentence** (Judicial Officer: Scotti, Richard F.)
14. POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT
Sentenced to Nevada Dept. of Corrections
Term: Minimum:1 Year, Maximum:3 Years
Concurrent: Charge 1,2,3,4,5,6,7,8,9,10,11,12,13
Credit for Time Served: 489 Days
Other Fees
Fee Totals:

Administrative	
Assessment Fee \$25	\$25.00
DNA Analysis Fee \$150	\$150.00
Genetic Marker	\$3.00
Analysis AA Fee \$3	
Fee Totals \$	\$178.00

10/23/2019 **Amended Sentence** (Judicial Officer: Scotti, Richard F.) Reason: Amended
11. ROBBERY WITH USE OF A DEADLY WEAPON
Sentenced to Nevada Dept. of Corrections
Term: Minimum:2 Years, Maximum:5 Years
Concurrent: Charge 1,2,3,4,5,6,7,8,9,10
Comments: plus a CONCURRENT term of THREE (3) YEARS with a minimum parole eligibility of ONE (1) YEARS for the Use of a Deadly Weapon

OTHER EVENTS AND HEARINGS

06/29/2016 **Grand Jury Indictment** (11:45 AM) (Judicial Officer Barker, David)
Parties Present
Minutes
Result: Matter Heard

06/29/2016 **Warrant** Doc ID# 1
[1] Indictment Warrant; Warrant for Arrest

06/29/2016 **Indictment** Doc ID# 2
[2]

06/30/2016 **Indictment Warrant Return** Doc ID# 3
[3]

07/07/2016 **Initial Arraignment** (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Result: Plea Entered

07/07/2016 **Indictment Warrant Return** (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Result: Matter Heard

07/07/2016 **All Pending Motions** (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Minutes
Result: Matter Heard

07/11/2016 **Media Request and Order** Doc ID# 4
[4] Media Request And Order Allowing Camera Access To Court Proceedings

07/14/2016 **Transcript of Proceedings** Doc ID# 5
[5] Reporter's Transcript of Proceedings, Grand Jury Hearing, June 28, 2016

07/28/2016 **Notice of Witnesses and/or Expert Witnesses** Doc ID# 6
[6] Notice of Witnesses and/or Expert Witnesses

08/12/2016 **Notice of Witnesses and/or Expert Witnesses** Doc ID# 7
[7] Supplemental Notice of Witnesses and/or Expert Witnesses

08/19/2016 **Motion for Discovery** Doc ID# 8

000048

08/29/2016 [8] Motion For Production Of Discovery
Opposition Doc ID# 9

09/01/2016 [9] State's Response to Defendant's Motion for Production of Discovery
Calendar Call (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Result: Matter Heard

09/01/2016 Motion for Discovery (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Defendant's Motion for Production of Discovery
Minutes
Result: Matter Heard

09/01/2016 All Pending Motions (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Minutes
Result: Matter Heard

09/06/2016 CANCELED Jury Trial (10:00 AM) (Judicial Officer Scotti, Richard F.)
Vacated - per Judge

09/20/2016 Notice of Witnesses and/or Expert Witnesses Doc ID# 10
[10] Second Supplemental Notice of Witnesses and/or Expert Witnesses [NRS 174.234]

09/26/2016 Motion Doc ID# 11
[11] Motion For Setting Of Reasonable Bail

10/03/2016 Opposition Doc ID# 12
[12] State's Opposition to Defendant's Motion for Setting of Reasonable Bail

10/04/2016 Motion to Set Bail (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Defendant's Motion for Setting of Reasonable Bail
Minutes
Result: Granted

01/26/2017 Notice of Witnesses and/or Expert Witnesses Doc ID# 13
[13] Third Supplemental Notice of Witnesses and/or Expert Witnesses [NRS 174.234]

01/27/2017 Notice Doc ID# 14
[14] Notice of Intent to Seek Punishment as a Habitual Criminal

02/08/2017 Motion Doc ID# 15
[15] Notice of Motion and Motion Outlining State's Discovery Compliance

02/16/2017 Calendar Call (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Minutes
Result: Matter Heard

02/21/2017 CANCELED Jury Trial (1:00 PM) (Judicial Officer Herndon, Douglas W.)
Vacated - per Judge

02/21/2017 Motion (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Motion Outlining State's Discovery Compliance
Result: Granted

02/21/2017 Status Check: Trial Setting (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Result: Matter Heard

02/21/2017 All Pending Motions (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Minutes
Result: Matter Heard

06/06/2017 Request (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Defendant's Request Re: Stipulated Status Check - Trial Setting
Parties Present
Minutes
Result: Matter Heard

06/06/2017 Receipt of Copy Doc ID# 16
[16] List of Discovery Items Provided to Defense

06/30/2017 Notice of Expert Witnesses Doc ID# 17
[17] Defendant's Notice of Expert Witnesses, Pursuant to NRS 174.234(2)

07/07/2017 Motion Doc ID# 18
[18] Notice of Motion and Motion to Exclude Eyewitness Expert Testimony

07/13/2017 Notice Doc ID# 19
[19] Defendant's Notice Of Witnesses, Pursuant To NRS 174.234

07/14/2017 Notice Doc ID# 20
[20] Defendant's Notice Of Alibi Witness

07/14/2017 Supplemental Doc ID# 21
[21] Defendant's Supplemental Notice of Expert Witnesses, Pursuant to NRS 173.234(2)

07/17/2017 Opposition to Motion Doc ID# 22
[22] Opposition to State's Motion to Strike Defendant's Supplemental Notice of Expert Witness

07/17/2017 Notice Doc ID# 23
[23] Defendant's Notice of Non-Opposition to State's Motion to Compel Reciprocal Discovery

07/18/2017 Opposition Doc ID# 24
[24] Opposition To State's Motion To Strike Alibi Notice

07/18/2017 Notice of Motion Doc ID# 25
[26] Notice of Motion and Motion to Compel Reciprocal Discovery Procedural History

07/18/2017 Notice of Motion Doc ID# 27
[27] Notice of Motion and Motion to Strike Alibi

07/18/2017 Notice of Motion Doc ID# 28
[28] Notice of Motion and Motion to Strike Defendant's Supplemental Notice of Expert Witnesses

07/19/2017 Opposition Doc ID# 25
[25] Opposition To State's Motion To Exclude Eye-Witness Expert Testimony

07/20/2017 Calendar Call (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Parties Present
Result: Matter Heard

07/20/2017 Motion to Exclude (9:00 AM) (Judicial Officer Herndon, Douglas W.)
07/20/2017, 07/21/2017, 07/24/2017
State's Motion to Exclude Eyewitness Expert Testimony

000049

07/20/2017 Result: Continued
All Pending Motions (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Parties Present
Minutes

07/21/2017 Result: Matter Heard
Motion (8:30 AM) (Judicial Officer Gonzalez, Elizabeth)
07/21/2017, 07/24/2017
State's Motion to Strike Alibi Notice
08/03/2017 Reset by Court to 07/21/2017

07/21/2017 Result: Matter Continued
Motion (8:30 AM) (Judicial Officer Gonzalez, Elizabeth)
07/21/2017, 07/24/2017
State's Motion to Strike Defendants Supplemental Notice of Expert Witness

07/21/2017 Result: Matter Continued
Overflow (8:30 AM) (Judicial Officer Gonzalez, Elizabeth)
OVERFLOW (3) A. LEXIS, M.DICKERSON/T. MACHNICH, 10-15 WITNESSES, 5 DAYS

07/21/2017 Result: Trial Date Set
All Pending Motions (8:30 AM) (Judicial Officer Gonzalez, Elizabeth)
Parties Present
Minutes

07/24/2017 Result: Matter Heard
CANCELED Jury Trial (10:00 AM) (Judicial Officer Herndon, Douglas W.)
Vacated - per Judge

07/24/2017 Jury Trial (10:00 AM) (Judicial Officer Scotti, Richard F.)
07/24/2017, 07/25/2017, 07/26/2017, 07/27/2017, 07/28/2017, 07/31/2017, 08/01/2017, 08/02/2017, 08/03/2017, 08/04/2017
Parties Present
Minutes

07/24/2017 Result: Trial Continues
All Pending Motions (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Parties Present
Minutes

07/24/2017 Result: Matter Heard
Notice of Witnesses and/or Expert Witnesses Doc ID# 29
[29] Notice of Rebuttal Alibi Witnesses [NRS 174.234]

07/25/2017 Jury List Doc ID# 31
[31]

07/28/2017 Amended Jury List Doc ID# 35
[35]

07/31/2017 Motion in Limine Doc ID# 30
[30] State's Motion in Limine to Limit Testimony of Dr. Steven Smith

08/03/2017 CANCELED Motion to Compel (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Vacated - per Judge
Notice of Motion and Motion to Compel Reciprocal Discovery Procedural History

08/03/2017 Amended Jury List Doc ID# 32
[32] Second Amended Jury List

08/04/2017 Instructions to the Jury Doc ID# 33
[33]

08/04/2017 Verdict Doc ID# 34
[34]

08/21/2017 Case Reassigned to Department 18
Criminal Case Reassignment to Judge Mark B. Ballus

09/07/2017 PSI Doc ID# 36
[36]

09/18/2017 Minute Order (3:00 AM) (Judicial Officer Herndon, Douglas W.)
Minutes

09/19/2017 Result: Matter Heard
Notice of Department Reassignment Doc ID# 37
[37] Notice of Department Reassignment

09/20/2017 Notice of Department Reassignment Doc ID# 38
[38] Amended Notice of Department Reassignment

09/21/2017 CANCELED Sentencing (9:00 AM) (Judicial Officer Ballus, Mark B)
Vacated - per Judge

09/21/2017 Sentencing (11:00 AM) (Judicial Officer Scotti, Richard F.)
09/21/2017, 09/28/2017
Parties Present
Minutes

10/16/2017 Result: Continued
Judgment of Conviction Doc ID# 39
[39] Judgment of Conviction (Jury Trial)

11/06/2017 Notice of Appeal (Criminal) Doc ID# 40
[40] Notice of Appeal

11/06/2017 Case Appeal Statement Doc ID# 41
[41] Case Appeal Statement

11/30/2017 Request Doc ID# 42
[42] Appellant's Request for Certified Transcript of Proceedings

12/01/2017 Ex Parte Doc ID# 43
[43] Ex Parte Motion and Order for Release of Evidence

12/06/2017 Recorders Transcript of Hearing Doc ID# 44

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[44] Recorder's Transcript of Proceedings Initial Arraignment and Indictment Warrant Return
12/06/2017 Recorders Transcript of Hearing Doc ID# 45

[45] Recorder's Transcript of Proceedings Calendar Call and Defendant's Motion for Production of Discovery
12/08/2017 Recorders Transcript of Hearing Doc ID# 46

[46] Recorder's Transcript of Proceedings Defendant's Motion for Setting of Reasonable Bail
12/06/2017 Recorders Transcript of Hearing Doc ID# 47

[47] Recorder's Transcript of Proceedings Calendar Call
12/06/2017 Recorders Transcript of Hearing Doc ID# 48

[48] Recorder's Transcript of Proceedings Motion Outlining State's Discovery Compliance and Status Check: Trial Setting
12/06/2017 Recorders Transcript of Hearing Doc ID# 49

[49] Recorder's Transcript of Proceedings Defendant's Request Re: Stipulated Status Check - Trial Setting
12/06/2017 Recorders Transcript of Hearing Doc ID# 50

[50] Recorder's Transcript of Proceedings State's Motion to Exclude Eyewitness Expert Testimony and Calendar Call
12/06/2017 Recorders Transcript of Hearing Doc ID# 51

[51] Recorder's Transcript of Proceedings State's Motion to Exclude Eyewitness Expert Testimony, State's Motion to Strike Alibi Notice, and State's Motion to Strike Defendant's Supplemental Notice of Expert Witness
12/06/2017 Recorders Transcript of Hearing Doc ID# 52

[52] Recorder's Transcript of Hearing Re: Grand Jury Return
12/08/2017 Ex Parte Doc ID# 53

[53] Ex Parte Motion and Order for Release of Evidence
12/14/2017 Recorders Transcript of Hearing Doc ID# 54

[54] Recorder's Transcript of Hearing - Sentencing
12/14/2017 Transcript of Proceedings Doc ID# 55

[55] Rough Draft Transcript of Proceedings: State's Motion to Exclude Eyewitness Expert Testimony, State's Motion to Strike Alibi Notice and State's Motion to Strike Defendant's Supplemental Notice of Expert Witnesses, Overflow
01/29/2018 Recorders Transcript of Hearing Doc ID# 56

[56] Recorders Transcript of Hearing Re: Jury Trial - Day 1
01/29/2018 Recorders Transcript of Hearing Doc ID# 57

[57] Recorders Transcript of Hearing Re: Jury Trial - Day 2
01/29/2018 Recorders Transcript of Hearing Doc ID# 58

[58] Recorders Transcript of Hearing Re: Jury Trial - Day 3
01/29/2018 Recorders Transcript of Hearing Doc ID# 59

[59] Recorders Transcript of Hearing Re: Jury Trial - Day 4
01/29/2018 Recorders Transcript of Hearing Doc ID# 60

[60] Recorders Transcript of Hearing Re: Jury Trial - Day 5
01/29/2018 Recorders Transcript of Hearing Doc ID# 61

[61] Recorders Transcript of Hearing Re: Jury Trial - Day 6
01/29/2018 Recorders Transcript of Hearing Doc ID# 62

[62] Recorders Transcript of Hearing Re: Jury Trial - Day 7
01/29/2018 Recorders Transcript of Hearing Doc ID# 63

[63] Recorders Transcript of Hearing Re: Jury Trial - Day 8
01/29/2018 Recorders Transcript of Hearing Doc ID# 64

[64] Recorders Transcript of Hearing Re: Jury Trial - Day 9
01/29/2018 Recorders Transcript of Hearing Doc ID# 65

[65] Recorders Transcript of Hearing Re: Jury Trial - Day 10
03/19/2018 Ex Parte Doc ID# 66

[66] Ex Parte Motion and Order for Release of Evidence
06/14/2018 Motion Doc ID# 67

[67] Defendant's Motion to Reconstruct the Record
07/02/2018 Motion (9:00 AM) (Judicial Officer Scotti, Richard F.)
Defendant's Motion to Reconstruct the Record
Parties Present
Minutes
Result: Granted

07/05/2018 Ex Parte Order Doc ID# 68

[68] Ex Parte Order for Expedited Transcript
07/10/2018 Notice Doc ID# 69

[69] Notice of Court Exhibits Added to the Trial Record
07/11/2018 Recorders Transcript of Hearing Doc ID# 70

[70] Recorders Transcript of Hearing Re: Defendant's Motion to Reconstruct the Record
07/25/2018 Order Doc ID# 71

[71] Order
10/23/2019 Minute Order (10:00 AM) (Judicial Officer Scotti, Richard F.)
Minutes
Result: Minute Order - No Hearing Held

11/20/2019 Amended Judgment of Conviction Doc ID# 72

[72] Amended Judgment of Conviction (Jury Trial)
12/23/2019 CANCELED Minute Order (10:00 AM) (Judicial Officer Scotti, Richard F.)
Vacated - per Judge

01/16/2020 NV Supreme Court Clerks Certificate/Judgment -Remanded Doc ID# 73

[73] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Vacated and Remand
02/05/2020 Status Check (3:00 AM) (Judicial Officer Scotti, Richard F.)
ISC - Remittitur
Minutes
01/22/2020 Reset by Court to 02/05/2020
Result: Matter Heard

02/07/2020 Order Doc ID# 74

[74] Notice of Hearing
02/07/2020 Order to Transport Defendant Doc ID# 75

[75] Order to Transport
02/20/2020 Status Check (8:30 AM) (Judicial Officer Scotti, Richard F.)

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Parties Present
Minutes
Result: Hearing Set
03/18/2020 **CANCELED Status Check** (9:00 AM) (Judicial Officer Scotti, Richard F.)
Vacated
Status Check: Evidentiary Hearing
04/23/2020 **Stipulation and Order** Doc ID# 76
[76] Stipulation and Order to Continue Hearing
04/29/2020 **CANCELED Status Check** (10:00 AM) (Judicial Officer Scotti, Richard F.)
Vacated - per Stipulation and Order
Status Check: Evidentiary Hearing
05/20/2020 **Status Check** (10:00 AM) (Judicial Officer Scotti, Richard F.)
Parties Present
Minutes
Result: Hearing Set
10/28/2020 **Motion to Continue** Doc ID# 77
[77] Motion to Continue Evidentiary Hearing
10/28/2020 **Clerk's Notice of Hearing** Doc ID# 78
[78] Notice of Hearing
10/29/2020 **Motion** Doc ID# 79
[79] Motion For Bail
11/04/2020 **Audiovisual Transmission Equipment Appearance Request** Doc ID# 80
[80] Audiovisual Transmission Equipment Appearance Request
11/06/2020 **Opposition** Doc ID# 81
[81] State's Opposition to Defendant's Motion for Bail
11/06/2020 **Response** Doc ID# 82
[82] State's Response to Defendant's Motion to Continue
11/09/2020 **Motion to Continue** (10:30 AM) (Judicial Officer Thompson, Charles)
Defendant's Motion to Continue Evidentiary Hearing
Result: Granted
11/09/2020 **Motion to Set Bail** (10:30 AM) (Judicial Officer Thompson, Charles)
Defendant's Motion For Bail
Result: Continued
11/09/2020 **All Pending Motions** (10:30 AM) (Judicial Officer Thompson, Charles)
Parties Present
Minutes
Result: Matter Heard
11/18/2020 **Notice of Hearing** Doc ID# 83
[83] Notice of Hearing
11/19/2020 **Notice of Hearing** Doc ID# 84
[84] Notice of Hearing
11/19/2020 **Order** Doc ID# 85
[85] Order to Produce Defendant for Bluejeans Hearing
12/07/2020 **Motion to Set Bail** (8:30 AM) (Judicial Officer Scotti, Richard F.)
Defendant's Motion to Set Bail
Parties Present
Minutes
Result: Motion Granted
01/04/2021 **Case Reassigned to Department 19**
Judicial Reassignment to Judge Crystal Eller
01/12/2021 **CANCELED Evidentiary Hearing** (10:00 AM) (Judicial Officer Scotti, Richard F.)
Vacated - per Law Clerk
08/12/2020 Reset by Court to 11/17/2020
11/17/2020 Reset by Court to 01/12/2021
01/12/2021 **Notice of Hearing** Doc ID# 86
[86] Notice of Hearing
01/13/2021 **Motion** Doc ID# 87
[87] Motion for Court Order To Produce Documents and Information
01/18/2021 **Clerk's Notice of Hearing** Doc ID# 88
[88] Notice of Hearing
01/20/2021 **Memorandum** Doc ID# 89
[89] Blue Jeans Hearing Information for Department 19
01/25/2021 **Motion for Order** (2:30 PM) (Judicial Officer Eller, Crystal)
Defendant's Motion for Court Order to Produce Documents
Parties Present
Minutes
Result: Granted
01/27/2021 **Order** Doc ID# 90
[90] ORDER GRANTING DEFENDANT'S MOTION TO COMPEL JURY COMMISSIONER TO PROVIDE DOCUMENTS AND INFORMATION
01/28/2021 **Minute Order** (7:00 AM) (Judicial Officer Jones, Tierra)
Minutes
Result: Minute Order - No Hearing Held
01/28/2021 **Notice of Department Reassignment** Doc ID# 91
[91] Notice of Department Reassignment
02/01/2021 **Motion for Clarification** Doc ID# 92
[92] Motion for Clarification of Order
02/03/2021 **Clerk's Notice of Hearing** Doc ID# 93
[93] Notice of Hearing

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02/11/2021 **Response** Doc ID# 94
[94] Response to Motion for Clarification of Order

02/12/2021 **Reply in Support** Doc ID# 95
[95] Reply in Support of Motion for Clarification of Order

02/16/2021 **Motion** (11:00 AM) (Judicial Officer Holthus, Mary Kay)
Motion for Clarification of Order
Parties Present
Minutes
Result: Off Calendar

02/19/2021 **Stipulation and Order** Doc ID# 96
[96] Order signed

02/22/2021 **CANCELED Evidentiary Hearing** (1:30 PM) (Judicial Officer Eller, Crystal)
Vacated

03/11/2021 **Status Check** (11:00 AM) (Judicial Officer Holthus, Mary Kay)
03/11/2021, 03/16/2021, 04/15/2021, 04/29/2021
STATUS CHECK: SET EVIDENTIARY HEARING
Parties Present
Minutes
Result: Matter Continued

03/15/2021 **Motion to Release** Doc ID# 97
[97] Defendant's Motion for Release from Jail to Attend Grandmother's Funeral

03/15/2021 **Clerk's Notice of Hearing** Doc ID# 98
[98] Notice of Hearing

03/16/2021 **Status Check** (11:00 AM) (Judicial Officer Holthus, Mary Kay)
STATUS CHECK: MOTION FOR OWN RECOGNIZANCE RELEASE
Result: Denied

03/16/2021 **All Pending Motions** (11:00 AM) (Judicial Officer Holthus, Mary Kay)
Parties Present
Minutes
Result: Matter Heard

03/17/2021 **Order** Doc ID# 99
[99] ORDR - Order To Transport for Funeral

03/25/2021 **CANCELED Motion to Release** (11:00 AM) (Judicial Officer Cherry, Michael A.)
Vacated - Previously Decided
Defendant's Motion for Release from Jail to Attend Grandmother's Funeral

05/20/2021 **Status Check** (11:00 AM) (Judicial Officer Holthus, Mary Kay)
05/20/2021, 07/29/2021, 08/03/2021
STATUS CHECK: NEGOTIATIONS
Parties Present
Minutes
Result: Matter Continued

08/12/2021 **Motion** Doc ID# 100
[100] Motion to Continue Evidentiary Hearing

08/12/2021 **Clerk's Notice of Hearing** Doc ID# 101
[101] Notice of Hearing

09/02/2021 **Motion** (12:30 PM) (Judicial Officer Holthus, Mary Kay)
Motion to Continue Evidentiary Hearing
Parties Present
Minutes
Result: Granted

09/07/2021 **Case Reassigned to Department 6**
From Judge Mary Kay Holthus to Judge Jacqueline Bluth

09/10/2021 **CANCELED Evidentiary Hearing** (10:00 AM) (Judicial Officer Holthus, Mary Kay)
Vacated - per Judge

11/10/2021 **Notice** Doc ID# 102
[102] Defendant's Notice of Expert Witnesses for Evidentiary Hearing

11/23/2021 **CANCELED Status Check** (11:00 AM) (Judicial Officer Israel, Ronald J.)
Vacated
Status Check: Set Evidentiary Hearing
09/16/2021 Reset by Court to 09/16/2021
09/16/2021 Reset by Court to 09/23/2021
09/23/2021 Reset by Court to 09/23/2021
09/23/2021 Reset by Court to 10/05/2021
10/05/2021 Reset by Court to 10/19/2021
10/19/2021 Reset by Court to 10/19/2021
10/19/2021 Reset by Court to 11/04/2021
11/04/2021 Reset by Court to 11/18/2021
11/18/2021 Reset by Court to 11/23/2021

11/29/2021 **Brief** Doc ID# 103
[103] Bench Brief for Evidentiary Hearing Being Held on 12/03/21

12/03/2021 **Evidentiary Hearing** (1:30 PM) (Judicial Officer Bluth, Jacqueline M.)
12/03/2021, 02/07/2022
Parties Present
Minutes
Result: Matter Continued

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12/03/2021 **Brief** Doc ID# 104
[104] Bench Brief For Evidentiary Hearing Being Held 12/03/21 in Response to State's Discovery Complaint

12/03/2021 **Brief** Doc ID# 105
[105] Bench Brief for Evidentiary Hearing Being Held on 12/03/21 Documents Showing the History of Mungal

12/08/2021 **Order** Doc ID# 106
[106] Expedited Order for Transcript

12/09/2021 **Motion** Doc ID# 107
[107] Motion For Clarification and Reconsideration of Court's Ruling at the 12/02/21 Hearing Regarding Alleged Discovery and Motion Seeking a Brief Delay in Court's Order Until The Issue are Clarified

12/09/2021 **Motion** Doc ID# 108
[108] Motion and Objections to State's Proposed Order Regarding Hearing on 12-03-21 and Draft of Defendant's Proposed Order and Request for Additional Time to Finalize the Proposed Order Submitted and File Other Motions before Court's Decision

12/13/2021 **Clerk's Notice of Hearing** Doc ID# 109
[109] Notice of Hearing

12/13/2021 **Clerk's Notice of Hearing** Doc ID# 110
[110] Notice of Hearing

12/13/2021 **Ex Parte Application** Doc ID# 111
[111] Ex Parte Application for an Order Shortening Time of Defendant's Motions Filed December 9, 2021

12/14/2021 **Recorders Transcript of Hearing** Doc ID# 112
[112] Transcript of Proceedings Re: Evidentiary Hearing 12/03/2021

12/14/2021 **Notice** Doc ID# 113
[113] Notice of Discovery Received from the District Attorney to the Defense

12/14/2021 **Motion** Doc ID# 114
[114] Motion Asking the Court Take Judicial Notice of the Mungal Case; and Motion Seeking Findings that Systematic Exclusion Is Inherent in the Jury Selection Process Based on the Mungal Case and Based on the Jury Commissioner's Failure to Follow the Mandates Giving Her Direction; and Motion to Reconsider Estoppel and Issue Preclusion

12/15/2021 **Supplement** Doc ID# 115
[115] Supplement for Motion for Clarification and Reconsideration of Court's Ruling and Motion and Objection to State's Proposed Order Regarding Hearing on 12-03-21 and Draft of Defendant's Proposed Order

12/15/2021 **Motion** Doc ID# 116
[116] Motion Asking for the Court to Order The Prosecutor to Provide a List of Items she Received from the Defense

12/16/2021 **Status Check** (11:00 AM) (Judicial Officer Holthus, Mary Kay)
Parties Present

Minutes
Result: Matter Heard

12/27/2021 **Opposition to Motion** Doc ID# 117
[117] State's Opposition to Defendant's Motions Filed on or After December 3, 2021 (Date Set for Evidentiary Hearing)

12/27/2021 **Reply to Opposition** Doc ID# 118
[118] Reply to State's Opposition to Defendant's Motions

12/28/2021 **Motion For Reconsideration** (11:00 AM) (Judicial Officer Bluth, Jacqueline M.)
Motion For Clarification and Reconsideration of Court's Ruling at the 12/02/21 Hearing Regarding Alleged Discovery and Motion Seeking a Brief Delay in Court's Order Until The Issue are Clarified

12/28/2021 **Motion** (11:00 AM) (Judicial Officer Bluth, Jacqueline M.)
[108] Motion and Objections to State's Proposed Order Regarding Hearing on 12-03-21 and Draft of Defendant's Proposed Order and Request for Additional Time to Finalize the Proposed Order Submitted and File Other Motions before Court's Decision

12/28/2021 **CANCELED Motion** (11:00 AM) (Judicial Officer Bluth, Jacqueline M.)
Vacated - Set in Error
[108] Motion and Objections to State's Proposed Order Regarding Hearing on 12-03-21 and Draft of Defendant's Proposed Order and Request for Additional Time to Finalize the Proposed Order Submitted and File Other Motions before Court's Decision

12/28/2021 **Motion** (11:00 AM) (Judicial Officer Bluth, Jacqueline M.)
[114] Motion Asking the Court Take Judicial Notice of the Mungal Case; and Motion Seeking Findings that Systematic Exclusion Is Inherent in the Jury Selection Process Based on the Mungal Case and Based on the Jury Commissioner's Failure to Follow the Mandates Giving Her Direction; and Motion to Reconsider Estoppel and Issue Preclusion

12/28/2021 **Motion** (11:00 AM) (Judicial Officer Bluth, Jacqueline M.)
Motion Asking for the Court to Order The Prosecutor to Provide a List of Items she Received from the Defense

12/28/2021 **Order** Doc ID# 119
[119] Order for Transcripts

12/28/2021 **All Pending Motions** (11:00 AM) (Judicial Officers Bluth, Jacqueline M., Vega, Valorie J.)
Parties Present

Minutes
Result: Matter Heard

12/30/2021 **Order** Doc ID# 120
[120] Expedited Ex Parte Order for Transcript

12/30/2021 **Order** Doc ID# 121
[121] Valentine - Order Re Evidentiary Hearing (Final)

01/06/2022 **Order** Doc ID# 122
[122] Order

01/06/2022 **Order** Doc ID# 123
[123] Order

01/19/2022 **Recorders Transcript of Hearing** Doc ID# 124
[124] Transcript of Proceedings Re: All Pending Motions December 28, 2021

01/20/2022 **Recorders Transcript of Hearing** Doc ID# 125
[125] Recorders Transcript of Hearing Re: Motion for Court Order to Produce Documents 1.25.21

01/21/2022 **Recorders Transcript of Hearing** Doc ID# 126
[126] Recorders Transcript of Hearing Re: Motion to Set Bail, December 7, 2020

01/21/2022 **Recorders Transcript of Hearing** Doc ID# 127
[127] Recorders Transcript of Hearing Re: Defendant's Motion to Continue Evidentiary Hearing and Defendant's Motion for Bail, November 9, 2020

01/21/2022 **Recorders Transcript of Hearing** Doc ID# 128
[128] Recorders Transcript of Hearing Re: Status Check, May 20, 2020

01/21/2022 **Recorders Transcript of Hearing** Doc ID# 129
[129] Recorders Transcript of Hearing Re: Status Check, February 20, 2020

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01/27/2022 **Motion** Doc ID# 130
[130] Motion Requesting Court Take Judicial Notice

01/27/2022 **Motion** Doc ID# 131
[131] Motion Seeking an Order that Expert Jeffrey Martin is an Expert

01/28/2022 **Clerk's Notice of Hearing** Doc ID# 132
[132] Notice of Hearing

01/28/2022 **Clerk's Notice of Hearing** Doc ID# 133
[133] Notice of Hearing

01/28/2022 **Recorders Transcript of Hearing** Doc ID# 134
[134] Recorder's Transcript Re: Motion for Clarification of Order - February 16, 2021

01/28/2022 **Recorders Transcript of Hearing** Doc ID# 135
[135] Recorder's Transcript Re: Status Check: Deft. Presence/Set Evidentiary Hearing - March 11, 2021

01/28/2022 **Recorders Transcript of Hearing** Doc ID# 136
[136] Recorder's Transcript Re: Status Check: Defendant's Presence/Set Evidentiary Hearing/Status Check: Motion for Own Recognizance Release - March 16, 2021

01/28/2022 **Recorders Transcript of Hearing** Doc ID# 137
[137] Recorder's Transcript Re: Status Check: Negotiations - May 20, 2021

01/28/2022 **Recorders Transcript of Hearing** Doc ID# 138
[138] Recorder's Transcript Re: Status Check: Deft. Presence/Set Evidentiary Hearing - April 15, 2021

01/28/2022 **Recorders Transcript of Hearing** Doc ID# 139
[139] Recorder's Transcript Re: Status Check: Evidentiary Hearing - April 29, 2021

01/28/2022 **Recorders Transcript of Hearing** Doc ID# 140
[140] Recorder's Transcript Re: Status Check: Negotiations - July 29, 2021

01/28/2022 **Recorders Transcript of Hearing** Doc ID# 141
[141] Recorder's Transcript Re: Status Check: Negotiations - August 3, 2021

01/28/2022 **Recorders Transcript of Hearing** Doc ID# 142
[142] Recorder's Transcript Re: Motion to Continue Evidentiary Hearing - September 2, 2021

01/31/2022 **Notice** Doc ID# 143
[143] Notice of Intent to Seek Testimony Via Audiovisual Means

02/01/2022 **Notice** Doc ID# 144
[144] Notice of Documents/Discovery

02/04/2022 **Notice of Motion** Doc ID# 145
[145] State's Notice of Motion and Motion to Strike Defendant's Motion Requesting Court to Take Judicial Notice and Motion Seeking an Order that Expert Jeffrey Martin is an Expert

02/07/2022 **Motion** (11:30 AM) (Judicial Officer Bluth, Jacqueline M.)
Defendant's Motion Requesting Court Take Judicial Notice
02/08/2022 Reset by Court to 02/07/2022

02/07/2022 **Motion** (11:30 AM) (Judicial Officer Bluth, Jacqueline M.)
Motion Seeking an Order that Expert Jeffrey Martin is an Expert
02/08/2022 Reset by Court to 02/07/2022

02/07/2022 **Motion to Strike** (11:30 AM) (Judicial Officer Bluth, Jacqueline M.)
Motion to Strike Defendant's Motion Seeking an Order that Expert Jeffrey Martin is an Expert and Defendant's Motion Requesting Court Take Judicial Notice

02/07/2022 **Reply** Doc ID# 146
[146] Reply in Support of Valentine's Motion Requesting Court Take Judicial Notice and Motion Seeking an Order that Expert Jeffrey Martin is an Expert; and Opposition to State's Motion to Strike Filed on 02/04/22

02/07/2022 **Brief** Doc ID# 147
[147] Bench Brief Regarding: (1) Judicial Notice, and (2) Expert Jeffrey Martin

02/07/2022 **Motion to Strike** (11:30 AM) (Judicial Officer Bluth, Jacqueline M.)
State's Notice of Motion and Motion to Strike Defendant's Motion Requesting Court to Take Judicial Notice and Motion Seeking an Order that Expert Jeffrey Martin is an Expert
02/17/2022 Reset by Court to 02/07/2022

02/07/2022 **Clerk's Notice of Hearing** Doc ID# 148
[148] Notice of Hearing

02/07/2022 **All Pending Motions** (11:30 AM) (Judicial Officer Bluth, Jacqueline M.)
Parties Present
Result: Matter Heard

02/10/2022 **Notice** Doc ID# 149
[149] Notice that Valentine Has Complied with Court's Order

02/10/2022 **Notice** Doc ID# 150
[150] Notice that Valentine Has Complied with Court's Order

03/03/2022 **Ex Parte Order** Doc ID# 151
[151] ORDER FOR TRANSCRIPT 7 Feb 2022 Valentine

04/07/2022 **Recorders Transcript of Hearing** Doc ID# 152
[152] Transcript of Proceedings Re: Evidentiary Hearing 02/07/2022

FINANCIAL INFORMATION

11/14/2017	Defendant Valentine, Keandre	
	Total Financial Assessment	178.00
	Total Payments and Credits	0.00
	Balance Due as of 04/13/2022	178.00
11/14/2017	Transaction Assessment	178.00

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CASE NO. C-16-316081-1
STATE OF NEVADA VS KEANDRE VALENTINE

Other Events on This Case	Image	Page Count
06/29/2016 Warrant	<u>Warrant</u>	2
08/29/2016 Indictment	<u>Indictment</u>	6
06/30/2016 Indictment Warrant Return	<u>Indictment Warrant Return</u>	2
07/11/2016 Media Request and Order	<u>Media Request And Order Allowing Camera Access to Court Proceedings</u>	2
07/14/2016 Transcript of Proceedings	<u>Reporter's Transcript of Proceedings, Grand Jury Hearing, June 28, 2016</u>	105
07/28/2016 Notice of Witnesses and/or Expert Witnesses	<u>Notice of Witnesses and/or Expert Witnesses</u>	4
08/12/2016 Notice of Witnesses and/or Expert Witnesses	<u>Supplemental Notice of Witnesses and/or Expert Witnesses</u>	65
08/19/2016 Motion for Discovery	<u>Motion For Production Of Discovery</u>	26
08/29/2016 Opposition	<u>State's Response to Defendant's Motion for Production of Discovery</u>	26
09/20/2016 Notice of Witnesses and/or Expert Witnesses	<u>Second Supplemental Notice of Witnesses and/or Expert Witnesses [NRS 174.234]</u>	6
09/26/2016 Motion	<u>Motion For Setting Of Reasonable Bail</u>	3
10/03/2016 Opposition	<u>State's Opposition to Defendant's Motion for Setting of Reasonable Bail</u>	6
01/26/2017 Notice of Witnesses and/or Expert Witnesses	<u>Third Supplemental Notice of Witnesses and/or Expert Witnesses [NRS 174.234]</u>	8
01/27/2017 Notice	<u>Notice of Intent to Seek Punishment as a Habitual Criminal</u>	2
02/08/2017 Motion	<u>Notice of Motion and Motion Outlining State's Discovery Compliance</u>	9
06/06/2017 Receipt of Copy	<u>Receipt of Copy</u>	3
06/30/2017 Notice of Expert Witnesses	<u>Notice of Expert Witnesses - noew</u>	29
07/07/2017 Motion	<u>Motion - MOT</u>	38
07/13/2017 Notice	<u>Notice - NOTC</u>	2
07/14/2017 Notice	<u>Notice - NOTC</u>	2
07/14/2017 Supplemental	<u>Supplemental - SUPP</u>	106
07/17/2017 Opposition to Motion	<u>Opposition to Motion - OPPM</u>	4
07/17/2017 Notice	<u>Notice - NOTC</u>	2
07/18/2017 Opposition	<u>Opposition - OPPS</u>	6
07/18/2017 Notice of Motion	<u>Notice of Motion - NOTM</u>	6
07/18/2017 Notice of Motion	<u>Notice of Motion - NOTM</u>	5
07/18/2017 Notice of Motion	<u>Notice of Motion - NOTM</u>	5
07/19/2017 Opposition	<u>Opposition - OPPS</u>	184
07/24/2017 Notice of Witnesses and/or Expert Witnesses	<u>Notice of Witnesses and/or Expert Witnesses - NWEW</u>	2
07/25/2017 Jury List	<u>Jury List</u>	1
07/28/2017 Amended Jury List	<u>Amended Jury List</u>	1
07/31/2017 Motion in Limine	<u>Motion in Limine</u>	111
08/03/2017 Amended Jury List	<u>Amended Jury List</u>	1
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Exhibit E

Transcript of 02/02/22 hearing on file.

1 a few --

2 THE COURT: You can finish your direct?

3 MR. GASTON: I was at the end. I'm just talking about --
4 I'm just asking about the DETR records and then the inclusion of
5 those would help make the list --

6 THE COURT: Okay. Yeah, if you can finish your direct,
7 I'm --

8 MS. BOTELHO: But, Your Honor, instead of that, can I get
9 an idea of -- since this is going to get continued anyway, when I'm
10 going to get the Court's ruling on the recreated list and whether the
11 State's going to get that data?

12 MR. GASTON: I mean, we're not sending anything unless
13 the Court specifically orders us to. There's no new list, there's no
14 nothing. It's just his analysis.

15 THE COURT: Okay. One second.

16 Ms. Botelho, my understanding, in speaking with
17 Mr. Martin, was that it wasn't -- it isn't a list, it's how he works on
18 the list and excludes. Right?

19 MS. BOTELHO: Yes.

20 THE COURT: So I don't think he has a separate document.

21 What I would think now is --

22 And he's shaking his head yes -- nodding his head yes.

23 And this is defense -- I mean, defense can order their
24 expert not to do this if they want, I mean, that's your purview, it's
25 your expert. But I think it would be appropriate if the State could

1 speak with Mr. Martin and kind of understand how those numbers
2 were gotten to so he can talk to them about -- and with them being
3 able to look at the master that they have and work out those
4 numbers.

5 Do you have an opposition to that, Mr. Gaston?

6 MR. GASTON: I mean, this -- I appreciate the Court's
7 suggestion. I mean this as respectfully as possible. But given the
8 way this hearing has progressed and et cetera, there's just no way
9 that that's a productive position for the defense to agree with. Like,
10 there -- I can already see how it's going to go. There's going to be a
11 conversation, then there's going to be a hundred million assertions
12 on the record by the State that expert said so and so when they
13 were having this private conversation --

14 THE COURT: Well, you're going to be present.

15 MR. GASTON: Whatever, we're still going to have the
16 same thing. I'm just going to say uh-uh, and the State's going to
17 say that is true, and we're going to call each other liars. I just can't
18 possibly imagine how that's productive and I don't think there's a
19 rule that requires us to do so.

20 So, respectfully, I do oppose that request.

21 MS. BOTELHO: I -- there's --

22 THE COURT: Well --

23 MS. BOTELHO: There's --

24 MR. GASTON: There's just no way that's good for us to
25 do.

1 MS. BOTELHO: What I'm really requesting -- I understand
2 there's not a list, Your Honor. Okay.

3 THE COURT: Yeah.

4 MS. BOTELHO: But what I'm saying is I don't even know
5 the numbers. I don't even know the numbers that he's working all
6 of this mathematical, you know, analysis on. Like, after he excludes
7 this person or this set of people or these people, what's the
8 underlying number that he got to?

9 THE COURT: Sure.

10 MS. BOTELHO: I don't have any of that.

11 THE COURT: Mr. Martin, would you -- do you have the --

12 MS. DICKENSON: Your Honor?

13 THE COURT: One second, Ms. Dickenson.

14 MS. DICKENSON: Your Honor, could I --

15 THE COURT: No, not right now. One second.

16 Would you -- are -- do you have the answers to the
17 questions the State's putting forth?

18 MR. MARTIN: A lot of different questions. But if you just
19 want me to split the list in two, which I haven't done, but I can do, I
20 can split it in two.

21 THE COURT: When you say split it in two, you're talking
22 post-2017, pre-2020?

23 MR. MARTIN: Right.

24 MR. GASTON: So I'm assuming he just means he'll -- he
25 just excludes all the names he's not using from the 2020 list and

1 then has whatever the final document is.

2 THE COURT: Yeah. Right? I mean --

3 MS. BOTELHO: And that's what I've always -- that's what I
4 assumed I was going to get when we say there's a recreated list, I
5 assumed I was going to get exclusion, exclusion, and then what
6 happens after all of these are excluded. Here are the numbers,
7 State. So we know how to do the calculations.

8 THE COURT: Yeah.

9 MS. BOTELHO: I did not receive that.

10 THE COURT: Okay.

11 MS. BOTELHO: Amongst other things.

12 THE COURT: Okay.

13 MS. BOTELHO: And so I think to properly prepare for
14 cross, I would like to get that as soon as possible.

15 THE COURT: That's fair.

16 MR. GASTON: Okay.

17 THE COURT: Okay?

18 MR. GASTON: May I finish there?

19 THE COURT: Yes.

20 MR. GASTON: Thank you.

21 MS. DICKENSON: Your Honor, is the Court saying --

22 THE COURT: Oh, yeah, I'm sorry --

23 MS. DICKENSON: I'm saying I believe a lot of what she's
24 asking for is work product. But if the Court is asking for us to split
25 the list and give it to her, I suppose we can do that.

1 THE COURT: Yeah, no, I mean, that's -- that is -- you are
2 able to -- each side is -- has the ability to effectively cross-examine.
3 And I was very clear -- listen, I feel like -- guys, I've got to be honest,
4 I feel like I have given the defense an incredible -- incredible amount
5 of leeway with this hearing. I think that with the whole thing with
6 the ZIP codes, I -- we're having a hearing, which is above and
7 beyond the hearing that I was told to do. And so now we're going
8 to really make sure we're playing fair. And so yeah, the State's
9 going to get that. That's not work product.

10 And even the rules, especially the one that Ms. Botelho
11 cited to at the beginning when it talks about expert witnesses and,
12 you know, being given the data and the statistics and the Court
13 even ordering it, I was very clear in my order that the State, by
14 however long ago, was going to have everything to properly
15 cross-examine. They still don't have it. So they're getting that.
16 And we're moving on.

17 So go ahead with the direct, Mr. Gaston.

18 MR. GASTON: Thanks, Your Honor.

19 **DIRECT EXAMINATION (CONT.)**

20 BY MR. GASTON:

21 Q So I already know -- asked a couple of questions about
22 this category, but I kind of just want to restart, Mr. Martin.

23 You received a list of DETR claims for the -- for Nevada
24 in 2017; is that correct?

25 A That's correct.

1 Q Okay. What -- and -- one sec. What percentage of Nevada
2 generally self-identifies as Hispanic on the DETR claims?

3 A The DETR claims? So I have three sources as DETR
4 claims. They all give the same number. The June 2017, that's the
5 month before, it was 24.97 percent. The spreadsheet I was given
6 doesn't have July, but it does have August. So the month after it
7 is 24.63 percent. And then a separate spreadsheet which did it by
8 date, and the date of July 31st, 2017, is the one I took, and it
9 was 24.25 percent.

10 Q Okay. Thank you.

11 And, again, just remind me, what was the percentage of
12 Nevada, according to the census, Clark County census of Hispanics?

13 A I'm sorry, of Hispanics or of the whole state?

14 Q For the census regarding Clark County that we talked
15 about earlier, what percentage --

16 A Yeah.

17 Q -- was Hispanic?

18 A 20.70.

19 Q So is it fair to say that Hispanics are actually
20 overrepresented on the DETR list?

21 A Absolutely.

22 Q Okay. Now, one thing I want to talk about is we're
23 referring to statewide DETR claims, right?

24 A That's correct.

25 Q Did it come to your attention that there's no way to parse

1 it out and look at it only by Clark County?

2 A Well, not in the information I was given.

3 Q Okay. However, what percentage of statewide DETR
4 claims did Clark County represent?

5 A Okay. Hang on one second. So 79 percent.

6 Q Okay.

7 A So -- and it varies a little bit by date. 79.12 percent in
8 June, and in August, it was 79.32.

9 Q Okay. So as -- your opinion as an expert and pursuant to
10 the law of large numbers, if we were to exclude the rest of the
11 State's claims from the numbers that you have so that we would
12 only have Clark County DETR claims, would you expect there to be
13 a significant difference in the numbers, the demographics that you
14 see?

15 A Not really. Mainly because Clark County makes up such a
16 high percentage of Nevada.

17 Q Thank you.

18 But as we were talking about, so Hispanics are
19 overrepresented on the DETR claims compared to their
20 demographics in the community; is that correct?

21 A That's correct.

22 Q So if the DETR names have been added into the master
23 list from 2017, would that have increased the statistics and the
24 demographics of Hispanics on that jury panel?

25 A It would -- to the extent that the person's on the DETR list,

1 are not in the Nevada Energy and not a driver, and to the extent
2 that those duplicates are handled correctly, it would increase
3 Hispanic representation.

4 Q So is it always true that adding a new source list of a -- of
5 major -- a major list of names in Clark -- in a city or a county usually
6 always helps make a list more representative?

7 A Of course, to be fair, depends on what list you're adding.

8 Q Okay.

9 A But, in general, adding more sources -- the whole idea
10 behind adding more sources, for instance, going to the four sources
11 that Nevada does, is to increase representativeness, is to catch as
12 many people as possible.

13 Q And so when you increase a list of major names, would
14 you agree that that increases representation of all race groups?

15 A Yes.

16 Q And when you have a list that's actually skewed towards
17 overrepresenting a certain ethnicity, does it help, when including
18 that list, then over and above increased that ethnicity's
19 representation on the master list?

20 THE COURT: Wait, go back. Rephrase that.

21 BY MR. GASTON:

22 Q When you have a source of names that is skewed towards
23 being overrepresented towards one -- towards a specific ethnicity,
24 what effect does including that in the master list have on that
25 ethnicity's representation in the master list?

1 A Mathematically, it has an effect, but I would put it
2 differently than the way you're putting it. To the extent that the
3 DETR list -- to the extent that drivers list implies some level of
4 income associated with needing a driver's license --

5 MR. DICKERSON: And, Your Honor, we'd object --

6 THE WITNESS: -- to drive a car --

7 MR. DICKERSON: -- to that assumption that it's a driver's
8 license. Because it's Nevada DMV, they issue identification cards,
9 they -- it's -- not everyone's a driver.

10 MR. GASTON: I think that would go to weight rather than
11 admissibility. It's his opinion, they can cross-examine on the --

12 THE COURT: No, I'm going to sustain it.

13 Go ahead. Next question?

14 MR. GASTON: Well, I don't think he finished --

15 BY MR. GASTON:

16 Q Would -- basically, let me just ask you this question: If
17 we -- if Clark County had included the DETR list in the master list
18 at 2017, would that have helped correct the disparity between the
19 observed Hispanics on the master list and their demographics in
20 the Clark County?

21 A Yes, I believe so.

22 Q Would including the voter rolls have helped alleviate that
23 disparity?

24 A Yes, I believe so.

25 Q And you've already testified about the 33 standard

1 deviations between the 2017 master list and the demographics as
2 indicating that it is not due to random chance. Would Clark -- in
3 your opinion, having looked at all of this, and -- would Clark County,
4 not including the Nevada voter rolls and the DETR records have
5 contributed to that problem of underrepresentation?

6 A Yes. Yes, the first place you look for underrepresentation
7 is what you have in your source list.

8 Q Thank you.

9 MR. GASTON: No more questions.

10 THE COURT: Okay. All right.

11 Mr. Martin, thank you so much. We appreciate your
12 testimony. We are going to have to select another day to do this for
13 your cross-examination and potential redirect, so the parties will be
14 in touch with you. Okay?

15 THE WITNESS: Okay. I'm gone February 18th through
16 February 22nd.

17 THE COURT: Okay.

18 THE WITNESS: So if you could avoid those dates, I'd
19 appreciate it very much.

20 THE COURT: Thank you for letting us know. I appreciate
21 that.

22 THE WITNESS: No problem.

23 THE COURT: All right, guys. So we will have to
24 reschedule. Trying to think of when we could -- first, let's talk about
25 how long -- I mean, we started today at 11:30. So what are we

1 thinking? Do we need a full day?

2 MR. GASTON: Well, if the DETR records are admitted, so I
3 don't have my third witness to testify, so it would be
4 cross-examination of the expert and then any redirect, and then I
5 guess oral argument, unless --

6 THE COURT: It'll be written.

7 MR. GASTON: -- you're going to order briefing on it.

8 THE COURT: Yeah.

9 MR. GASTON: You are ordering briefing on it?

10 THE COURT: Most of the time with something this
11 layered, yeah. I do a page limit and briefing.

12 MR. GASTON: So it should be however the State
13 ultimately thinks they need for cross-examination.

14 MS. BOTELHO: I'm not sure if I even have all the records
15 that he referred to today.

16 THE COURT: Okay. So, Ms. Botelho, we'll hopefully -- I
17 should have kept him on, but ask -- oh, Mr. Martin's still on.

18 Mr. Martin, are you still there?

19 MR. MARTIN: Yes, I am.

20 THE COURT: Thank you, sir. How long will it take you to
21 get the list to Ms. Botelho?

22 MR. MARTIN: That's not very hard at all.

23 THE COURT: Okay.

24 MR. MARTIN: So whenever she needs it.

25 THE COURT: All right. So by Friday, would you be able to

1 get that to her?

2 MR. MARTIN: Absolutely. I -- respectfully, I guess, I'll talk
3 to Mr. Gaston and Ms. Dickenson about exactly what they want me
4 to do. But if you're telling me to do it, I absolutely can do it by
5 Friday.

6 THE COURT: Yeah. Yeah, no, I'm definitely ordering that
7 that be done. I just wanted to make sure that by Friday it would be
8 a reasonable time for you to be able to get all that together. I don't
9 know what goes into doing that.

10 MR. MARTIN: Right. I just want to make sure everybody's
11 happy with whatever I'm doing.

12 THE COURT: Oh, I can assure you probably no one's
13 happy. But that's -- it's okay. That's just kind of the way this goes.

14 MR. MARTIN: I'll take that for what it's worth.

15 THE COURT: Yeah. All right. So Friday by 5:00, that'll go
16 over to the State.

17 Ms. Botelho, what would you say is a reasonable time
18 period in which you can review that?

19 MS. BOTELHO: Two weeks.

20 THE COURT: Okay. All right. So I will -- basically, what I
21 need you guys to do is provide some dates that work. Mondays
22 and Fridays are usually the best. That way it's easier for me to work
23 with jury trials on those dates. So you guys come up with some
24 lists of Mondays and Fridays that work for you, and then Crystal will
25 have to ask for a special setting so we can have Mr. Valentine here.

1 We were lucky this time and we got to have him here in
2 person, but I don't know if we'll be as lucky in the future.

3 And, Mr. Valentine, I remember last time you -- at the end
4 of the hearing, you -- I think you were frustrated, you're, like, I don't
5 want to be here. But you do want to be here for these hearings,
6 right?

7 THE DEFENDANT: Oh, man. Yeah.

8 THE COURT: Yeah. I just want you to know you have a
9 right -- you, of course, always have a right to be here. But last time
10 you were frustrated and you're, like, you clearly did not -- I think
11 you even said something to the effect of, like, I just want to get out
12 of here. So.

13 THE DEFENDANT: Well, I was trying to -- I was -- my bus
14 was leaving. Because I ain't even in CCDC. I'm, like, by the airport
15 base.

16 THE COURT: Right. Yeah.

17 THE DEFENDANT: So I was going to have to do in here all
18 night.

19 THE COURT: Got you.

20 THE DEFENDANT: But, I mean, yeah.

21 THE COURT: It was more about that, right? It was more
22 that you were worried you were going to miss your transportation
23 back?

24 THE DEFENDANT: Yeah.

25 THE COURT: Okay. All right. Okay, guys, so get me a list

1 of Mondays and Fridays post two weeks from today, and then
2 Crystal will get you guys on the setting. We'll work with the
3 departments in charge of the custody setting. Okay?

4 MS. BOTELHO: Okay.

5 MR. GASTON: Yes, ma'am.

6 THE COURT: Good. All right.

7 We can go off. Thank you for that.

8 [Proceeding concluded at 5:04 p.m.]


9 ///

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18 ATTEST: I do hereby certify that I have truly and correctly
19 transcribed the audio/video proceedings in the above-entitled case
20 to the best of my ability. Please note: Technical glitches in the
21 BlueJeans audio/video which resulted in distortion and/or audio
cutting out completely were experienced and are reflected in the
transcript.

22 
Shawna Ortega, CET*562

Exhibit F

000075



1 NOTC
2 DARIN F. IMLAY, PUBLIC DEFENDER
3 NEVADA BAR NO. 5674
4 TYLER C. GASTON, DEPUTY PUBLIC DEFENDER
5 NEVADA BAR NO. 13488
6 PUBLIC DEFENDERS OFFICE
7 309 South Third Street, Suite 226
8 Las Vegas, Nevada 89155
9 Telephone: (702) 455-4685
10 Facsimile: (702) 455-5112
11 Tyler.Gaston@clarkcountynv.gov
12 *Attorneys for Defendant*

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

12 KEANDRE VALENTINE,

13 Defendant.

CASE NO. C-16-316081-1

DEPT. NO. VI

14
15 **NOTICE THAT VALENTINE HAS COMPLIED WITH COURT'S ORDER**

16 COMES NOW, the Defendant, KEANDRE VALENTINE, by and through TYLER C.
17 GASTON and SHARON G. DICKINSON, Deputy Public Defenders, and hereby files this notice
18 attesting that Valentine has complied with the court's order directing Valentine to create and
19 provide the prosecutors with a recreated 2017 master list comprised of potential jurors who
20 would have been on the master list when summons were issued for Valentine's trial. The actual
21 2017 master list was unavailable and what has been produced is a subset from the 2020 list given
22 to the parties by the jury commissioner. Also, included on the disk are a list of duplicates. The
23 State received the same 2020 Master List as Valentine received from the jury commissioner but
24 chose not to hire an expert to evaluate it.

25 ///

26 ///

27 ///

28 ///

1 Although Valentine objected and continues to object to the court's order, he has complied
2 with the court's order.

3 This Notice is made and based upon all the papers and pleadings on file herein, the
4 attached Declaration of Counsel, and any oral argument the court may want to hear.

5
6 DATED this 9th day of February, 2022.

7 DARIN F. IMLAY
8 Clark County Public Defender

9 By: /s/ Tyler C. Gaston
10 TYLER C. GASTON, #13488
Deputy Public Defender

DATED this 9th day of February, 2022.

DARIN F. IMLAY
Clark County Public Defender

By: /s/ Sharon G. Dickinson
SHARON G. DICKINSON, #3710
Chief Deputy Public Defender

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DECLARATION

TYLER C. GASTON makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Deputy Public Defender for the Clark County Public Defender's Office appointed to represent Defendant Keandre Valentine in the present matter;

2. I am more than 18 years of age and am competent to testify as to the matters stated herein. I am familiar with the procedural history of the case and the substantive allegations made by The State of Nevada. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

3. I have attached the email I sent to the court as *Exhibit A*.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 9th day of February 2022.

/s/ Tyler C. Gaston
TYLER C. GASTON

1 CERTIFICATE OF ELECTRONIC TRANSMISSION

2 I hereby certify that service of the above and foregoing was made this 10th day of
3 February, 2022, by electronic transmission, through Odyssey eFileNV EfileAndServe, to:

4 DISTRICT ATTORNEY'S OFFICE
5 Email Address: motions@clarkcountyda.com

6 By: /s/ Jennifer Georges
7 An employee of the
8 Clark County Public Defender's Office

Exhibit G

000080

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 05, 2020

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

February 05, 2020 03:00 AM ISC - Remittitur

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 03B

COURT CLERK: Vargas, Elizabeth

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Matter heard.

000081

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 20, 2020

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

February 20, 2020 08:30 AM Status Check

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 03B

COURT CLERK: Vargas, Elizabeth

RECORDER: Amoroso, Brittany

REPORTER:

PARTIES PRESENT:

Agnes Lexis	Attorney for Plaintiff
State of Nevada	Plaintiff
Tegan Machnich	Attorney for Defendant
Tyler Gaston	Attorney for Defendant

JOURNAL ENTRIES

Sharon Dickinson, Esq. present on behalf of Defendant. Defendant's appearance waived. Ms. Botelno stated parties needed time to collect data from the Jury Commissioner. Ms. Dickinson requested a Court stated reports were needed for the Evidentiary Hearing. Ms. Botelno stated she would not oppose the requested information, however did not know if the information could be obtained. COURT ORDERED, Status Check SET; Evidentiary Hearing SET.

3/18/20 9:00 AM STATUS CHECK: EVIDENTIARY HEARING

4/29/20 10:00 AM EVIDENTIARY HEARING

000082

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 20, 2020

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

May 20, 2020 10:00 AM Status Check

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 03B

COURT CLERK: Vargas, Elizabeth

RECORDER: Amoroso, Brittany

REPORTER:

PARTIES PRESENT:

Agnes Lexis

Attorney for Plaintiff

Sharon A. Dickinson

Attorney for Defendant

State of Nevada

Plaintiff

JOURNAL ENTRIES

Ms. Dickinson stated she was unaware a subpoena was needed; stated she had received most of the items requested, and listed items not yet received. Ms. Botello requested the hearing take place and documents be provided as soon as possible; requested the expert be able to testify via Blue Jeans. Arguments regarding setting an Evidentiary Hearing and scheduling. COURT ORDERED, if any discovery issues arose, a motion to compel on order shortening time would be entertained only after a subpoena was served on the Jury Commissioner and the time to respond to the subpoena had been exhausted. Court stated witnesses would be permitted to appear via Blue Jeans at the Evidentiary Hearing. COURT FURTHER ORDERED, all documents Defendant received thus far from the Jury Commissioner to be provided to the state by June 10; additional documents received from the Jury Commissioner must be seasonally produced to the State, and any documents that will be presented at the Evidentiary Hearing must be produced to the State by no later than July 15. Court stated the entire day of August 12 would be set aside for the Evidentiary Hearing. COURT ORDERED, appearance by Mr. Valentine WAIVED.

8/12/20 9:00 AM EVIDENTIARY HEARING

Printed Date: 5/30/2020

Page 1 of 1

Minutes Date:

May 20, 2020

Prepared by: Elizabeth Vargas

000083

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 09, 2020

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

November 09, 2020 10:30 AM All Pending Motions

HEARD BY: Thompson, Charles **COURTROOM:** RJC Courtroom 03B

COURT CLERK: Hansen-McDowell, Kathryn

RECORDER: Amoroso, Brittany

REPORTER:

PARTIES PRESENT:

Agnes M Botelho

Attorney for Plaintiff

Sharon A. Dickinson

Attorney for Defendant

State of Nevada

Plaintiff

Tyler Gaston

Attorney for Defendant

JOURNAL ENTRIES

**DEFENDANT'S MOTION TO CONTINUE EVIDENTIARY HEARING . . . DEFENDANT'S
MOTION FOR BAIL**

Court noted it reviewed the Motion to Continue, inquired if there was an opposition. State advised they filed an opposition on Friday requesting to have a hearing with the commissioner to request discovery however, Defense counsel provided it today. Ms. Dickinson stated they need time to go through all the raw data they have received and requested the continuance. colloquy regarding scheduling. COURT ORDERED, Motion GRANTED and hearing SET.

Mr. Gaston advised Mr. Valentine was not transported and he had wanted to be at the hearing; requested a continuance. Colloquy. COURT ORDERED, Motion for Bail CONTINUED. Court stated staff would check when the Deft. could be transported and notify counsel when the continuance date would be.

1/12/2021 10:00 AM EVIDENTIARY HEARING

Printed Date: 12/2/2020

Page 1 of 1

Minutes Date:

November 09, 2020

**Prepared by: Kathryn Hansen-
McDowell**

000084

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 25, 2021

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

January 25, 2021 02:30 PM Defendant's Motion for Court Order to Produce Documents

HEARD BY: Eller, Crystal

COURTROOM: RJC Courtroom 03B

COURT CLERK: Castle, Alan

RECORDER: Amoroso, Brittany

REPORTER:

PARTIES PRESENT:

Agnes M Botelho

Attorney for Plaintiff

Public Defender

Attorney for Defendant

Sharon A. Dickinson

Attorney for Defendant

State of Nevada

Plaintiff

Tyler Gaston

Attorney for Defendant

JOURNAL ENTRIES

Court Finds there being no opposition filed and for good cause shown Defendant's Motion for Court Order to Produce Documents is GRANTED; FURTHER State's request for Protective Order GRANTED. Colloquy. Court Finds if the documents are not received in time for the evidentiary hearing parties may stipulate regarding the protective order. COURT ORDERS, IF the evidentiary hearing is continued, then the State will be given time for review of the records to determine if the State wants to hire its own expert. Ms. Dickinson to prepare the order and have Ms. Botelho review as to form and content.

CUSTODY (COC)

Printed Date: 1/26/2021

Page 1 of 1

Minutes Date:

January 25, 2021

Prepared by: Alan Castle

000085

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 28, 2021

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

January 28, 2021 7:00 AM Minute Order

HEARD BY: Jones, Tierra

COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- As this is a criminal matter, this case is being returned to Master Calendar to be randomly reassigned to a criminal department.

PRINT DATE: 01/28/2021

Page 1 of 1

Minutes Date: January 28, 2021

000086

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 16, 2021

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

February 16, 2021 11:00 AM Motion for Clarification of Order

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Yorke, Dara

RECORDER: Sison, Yvette G.

REPORTER:

PARTIES PRESENT:

Agnes M Botelho

Attorney for Plaintiff

Sharon A. Dickinson

Attorney for Defendant

State of Nevada

Plaintiff

Tyler Gaston

Attorney for Defendant

JOURNAL ENTRIES

Agnes Botelho, Esq., Sharon Dickinson, Esq. and Tyler Gaston, Esq. present via Bluejeans video conference; Adrian Viesca also present via Bluejeans video conference.

Deft. not present. Court advised parties it didn't believe it could clarify another Judge's order; additionally, Court noted a lot of what was ordered, didn't exist. Ms. Dickinson concurred, noting that was her understanding. Court advised, if parties could work the matter out, it would take the matter off calendar. Mr. Viesca noted he was with the Jury Commissioner and they filed the Motion due to non-compliance. COURT DIRECTED parties to put together a Stipulation and Order and have both sides sign off. Ms. Dickinson indicated they needed to set a hearing. Colloquy between parties. Following colloquy, Court stated it didn't want to do much without Deft. being present. Ms. Dickinson indicated they wanted to set an evidentiary hearing a month to two months out. Mr. Gaston present. Mr. Gaston advised the Court he spoke with Deft. and informed him of what was going on; therefore, they could set the evidentiary hearing. Upon Court's inquiry, the Correction Officer indicated Deft. informed the Officer that his attorney advised him not to come, and then later on Deft. told the Officer he was sick. Court indicated it would status check Deft.'s presence. Court inquired about setting a trial date; however, Mr. Gaston indicated to the Court that there was no trial, only an evidentiary hearing. Colloquy between parties. Following colloquy, COURT ORDERED, matter SET for status check in three weeks for Deft.'s presence and to set the evidentiary hearing. Mr. Gaston concurred. Court inquired how long parties anticipated the evidentiary hearing to be, which Ms. Dickinson noted six to eight hours. COURT FURTHER ORDERED, Motion for Clarification was OFF CALENDAR.

CUSTODY (COC)

3/11/21 11:00 AM STATUS CHECK: DEFT,'S PRESENCE / SET EVIDENTIARY HEARING

Printed Date: 2/23/2021

Page 1 of 1

Minutes Date:

February 16, 2021

Prepared by: Dara Yorke

000087

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 11, 2021

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

**March 11, 2021 11:00 AM STATUS CHECK: DEFT. PRESENCE/ SET EVIDENTIARY
 HEARING**

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Yorke, Dara

RECORDER: Sison, Yvette G.

REPORTER:

PARTIES PRESENT:

Bridget M Matos	Attorney for Defendant
Michael Dickerson	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Michael Dickerson, Esq. present via Bluejeans video conference.

Deft. not present. Due to technical issues with Bluejeans throughout District Court, the in-custody Defts. were not present. Ms. Matos noted she wanted to file a bail Motion. Ms. Schifalacqua noted the instant case belonged to Mr. Dickerson and she didn't feel comfortable proceeding. MATTER TRAILED for Mr. Dickerson.

MATTER RECALLED. Same parties present. Ms. Matos indicated the State was in agreeance with not going on an order shortening time, as long as a Motion was filed. Ms. Schifalacqua noted Ms. Bohtelo could argue the matter on Tuesday, March 16, 2021. Mr. Dickerson present. Colloquy between parties. Following colloquy, COURT ORDERED, matter CONTINUED to Tuesday, March 16, 2021, noting it would also place the matter on calendar for Motion for Own Recognizance release. Mr. Dickerson noted the State would be responding orally. COURT DIRECTED parties if there were exhibits, to get those to the Court ahead of time. Parties concurred.

CUSTODY (COC)

3/16/21 11:00 AM CONTINUED: STATUS CHECK: DEFT. PRESENCE / SET EVIDENTIARY
HEARING ...MOTION FOR OWN RECOGNIZANCE RELEASE

Printed Date: 3/16/2021

Page 1 of 1

Minutes Date:

March 11, 2021

Prepared by: Dara Yorke

000088

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 16, 2021

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

March 16, 2021 11:00 AM All Pending Motions

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Yorke, Dara

RECORDER: Sison, Yvette G.

REPORTER:

PARTIES PRESENT:

Agnes M Botelho	Attorney for Plaintiff
Keandre Valentine	Defendant
Sharon A. Dickinson	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Agnes Botelho, Esq. and Sharon Dickinson, Esq. present via Bluejeans video conference;
Deft. present in-custody via Bluejeans video conference.

**STATUS CHECK: DEFT. PRESENCE/ SET EVIDENTIARY HEARING...STATUS CHECK:
MOTION FOR OWN RECOGNIZANCE RELEASE**

Ms. Dickinson requested for Deft. to be released in order to go to his Grandmother's funeral, which they have already submitted paperwork for Deft. to be released from 11:00 am to 12:00 pm, which it was filed and set for March 25, 2021. Statements by Ms. Botelho noting she had not heard of that type of special request. Statements by Ms. Dickinson. Court advised it would not release Deft., indicating if Ms. Dickinson couldn't figure out how to transport through the jail, it couldn't release; therefore, ORDERED, Motion for Own Recognizance Release was hereby ADVANCED and DENIED. Ms. Dickinson added parties were also present to set the evidentiary hearing, noting she was looking to set in mid May 2021; additionally, informed the Court it would take six to eight hours. Court DIRECTED Ms. Dickinson to contact Kelly, the Judicial Executive Assistant, for scheduling. Ms. Botelho explained she didn't believe they should set for a trial, only an evidentiary hearing. Further statements by Ms. Botelho. Court explained it didn't believe it could get that much time with the jail, and indicated they may have to do blocks of time. Following colloquy, COURT ORDERED, matter SET for status check in 30 days and hoped that parties would get a hold of Kelly, the JEA. Court noted the conditions of any release would remain in effect. COURT FURTHER ORDERED, Motion to Release set on March 25, 2021 was hereby VACATED.

CUSTODY (COC)

4/15/21 11:00 AM STATUS CHECK: SET EVIDENTIARY HEARING

Printed Date: 4/1/2021

Page 1 of 1

Minutes Date:

March 16, 2021

Prepared by: Dara Yorke

000089

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 15, 2021

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

April 15, 2021 11:00 AM STATUS CHECK: SET EVIDENTIARY HEARING

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Yorke, Dara

RECORDER: Sison, Yvette G.

REPORTER:

PARTIES PRESENT:

Hilary Heap	Attorney for Plaintiff
Keandre Valentine	Defendant
Sharon A. Dickinson	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Hilary Heap, Esq. and Sharon Dickinson, Esq. present via Bluejeans video conference; Deft. present in-custody via Bluejeans video conference.

Ms. Dickinson indicated she had not heard of a date set for the evidentiary hearing. Ms. Heap indicated the instant matter belonged to Ms. Botelho. Court advised it's notes indicated parties were supposed to contact the Judicial Executive Assistant and now parties were requesting the second week in June 2021. Court inquired about June 21, 2021, which Ms. Dickinson noted that date worked for her. COURT ORDERED, matter SET for another status check, and DIRECTED Ms. Dickinson to reach out to get the hearing set.

CUSTODY (COC)

4/29/21 11:00 AM STATUS CHECK: EVIDENTIARY HEARING

000090

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 29, 2021

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

April 29, 2021 11:00 AM STATUS CHECK; SET EVIDENTIARY HEARING

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03B

COURT CLERK: Yorke, Dara

RECORDER: Garcia, Trisha

REPORTER:

PARTIES PRESENT:

Agnes M Botelho Attorney for Plaintiff

Sharon A. Dickinson Attorney for Defendant

State of Nevada Plaintiff

JOURNAL ENTRIES

Agnes Botelho, Esq. and Sharon Dickinson, Esq. present via Bluejeans video conference.

Deflt. not present. Court noted Deflt. refused transport. Ms. Dickinson noted she spoke with Ms. Botelho regarding possible negotiations; therefore, requested matter be set for status check in two weeks. Ms. Botelho concurred. COURT ORDERED, matter SET for status check in three weeks due to the Court's calendar.

CUSTODY

5/20/21 11:00 AM STATUS CHECK: NEGOTIATIONS

000091

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 20, 2021

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

May 20, 2021 11:00 AM STATUS CHECK: NEGOTIATIONS

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Orpineda, Yolanda; Yorke, Dara

RECORDER: Sison, Yvette G.

REPORTER:

PARTIES PRESENT:

Agnes M Botelho	Attorney for Plaintiff
Keandre Valentine	Defendant
Sharon A. Dickinson	Attorney for Defendant
State of Nevada	Plaintiff
Tyler Gaston	Attorney for Defendant

JOURNAL ENTRIES

Agnes Botelho, Esq., Tyler Gaston, Esq. and Sharon Dickinson, Esq. present via Bluejeans video conference; Deft. present in-custody via Bluejeans video conference.

Upon Court's inquiry, Mr. Gaston indicated parties did speak; however, had not been able to reach a negotiation. Further, Mr. Gaston noted they would like to set an evidentiary hearing on either September 9 or September 10, 2021. Ms. Botelho concurred. Additionally, Ms. Botelho indicated she didn't have an opportunity to go through the discovery; however, the State did make a formal offer with Deft. to resolve the instant case. Ms. Botelho stated, Deft. rejected the offer; however, she would leave the offer open until three weeks before the evidentiary hearing. Ms. Botelho made a record indicating after that, she would never renew that offer again. Statements by Ms. Dickinson. Colloquy between parties. Following colloquy, COURT DIRECTED parties to get with the Judicial Executive Assistant to set the date. Upon Court's inquiry, Ms. Dickinson noted it would be about six hours for the hearing. Court advised parties it would loosely set the matter on September 10, 2021 at 10:00 am. Parties concurred. Ms. Botelho noted she would like to set the status check negotiations prior to that. Deft. argued he would not take the deal at all. Court informed Deft. it wanted him to acknowledge the offer at that time, and reject it. COURT ORDERED, status check SET on negotiations, and matter SET for an evidentiary hearing thereafter.

CUSTODY (COC)

7/29/21 11:00 AM STATUS CHECK: NEGOTIATIONS

9/10/21 10:00 AM EVIDENTIARY HEARING

Printed Date: 5/29/2021

Page 1 of 1

Minutes Date:

May 20, 2021

Prepared by: Dara Yorke

000092

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 29, 2021

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

July 29, 2021 11:00 AM STATUS CHECK: NEGOTIATIONS

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Boyle, Shelley; Burdette, Susan

RECORDER: Sison, Yvette G.

REPORTER:

PARTIES PRESENT:

Keandre Valentine	Defendant
Michael G Giles	Attorney for Plaintiff
Sharon A. Dickinson	Attorney for Defendant
State of Nevada	Plaintiff
Tyler Gaston	Attorney for Defendant

JOURNAL ENTRIES

Deft. present via video conference, counsel present via Bluejeans.

Mr. Gaston stated the State made an offer to resolve the counts that were reversed by the Nevada Supreme Court for insufficient evidence; Deft. is to stipulate to a term of ten to twenty-five years. Deft. is asking State for a minimum of eight years on the bottom. State declined Deft's request. The Evidentiary Hearing may take up to six and a half hours to hold; it may run into the following Monday as well. Mr. Gaston stated if the Court considers imposing a minimum of eight years on the bottom end of Deft's sentence, Deft. will plead guilty to the remaining counts and the case can proceed to sentencing.

COURT NOTED, It is unable to review Deft's Pre-Sentence Investigation (PSI) Report in Odyssey; it would like to review that before Sentencing. Mr. Giles stated the matter is not resolved; the parties tried to resolve it before the Evidentiary Hearing and as that hasn't happened the State's offer is revoked. Following colloquy regarding scheduling and State considering Deft's offer, COURT ORDERED, matter CONTINUED.

CUSTODY (COC)

CONTINUED TO: 08/03/21 11:00 A.M.

Printed Date: 7/31/2021

Page 1 of 1

Minutes Date:

July 29, 2021

Prepared by: Shelley Boyle

000093

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 03, 2021

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

August 03, 2021 11:00 AM STATUS CHECK: NEGOTIATIONS

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Boyle, Shelley; Burnett, Erin

RECORDER: Sison, Yvette G.

REPORTER:

PARTIES PRESENT:

Jay Raman	Attorney for Plaintiff
Keandre Valentine	Defendant
Sharon A. Dickinson	Attorney for Defendant
State of Nevada	Plaintiff
Tyler Gaston	Attorney for Defendant

JOURNAL ENTRIES

Deft. present via video conference; Counsel present via Bluejeans.

COURT ADVISED, Deft's. Pre-Sentencing Investigation (PSI) report was reviewed; Court is NOT INCLINED to change its inclinations previously stated. Colloquy regarding State's offer to Deft. Statement by Deft; he is rejecting the State's offer as he wants a stipulation to 8 years on the bottom end of the deal. Counsel jointly agreed the Evidentiary Hearing date STANDS. COURT SO NOTED.

CUSTODY (COC)

000094

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 02, 2021

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

September 02, 2021 12:30 PM Motion to Continue Evidentiary Hearing

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Burnett, Erin

RECORDER: Sison, Yvette G.

REPORTER:

PARTIES PRESENT:

Keandre Valentine	Defendant
Michael Dickerson	Attorney for Plaintiff
Sharon A. Dickinson	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Deft. present via video conference; Counsel present via Bluejeans.

Ms. Dickinson requested the Evidentiary Hearing be reset to the beginning of November. With there being no objection from State, COURT ORDERED; Motion GRANTED; Evidentiary Hearing VACATED; a Status Check SET.

CUSTODY (COC)

STATUS CHECK: SET EVIDENTIARY HEARING 9/16/2021 11:00 AM

000095

C-16-316081-1

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

December 03, 2021

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

December 03, 2021 01:30 PM Evidentiary Hearing

HEARD BY: Bluth, Jacqueline M. COURTROOM: RJC Courtroom 10C

COURT CLERK: Lord, Rem

RECORDER: Takas, De'Awna

REPORTER:

PARTIES PRESENT:

Agnes M Botelho	Attorney for Plaintiff
Keandre Valentine	Defendant
Michael Dickerson	Attorney for Plaintiff
Sharon A. Dickinson	Attorney for Defendant
State of Nevada	Plaintiff
Tyler Gaston	Attorney for Defendant

JOURNAL ENTRIES

Following arguments by counsel COURT stated findings that it would allow the Deter documents to come in and would proceed with the evidentiary hearing. Mr. Botelho made an oral motion for the continuance of the evidentiary hearing due to the ruling on the Deter documents, Mr. Gaston argued in opposition. COURT stated findings and ORDERED oral motion for continuance GRANTED. Colloquy regarding scheduling, COURT FURTHER ORDERED, status check SET.

CUSTODY

12/16/2021 11:00 AM STATUS CHECK

Printed Date: 12/7/2021

Page 1 of 1

Minutes Date:

December 03, 2021

Prepared by: Rem Lord

000096

C-16-316081-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 16, 2021

C-16-316081-1 State of Nevada
 vs
 Keandre Valentine

December 16, 2021 11:00 AM Status Check

HEARD BY: Holthus, Mary Kay **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Boyle, Shelley; Squyres, Stephanie

RECORDER: Sison, Yvette G.

REPORTER:

PARTIES PRESENT:

Agnes M Botelho	Attorney for Plaintiff
Keandre Valentine	Defendant
Sharon A. Dickinson	Attorney for Defendant
State of Nevada	Plaintiff
Tyler Gaston	Attorney for Defendant

JOURNAL ENTRIES

Mr. Gaston not present. Ms. Dickerson requested the MATTER TRAIL, to allow Mr. Gaston to appear. Ms. Botelho noted there are Motions set to be heard 12.28.21. COURT SO NOTED, matter TRAILED.

MATTER RECALLED, Mr. Gaston now present. All other parties present as before. Upon Court's inquiry, Mr. Gaston stated the matter was on calendar today to set the Evidentiary Hearing and for State to indicate if they will hire an expert. Ms. Botelho stated the State will not be hiring an expert; the Evidentiary Hearing can be set. Colloquy regarding scheduling and Department 6's upcoming trial schedule. COURT ORDERED, the Motions SET 12.28.21 STAND. An Evidentiary Hearing will be set at the next setting in Department 6 if it is necessary.

CUSTODY (COC)

000097

Exhibit H

000098

Steven D. Grierson

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,
10 vs.
11 KEANDRE VALENTINE,
12 Defendant.

CASE#: C-16-310681-1
DEPT. II

13 BEFORE THE HONORABLE RICHARD F. SCOTTI,
14 DISTRICT COURT JUDGE

15 THURSDAY, FEBRUARY 20, 2020
16 RECORDER'S TRANSCRIPT OF HEARING:
17 STATUS CHECK

18 APPEARANCES:

19 For the State: AGNES BOTHELO, ESQ.
20 Chief Deputy District Attorney

21 For the Defendant: TEGAN C. MACHNICH, ESQ.
22 SHARON DICKINSON, ESQ.
23 TYLER GASTON, ESQ.
24 Deputy Public Defenders

25 RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

1 Las Vegas, Nevada, Thursday, February 20, 2020

2
3 [Case called at 8:39 a.m.]

4 THE COURT: State of Nevada versus Valentine. What are
5 we doing in this one?

6 Good morning.

7 MS. BOTELHO: Good morning, Your Honor.

8 MS. MACHNICH: Good morning, Your Honor. I believe we're
9 just setting an evidentiary hearing.

10 THE COURT: All right. Let's go ahead, and Ms. Tegan, put
11 everyone's names on the record.

12 MS. DICKINSON: Yes, I'm Sharon Dickinson with the Public
13 Defender's Office.

14 THE COURT: All right. Hello.

15 MS. MACHNICH: Tegan Machnic, Public Defender 11642.

16 MR. GASTON: Tyler Gaston from the Public Defender's
17 Office.

18 THE COURT: Very good.

19 MR. GASTON: -- 13488.

20 MS. BOTELHO: Agnes Botelho for the State, bar number
21 11064.

22 THE COURT: All right. How soon does everybody want this?
23 I could do it as soon as you want it. I could do it tomorrow if you want.

24 MS. MACHNICH: We may need a little more time than that,
25 Your Honor.

1 THE COURT: Okay.

2 MS. MACHNICH: I think that we probably still need time to
3 collect some data from the Jury Commissioner's Office. I know Sharon
4 has been working with Judge Bell to some extent and the Jury
5 Commissioner in order to work out how we're going to obtain some of
6 the data from that time period.

7 THE COURT: Oh, I see. So you're going to either ask her to
8 voluntarily produce it or serve a subpoena somehow, but you need more
9 information.

10 MS. DICKINSON: Correct.

11 MS. MACHNICH: Yes.

12 THE COURT: All right. So what are you thinking, a month
13 then?

14 MS. DICKINSON: I'm thinking longer than that.

15 THE COURT: Okay.

16 MS. DICKINSON: Only because after -- depending on what
17 we obtained, it could be a month, but since we don't know if it's going to
18 take a while. We're looking for reports with zip codes on them, because
19 that's pretty much what the evidentiary hearing is about.

20 THE COURT: All right.

21 MS. DICKINSON: We aware that that's available, but they
22 would have to get it.

23 THE COURT: Let's hear from the State. What's your
24 position? What do you want to do here?

25 MS. BOTELHO: Um.

1 THE COURT: And are you going to oppose the request for
2 information.

3 MS. BOTELHO: I'm not, so long as it is tailored for the limited
4 purpose set forth in the Nevada Supreme Court opinion. And I believe
5 just based on the representations they made about the zip code issue,
6 they're entitled to the records if they exist.

7 My understanding or my guess or assumption based on, you
8 know, having read transcripts from other hearings like this is that I don't
9 know if that kind of information can be obtained but.

10 THE COURT: Well, we'll see. Let's give them a chance to do
11 it. And if they do it, then they'll disclose it and then we'll go from there.
12 If they do something you think is beyond what they're entitled to, file an
13 appropriate objection or motion. Order shortening time is fine or I'll also
14 accept telephone conference calls.

15 MS. BOTELHO: Okay. Thank you.

16 THE COURT: Whatever works out. So do you want to set
17 another status check Tegan or --

18 MS. DICKINSON: That would probably be a good idea.

19 MS. BOTELHO: Yeah.

20 THE COURT: -- do you want to just to get an evidentiary
21 hearing date now?

22 MS. BOTELHO: I would prefer a status check.

23 MS. DICKINSON: Yeah. I think maybe --

24 MS. BOTELHO: Maybe in 30 days.

25 THE COURT: That long, okay.

1 MS. BOTELHO: If we can do maybe an evidentiary hearing
2 just to set it in 60.

3 THE COURT: Yeah, why don't we set just to have it on the
4 calendar. I have --

5 MS. DICKINSON: Okay.

6 THE COURT: -- back to back medical malpractice case trials
7 and a few other things I got. Yeah.

8 MS. MACHNICH: Oh boy.

9 THE COURT: So let's go ahead and set the evidentiary
10 hearing out 60 and a status check 30. And at the status check we'll see
11 if we need to adjust the date for the evidentiary hearing.

12 MS. MACHNICH: Perfect.

13 MS. BOTELHO: Thank you.

14 THE CLERK: Status check date is March 18th at 9 a.m. And
15 the evidentiary hearing is April 22nd at 9.

16 MS. BOTELHO: And I'm sorry. I am on vacation that week.

17 THE COURT: All right.

18 MS. BOTELHO: The only week I'm not available.

19 THE COURT: Let's push it closer one week then. Does that
20 work?

21 MS. BOTELHO: Yes.

22 THE COURT: That way you don't have to do it right after you
23 come back.

24 MS. BOTELHO: Yes, Your Honor. Thank you.

25 THE COURT: All right.

1 THE CLERK: That's April 29th. I mean, yeah, April 29th.
2 THE COURT: All right. Is that it?
3 MS. DICKINSON: That's it, Your Honor. So you would prefer
4 we issue subpoenas or bring it to the Court's attention?
5 THE COURT: Whatever you think it appropriate.
6 MS. DICKINSON: Okay.
7 THE COURT: I'm flexible there. So whatever you think is
8 appropriate or try to work it out if there's some dispute or call me if
9 there's some other issues.
10 MS. DICKINSON: Okay.
11 MS. MACHNICH: That'll work.
12 MS. DICKINSON: That'll work.
13 THE COURT: All right.
14 MS. DICKINSON: Thank you.
15 MS. BOTELHO: Thank you, Your Honor.
16 THE COURT: The -- one other thing. What about disclosure
17 of witnesses? That's something we'll deal with in logistics at the -- at the
18 status check.
19 MS. MACHNICH: That sounds good.
20 THE COURT: All right. Thank you. Nice to see everybody.
21 MS. BOTELHO: Thank you, Your Honor
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MS. MACHNICH: Thank you, Your Honor.

MS. DICKINSON: Thank you, Your Honor.

[Hearing concluded at 8:43 a.m.]

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



Jessica Kirkpatrick
Court Recorder/Transcriber



1 **RTRAN**

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

7
8 **THE STATE OF NEVADA,**
9 **Plaintiff,**

CASE#: C-16-310681-1
DEPT. II

10 **VS.**

11 **KEANDRE VALENTINE,**
12 **Defendant.**

13 **BEFORE THE HONORABLE RICHARD F. SCOTTI,**
14 **DISTRICT COURT JUDGE**

15 **WEDNESDAY, MAY 20, 2020**
16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **STATUS CHECK**

18 **APPEARANCES: [All appearances via videoconference]**

19 **For the State:**

AGNES BOTHELO, ESQ.
Chief Deputy District Attorney

20
21 **For the Defendant:**

SHARON DICKINSON, ESQ.
Deputy Public Defender

22
23
24 **RECORDED BY: BRITTANY AMOROSO, COURT RECORDER**
25

1 Las Vegas, Nevada, Wednesday, May 20, 2020

2
3 [Case called at 10:44 a.m.]

4 THE COURT: All right. Now we turn to State versus
5 Valentine, C316081, C316081. It looks like you guys are still on the
6 videoconference going back to the Khavkin matter. You guys can
7 disconnect your videoconference now.

8 UNIDENTIFIED SPEAKER: All right. Thank you, Your Honor,
9 have a good day.

10 THE COURT: All right. Let's bring up the parties then on the
11 Valentine case, State of Nevada versus Keandre Valentine, C316081.
12 Who do we have on behalf of appellant Keandre Valentine?

13 MS. DICKINSON: Your Honor, Sharon Dickinson from the
14 Public Defender's Office. Am I speaking or am I muted?

15 THE COURT: No, we can hear you very well. Thank you Ms.
16 Dickinson.

17 MS. DICKINSON: Oh, You can. Okay.

18 THE COURT: All right. And who do we have for the State?

19 MS. BOTELHO: Good morning, Your Honor. Good morning,
20 Ms. Dickinson. This is Agnes Botelho, bar number 11064 for the State.

21 THE COURT: Very good. So I'm glad you're both on the line.
22 So this is a matter where the conviction was vacated and remanded
23 based on the -- you know, the issue of proper cross section of the jury.

24 All right. So let's go ahead and hear from the appellant,
25 actually the Defendant Valentine. It seems that you are seeking

1 information from the Jury Commissioner. There was an ex parte order
2 submitted to the Court. The Court believed that that was improper,
3 because the Court needs to hear from the State. The Court was also
4 inquiring as to whether that could only be done after a subpoena has
5 been served on the Jury Commissioner. The Court had suggested that
6 this should probably be brought back to the Court on a motion to compel
7 an order shortening time. I believe we didn't receive that. So I wanted
8 to have a status check on where the parties stand and where the parties
9 have -- what the parties have agreed upon in terms of production of the
10 documents. Let's go ahead and first hear from Defendant.

11 MS. DICKINSON: Your Honor, most of the things that you just
12 said I was unaware of. I was not told that we needed to have a
13 subpoena I know for the Jury Commissioner. In fact, when I'd been in
14 court the last time the Court had said that it would be willing to give me
15 an order. So if the Court wants us to do a subpoena, I -- we certainly
16 can but we didn't do that based on the Court's last hearing.

17 However, we have received most of the things that we
18 requested, not all. We're still missing all the information on the master
19 list. We're still missing a -- the number and names of the sources for
20 data collected as required under Nevada Revised Statutes. I'm not sure
21 if they gave us the contact information names of the vendors. I don't
22 think I received any of that.

23 THE COURT: Okay.

24 MS. DICKINSON: They had a report that they were going to
25 send to me, but they said it was too large to send by email. I haven't

1 received that. I was told that they could do a master list by zip code.
2 But they thought there would be a charge for that and they wanted to
3 know who would have to pay for that. I do not believe I received
4 anything with regard to how summons are issued. I did not receive any
5 written procedures from the County or from the Jury Commissioner.

6 I -- only things that I received were documents from outside
7 sources. I received an Agile Jury Random Pool selection overview and
8 an Agile Jury User Manual for Clark County Nevada and in reading
9 these -- and an Agile Data Merger Extract and Load Instructions,
10 probably about 500 pages. In just looking at this it would seem to
11 indicate that the County is able to load information, which is contrary to
12 what the Jury Commissioner has always testified in the past. So I need
13 to check on that.

14 So that's part -- that's where I am right now. We had a status
15 check to see if we had received everything and naturally we'll share this
16 with the DA also and then set a potential hearing. I'm not sure when we
17 would be read, because we had intended to get an expert. I'm not sure
18 if we'll be able to still do that. But then of course if we do get an expert
19 there's travel concerns and concerns when we can actually have an
20 evidentiary hearing. So that's where the defense is with this.

21 THE COURT: All right. So just to reiterate on the procedural
22 status, the Court had received the ex parte application for production of
23 the documents. The Court thought it was improper for it to order the
24 production of documents without hearing from the other side. And we
25 had provided the information as to the rejection to, you know, counsel to

1 Mr. Valentine. My law clerk in his email stated Judge has
2 denied/rejected the order on the ex parte application. "The relief
3 requested must be sought by a motion to compel on order shortening
4 time". We never received that and so I am glad that we are all here to
5 discuss what procedure we're going to need then in order to resolve
6 these remaining issues as to discovery. Let me hear from the State.

7 MS. BOTELHO: Your Honor, I can understand that they're
8 having difficulty obtaining some of the documents. But, I mean, I would
9 ask that the hearing take place as soon as reasonably necessary. Once
10 the items requested are produced. I would ask to be given a copy as
11 soon as possible. I didn't know that they had received any documents
12 as of, you know, until just a few minutes ago. And so we need an
13 opportunity to also look over those things.

14 If, you know, the issue of the expert and traveling, I would ask
15 that the expert be allowed to testify during the hearing by way of
16 BlueJeans. Audiovisual testimony is, you know, appropriate. I would
17 just ask not to, you know, delay this in any unreasonable way.

18 I can understand the Jury Commissioner taking some time to
19 put together these documents, especially, you know, given the times that
20 we're encountering right now. But, I mean, [audio distortion] --

21 THE COURT: You're cutting in and out. Are you still on the
22 line?

23 MS. BOTELHO: Yes, Judge.

24 THE COURT: Great. Yeah, you were cutting in and out.
25 Sometimes it's hard to hear.

1 Okay. Did you finish?

2 MS. BOTELHO: No, I would just -- I guess what my biggest
3 issue is I want to make sure as I stated in the first appearance that the
4 items and the documentation, so I have sufficient time to file a motion to
5 strike if it goes beyond, you know, what was ordered by the Nevada
6 Supreme Court in terms of the remand. I'd like an opportunity to file, you
7 know, a motion to strike.

8 THE COURT: So all right and what's your position on what
9 we do if the Jury Commissioner doesn't promptly provide the remaining
10 information to defendant that defendant's looking for?

11 MS. BOTELHO: I'm okay with a motion to compel or an order
12 to show cause as the Court deems necessary.

13 THE COURT: Do you believe that an actual subpoena is
14 required to be served on the Jury Commissioner before a motion to
15 compel can be filed?

16 MS. BOTELHO: I would agree with that, Your Honor. That
17 way, you know, at least we have a paper trial, especially if we're going to
18 start -- or if the Court's going to start in essence escalating some kind of
19 sanction.

20 THE COURT: But are you confident from what you've seen
21 that the Jury Commissioner will be providing everything that defendant is
22 looking for?

23 MS. BOTELHO: I'm not sure. I haven't seen anything.

24 THE COURT: All right.

25 All right, so Ms. Dickinson, let's go back to you please and see

1 what your response is to all that.

2 MS. DICKINSON: Your Honor, in the past the Jury
3 Commissioner on these types of issues has agreed to give us everything
4 without a subpoena. We can issue a — and that's the way we have been
5 proceeding with this.

6 THE COURT: All right. Let's try to keep working that way, but
7 if you don't get something let's discuss the procedure that you should do
8 then.

9 MS. DICKINSON: The only problem that we may have is with
10 regard to the zip codes of the master list. Because when I spoke to the
11 attorney representing the Jury Commissioner, Adrian Viesca, who is with
12 the Eight Judicial District Court, he's the person who has been
13 coordinating things for us. He said that he thought there was a cost for
14 them to obtain that.

15 Now I haven't talked to him since, because right when we
16 were trying to get this is when the lock down came and it took him longer
17 to get me things. I think I just received these a few weeks ago, maybe
18 two weeks ago. But so that's been part of the delay in getting things,
19 because he's not at the court every day anymore and working from
20 home.

21 So the only issue, when I did talk to him, was who was going
22 to pay for them to get a zip code breakdown on the master list. Because
23 the way I understood, and I'll go back and talk to him again to make sure
24 I understood him correctly, is that they don't ever request that. And he
25 wasn't sure if they would charge them for that. So that's the only part I

1 think where we've -- we came to a standstill on the master list. But
2 everything else I think he's agreed to. I just haven't received it yet. And
3 I can send what I have today to Agnes.

4 THE COURT: What about the timing of an evidentiary hearing
5 on this? How quickly can both sides be ready?

6 MS. DICKINSON: Well I was -- I was thinking and I don't
7 know how Agnes feels, that the earliest that we could possibly ready
8 would be an August for an evidentiary hearing, because I have like
9 almost 300 pages of documents to go through. And I've gone through
10 some of them already. I need to have an IT person look at that. And of
11 course we've been working short staffed here in our office. The IT
12 people are not working full staff. I mean, I think I'm being -- you know,
13 I'm not sure if we'll be ready in August. That's what I'm hoping we be
14 ready in August. And then of course we still have to find an expert if our
15 office is still willing to go ahead and pay for that. So that to me would be
16 the earliest. And I would prefer like mid-August or the end of August.

17 THE COURT: So that would be today -- this is end of or
18 middle of May, that's about three months.

19 All right. Ms. Botelho, let's hear from you on that, on how
20 quickly we should set down the evidentiary hearing.

21 MS. BOTELHO: I'm okay with August, Your Honor. Mid-
22 August is fine so long as we have the assurance that they're going to be
23 providing -- diligently providing me the documents once they receive
24 them so I have an opportunity to look through them too and hire any
25 experts on our behalf, or you know, subpoena witnesses on our behalf.

1 And so I'm okay with August -- middle of August. I would
2 really, really, really like it go forward the middle of August before we've,
3 you know, potentially go into fall and winter. I don't believe this should
4 be an issue. If they've gotten -- If it's just a matter of getting the
5 documents, please provide them to me as well.

6 MS. DICKINSON: Okay. We --

7 THE COURT: All right. Give me one moment.

8 MS. DICKINSON: Would it be --

9 THE COURT: All right. So this is what we're going to do.
10 First the Court is ordering that if any discovery difficulties arise with the
11 documentation information sought by the Jury Commissioner, then the
12 Court will entertain a motion to compel on order shortening time only
13 after a subpoena has been served on the Jury Commissioner and the
14 time to respond to that subpoena has been exhausted.

15 Of course the Court will permit any witnesses for the
16 evidentiary hearing to be presented by BlueJeans. The Court is going to
17 set down the evidentiary hearing for mid-August. Liz will provide you
18 with that date.

19 THE CLERK: August 12th at 9 a.m.

20 THE COURT: August 12th at 9 a.m. We'll discuss how much
21 time you need in a moment. All documents that the Defendant has
22 received so far from the Jury Commissioner must be produced to the
23 State within three weeks from today.

24 That date, Liz, will be? Three weeks from today --

25 THE CLERK: Is June 10th.

1 THE COURT: June 10th. All additional documents received
2 by the Defendant from the Jury Commissioner have to be seasonably
3 produced to the State. And any documents that will be presented -- any
4 documents received from the Jury Commissioner that will be presented
5 at the evidentiary hearing must be produced to the State no later than
6 mid-July. The Clerk will give you that date as well.

7 THE CLERK: July 15th.

8 THE COURT: July 15th. All right the evidentiary hearing, what
9 will we need? Do we need a full day? Do we need more than a full
10 day?

11 MS. DICKINSON: You know, Your Honor, I have no idea. I
12 still haven't finished going through all these documents. I have had no
13 time to try to find an expert. So I'm not sure.

14 I would tend to think it would probably only be a half a day. I
15 don't know what the DA thinks, if that.

16 MS. BOTELHO: Um --

17 THE COURT: Ms. Botelho.

18 MS. BOTELHO: If the Court is okay with saving the entire day
19 for us that would be fantastic.

20 THE COURT: All right. Very good I'll do that.

21 MS. BOTELHO: I think it's better we --

22 THE COURT: I'll do that.

23 MS. BOTELHO: Okay. Thank you, Judge.

24 THE COURT: My court clerk is asking something.

25 [Colloquy between the Court and the Clerk]

1 THE COURT: I'm going to set aside the entire day August
2 12th at 9 a.m. for you the entire day. Any other matters I have set on that
3 day we will continue. All right. Hold on one moment please.

4 MS. DICKINSON: Your Honor, can I ask one more question?

5 THE COURT: Yes.

6 MS. DICKINSON: If we issue a subpoena normally we have
7 to have a date for that subpoena. Is it all right when we give them, when
8 we issue it, just give them a week to turn it over to us, so from the date
9 that we issue the subpoena to the Jury Commissioner?

10 THE COURT: That will be fine provided anything you request
11 in the subpoena has already been requested of them, so it's not like they
12 get ambushed.

13 MS. DICKINSON: Right. There's only a few other things they
14 haven't given us and since there's an issue about payment on the
15 master list, I can go ahead and do a subpoena on that. And then if
16 there's a problem we can come back to court.

17 THE COURT: All right.

18 MS. DICKINSON: Okay. Thank you.

19 THE COURT: All right. That's fine. So what about the
20 presence of Mr. Valentine? I know it's a long ways off, but will you be
21 requesting that -- I can waive his appearance of course unless the State
22 thinks he needs to be here. I don't think he needs to be here. If you
23 want him here I need to do a transport order.

24 MS. BOTELHO: I don't believe he needs to be there, Your
25 Honor.

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THE COURT: All right.

MS. DICKINSON: No, I know -- he has asked to waive his appearance.

THE COURT: All right, Any appearance by Mr. Valentine is waived for the evidentiary hearing. And the Court will not issue a transport order. All right. Anything else counsel?

MS. BOTELHO: No, Your Honor.

MS. DICKINSON: No. Thank you.

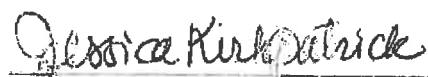
THE COURT: All right. Thank you. Have a good day.

MS. BOTELHO: You too.

MS. DICKINSON: You too, bye.

[Hearing concluded at 11:01 a.m.]

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



Jessica Kirkpatrick
Court Recorder/Transcriber

Steven D. Grierson

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-16-310681-1
DEPT. II

10 vs.

11 KEANDRE VALENTINE,
12 Defendant.

13 BEFORE THE HONORABLE CHARLES THOMPSON,
14 SENIOR DISTRICT COURT JUDGE

15 MONDAY, NOVEMBER 9, 2020

16 RECORDER'S TRANSCRIPT OF HEARING:
17 DEFENDANT'S MOTION TO CONTINUE EVIDENTIARY HEARING,
18 DEFENDANT'S MOTION FOR BAIL

19 APPEARANCES: [All appearances via videoconference]

20 For the State: AGNES BOTHELO, ESQ.
Chief Deputy District Attorney

21 For the Defendant: TYLER GASTON, ESQ.
22 SHARON DICKINSON, ESQ.
23 Deputy Public Defenders

24
25 RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

1 Las Vegas, Nevada, Monday, November 9, 2020

2
3 [Case called at 10:55 a.m.]

4 THE COURT: All right. Page 21, State of Nevada versus
5 Valentine.

6 MS. DICKINSON: Good morning, --

7 [Attorney from another case interrupts]

8 MS. DICKINSON: -- Sharon Dickinson --

9 MS. BOTELHO: Agnes --

10 MS. DICKINSON: -- from the Public Defender's Officer here
11 representing Mr. Valentine.

12 MR. GASTON: Along with Tyler Gaston --

13 MS. BOTELHO: And Agnes Botelho --

14 MR. GASTON: -- from the Public Defenders Office.

15 MS. BOTELHO: And Agnes Botelho from the State, bar
16 number 11064. Good morning,

17 THE COURT: Okay. This is the Defendant's motion to
18 continue the evidentiary hearing and also the motion for bail. With
19 regard to the evidentiary hearing, do you have any objection to a
20 continue -- does the State object to a continuance?

21 MS. BOTELHO: Your Honor, I did file kind of a response. It's
22 not necessarily an opposition. In my response, I asked for -- and I
23 apologize if you didn't get it. I filed it on Friday.

24 THE COURT: I did not get it.

25 MS. BOTELHO: With the holiday -- okay, with the holiday,

1 Your Honor, actually my opposition would have been due today or
2 tomorrow. However I tried to get one in there, so that we wouldn't have
3 to continue this hearing.

4 THE COURT: Do you want me to continue it so I can read it,
5 because I don't have it available to me right now?

6 MS. BOTELHO: As to this issue, no, because I really -- it's
7 not an opposition per se, Judge, it was actually like a two paragraph
8 response. I just ask that we have some kind of hearing with the Jury
9 Commissioner or the individual noted in the Public Defender's motion to
10 continue, the individuals who had not turned over the requested
11 discovery since March of 2020.

12 But this morning Ms. Dickinson did provide me some
13 documentations and I believe she provided me a -- the master list that
14 she received on November 3rd, 2020. So I don't know if now the
15 discovery issue is moot if she's received all of her information.

16 MS. DICKINSON: Your Honor, yes, that's correct. I did talk to
17 the Jury Commissioner's attorney this morning again. And we have
18 received everything we requested except for some raw data, which I
19 don't know that we're going to even need. And so I had sent it this
20 morning to the prosecutor. She couldn't open up some of the files. So
21 I'll have to download it on a UBS [sic] stick for her. I think we have
22 everything right now.

23 We have hired someone to go through it for us and they said
24 they would need three to four weeks to finish. We had received a batch
25 like at the end of April. I think we received something else in August and

1 now this is the final batch. And the reason for the delay is because
2 nobody has ever done this before. And so we had to work with the
3 vendor and also with the court's IT people. So we did receive everything
4 last Tuesday.

5 So if we could have the hearing set we had originally said the
6 end of December. I don't know if maybe -- after I saw everything they
7 gave us, I'm thinking maybe January would be better, because it will
8 give both sides time to go through all this document -- all the documents.

9 THE COURT: Any objection to January?

10 MS. BOTELHO: I was actually hoping for either early
11 December or some time in December, Your Honor, only because this is
12 an evidentiary hearing ordered by the Nevada Supreme Court on a
13 reverse remand specifically for this --

14 THE COURT: I understand.

15 MS. BOTELHO: -- evidentiary --

16 THE COURT: I know what it is.

17 MS. BOTELHO: Okay. And I would -- I had hoped that Judge
18 Scotti would be able to hear it, especially since he presided over the
19 trial.

20 THE COURT: Apparently the Public Defender needs four
21 weeks. That would be middle of December. I don't -- is this going to
22 take more than a day?

23 MS. DICKINSON: Your Honor, I'm not sure because I need to
24 have the expert who's looking at it to get back with me and explain to me
25 exactly what needs to be done. I don't think an evidentiary --

1 THE COURT: Well you said you needed four weeks, correct?

2 MS. DICKINSON: Correct at least four weeks. But I would
3 think the prosecutor would want an additional couple weeks so we can
4 talk about what the experts discovered. So that's why I was thinking
5 January. Because even if we do four weeks, we're right in the middle of
6 Thanksgiving holidays, so to be safe that's why I thought January.

7 THE COURT: Well I would certainly do it after Thanksgiving.
8 I was thinking about the -- maybe the second week of December. I don't
9 know -- let's see what kind of time they have.

10 THE CLERK: Would it go on its own day for an evidentiary
11 hearing, Your Honor?

12 THE COURT: At least one day, yes.

13 THE CLERK: At least one day. I can set it on a Tuesday on
14 December 15th, if --

15 THE COURT: How does December 15th look?

16 MS. DICKINSON: I --

17 MS. BOTELHO: It's, I mean, I'm sorry. It doesn't work for me.
18 I'm out of town December 10th through the 17th.

19 THE COURT: Okay.

20 MS. BOTELHO: So earlier that week would be fine.

21 THE COURT: Well it would have to be after the 17th. Let's
22 see.

23 THE CLERK: I'm trying to check with Brandon. I know,
24 because right now the evidentiary hearings on a Tuesday which is
25 normally a do not set date.

1 THE LAW CLERK: [Indiscernible].
2 MS. DICKINSON: What about the 29th?
3 THE COURT: They may be dark between Christmas and
4 New Year.
5 THE CLERK: Right.
6 THE COURT: Are you dark between Christmas and New
7 Year?
8 THE LAW CLERK: No, there's some current conflicts on
9 Tuesday for another department using our courtroom.
10 THE COURT: There's some conflicts on Tues -- on that date.
11 I think we're going to have to do it in January.
12 MS. DICKINSON: Okay.
13 THE LAW CLERK: Unless they're available for a Friday.
14 THE COURT: We'll give you a January date.
15 MS. DICKINSON: Okay. Thank you.
16 THE CLERK: Brandon, would January 12th be okay? That's a
17 Tuesday or --
18 THE LAW CLERK: Yeah.
19 THE COURT: Sure. January 12th.
20 THE CLERK: Let's see we had it currently set at 10 a.m., --
21 MS. BOTELHO: And what --
22 THE CLERK: -- so I can reset it at 10 a.m.
23 THE COURT: January 12 at 10 a.m.
24 MS. DICKINSON: Thank you.
25 MS. BOTELHO: 10 a.m., thank you so much.

1 MS. DICKINSON: Thank you.

2 MS. BOTELHO: And Your Honor, there is a motion for bail.
3 And I did file a written opposition as well. That one may have to be
4 continued so the Court has an opportunity to review my opposition.

5 THE COURT: I did receive your opposition to the motion for
6 bail.

7 MS. BOTELHO: Oh, you did? Okay, perfect.

8 THE COURT: Yeah, that was filed on November 6th.

9 MS. BOTELHO: Yes, Your Honor.

10 THE COURT: I have that in front of me. I saw the motion for
11 bail. Anything in addition to what's in the motion and the opposition?

12 MS. BOTELHO: No.

13 MR. GASTON: Just, Your Honor, Tyler Gaston from the
14 Public Defender's Office. Mr. Valentine wasn't transported today. I think
15 it's a little more difficult to transport him for this courtroom than for the
16 courtrooms that traditionally handle the criminal calendar, I guess was
17 my understanding. But I spoke to the Defendant about maybe waiving
18 his appearance. And after speaking to him, he does want to be present
19 for his bail motion to be heard. So I guess before the -- before oral
20 argument on the motion or the Court makes a decision, I would just ask
21 to pass it for the Defendant to be transported.

22 THE COURT: Well they won't transport him to the courtroom
23 and this courtroom is not equipped for prisoners. It would have to be
24 done in the lower level at some point I think.

25 THE MARSHAL: Yes.

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THE COURT: And I don't know what --

MR. GASTON: I mean, whatever works for the court.

THE COURT: Well if he wants to be present -- I tell you what. I don't know that we can accomplish a date and time at this point. We're going to need staff to communicate with the lower level and find out when that's available.

THE MARSHAL: Okay, Judge.

THE COURT: They'll have to notify you. Because I can't -- I've been to the lower level. I know that they have things going on. As a matter of fact, I'm going to be there tomorrow morning. But they're going to have to arrange for that and they will notify you when it's on calendar and what date and time.

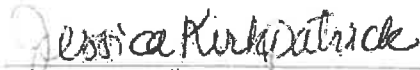
MR. GASTON: Thank you, Your Honor.

MS. BOTELHO: Okay. Thank you.

[Hearing concluded at 11:04 a.m.]

* * * * *

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


Jessica Kirkpatrick
Court Recorder/Transcriber

Steven D. Grierson

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-16-310681-1
DEPT. II

10 vs.

11 KEANDRE VALENTINE,
12 Defendant.

13 BEFORE THE HONORABLE RICHARD F. SCOTTI,
14 DISTRICT COURT JUDGE

15 MONDAY, DECEMBER 7, 2020
16 RECORDER'S TRANSCRIPT OF HEARING:
17 MOTION TO SET BAIL

18 APPEARANCES: [All appearances via videoconference]

19 For the State:

AGNES BOTHELO, ESQ.
Chief Deputy District Attorney

21 For the Defendant:

22 TYLER GASTON, ESQ.
Deputy Public Defender

23
24
25 RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

1 Las Vegas, Nevada, Monday, December 7, 2020

2
3 [Case called at 8:46 a.m.]

4 THE COURT: First on our 8:30 calendar we have State of
5 Nevada versus Valentine, case C316081. Who do we have for the State
6 on that case?

7 MS. BOTELHO: Good morning, Your Honor, Agnes Botelho
8 for the State, bar number 11064.

9 THE COURT: All right. Ms. Botelho. Then who do we have
10 for the defendant, Keandre Valentine?

11 MR. GASTON: Tyler Gaston from the Public Defender's
12 Office, bar number 13488. Good morning, Your Honor.

13 THE COURT: Good morning, Mr. Gaston. All right. And then
14 the Court notes that Mr. Valentine is present through the audiovisual
15 conferencing. The Court can actually see him in the remote location
16 where he is appearing.

17 All right, Counsel -- Ms. Botelho, can you see Mr. Valentine
18 and note that he is in fact appearing?

19 MS. BOTELHO: Yes, Your Honor, I see him on BlueJeans as
20 well as defense counsel.

21 THE COURT: Very good. All right, so let's go ahead and
22 hear Mr. Gaston's motion for bail. Oh, Mr. Gaston, you can -- can you
23 see both parties, Ms. Botelho and your client?

24 MR. GASTON: Yes, sir.

25 THE COURT: All right. Let's go ahead and hear your

1 argument on bail.

2 MR. GASTON: Your Honor, I understand that he was
3 convicted at trial, but a couple things. First, some of those convictions
4 were reversed already for insufficient evidence. And the remaining
5 convictions have been remanded now for us to do this evidentiary
6 hearing and flush out our fair cross-section of the community claim.
7 While that is pending Mr. Valentine is seeking bail to be with his family
8 instead of in CCDC while that is pending.

9 Now Ms. Dickinson in our motion laid out the statute and the
10 cases on governing in Nevada with respect to the Court granting bail for
11 appeals. And NRS 178.488 provides that bail may be allowed pending
12 appeal unless you think the appeal is frivolous or taken for delay, which
13 since the Supreme Court's reversed for an evidentiary hearing I would
14 argue it's not frivolous. And the bail can be denied by District Court if
15 defendant's release poses a risk of flight or danger to the community.
16 And then there's some factors listed out in our motion with respect to
17 what the Court's supposed to consider.

18 And I would just point out with respect to Mr. Valentine his
19 criminal history comes from when he was 18 years old, right, 18 and 19
20 years old and then the present situation. But as far as bail release,
21 we're not asking for him just to be released and walk around and do as
22 he wants pending appeal. We're asking for \$100,000 bail, which is an
23 incredibly substantial amount of bail for an indigent defendant to make.
24 He actually can't make it himself. He'll need help from his family to
25 make then. And then I think what the key component to go part and

1 parcel with that is the high level electronic monitoring.

2 He'll have the ankle monitor bracelet. His -- he has an
3 address that he can live here in Vegas with his family with his aunt who
4 he's always had very close family support. Even if Your Honor
5 remembers from jury trial, his family was present in court almost every
6 single day. So he has that close family support. And more -- I know that
7 that address hasn't necessarily been verified by intake services like it
8 might in a pretrial situation. But the nice thing about the house arrest is
9 and House Arrest won't release him on house arrest or high level
10 monitoring unless they verify the address themselves. They'll verify the
11 address themselves. They'll make sure there's no felons living there,
12 there's no firearms, there's no drugs. They'll basically do the
13 investigative verification process themselves before he even gets out.

14 And then like I said, he still has over -- he still has a \$100,000
15 bail hanging over his head if he does something that he's not supposed
16 to do. More -- he has a kid that he hasn't seen in over 5 years, I believe,
17 if I'm not mistaken, something close to that. He's been in custody
18 almost that entire time. His sentence was 18 years on the bottom. It's
19 been reduced to about 12. He's done about half his sentence I think.
20 He doesn't have any intention of running. He wants to be here. He
21 wants to do his evidentiary hearing.

22 And moreover, Your Honor, while I understand the State's
23 argument that because of those offenses that he committed back when
24 he was 18 and 19 before this offense, that the Court should consider
25 that he's a danger to the community, I mean, on high level electronic

1 monitoring with his family posting \$100,000 bail and being on the hook
2 for that if he messes up, I'd argue that's more than sufficient that Mr.
3 Valentine's going to behave himself. But it cuts the other way too,
4 because I don't see any evidence of flight risk on Mr. Valentine on any of
5 those cases either. I don't see failures to appear or anything that he has
6 a history of not showing up to court or doing anything like that.

7 So ultimately, Your Honor, I think that you should set a bail. It
8 looks like he's also -- it doesn't -- as Ms. Dickinson laid out in our motion
9 it doesn't look like he's -- he has the judgment of conviction pending right
10 now based on the remittitur issued. And he's sitting here in CCDC
11 instead of in prison. So ultimately, I do think the Court should set a bail
12 and I think the Court should take into account the ability to pay of him
13 and his family. I think \$100,000 bail is more than warranted, especially
14 when you couple it with high level electronic monitoring pending our
15 evidentiary hearing to flush out the fair cross-section claim.

16 THE COURT: All right. Thank you. Let's go ahead and hear
17 from you, Ms. Botelho.

18 MS. BOTELHO: Yes, Your Honor. First I'd like to correct Mr.
19 Gaston's very inaccurate claim indicating that the defendant does not
20 have a history of failing to appear in court. As I outlined in Exhibit 1 of
21 the State's opposition, it was the State's opposition to the defendant's
22 initial bail motion before Judge Herndon in Department III, back when
23 this case first started. We pointed out if you look at the procedural
24 history in C309398, the defendant was charged in that case with
25 attempted robbery with use of a deadly weapon, conspiracy to commit

1 robbery and also possession of a stolen firearm. Those charges stem
2 from a July 28th, 2015 attempted robbery of a woman walking in the area
3 of Rainbow and Washington Avenue, as well as an earlier residential
4 burglary from where the firearm used in that attempted robbery was
5 stolen.

6 In that particular case, Your Honor, during this attempted
7 robbery of this woman just walking down the street, the defendant
8 racked that gun and made it like he was going to shoot this woman if she
9 did not comply. So we have an individual here who, as Mr. Gaston
10 correctly pointed out, already has a criminal history for violent behavior
11 from California.

12 Your Honor, I'll remind the Court he was a three-time
13 convicted felon before he showed up in Nevada, before he attempted
14 that robbery upon the woman walking -- just walking down the street.
15 He was -- he had a conviction in 2013 for a burglary which was a
16 residential burglary. In that particular case there was a rear window
17 door that was smashed in. The interior of the residence had been
18 ransacked. And the Defendant and his co-conspirator evaded the
19 police, first in a vehicle and then by foot. The defendant and the jewelry
20 were recovered from inside the vehicle. He was given 5 years'
21 probation, 6 months in jail and placed on probation on May 2nd of 2013
22 in California.

23 He picked up his next case on September 5th of 2019 [sic].
24 That's like four months later, Judge, five months later, in California while
25 he had just begun the probation in the residential burglary case. So he

1 was arrested on November 6th of 2013, so a month after for taking a
2 vehicle without owner's -- so he was arrested in that new case, Your
3 Honor, on November 6th of 2013. He got a new conviction as a result of
4 those arrests in 2014 for taking a vehicle without owner's consent. And
5 guess what, Your Honor, evading a police officer and disregarding --
6 with disregard for the safety of others. He led the police on a high speed
7 chase in a stolen vehicle. He left his phone in the vehicle which led the
8 police to him. Guess what, he was given 5 years' probation again. This
9 time they doubled the fail time to a year in jail. And he was violated from
10 probation on August 9th of 2014 after he absconded from probation.

11 So here we have an individual who was given multiple
12 opportunities in California, given probation while he's committed these
13 very violent offenses, leading police on high speed chases, stealing
14 things from individuals, committing residential robberies. He absconded
15 from probation then made his way to Nevada where, let's see that was in
16 2014, by July 28th of 2015, this is when he attempt to rob the woman at
17 gunpoint, where he racked the slide of that handgun as if he was loading
18 a bullet into the chamber.

19 So when he was arrested on that case in Nevada, Your
20 Honor, he was also subject to a fugitive arrest for the taking a vehicle
21 without owner's consent and evading the police officer from California.
22 However, the system failed the victims in this case. When he was
23 released from custody in C309398, back then he posted a \$25,000 bail.
24 Regardless of him not having ties to the community, regardless of him
25 absconding from probation, regardless of his criminal history all being in

1 California, regardless of the multiple lies that he gave to the Court in that
2 case.

3 And I'll have the Court after he was released from custody, he
4 actually failed to appear in a calendar call for that case in that C309398.
5 When his defense attorney showed up before the Court in that case they
6 gave the excuse of oh he was in California. He's making his way. So
7 they did a continued calendar call. And this is all listed in Exhibit 1 of our
8 motion. He showed up at that calendar call -- oh he's on his way from
9 California he has court trouble. They did a continued calendar call for
10 the very next day. The defense requested another continuance saying
11 oh he was in a car accident. Then they did a continued calendar call on
12 the 16th of May 2016, where the defendant -- the defense attorney said
13 well he's having issues in California. So at that -- in that instance the
14 Court in that attempted robbery case, the Nevada court issued a no bail
15 bench warrant.

16 So the no bail bench warrant was issued May 17th of 2016.
17 Your Honor, by May 26th, 2016, 11 days later, the defendant had robbed
18 Mr. Marvin Bass, one of the victims in this case, an individual who you
19 heard testimony from. He was the individual sitting in his car where he
20 had that chain stolen from him. So he robbed Mr. Bass May 26th of 2016
21 while he was on a no bail bench warrant pending trial in another
22 attempted robbery with a firearm, with a stolen firearm. Two days later,
23 the Defendant goes on that robbery spree in that neighborhood where
24 he victimized Darrell and Deborah Falkner.

25 And, Your Honor, I understand that we -- this case was not

1 necessarily reversed but it was remanded for further proceedings. So I
2 understand the procedural nature of this case. But, Your Honor, you
3 can't un-hear testimony that you heard back on this trial. This was a
4 lengthy trial. I know that you probably recall the testimony from Darrell
5 and Deborah Falkner. These -- this was the couple who came in from
6 Texas after they had moved, because they no longer felt that Las Vegas
7 was safe. They were in their garage when this individual came in,
8 robbed her husband at gunpoint and she was so, so, so, so, so scared.
9 Even as she testified before Your Honor during trial, she expressed to
10 you just how scared she was.

11 After he robbed this couple in their garage, he robbed that little
12 -- that young man, Jordan Alexander who I believe was bringing
13 groceries in or loading his child in a car seat. And then he robbed
14 Santiago Garcia who was -- I believe he was like a worker just doing
15 work outside of a home or I believe he was up on the roof. He was
16 cutting trees. And then he robbed Lazaro --

17 THE COURT: You're going to have to -- you're going to have
18 to wrap it up soon, okay.

19 MS. BOTELHO: Okay. And then he robbed this other couple,
20 Judge, in their garage and you heard from their testimony as well. So
21 you heard testimony from 7 victims for 5 events concerning this
22 Defendant.

23 If the defense wants to go back to the situation where, you
24 know, if we want to ignore the fact that he has been convicted because it
25 was remanded for further proceedings, the Court has two options here.

1 Per NRS 174.187 the Court can hold the Defendant no bail. Because he
2 was pending felony -- a no bail bench warrant, he was out on release on
3 a felony case when he committed the instant offense. If the Court would
4 like to set bail, the bail that was appropriate then and is still appropriate
5 now, set by Judge Herndon after lengthy argument and after briefing,
6 was \$500,000. And I would ask for the added condition of high level
7 electronic monitoring. And I'll submit on that, Your Honor.

8 THE COURT: Court sets bail at \$500,000 with high level
9 electronic monitoring because this Defendant has a history of failure to
10 appear in court, evading police, violating terms of probation. There's a
11 history of violent crimes and violent criminal behavior, including use of a
12 gun. This is a defendant who is a three-time convicted felon. He's also
13 committed very serious crimes while awaiting trial on other charges and
14 for the other reasons articulated by the State in argument today.

15 I'll ask the State to prepare the order please.

16 MR. GASTON: Thank you, Your Honor.

17 MS. BOTELHO: I will do so, thank you,

18 THE COURT: All right. Thank you.

19 [Hearing concluded at 9:01 a.m.]

20 * * * * *

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

23 
24 Jessica Kirkpatrick
25 Court Recorder/Transcriber



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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KEANDRE VALENTINE,

Defendant.

CASE NO.: C-16-316081-1

DEPT. XIX

BEFORE THE HONORABLE CRYSTAL ELLER, DISTRICT COURT JUDGE
MONDAY, JANUARY 25, 2021

**RECORDER'S TRANSCRIPT OF HEARING RE:
MOTION FOR COURT ORDER TO PRODUCE DOCUMENTS**

APPEARANCES VIA BLUEJEANS VIDEO CONFERENCE:

For the Plaintiff:

AGNES M. BOTELHO, ESQ.
Chief Deputy District Attorney

For the Defendant:

SHARON A. DICKINSON, ESQ.
Chief Deputy Public Defender

TYLER C. GASTON, ESQ.
Deputy Public Defender

RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

1 Las Vegas, Nevada; Monday, January 25, 2021

2

3 [Hearing commenced at 2:32 p.m.]

4 THE COURT: All right. Thank you everyone. I know you've
5 checked in. Let's go ahead and make appearances for the record.

6 MS. BOTELHO: Agnes Botelho for the State. Good
7 [Inaudible] 11064.

8 THE COURT: Thank you.

9 MS. DICKINSON: Hello, Your Honor. Sharon Dickinson
10 representing Keandre Valentine. My bar number is 3710.

11 MR. GASTON: And Tyler Gaston on behalf of Mr. Valentine
12 as well.

13 THE COURT: Okay. All right. Who's going to argue the
14 motion?

15 MS. DICKINSON: Your Honor, I can argue it. The party of
16 interest is not the DA's office, it's the Court's attorney, Mr. Viesca, and
17 he's not present.

18 It's my understanding -- is this off? It's my understanding that
19 in another case where they filed a motion to compel, he has agreed to
20 give the information and the only thing he asks is that the Court go
21 ahead and issue a protective order. He's not here to say that.

22 I was on the other case, but I had to get out of that case to
23 come here, but that was my understanding from talking to Nadia Hojjat
24 of our office. That in her case, he has given the information. In my
25 case, I'm just still waiting for it.

1 THE COURT: Okay, and --

2 MS. BOTELHO: Your Honor, and I --

3 THE COURT: Go ahead.

4 MS. BOTELHO: -- of course I then filed an opposition and I
5 didn't really, I mean, I don't have standing in this particular matter or
6 issue. I would just ask though that, the Jury Commissioner and/or her
7 attorney be present to make the specific representations in case -- I
8 mean, I don't know what the circumstances were in the other case, such
9 that they would agree. I mean, I don't know if it's a blanket, okay, to all
10 of these requests or if there are differences, and I don't know why
11 they're not present.

12 MS. DICKINSON: And, Your Honor, I can let the Court know
13 that they have not shown up in the other courtroom either.

14 THE COURT: Okay.

15 MS. DICKINSON: And I did go ahead and email them. And
16 the issue is exactly the same in *Valentine* as it is in *Mungai*, so there's
17 no difference.

18 THE COURT: Okay.

19 Ms. Botelho, also I want to note so you know, in case you
20 don't and for the record, that no opposition was filed to this motion.

21 So, I'm granting it. I will grant it with a protective order and
22 other than adding a protective order, it's granted as requested. And if
23 you could go ahead and submit an order, I'll get that out to you right
24 away so that you'll have time to be prepared for the hearing in February.

25 MS. DICKINSON: Your Honor, would it be okay if I put a date

1 for the protective order where they would have to turn it to me by March
2 -- or February 1st?

3 THE COURT: Yes. I think having a deadline is a good idea.

4 MS. DICKINSON: I mean, not the protective part, for that
5 order?

6 THE COURT: I'll put -- yes, you can put that in the order.

7 MS. DICKINSON: Okay. And then I'll let the Court know that
8 if we do get it on February 1st, that will not give us enough time for the
9 evidentiary hearing because the expert had said previously he needed
10 four weeks.

11 THE COURT: Right. And I understand that from your motion,
12 so based on today's date, I understand that we're pretty much out of
13 time unless you get it tomorrow.

14 MS. DICKINSON: Right, right.

15 THE COURT: So, let's just see when they give it to you and
16 then we'll go -- from there if you guys can stipulate or if you need to
17 request another extension.

18 Hold on please.

19 MS. DICKINSON: Okay.

20 [Colloquy between the Court and the Law Clerk]

21 THE COURT: Okay -- anticipation of having to continue this,
22 will you guys submit dates to continue that February hearing to my Law
23 Clerk so we can get it scheduled?

24 MS. DICKINSON: Yes, Your Honor.

25 MS. BOTELHO: Yes, Your Honor. And I would just ask that I

1 be provided the information as soon as they receive it so that we have
2 an opportunity to perhaps, hire an expert in rebuttal or, you know, get
3 the necessary documentation to oppose.

4 THE COURT: Okay.

5 MS. DICKINSON: Yes.

6 THE COURT: Can you make that part of the order, Ms.
7 Dickerson?

8 MS. DICKERSON: Yes, I will, Your Honor.

9 THE COURT: Thank you.

10 MS. DICKERSON: Thank you.

11 MR. GASTON: Thank you.

12 MS. BOTELHO: Thank you.

13 THE COURT: Thank you. Have a good day, everyone.

14 MS. DICKERSON: Okay. Thank you, you too. Bye.

15 [Hearing concluded at 2:37 p.m.]

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

24 

25 Brittany Amoroso
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-16-316081-1
DEPT. XVIII

10 vs.

11 KEANDRE VALENTINE,
12 Defendant.

13
14 BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE
15 TUESDAY, FEBRUARY 16, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **MOTION FOR CLARIFICATION OF ORDER**

18 [ALL PARTIES APPEARED VIA BLUEJEANS]

19 APPEARANCES:

20 For the State:

AGNES BOTELHO, ESQ.
Deputy District Attorney

21
22 For the Defendant:

SHARON DICKINSON, ESQ.
TYLER GASTON, ESQ.
ADRIAN VIESCA, ESQ.

23
24
25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, February 16, 2021

2

3 [Hearing began at 11:02 a.m.]

4 THE COURT CLERK: State of Nevada versus Keandre
5 Valentine, C316081.

6 MS. BOTELHO: Good Morning, Your Honor, Agnes Botelho,
7 bar #11064. The State is not really a party to this motion; however, we
8 were served, and so I'm present.

9 THE COURT: All right. Sharon Dickinson from the Public
10 Defender's Office representing Keandre Valentine.

11 THE CORRECTIONS OFFICER: Keandre Valentine refused
12 to come to court.

13 THE COURT: Alrighty then.

14 MR. VIESCA: And Your Honor, this is Adrian Viesca on
15 behalf of the Eighth Judicial District Court and the Jury Commission.

16 THE COURT: Is the Defendant present?

17 THE CORRECTIONS OFFICER: No, Your Honor, he refused
18 to come to court.

19 THE COURT: Okay. So what does everybody want to do?
20 Put it over, how long? You have to unmute if you're going to speak
21 though. Anybody?

22 MS. DICKINSON: Your Honor, Sharon Dickinson from the
23 Public Defender's Office --

24 THE COURT: Ms. Dickinson, let me just give you a heads up.

25 MS. DICKINSON: -- okay.

1 THE COURT: I don't have any intention or believe I can
2 clarify another Judge's order --

3 MS. DICKINSON: Yes.

4 THE COURT: -- that infers that there was something in mind,
5 and I don't have any idea how I'm supposed to do that. So, that's -- I'm
6 just forecasting where I'm going to go, once your client is present; and
7 beyond that, it appears that a lot of what was ordered doesn't exit,
8 though I'm not sure how anybody can provide what doesn't exist. So, I
9 don't know if --

10 MS. DICKINSON: That's my understanding, Your Honor, that
11 after we filed a motion and obtained the order, which was not opposed,
12 then Mr. Viesca said it doesn't exist.

13 However, I do have a master -- a current master list, which Mr.
14 Viesca had accidentally sent me two weeks ago, and I think he's agreed
15 to allow us to use that. We're using it in another case, there's two of
16 those.

17 So, what I would propose is the Court just issue an order if the
18 Court wants to, but we already have -- we already have the current
19 master list.

20 We agree not to go ahead and give it to anyone, you know, so
21 we would abide by the protective order. If the Court wants me to submit
22 an order with regard to that -- a new order, if that's what Mr. Viesca
23 wants, I could do that.

24 THE COURT: I don't care, if you guys have worked it out, I'm
25 fine being out of the mix, and we could just take this off calendar.

1 MS. DICKINSON: Right, yes. I think we have; have we Mr.
2 Viesca?

3 MR. VIESCA: Your Honor, this is Adrian Viesca on behalf of
4 the Eighth Judicial District Court, and the Jury Commissioner. Our
5 concern was just having the Jury Commissioner held in contempt for not
6 complying with an order that she couldn't comply with, which is why we
7 filed a motion for clarification.

8 So, you're accurate in your statement that some of the -- the
9 order that was entered, we are unable to provide that information, and
10 as Defense Counsel mistakenly indicated, he does have access to the
11 current records, which has been previously provided to her. We also
12 just want to keep those records under a protective order so they're --
13 they contain the personal identifying information of jurors and potential
14 jurors, and so we don't want that information getting in the wrong hands.

15 THE COURT: That seems fine.

16 MS. DICKINSON: Your Honor, we agreed to that. We agree
17 to that all the time, so we have no problem with that.

18 THE COURT: All right, so you two put together then maybe a
19 stip and order, and everybody sign off on it, and send it over.

20 MS. DICKINSON: Thank you, Your Honor, yes.

21 MR. VIESCA: Thank you.

22 THE COURT: Is that all we're doing here now?

23 MS. DICKINSON: Yes.

24 THE COURT: Okay --

25 MS. DICKINSON: Oh, well Your Honor, one other thing is that

1 we needed to set a hearing, and I'm not sure if we could just do this
2 through your law clerk to find a date for a hearing.

3 THE COURT: -- what kind of hearing? Anything special?

4 MS. BOTELHO: It's the hearing on the remand on the limited
5 issue of the jury venire, Your Honor, and so I think -- my proposal is we
6 email your JEA, with our availability so we don't do it on the record and
7 waste time --

8 THE COURT: That's fine, I just --

9 MS. BOTELHO: -- and agree upon a certain dates.

10 THE COURT: -- I got -- other than a cursory look, I didn't
11 have the opposition or reply and stuff today so, my position had been
12 initially in this, I can't clarify another Judge's order, so I'm not really
13 involved. So, I'm not super familiar with the underlying. All I know is
14 that another Judge ordered stuff that you wanted me to clarify that I can't
15 clarify, but the obvious thing is some of the stuff can be provided.

16 So, beyond that, I don't know anything about the evidentiary
17 hearing. I don't know what's going to be involved, so -- and honestly we
18 don't have Mr. Valentine here, so I think before we start setting anything,
19 I don't want to do too much outside his presence.

20 MS. DICKINSON: Okay, thank you, Your Honor.

21 THE COURT: And then maybe you guys could give me a little
22 heads up in the interim, as to what I'm -- how much time, when it's going
23 to go. Do we have a trial date on this?

24 MS. DICKINSON: No, Your Honor, we have an evidentiary
25 hearing. We're supposed to set an evidentiary hearing, but we've had

1 problems getting all the discovery. Now that we have the discovery, it'll
2 probably be at least a month to two months before we'd be ready for the
3 evidentiary hearing. We had problems getting a time before because of
4 Covid.

5 THE COURT: It's not been that much better now but --

6 MS. DICKINSON: Right.

7 THE COURT: -- so, let's put it on for your client's presence.
8 When do you want it?

9 MS. DICKINSON: I'm not sure. Tyler are you there, do you --
10 Tyler is handling the evidentiary hearing.

11 MR. GASTON: I'm here. Your Honor, you're just asking to set
12 it -- you want to set a hearing to get us the evidentiary hearing date
13 when the Defendant is present?

14 THE COURT: I'm thinking -- when somebody refuses, it
15 leaves me to believe there's somebody who may want to be present and
16 everything and I don't want to -- I was only just giving you a heads up on
17 this motion in case somebody wanted to do something in the interim.
18 But --

19 MR. GASTON: For what it's worth, we talked to the
20 Defendant about what was going to happen today. As far as setting the
21 evidentiary hearing, the Defense doesn't have any objection if you -- if
22 we wanted to just set the -- like Ms. Botelho suggested, just set the
23 evidentiary hearing via emailing back and forth with your clerk, with our
24 available dates. I don't think we -- unless the Court really wants to, I
25 don't think we have to have a hearing with the Defendant present just to

1 get the date set for the evidentiary hearing.

2 THE COURT: Well, I ruled on motions and stuff, and he's not
3 present, I don't know -- do we know why he's not present?

4 THE CORRECTIONS OFFICER: He [unintelligible], Your
5 Honor. He told the officers that his lawyer told him not to come, and
6 when the Sergeant showed up, he said that he was sick.

7 THE COURT: All right.

8 MS. DICKINSON: Your Honor, do you want to set up a status
9 check in like three weeks?

10 THE COURT: Yeah, let's do a status check the Defendant's
11 presence, and in the meantime, if you guys tell me what the evidentiary
12 hearing is and how much time it's going to take, does that work?

13 MS. BOTELHO: Yes, we'll do that in an email with all the
14 parties CC'd Your Honor.

15 THE COURT: That would be perfect; and I guess -- do you
16 want to set a trial date right now?

17 MR. GASTON: Judge, it won't be a trial. It would just be an
18 evidentiary hearing. It's been reversed by the Supreme Court on a
19 limited history of a full evidentiary hearing.

20 THE COURT: On what?

21 MR. GASTON: On an evidentiary hearing relating to the
22 venire challenge the Defense made, so we would just -- there's no trial,
23 it's just going to be an evidentiary hearing on this venire challenge, and
24 then we'll go from there depending on what Your Honor rules.

25 THE COURT: So, they didn't reverse the conviction?

1 MS. BOTELHO: They did not, Your Honor.

2 MS. DICKINSON: Your Honor, actually they did reverse the
3 convictions; two of them were permanently reversed, two or more; some
4 of them temporarily until the evidentiary hearing. Depending on the
5 outcome of the evidentiary hearing, the Court can either order a new trial
6 or the convictions would be reinstated.

7 THE COURT: And is that all in the remand or are there any
8 briefs out there that can tell me what you all think is going on?

9 MS. DICKINSON: Your Honor, it's in the order. I can provide
10 the Court with the order --

11 THE COURT: No, I can get the order.

12 MS. DICKINSON: -- and I can provide the Court with more
13 information.

14 THE COURT: I mean, I can get the order but if there's
15 anything beyond that -- all right. So we probably don't need three weeks
16 for the Defendant's presence and to set the evidentiary hearing, right?

17 MR. GASTON: Sure.

18 MS. DICKINSON: I just picked a time, three weeks. The
19 Court can set anytime. If he's sick, I don't know, what's going on.

20 THE COURT: All right. We'll go three weeks, if that's fine.
21 Mr. Gaston, no objection to a three-week status check and set the
22 evidentiary hearing and maybe you guys -- you guys are going to let me
23 know what's going on?

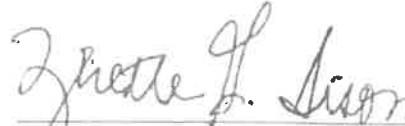
24 MR. GASTON: Yes, that sounds great.

25 THE COURT: All right. Is it going to be a long evidentiary

1 hearing, do you know?
2 MS. BOTELHO: Probably, Your Honor.
3 MR. GASTON: I would think so.
4 MS. DICKINSON: Your Honor, we were thinking maybe six
5 hours or eight hours.
6 THE COURT: Okay, three weeks.
7 THE COURT CLERK: March 11th at 11 a.m.
8 MS. BOTELHO: Thank you.
9 MR. GASTON: Thank you.
10 THE COURT: So, we're taking a motion for clarification off
11 calendar, right? Is that right everybody? Ms. Dickinson, your motion.
12 Motion is off —
13 MS. DICKINSON: Yes. Oh that's fine, yes. If the Court wants
14 to take that off calendar, that's fine; and I'll prepare the other order and
15 send it to Mr. Viesca.
16 THE COURT: All right. Thank you.
17 MS. DICKINSON: The stip and order. Okay, thank you.
18 [Hearing concluded at 11:13 a.m.]
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Yvette G. Sison
Court Recorder/Transcriber

Steven D. Grierson

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C-16-316081-1
DEPT. XVIII

10 vs.

11 KEANDRE VALENTINE,
12 Defendant.

13
14 BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE
15 TUESDAY, MARCH 16, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING:**

17 STATUS CHECK: DEFENDANT'S PRESENCE/SET EVIDENTIARY
18 HEARING/STATUS CHECK: MOTION FOR OWN RECOGNIZANCE RELEASE

19 [ALL PARTIES APPEARED VIA BLUEJEANS]

20 APPEARANCES:

21 For the State: AGNES BOTELHO, ESQ.
22 Deputy District Attorney

23 For the Defendant: SHARON DICKINSON, ESQ.
24 Deputy Public Defender

25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, March 16, 2021

2
3 [Hearing began at 12:46 p.m.]

4 THE COURT CLERK: State of Nevada versus Keandre
5 Valentine, C316081.

6 MS. BOTELHO: Agnes Botelho, bar #11064, I'm here on
7 Keandre Valentine. Mr. Gaston put this matter on calendar with the
8 Court's permission, kind of on a short set, but I don't see Mr. Gaston on
9 BlueJeans.

10 MS. DICKINSON: Your Honor, this is Sharon Dickinson from
11 the Public Defender's Office. I'm representing Keandre Valentine. Mr.
12 Gaston is in a preliminary hearing right now.

13 My understanding, we were here for two reasons. I thought
14 one was to set the hearing date, possible trial date also. With regard to
15 the short setting that was -- we were asking permission to have him
16 released to go to his grandmother's funeral on Thursday.

17 We had submitted some paperwork on that. I'm not sure if it's
18 on this calendar or if it was put on a different calendar; but basically, he's
19 seeking to get out at least from like 11 a.m. to 12 p.m. for a private
20 viewing at Palm Mortuary on Thursday.

21 THE COURT: What's the State's position?

22 MS. DICKINSON: The date that -- we had asked for today for
23 the funeral, but then we had notice that it was set for the 25th of March,
24 which obviously would be too late for the funeral, which is on the 18th.

25 THE COURT: Okay, it was filed and set for the 25th. What's

1 the State's position?

2 MS. BOTELHO: Your Honor, I don't know what the jail can
3 accommodate in terms of transporting him for this limited purpose. The
4 only opposition that I would have would be of course [unintelligible]
5 without any supervision. [unintelligible] argued his bail ad nauseum,
6 beginning [unintelligible] and --
7 [Of note, Ms. Botelho's BlueJeans connection is going in and out, hence
8 the multiple "unintelligibles"]
9 and his bail is currently at \$500,000 plus high-level electronic monitoring
10 and so if -- I don't know what the jail's position is. I've never heard of
11 them making these special accommodations to, you know; transport a
12 Defendant for a purpose such as this.

13 MS. DICKINSON: Your Honor, if I can be heard. I know that I
14 had this situation in the past, a long time ago. I do not know what the
15 status is with the jail due to Covid; with that caveat, we ask the Court to
16 consider a release.

17 THE COURT: I'm not going to release him. I mean, if you
18 could figure out a way to have him transported over there or what not, if
19 it's something the jail can do, but --

20 MS. DICKINSON: Okay, thank you, Your Honor. And then the
21 other reason we're here today is the Court was going to set a hearing
22 date, an evidentiary hearing date and possibly a trial date. We did
23 receive the other paperwork or information from the Court that we
24 needed to give to our expert. He's reviewing that right now. We did give
25 it also to the DA. He has another hearing in April, so we were hoping

1 that we could set an evidentiary hearing in maybe mid-May. I don't know
2 if you want to also set it for a trial date at that time.

3 I think we had anticipated that it may -- the hearing --
4 evidentiary hearing date would take six to eight hours.

5 THE COURT: Those are my notes.

6 MS. DICKINSON: That's correct.

7 THE COURT: Mr. Valentine, you're here right?

8 THE DEFENDANT: Yeah.

9 THE COURT: All right. Did you guys get with my JEA and
10 talk about any possible dates?

11 MS. DICKINSON: We haven't done that yet, but we will. We
12 can do that. I was just wondering, if we set it for trial, it would make it
13 easier just to get one day. I'm not sure what Agnes' opinion is on that.

14 MS. BOTELHO: Well, I don't think we should set it for trial
15 because -- I mean technically, it's not a trial, it's just an evidentiary
16 hearing where, you know, Judge Holthus would take testimony from the
17 jury commissioner and your expert, and so I don't anticipate this having
18 to go to trial after this hearing.

19 Your Honor, this is a remand, just on the very limited purpose
20 of an evidentiary hearing, on the fair cross section of the community
21 issue --

22 THE COURT: Got you.

23 MS. BOTELHO: The remand did indicate that once the Court
24 -- if the Court, you know, made the requisite findings after the evidentiary
25 hearing, that there was a fair cross section of the community

1 represented in the jury venire.

2 The District Court could reinstate the judgment of conviction,
3 and you know, Mr. Valentine would stand convicted, as he was in trial.
4 So I think we just need to set an evidentiary hearing. The only
5 opposition I have concerning this other issue, is if he were to get
6 released, I'm prepared to re-argue bail if we have to for the, you know,
7 tenth millionth time, but I don't think he should be OR'd.

8 We can get with your JEA for a date. The only problem is,
9 with the hearing, it will be a lengthier hearing. I've been in trial with Mr.
10 Gaston, I believe he's the one that's going to question their expert, and
11 he tends to take his time asking questions, so we anticipate you know
12 maybe a full day of a hearing; and so it's difficult when we're setting the
13 hearing date because my understanding is the Court hasn't been able to
14 get time blocks like that.

15 THE COURT: Yeah, I don't -- I don't -- how do we -- I'm not
16 sure that we can get that much time with the jail. We may have to do it
17 in blocks of time, perhaps, I don't know, honestly, so -- we will -- let's do
18 a status check in 30, and in the meantime hopefully we'll have -- you
19 guys will all get ahold of Kelly, and we'll figure out how to best do it.

20 MS. BOTELHO: Okay.

21 THE COURT: I don't know whether it's -- yeah, I don't know.

22 THE COURT CLERK: April 15th at 11 a.m.

23 MS. BOTELHO: And Your Honor, just for clarification,
24 concerning his release, there's no OR issue --

25 THE COURT: No.

1 MS. BOTELHO: -- the \$500,000 plus high-level electronic
2 monitoring remains; however, if the jail can make the accommodations
3 to transport him to and from his mother's funeral -- grandmother's
4 funeral on the 18th, the Court is willing to do that? Do I have --

5 THE COURT: That's correct.

6 MS. BOTELHO: Thank you, Your Honor.

7 MS. DICKINSON: Thank you, Your Honor.

8 THE COURT: Mr. Valentine, sorry about your loss.

9 THE DEFENDANT: Thank you.


10 [Hearing concluded at 12:53 p.m.]

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

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18 Yvette G. Sison
19 Court Recorder/Transcriber
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1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,
9 Plaintiff,

CASE NO: C-16-316081-1

DEPT. XVIII

10 vs.

11 KEANDRE VALENTINE,
12 Defendant.

13
14 BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE
THURSDAY, APRIL 15, 2021

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**
16 **STATUS CHECK: DEFT. PRESENCE/ SET EVIDENTIARY HEARING**

17
18 APPEARANCES VIA BLUEJEANS VIDEO CONFERENCING:

19 For the State:

HILARY HEAP, ESQ.
Chief Deputy District Attorney

20
21 For the Defendant:

SHARON G. DICKINSON, ESQ.
Deputy Public Defender

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23
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25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada; Thursday, April 15, 2021

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3 [Proceeding commenced at 12:16 p.m.]

4 MS. DICKINSON: Your Honor, this is Sharon Dickinson from
5 the Public Defender's Office. I'm here on Keandre Valentine.

6 THE COURT: Okay.

7 THE MARSHAL: Page 5.

8 THE COURT CLERK: State of Nevada versus Keandre
9 Valentine, C316081.

10 MS. HEAP: Your Honor, I don't have that case. It looks like
11 that would be Mr. Dickerson or Ms. Botelho.

12 MS. DICKINSON: Your Honor, we're here today on a status
13 check to set the evidentiary hearing.

14 THE COURT: Right.

15 MS. DICKINSON: I've not heard of a date to [audio
16 distortion].

17 THE COURT: Yikes. Is your client present?

18 MS. DICKINSON: He's in custody. I'm not sure.

19 THE COURT: Mr. Valentine, are you there?

20 THE DEFENDANT: Yeah.

21 THE COURT: Okay. It looks like -- my notes indicate you
22 guys were going to reach out to Kelly and try to set this up sometime in
23 mid-May, and now you're asking for the second week in June; is that
24 right?

25 MS. DICKINSON: Your Honor, Agnes, the Prosecutor, had

1 asked for possibly June. And if we did June, we were available the
2 second week. So, yes.

3 THE COURT: Are you available June 21st?

4 MS. DICKINSON: Yes, Your Honor.

5 THE COURT: All right, are -- you're available that whole
6 week?

7 MS. DICKINSON: Well, I'm not sure about the whole week
8 because Tyler Gaston is doing the hearing. He's in another --

9 THE COURT: All right, let me do this guys. I'm going to
10 status check this again. We'll reach out to you in the next couple weeks
11 and get it set. Okay?

12 MS. DICKINSON: Okay. Okay.

13 THE COURT CLERK: April 29th at 11:00 a.m.

14 MS. DICKINSON: Thank you.

15 THE COURT: Sure, thank you. We'll be in touch with you.
16 Won't we?

17 MS. DICKINSON: Okay, thank you.

18 [Proceeding concluded at 12:19 p.m.]

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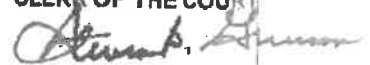
21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
23 ability.

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Kaihl Berndt

Kaihl Berndt
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,
9 Plaintiff,

CASE NO: C-316081-1

DEPT. XVIII

10 vs.

11 KEANDRE VALENTINE,
12 Defendant.

13
14 BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE
THURSDAY, APRIL 29, 2021

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**
16 **STATUS CHECK: SET EVIDENTIARY HEARING**

17
18 APPEARANCES VIA BLUEJEANS VIDEO CONFERENCING:

19 For the State:

AGNES M. BOTELHO, ESQ.
Chief Deputy District Attorney

20
21 For the Defendant:

SHARON G. DICKINSON, ESQ.
Deputy Public Defender

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25 RECORDED BY: TRISHA GARCIA, COURT RECORDER

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Las Vegas, Nevada; Thursday, April 29, 2021

[Proceeding commenced at 11:11 a.m.]

THE COURT CLERK: Page 2, State of Nevada versus
Keandre Valentine, C316081.

MS. BOTELHO: Good morning, Your Honor, Agnes Botelho
for the State, bar number 11064.

THE COURT: Good morning. Do we have anybody for the
Defendant? This is Ms. Dickinson's; isn't it usually?

MS. BOTELHO: Yes, it is.

THE COURT: Ms. Dickinson?

MS. BOTELHO: And she told me she was logged on.

THE COURT CLERK: She was on earlier.

THE COURT: Ms. Dickinson, are you there?

UNIDENTIFIED SPEAKER: Your Honor, she may have been.
Unfortunately, we're having some technical difficulties. The internet just
went out for some of our office.

MS. DICKINSON: Your Honor, here I am.

THE COURT: There you are.

MS. DICKINSON: Sharon Dickinson --

THE COURT: I hear you.

MS. DICKINSON: Okay.

THE COURT: All good. All right, your client refused.

MS. DICKINSON: Oh, okay.

THE COURT: So --

1 MS. DICKINSON: I -- Ms. Botelho and I have been talking
2 about possible negotiations, and I was going to ask if the Court would be
3 willing to set this for status check in two weeks. We're going to plan on
4 meeting on Thursday next week and see if it's possible to negotiate this
5 and also to go over all the discovery, if that's okay --
6 THE COURT: Absolutely.
7 MS. BOTELHO: That's all correct, Your Honor.
8 THE COURT: Totally fine with me.
9 MS. BOTELHO: That would be our request.
10 THE COURT: You got it.
11 MS. DICKINSON: Okay.
12 THE COURT: So, two weeks?
13 MS. DICKINSON: Yes, thank you.
14 THE COURT CLERK: It'll actually be three.
15 THE COURT: It's going to be three, okay?
16 MS. DICKINSON: Okay.
17 MS. BOTELHO: Even better, thank you.
18 THE COURT CLERK: May 20th at 11:00 a.m.
19 MS. DICKINSON: Thank you, Your Honor.

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THE COURT: Thank you.

MS. BOTELHO: Thank you.

[Proceeding concluded at 11:12 a.m.]

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



Kaihla Berndt
Court Recorder/Transcriber



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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,

vs.

KEANDRE VALENTINE,
Defendant.

CASE NO: C-16-316081-1
DEPT. XVIII

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE
THURSDAY, JULY 29, 2021

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
STATUS CHECK: NEGOTIATIONS**

APPEARANCES VIA BLUEJEANS VIDEO CONFERENCING:

For the State:

MICHAEL G. GILES, ESQ.
Chief Deputy District Attorney

For the Defendant:

TYLER GASTON, ESQ.,
SHARON G. DICKINSON, ESQ.
Deputy Public Defenders

RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada; Thursday, July 29, 2021

2
3 [Proceeding commenced at 12:11 p.m.]

4 THE COURT CLERK: Case 316081 State of Nevada versus
5 Keandre Valentine.

6 MR. GASTON: Good morning, Your Honor, Tyler Gaston and
7 Sharon Dickinson from the Public Defender's Office on behalf of Mr.
8 Valentine who's present in custody.

9 THE COURT: Good morning --

10 MR. GILES: Michael Giles for the State.

11 THE COURT: -- or afternoon, I guess.

12 MR. GASTON: This was on for a status check on
13 negotiations. Just a brief reminder, this is a case that we went to trial on
14 a couple years ago, and we lost on all counts.

15 THE COURT: Right.

16 MR. GASTON: It went up for appeal, and ultimately, the Court
17 reversed a couple of the convictions for insufficient evidence and
18 remanded the remaining counts for an evidentiary hearing on our venire
19 challenge. He was originally sentenced to 18 to 48 years. After the two
20 counts that were reversed -- or found insufficient, he's currently facing a
21 maximum of 12 to 32 years. The State made an offer to resolve the
22 remaining counts, essentially, if Mr. Valentine was considering
23 stipulating to a 10 to 25-year sentence. We asked the State if they
24 would agree to an 8 on the bottom, instead of a 10, and Ms. Lexus -- or
25 Ms. Botelho said no, she's not inclined to do that.

1 As of right now, we have the evidentiary hearing set I believe
2 on September 9th. We just have it blocked out for that Friday, but I think
3 it might take about six, six and a half hours, so we might have to go into
4 the following Monday as well. That being said, I spoke to Mr. Valentine,
5 I -- obviously, I don't know if the Court's willing to consider it or indicate
6 in any way, but if the Court would consider giving an 8 on the bottom at
7 sentencing, Mr. Valentine would be willing to just plead straight up to the
8 remaining charges, as well, and proceed to sentencing.

9 THE COURT: Wow, I've never had anybody do that with me.

10 MR. GILES: And --

11 THE COURT: It's creative, I mean --

12 MR. GASTON: If the Court wants to review a PSI to make a
13 decision or anything like that, obviously Mr. Valentine's been in custody
14 for -- since his last trial back -- basically since 2016. He's been in for
15 about 5 years. The PSI that we used at that sentencing is in Odyssey if
16 the Court wants to view that before making a decision or whatever. But
17 the 8 on the bottom is the important thing to Mr. Valentine. We're fine
18 with the top being whatever the Court considers fair.

19 If the Court's willing to indicate that it would give an 8, we
20 would just plead straight up.

21 THE COURT: Okay. I'm not going to get involved in
22 negotiations, so.

23 MR. GILES: And Your Honor, before that happens, Michael
24 Giles appearing on behalf of Ms. Botelho who had to leave the
25 BlueJeans. The matter is not resolved. The idea was to try and resolve

1 it before the evidentiary hearing. As that's not likely to happen, the offer
2 -- her offer is now revoked. And I believe she would probably want to be
3 considered on what Mr. Gaston's requesting.

4 THE COURT: Okay, well do you want to put it on on
5 Tuesday?

6 MR. GILES: I would think that would be the easiest way. And
7 that way -- she's familiar with the case, I'm not. I'm just getting a new
8 date.

9 THE COURT: I'd be more comfortable, especially if she's
10 going to withdraw the offer. I want to make sure Mr. Valentine
11 acknowledges the offer and officially for the record rejects it if that's what
12 he's going to do and -- so, let's go to Tuesday.

13 MR. GASTON: Thanks, Your Honor.

14 THE COURT CLERK: August 3rd, 11:00 a.m.

15 THE COURT: And by the way, Mr. Gaston, I show evidentiary
16 hearing 9/10/21.

17 MR. GASTON: That's probably it, so whatever the Friday is.
18 If I said the 9th, then I'm wrong. Whatever that Friday is.

19 THE COURT: Okay. All right.

20 MR. GASTON: Thank you.

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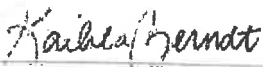
THE MARSHAL: Page 12, Petey.

THE COURT: Mr. Gaston, make sure you talk to Mr.
Valentine before Tuesday so we know what we're doing, please.

[Proceeding concluded at 12:14 p.m.]

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


Kaihla Berndt
Court Recorder/Transcriber

Steven D. Grlerson

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,
9 Plaintiff,
10 vs.
11 KEANDRE VALENTINE,
12 Defendant.

CASE NO: C-16-316081-1
DEPT. XVIII

13
14 BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE
TUESDAY, AUGUST 3, 2021

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**
16 **STATUS CHECK: NEGOTIATIONS**

17
18 APPEARANCES VIA BLUEJEANS VIDEO CONFERENCING:

19 For the State: JAY P. RAMAN, ESQ.
20 Chief Deputy District Attorney

21
22 For the Defendant: TYLER GASTON, ESQ.,
SHARON G. DICKINSON, ESQ.
23 Deputy Public Defenders

24
25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada; Tuesday, August 3, 2021

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3 [Proceeding commenced at 11:44 a.m.]

4 THE COURT CLERK: Case C316081 State of Nevada versus
5 Valentine.

6 MR. GASTON: Good morning, Your Honor. Tyler Gaston
7 and Sharon Dickinson of the Public Defender's Office on behalf of Mr.
8 Valentine who's present in custody.

9 THE COURT: All right, this is on to status check negotiations.
10 I mean I looked over the PSI, anyway, I'm not willing to make a
11 commitment, so you guys do what you got to do.

12 MR. GASTON: Okay. So, then we'll -- I guess we'll just leave
13 the evidentiary hearing as set and [indiscernible] have an expert witness
14 testify, and I just want to make sure that the Court's okay with him
15 testifying via BlueJeans.

16 THE COURT: Yeah, that's fine. We did the -- we put the
17 negotiation rejection on the record, right?

18 MR. GASTON: I did it last time. I can do it again if you want.

19 THE COURT: No, if you're comfortable you --

20 MR. GASTON: Sure. Yeah, the Defendant's -- currently after
21 the recent reversals, etcetera, the Defendant's currently serving 12 to 32
22 years. The offer is to stipulate to 10 to 25 years. We're rejecting that
23 offer at this time. We've talked to the State about stipulating to an 8 on
24 the bottom. The State doesn't seem interested at that -- in that at this
25 time either. And so, we don't -- we haven't reached a negotiation

1 [indiscernible].

2 THE COURT: All right, well. And that's correct, Mr.
3 Valentine? That's your understanding of the offer?

4 THE DEFENDANT: Yeah.

5 THE COURT: And you're not interested in it?

6 THE DEFENDANT: No, I'm not interested, no.

7 THE COURT: Okay. Well, we'll just -- we'll see you at the
8 evidentiary hearing.

9 MR. GASTON: Thanks, Your Honor.

10 [Proceeding concluded at 11:46 a.m.]

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

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Kathia Berndt

Kathia Berndt
Court Recorder/Transcriber

Steven D. Grierson

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
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8 STATE OF NEVADA,
9 Plaintiff,

10 vs.

11 KEANDRE VALENTINE,
12 Defendant.

CASE NO: C-16-316081-1
DEPT. XVIII

13 BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE
14 THURSDAY, SEPTEMBER 2, 2021

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**
16 **MOTION TO CONTINUE EVIDENTIARY HEARING**

17 APPEARANCES VIA BLUEJEANS VIDEO CONFERENCING:

18 For the State: MICHAEL DICKERSON, ESQ.,
19 Chief Deputy District Attorneys

20 For the Defendant: SHARON G. DICKINSON, ESQ.
21 Deputy Public Defender

22
23 ADDITIONAL APPEARANCE: ROBERT STEPHENS, ESQ.
24 Chief Deputy District Attorney

25 RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada; Thursday, September 2, 2021

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3 [Proceeding commenced at 12:39 p.m.]

4 THE COURT CLERK: Case C316081 State of Nevada versus
5 Valentine.

6 MS. DICKINSON: Sharon Dickinson on behalf of Mr.
7 Valentine.

8 THE COURT: All right, this is -- you guys are requesting to
9 continue the evidentiary hearing?

10 MS. DICKINSON: Yes, Your Honor. The evidentiary hearing
11 was going to be handled by Tyler Gaston. And he is in trial, and I
12 believe the State has no objection to continuing it to the beginning of
13 November.

14 THE COURT: All right.

15 MR. STEPHENS: Your Honor, this case is being handled by
16 Ms. Botelho or Mr. Dickerson of our office; I don't have any of those
17 notes.

18 THE COURT: All right. Well, somebody put together an email
19 chain with Kelly --

20 MR. DICKERSON: Mike Dickerson on behalf of the State.

21 THE COURT: -- my JEA --

22 MR. DICKERSON: I can fill in here.

23 THE COURT: Sorry. Oh, there you are. Are you --

24 MR. DICKERSON: We have no objection.

25 THE COURT: No objection?

1 MR. DICKERSON: That's correct, Your Honor.
2 THE COURT: All right. You guys want to just get ahold of
3 Kelly and work out a date?
4 MR. DICKERSON: Yeah, yeah.
5 MS. DICKINSON: That'll be fine, Your Honor. Yeah, we can
6 do that.
7 MR. DICKERSON: That works for the State.
8 THE COURT: Okay. All right, we'll vacate the 9/10
9 evidentiary hearing.
10 MS. DICKINSON: Thank you, Your Honor.
11 THE MARSHAL: Page 4 from the 11:00 --
12 THE COURT: Oh, you know what? Hey, hey, time out.
13 Contact Judge Bluth now. Let's put that on for status check in front of
14 her, so she knows what's going on.
15 MS. DICKINSON: Excuse me, Your Honor. Did you say it
16 was transferred to another Judge?
17 THE COURT: Well, it's not transferred. My whole caseload,
18 Judge Bluth is taking over outlying. So, yes, it will be Judge Bluth.
19 MS. DICKINSON: Okay.
20 THE COURT: So, let's put it on for status check. You want a
21 week or two weeks?
22 MS. DICKINSON: Two weeks.
23 THE COURT: Okay. Continue it two weeks to reset the
24 evidentiary hearing.
25 THE COURT CLERK: September 16th at 11:00 a.m.

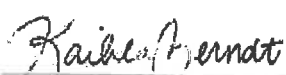
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MS. DICKINSON: Thank you.

THE COURT: Uh-huh.

[Proceeding concluded at 12:41 p.m.]

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


Kaihla Berndt
Court Recorder/Transcriber



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff(s),

vs.

KEANDRE VALENTINE,

Defendant(s).

Case No. C-16-316081-1

Department VI

BEFORE THE HONORABLE JACQUELINE M. BLUTH,
DISTRICT COURT JUDGE

FRIDAY, DECEMBER 3, 2021

**TRANSCRIPT OF PROCEEDINGS RE:
EVIDENTIARY HEARING**

(Appearances on page 2.)

RECORDED BY: DELORIS SCOTT, COURT RECORDER

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APPEARANCES:

For the State:

AGNES M. BOTELHO, ESQ.
Chief Deputy District Attorney
MICHAEL DICKERSON, ESQ.
Chief Deputy District Attorney

For the Defendant(s):

TYLER GASTON, ESQ.
Deputy Public Defender
KRISTY HOLIDAY, ESQ.
Deputy Public Defender
SHARON G. DICKENSON, ESQ.
Deputy Public Defender
(Via BlueJeans)

1 **LAS VEGAS, NEVADA, FRIDAY, DECEMBER 3, 2021**

2 [Proceeding commenced at 1:21 p.m.]

3
4 **THE COURT:** We are on the record in State of Nevada
5 versus Keandre Valentine, C316081.

6 **MR. GASTON:** Good morning, Your Honor. Tyler Gaston
7 and Kristy Holiday are present in court on behalf of Mr. Valentine,
8 along with Ms. Dickenson, who's also attorney of record on the
9 case and she's present via BlueJeans.

10 The client is not present. I -- are we planning on having
11 him?

12 **THE COURT:** I thought. I mean, what -- yeah, right? I
13 mean --

14 **MR. GASTON:** The defense position would be that this
15 would be a hearing in which the defendant's presence would be
16 required.

17 **THE COURT:** Agreed. No, I think it's a critical point of the
18 proceeding and my understanding was that he was going to be
19 here. But -- so I am waiting for him to pop up.

20 **MS. HOLIDAY:** Maybe because it's set at 1:30, Judge?

21 **THE COURT:** Yeah, you're right. I keep thinking it's 1:30,
22 but it's 1:21. So let's give him a few minutes.

23 Do you feel comfortable talking about the record part
24 without him being here?

25 **MR. GASTON:** That's fine.

1 THE COURT: All right. So I do have -- is Ms. Dickenson
2 using Ms. Clark's -- I'm sorry, I have to make sure I have everybody
3 on. So I have a Ms. Stone and a Ms. Clark. I know who Ms. Clark is.

4 MR. GASTON: Ms. Stone is also an attorney of ours.
5 They're not technically on this case, they are just attorneys in office
6 witnessing a proceeding.

7 THE COURT: Okay. Perfect. And then Ms. Dickenson is
8 present via BlueJeans on behalf of Mr. Valentine, who will be
9 joining us shortly.

10 Ms. Botelho on behalf of the State.

11 So I had -- I was asking the attorneys a few questions
12 before we went on, just because I wanted to fully understand
13 exactly where we were procedurally, because I had received some
14 e-mails going back and forth between the parties in regards to
15 some documents that the State had received this week.

16 And so, basically, the State's position was that the minute
17 order put forth by Judge Scotti on May 20th of 2020 stated that the
18 Court ordered all documents Defendant received thus far from the
19 jury commissioner to be provided to the State by June 10th.
20 Additional documents received from the jury commissioner must
21 be [indiscernible] produced to the State. And any documents that
22 were presented at the evidentiary hearing must be produced to the
23 State by no later than July 15th.

24 So it was Ms. Botelho's position that the documents that
25 were handed over, which are the DETR records, should not be used,

1 because they were not turned over in the timeline that was
2 expressed by the minute order.

3 Mr. Gaston's position was that he did not believe that
4 these were -- that -- he did not believe that these needed or were
5 ordered to be turned over, that these were documents in which his
6 expert relied upon and therefore he was turning them over just as a
7 professional courtesy and did not believe that it was mandated by
8 the court order.

9 Mr. Gaston, did that fully represent the representations
10 you had made up to that point?

11 MR. GASTON: Yes.

12 THE COURT: Okay. Ms. Botelho, does that fully represent
13 the representations you had made up to that point?

14 MS. BOTELHO: Yes.

15 THE COURT: Okay. So, Mr. Gaston, I'm going to turn it
16 over to you now, because now that we're on the record, I think that
17 there was a few added things that you wanted to put on the record
18 in regards to the record.

19 MR. GASTON: Yes, Your Honor. Thank you.

20 Yeah, I was brief before, trying to give an overview of
21 what I thought the issues were. I wasn't necessarily trying to --

22 THE COURT: I understand that.

23 MR. GASTON: Okay. So the State sent an e-mail to
24 everybody indicating that it was going to be seeking to preclude the
25 use of the DETR records and these other two things that were

1 turned over as well this week, the agreement between the judicial
2 district court and the Department of Unemployment and any e-mail
3 correspondence between them. And I guess the subtext is if the
4 Court's not precluding that, the State might want a continuance.
5 We'd be opposed to both of those requests.

6 For there to be a violation -- for there to be a remedy
7 given to the State, there has to be a violation. For there to be a
8 violation, there has to be a rule which was violated.

9 The State seems to be making kind of two arguments, that
10 we violated Judge Scotti's minute -- or Judge Scotti's order
11 compelling, essentially, reciprocals -- reciprocal discovery, and that
12 we violated, I guess, just -- we either didn't comply with State
13 request for discovery with respect to expert things, or general rules
14 that exist regarding discovery and -- with respect to expert
15 witnesses. And I'd just respond to each in turn.

16 THE COURT: Okay.

17 MR. GASTON: So with respect to Judge Scotti's order,
18 DETR records don't fall within anything in Judge Scotti's order.
19 They're, A, not documents given to us by the jury commissioner.
20 They're, B, not documents that we're introducing at the evidentiary
21 hearing. So I don't really see how they're an argument that they fall
22 within Judge Scotti's order at all.

23 Aside from the fact that we're now two years later, we
24 received those documents this week, or slash-last week, late last
25 week, and we disclosed them pretty much immediately. They're

1 also within the public domain and she could have gotten -- the
2 district attorney, common theme here, has done very little in the
3 last two years to prepare her own case, including retain an expert of
4 her own or anything like that. And she could have got these
5 documents herself if she wanted them to.

6 Moreover, there's no real prejudice to them, because
7 they're just the unemployment records for 2017, where the
8 important part of it is you just count up the African-Americans and
9 the Hispanics on them and divide it by the total number of people in
10 the unemployment records. That's essentially what this issue is.
11 The jury commissioner was required to use this as one of the
12 sources. She wasn't. What's the racial composition of that? And is
13 that part of the reason that there might have been a systemic --
14 systematic underrepresentation of minorities?

15 The -- so, essentially, doesn't violate the order. We just
16 received them anyways. There's no prejudice to the State
17 regardless and they could have done this themselves.

18 As far as general requests/expert rules, again, the State
19 asserts that we violate all these rules without -- and this will again
20 be a common theme kind of what my response is to what -- a lot of
21 what the State's saying is without citation. What rule are we
22 accused of actually violating? We noticed our expert. There is no
23 rule.

24 First, just to be clear, we don't even have to -- I don't even
25 think we have to notice an expert for an evidentiary hearing

1 anyways. There's no rule that says we have to.

2 THE COURT: Okay.

3 MR. GASTON: We did anyways, to be polite. There's no
4 requirement within the expert notice that we have to tell them in
5 other cases in which he's been qualified, or any other statement
6 he's ever made in the past, or any of the things that she says she
7 requested continuously, any documents he relied on, et cetera.
8 There's no requirement that we have to give those over to the State
9 anyways.

10 THE COURT: Let me ask you a question and --

11 MR. GASTON: Sure.

12 THE COURT: -- of course, I always let everybody speak as
13 much as they want to in regards to these arguments.

14 But something that's important to me as the judge is I
15 want everybody to -- I want everybody always, whether it be a trial
16 or an evidentiary hearing, to feel like that they have the opportunity
17 to review and feel prepared as either representing their client or as
18 either representing the State of Nevada, right?

19 So what is your specific response to the State's right to be
20 adequately prepared? And I know you're saying, hey, she could
21 have gotten them herself. And I don't know if she always knew you
22 were going to get the DETR records and therefore she could have
23 gotten themselves, but let's -- if she didn't do that and she didn't
24 know that that's what your expert was relying upon, then doesn't it
25 put her in a position to, okay, how do I adequately cross-examine

1 an expert when I'm finding out a few days before the hearing what
2 that person relied upon?

3 MR. GASTON: Sure.

4 THE COURT: Can you address that specifically?

5 MR. GASTON: I'll respond in three parts.

6 Part number one is it would stagger the imagination if
7 they don't think we're going to talk about the DETR records when
8 there's, essentially, two sources with which the jury commissioner
9 should have been including in addition to the two they were -- that
10 they weren't, and the DETR records is one of them.

11 There -- it was the -- one of the arguments we'll make
12 once we're done with the State's arguments, assuming -- is that we
13 don't even need an evidentiary hearing because of estoppel issues
14 with respect to *Mungai*. But that's also part of the point, is we told
15 them that there's a *Mungai* decision where Department 23 ruled in
16 our favor and found all these things. And the issue is the exact
17 same, it's identical with the respect to the systematic -- with respect
18 to the system in place in 2017 that was being used.

19 This evidentiary hearing is going to be the exact same,
20 and that was on a Zoom call with me, the district attorney,
21 Ms. Dickenson, Emily Reeder from our office, where we went over
22 all those things. And it was -- now the purpose of that was to talk
23 about negotiations, but the reason we were being forthcoming
24 about everything is because we wanted the State to go look at
25 *Mungai*, it's the exact same issue, the exact same things. And all

1 these discovery arguments they talk about were talked about there.

2 The jury commissioner agreement was disclosed to us,
3 and during that evidentiary hearing, it was disclosed to Ms. Hojjat
4 from our office, actually, but was discussed. The DETR records, it
5 was discussed, the 2020 version was discussed in there, but --

6 THE COURT: When is this meeting happening?

7 MR. GASTON: That meeting happened -- it couldn't have
8 happened -- honestly, I don't remember exactly. But it would have
9 been over the summer, maybe, a little before the summer.

10 THE COURT: Okay. So months.

11 MR. GASTON: It wasn't that much longer after the
12 *Mungai* hearing, which was in April. So months and months ago.
13 Not a year ago.

14 The -- so they were on notice that if they actually wanted
15 to be prepared and know what we're going to talk about, they could
16 go look in the *Mungai*, because it's pretty much word for word
17 going to be the exact same hearing.

18 THE COURT: Okay.

19 MR. GASTON: With respect -- so that's argument number
20 one as to why there's sort of argument that it's a ambush and how
21 can they ever be prepared and it's so unfair for them to have to go
22 forward now with all this surprise stuff. It's kind of silly.

23 With respect to the second argument, my second point
24 that I would make is that, again, they can't just -- I don't think it
25 would be appropriate for the Court to give them a continuance just

1 because they're asking for one and saying that there's these
2 documents that our expert relied on that they don't have, et cetera.
3 A continuance is a remedy given to alleviate a prejudice. The fact
4 that one side just didn't prepare for an evidentiary hearing that's
5 been two years in the making isn't cause for a continuance.

6 And the problem with -- the subtext here is the problem is
7 they -- the more continuances and time we take to do this, the more
8 it just works for the State. They have absolutely no incentive to do
9 this hearing. Our guy's got the felony convictions, he's serving his
10 sentence, they have -- nothing changes. I mean, if this took us 12
11 years to be ready for this hearing, the State wouldn't care. I mean,
12 they might say they want to get this over with, et cetera, but the fact
13 is, just intellectually, there's no change in position for the
14 defendant's situation. They want the defendant to stay in the same
15 spot that he's in now, so they benefit from all these continuances,
16 which is why defense argument would be that in the last two years
17 they've done very little to prepare.

18 With respect --

19 THE COURT: Why had this taken two years? Because
20 COVID?

21 MR. GASTON: I think there's a -- that's a more
22 complicated question, potentially. But maybe that's what --

23 MS. HOLIDAY: All of defense requests to continue,
24 because they needed these records.

25 MR. GASTON: So COVID would be part of it. It would

1 take a long time to get the stuff, the people that we're getting stuff
2 from wasn't always cooperative and there was a lot of items to get
3 and go through.

4 THE COURT: Okay.

5 MR. GASTON: But with respect to the third prong, which
6 is would a continuance even help alleviate the -- any perceived
7 prejudice to the State, of which I would submit there's none, the
8 DETR records are relevant in, basically, one way. It will show --
9 here's a proffer: It'll show that the -- sense of minorities,
10 African-Americans and Hispanics were overrepresented on the
11 DETR records. So the inclusion of DETR records would help make
12 the master list more fair. That's it. That's the relevance.

13 So what are they going to do to -- if you give them 30
14 days or seven months or 10 years, what are they going to do
15 without -- with that file?

16 THE COURT: So the DETR records, basically, are giving
17 me a percentage.

18 MR. GASTON: Yeah. Well, the DETR records are the list
19 of the names we have in our -- our expert counted them up and
20 divided them, and that -- and he'll get you the percentage. So they
21 can --

22 THE COURT: So she would have to rely on that.

23 MR. GASTON: True. But she could get her own expert.
24 But she doesn't have an expert.

25 THE COURT: No, but, I mean, she could probably do the --

1 I'm not thinking that that math's that hard, right?

2 MR. GASTON: That's my whole point is you just count up
3 the numbers and divide them by x and then you have what
4 percentage were African-Americans and what percentage were
5 Hispanics.

6 THE COURT: No, I get that. But I don't know -- it sounds
7 like it's so voluminous. So does that -- I mean, can we do that in 15
8 minutes so they could fact check or are they so voluminous it takes
9 time to look through every single one and do the percentages?

10 MR. GASTON: I don't know if you could do it in 15
11 minutes. So I don't know if you could do it in 15 minutes, because
12 there's a lot of unemployment -- there's a lot of people on the
13 unemployment record. But --

14 THE COURT: How many?

15 MS. DICKENSON: Your Honor, I could answer some of
16 these questions, because I was the one that -- with the -- obtained
17 some of this discovery.

18 The thing from DETR that we received, we just received
19 this week.

20 THE COURT: Right.

21 MS. DICKENSON: And it's just a chart. It's the chart for
22 several months. And it has some statistics on it.

23 Another document they sent us is -- there's statistics that
24 they give to the Department of Labor for all of Nevada. Again, it's
25 in a chart-like form. These are not voluminous documents at all,

1 We -- I provided the prosecutor with everything the jury
2 commissioner gave us and we submitted a bench brief explaining
3 the procedures that occurred. We notified her of *Mungai* and we
4 submitted a bench brief to the Court on the structure of *Mungai*. So
5 I think that we have fulfilled all of our obligations.

6 Thank you.

7 THE COURT: You're welcome.

8 Go ahead.

9 MR. GASTON: On the DETR records, I don't have
10 anything to supplement with what Ms. Dickenson said. And I think
11 it applies to the [indiscernible].

12 I know the State, before we got on the record, I know
13 when the State was going over its recitation of violations, it talked a
14 lot about all the times that the State had requested X, Y, and Z from
15 Ms. Dickenson, and how, essentially, I think that served two ways
16 from the State's argument is that, A, we never complied at all with
17 what the State was requesting, and B, because they requested so
18 politely and persistently and we didn't comply, that the remedy
19 should be more severe than generally, because it makes us seem
20 more negligent.

21 And, I guess, not to put too fine a point on it, but, again,
22 it's an argument about a violation without a citation. What rule did
23 we violate? Just because we didn't -- I mean, State -- not to put too
24 fine a point on it, but the State can request whatever they want, as
25 much as they want from us. But if there's not a rule requiring us to

1 give them information, we don't have to.

2 And -- but despite that, we still did in the sense that we
3 told them what our expert's going to testify to. He testified on
4 *Mungai*. We told him that our intention in this hearing was to
5 pretty much do a line-by-line recreation of that evidentiary hearing,
6 if the Court disagrees with me on my estoppel argument, because
7 it's the same issue. And so if they wanted to know what our expert
8 was going to say and what he's going to conclude and how soon
9 they could just read *Mungai's* transcript.

10 THE COURT: I mean, I -- so whether or not you -- I -- the
11 only thing I take issue with this, I do think evidentiary -- I think
12 reciprocal discovery applies to evidentiary hearings. I think if rules
13 were reversed, you would be doing the same thing. I think -- I
14 mean, I don't think you'd ever come in here and State's going to put
15 on an expert and you don't have any of the underlying data and you
16 don't have, you know, any, really, knowledge of that expert, I mean,
17 I think you would be stamping your foot too, and saying, hey, this
18 isn't fair. The point of an evidentiary hearing -- the point of all of
19 this is -- right -- is to ascertain the truth. And so that's what I was
20 talking about in the importance of everybody being prepared and
21 having what they should have.

22 Now, that's not withstanding your argument about, okay,
23 but this is the exact same thing as *Mungai*, which happened a while
24 ago, and this is all there. So --

25 MR. GASTON: And to clarify those, I guess, the two

1 things, the underlying data they relied on, all of that is disclosed to
2 the State except for the DETR records, which we just got. And also
3 to show how easy it was to get the stuff, we got the DETR records
4 in within, like, 25 minutes or 30 minutes, he'd responded to us with
5 the updated number on the percentage of African-Americans and
6 Hispanics in the DETR records. So that's the only actual really
7 underlying data on which he relied that the State is arguing they
8 didn't have until the last second.

9 With respect to the other arguments the State was
10 making, that's what I was trying to get to with that -- how we have
11 to give them every time he's been qualified as an expert in every
12 state when he's sat in any other case on -- instead of all those other
13 things that they're arguing about, I didn't -- that's just kind of
14 onerous and certainly not required.

15 THE COURT: So I -- okay. So I agree with you in regards
16 to that, unless, like, a Motion in Limine is filed and it's decided,
17 right?

18 MR. GASTON: Yes, Your Honor.

19 THE COURT: So, like, if they do a Motion in Limine for
20 evidentiary hearings, say I want every case, I want this, I want that,
21 then I think the Court needs to decide it, hear you both out and
22 decide it.

23 But my point, which I think we're on the same page now,
24 is that I do think that if the State put up an expert, you're entitled to,
25 you know, underlying data or anything that the expert relied upon,

1 just so you're -- just so it's not ambush. That's all. And --

2 MR. GASTON: Right. I mean, I was just splitting the kind
3 of two categories. The data, which I think they all had, except the
4 DETR stuff, which wasn't, really, I don't think they would do much
5 with anyways, and I don't think -- we gave it to them when we got it
6 and I don't think a continuance is -- I certainly don't think preclusion
7 is relevant, but -- or appropriate, but I don't think a continuance is,
8 either.

9 And in the separate arguments, where they argued all the
10 other stuff they wanted from our expert and request that it's -- that
11 we didn't give, I don't think that -- so I was just splitting those into
12 kind of two categories.

13 THE COURT: Okay. All right. So --

14 MS. DICKENSON: Your Honor, if I could just say one
15 other thing, that the underlying data that she's talking about was
16 given to her I thought before July, as soon as we received it from
17 the jury commissioner. She's talking about the voluminous
18 statistics and jury summons and all that, so she's had that.

19 THE COURT: Oh, I -- so I think that, unless I'm wrong, I
20 think we're talking about the e-mail that came through yesterday in
21 regards to the hearing, the unemployment benefit by ethnicity and
22 race, January 2016 to January 2019, and the copy of characteristics
23 of unemployment insurance claimants, isn't that -- those are the
24 two documents that we're talking about. It was my understanding
25 that those came through this week on Tuesday, Wednesday, and

1 yesterday. Is that --

2 MS. DICKENSON: That's correct.

3 THE COURT: Okay.

4 MS. DICKENSON: That's correct.

5 THE COURT: Okay. So Ms. Botelho, if you want to hit
6 rebuttal -- or just your argument in regards to Mr. Gaston, and then
7 also if you want to open up the argument in regards to why they
8 should just be precluded in general, because you don't believe that
9 they're either relevant or part of the order. So go ahead.

10 MS. BOTELHO: Yes, Your Honor.

11 For Mr. Gaston to stand here and even have the audacity
12 to assert that the State has no incentive to put forth this evidentiary
13 hearing is just laughable. It's laughable. And here's why.

14 The State actually filed a response to their Motion to
15 Continue the Evidentiary Hearing the first time, November 6th
16 of 2020. And in that opposition, Your Honor, the State says we
17 request all of these things to happen so the jury commissioner can
18 explain why they haven't complied. We're sympathetic to the delay
19 due to the pandemic. But any further delay will cause prejudice to
20 the State.

21 It was at that time that Judge Scotti heard the trial,
22 presided over jury selection. And the Court should preside over the
23 evidentiary hearing, because having another judge now, like
24 yourself, having to review the cold and voluminous record would
25 certainly cause further delay.

1 We also have victims, some of which were elderly, who
2 testified at the last trial. So to even assert or insinuate that we don't
3 want this hearing to go forward is laughable.

4 The State is not asking to continue. Absolutely not. So I
5 wish, you know, Mr. Gaston would stop trying to speak on my
6 behalf. We are not seeking to continue. We want to go forward.
7 However, we want the same rules that apply to the defense or that
8 apply to the State to also apply to the defense. And that is, you
9 know, concerning the conversation that you had with Mr. Gaston
10 about reciprocal discovery, not ambushing, complying with rules,
11 such as, you know, they did comply with the rule filing their notice
12 of expert witness within the 21 days. And that's what Judge
13 Scotti's order, as shown on the minute order, was trying to do. It
14 was trying to guarantee some level of fairness.

15 And so yes, Ms. Dickenson is correct, we did receive the
16 voluminous master list records. We received that a week or so after
17 they received it. And we had conversations about that particular
18 level of discovery or that specific discovery that they turned over.

19 We did have some conversation about *Mungai*. And as
20 Mr. Gaston indicated, it was, you know, in the context of trying to
21 negotiate this case, because they've been flaunting Judge Spells'
22 decision on *Mungai* everywhere around this courthouse.

23 But what's also misplaced by Mr. Gaston is his reliance on
24 *Mungai* and my strategy in terms of how this hearing was going to
25 go. While he is correct that *Mungai* raised the same issue as

1 Valentine, I don't believe -- and there were different deputies,
2 different deputy public defenders who handled this, and a very
3 different judge -- I don't believe the hearing would go exactly the
4 same way that this hearing would go, exactly the same way as
5 *Mungai*.

6 And to also -- to Mr. Gaston's accusation that the State
7 has done nothing to prepare this case, that -- I think he needs to
8 look inward in that regard. Because when I had a conversation with
9 Ms. Dickenson yesterday, she indicated, at the very last minute, on
10 Monday, that they were looking through the records that they had
11 and realized they didn't have the right ones. And that's why she
12 had to go searching through the DETR records on Monday and
13 provide them to me on Tuesday --

14 MS. DICKENSON: Your Honor, I'm going to object to her
15 misstating our conversation.

16 MS. BOTELHO: -- and Wednesday and Thursday.

17 And so the State's not disclosing anything late. The
18 State's ready to go forward. And so if he could refrain from making
19 such accusations, that would be wonderful.

20 In terms of the DETR records and *Mungai*, as it is
21 implicated in *Mungai*, as I indicated before we went on the
22 record, 2020, those were the records that they presented, the DETR
23 records that they presented in *Mungai*, which I've been handling it,
24 would have been objected to as being unreliable, not relevant to a
25 jury selection master list that occurred in 2017.

1 And so for them to insinuate that I didn't review *Mungai*,
2 also misplaced. Because an objection certainly would have been
3 lodged as to the relevance of the 2020 DETR records that they refer
4 to in that case.

5 The reason that they have to now disclose this, you know,
6 the 2016 or the 2017 DETR records is because they saw -- they
7 realized after *Mungai* was decided by Judge Spells that they might
8 get some play on the DETR records, despite the fact that in *Mungai*
9 and in *Valentine*, the Nevada Supreme Court was very, very, very,
10 very clear on the scope of this evidentiary hearing. I was trial
11 counsel on *Valentine*, so was Mr. Dickerson, so was Mr. Gaston.

12 And in terms of the challenges that they preserved to that
13 jury venire, it was very limited in scope, Your Honor. The first was,
14 well, the system did enforce jury summonses. Well, the Nevada
15 Supreme Court said in a footnote in the published decision, hey, we
16 didn't need to reach that for the reason stated therein -- all right, I
17 can't find the exact page right now, but the Nevada Supreme Court
18 indicated that there was no reason for them to talk about that,
19 because -- I'm sorry, Your Honor, it says here -- it's Footnote
20 Number 4:

21 It is unclear that *Valentine's* allegations regarding the
22 enforcement of jury summonses would, if true, tend to establish
23 underrepresentation as a result of systemic exclusion.

24 Accordingly, he was not entitled to an evidentiary hearing as to
25 those allegations.

1 So in terms of the Nevada Supreme Court, they said, hey,
2 you know, that one allegation that they made, the first one, they're
3 not entitled to an evidentiary hearing on that. What is very clear
4 from the Nevada Supreme Court is that they were entitled to,
5 according to their review of the records, to an evidentiary hearing
6 on the tailored and limited issue, which was that the system sent
7 out an equal number of summonses to citizens located in each
8 postal ZIP code without ascertaining the percentage of the
9 population in each ZIP code.

10 At no point in time did the Nevada Supreme Court, upon
11 review of this appeal, of this case, indicate that DETR records or any
12 other records that Mr. Gaston is now trying to introduce in this very
13 limited evidentiary hearing indicate that it would be appropriate to
14 do so.

15 This is the issue that they have preserved, the issue that
16 the Nevada Supreme Court remanded this case for, and evidentiary
17 hearing is the number two -- the second allegation, which they, you
18 know, didn't find, but they indicated, which, if true or if it could be
19 established, might -- might, might meet the third prong.

20 And so that's kind of twofold, that's my argument.
21 Number one, it was untimely disclosed. Number two, it's not
22 relevant for the purposes of the hearing. And so I think it should be
23 excluded for those reasons.

24 In my objection to their Motion to Continue, I very
25 specifically asked Judge Scotti, and my recollection is he did grant

1 this, I asked them on page 2, line 10, a detailed offer of proof from
2 defense counsel as to the relevance of the outstanding items
3 and/discovery so the State can determine whether it should lodge
4 an objection to the items not being relevant or necessary or beyond
5 the scope of the subject matter ordered by the Nevada Supreme
6 Court.

7 So the State has always been on the lookout for these
8 items. And up until Tuesday of this week, there was no talk about
9 DETR records in this case. They can say whatever they want to talk
10 about in *Mungai*, but this is not the same case. The issues are the
11 same, but our objections are going to be completely different. That
12 DETR record has nothing to do with the summonses being sent to
13 particular jury -- excuse me, ZIP codes.

14 And so where's the relevance? It's beyond the scope, not
15 relevant, it was untimely disclosed on top of that. And so the
16 State's request is that we go forward. We go forward on the
17 tailored issue concerning the ZIP code issue, the summonses going
18 to certain ZIP codes. That is what the State prepared for, that is the
19 discovery that they turned over in a timely fashion, and that is what
20 the State is prepared to have this hearing about.

21 To allow them to enlarge the record and bring forth
22 another issue would be unjust. It would be extremely prejudicial.
23 And, Judge, you are not bound by the decision of Judge Spells.
24 Absolutely not. And so this is an entirely different hearing. And I
25 would ask that that go forward.

1 MR. GASTON: And before I respond, I need to -- or can --
2 do you mind if I address Mr. Valentine? I don't have anything
3 confidential, I just don't want him to think we ignored him.

4 THE COURT: Yeah, no -- I was just going to make a record
5 of it. But you can.

6 MR. GASTON: Can you hear me, Mr. Valentine?

7 THE DEFENDANT: Yeah, I can hear you.

8 MR. GASTON: Okay. I just want to catch you up to speed
9 real quick. So we have our evidentiary hearing today that we talked
10 about. That's what you're here for, that your guys' video just
11 popped on a little bit late. We haven't started the hearing. The
12 State had a couple legal arguments it wanted to make in advance
13 about discovery and scope of the evidentiary hearing, and I have
14 one too. And so the judge asked if it was okay to go ahead and get
15 started with that, since, obviously, we're going to have a limited
16 amount of time today and I said that was okay.

17 So we're just in the middle of addressing the legal stuff.
18 But we haven't actually started the evidentiary hearing or anything
19 like that. So that's kind of where we are yet. Okay?

20 THE DEFENDANT: Okay.

21 CORRECTIONS OFFICER: And sorry about that, Judge.
22 We didn't have a leave to commit.

23 THE COURT: Not a problem. Thank you.

24 MR. GASTON: Do you mind if I respond?

25 THE COURT: Mr. Gaston, yeah, if you could respond into

1 the State's position that you're going outside the confines of the
2 Supreme Court of reverse and remand.

3 MR. GASTON: Sure.

4 THE COURT: Or [indiscernible.]

5 MR. GASTON: I -- so -- yes, staying organized, the State
6 still has all its discovery arguments that it made as to why our stuff
7 should be stricken or whatnot, and I responded to that, I believe.
8 They made one argument that I think I didn't respond to, which is
9 that, essentially, implying that we were negligent or lazy,
10 essentially, because we looked at the DETR records relatively close
11 to this hearing and realized we didn't have the right numbers, et
12 cetera, and then we went out and got the 2017 numbers to set
13 the 2020 numbers. I just -- two points with that, if that's okay.

14 Number one, the actual numbers between 2020 and 2017
15 aren't -- in every year aren't really going to be that different, period,
16 because the law of large numbers and they -- fairly steadyish. But
17 we -- it's obviously better to use 2017 than 2020, just because that's
18 the year we're talking about. And we didn't know we could
19 the 2017 records, then we realized that we could. We could. And
20 so we got them.

21 So it wasn't so much that we weren't available/ready as it
22 was we realized that we could get the 2017 records. And I still don't
23 think there was a gigantic difference in those two numbers due to
24 the law of large numbers, essentially.

25 THE COURT: Okay.

1 MR. GASTON: The scope of -- with respect to the State's
2 argument regarding the scope of remand, I would, essentially, just
3 kind of, I guess, respond threefold,

4 Number one, the State says a lot of its editorial opinion as
5 to what the Nevada Supreme Court meant with respect to the
6 remand. But the fact is the State held that when the attorney makes
7 an allegation if -- which, if true, could meet a prima facie challenge,
8 but they're entitled to have an evidentiary hearing. They did not
9 refer specifically to prove or disprove the ZIP code issues. They
10 reversed to give us an evidentiary hearing on the third prong of the
11 fair cross-section challenge.

12 And I'm sure the Court reviewed this in advance, but
13 Prong 1 was the distinctive group, Prong 2 is it's not random,
14 essentially, and Prong 3 is that it's due to systematic exclusion.
15 Prong 1 and 2 we've already said was addressed by the district
16 court and it reversed for us to get an evidentiary hearing on
17 Prong 3.

18 This is the -- this is a -- oh, okay. This is similar, this is the
19 exact same, essentially. Because -- and in *Mungal*, both me and
20 Ms. Hojjat made the same argument, and I did in another case, and
21 Ms. Gaston -- Cara Gaston made the argument in another case,
22 because the jury commissioner testified previously that they did, in
23 fact, send ZIP codes or equal number of ZIP codes to each
24 summons regardless of the various -- or equal number of
25 summonses to each ZIP code regardless of the various populations

1 within ZIP codes. So I relied on her testimony under oath and that
2 transcript to make those arguments. And so the Supreme Court
3 reversed on ellipse.

4 As we got the data, we realized that not, in fact, accurate.
5 If maybe it was misunderstood, whatever, but that's not accurate.
6 They don't do that. But we realized that there's all these other
7 issues.

8 And so the State also made an argument, Mr. Chin made
9 an argument on behalf of the DA's office in *Mungai*, arguing that
10 the scope of remand should be more limited, et cetera, and
11 Department 23 disagreed with that and held that the scope of the
12 remand was to do an evidentiary hearing on Prong 3, and we had
13 established in *Mungai* enough on Prong 3 to do that. So they made
14 the exact same argument in Department 23, which wasn't
15 considered persuasive by Department 23.

16 And in this case, it shouldn't be considered persuasive,
17 either, because like a good analogy would be that we are trying to
18 suppress the defendant's confession. And we read through the
19 transcripts, and it appears that our kind of young defendant didn't
20 really get a lot of breaks and it was a really long and probably hot
21 and coercive. So we file a motion arguing that due to all that, it
22 probably wasn't a voluntary waiver of his rights. The Court's, like,
23 okay, sure, let's do an evidentiary hearing and figure it out.

24 We do an evidentiary hearing and it turns out that what
25 we didn't see in the transcript is he actually got a break every hour,

1 they bought him a hamburger, they gave him a soda, and it was,
2 like, a really friendly environment and all the stuff that we thought
3 was true from the transcript was wrong.

4 But what also comes out is the guy's, like, yeah, but
5 during the second break, he was mouthing off, so I beat him up. I
6 beat him up with a phone book. Right? We got an evidentiary
7 hearing to suppress the defendant's confession on our prima -- on
8 our essential proffer theory argument as to why X facts support it
9 being not a voluntary waiver. Those aren't supported by the
10 evidentiary hearing. However, these other facts come out that are
11 even worse than what we said initially.

12 And that's what's happened here. We didn't know all of
13 the things that we know now because we didn't ever get an
14 evidentiary hearing. So we are guessing as to why -- we knew for
15 sure there was systematic exclusions, right, because we make these
16 arguments in every case and it's always showing up and there had
17 to be something wrong. And they weren't complying with the
18 rules.

19 We make the argument, we're guessing as to what's
20 going on. And then we figure out to what extent they really weren't
21 complying with the rules, to what extent they were violating the
22 statutes, to what extent the actual statistical problems that that was
23 causing, and then we're bringing that forth during the evidentiary
24 hearing. It just seems sort of like what the Court says, if the point's
25 to get to the truth to see if there was systematic exclusion, I mean,

1 it just seems absurd to limit us to what our original theory was
2 when it comes out that, actually, during that evidentiary hearing, it
3 turns out there's all these other reasons. And that's essentially the
4 same reason he met Judge Spells held in Department 23.

5 I haven't got here yet, because I want to kind of stay
6 organized, because there's a lot of issues. But I have a separate
7 argument that *Mungai* actually is controlling on this Court. And so I
8 disagree with the State's argument on that, as well. But I guess,
9 saving that separately.

10 So, A, the State's editorializing it with respect to why the
11 Nevada Supreme Court ruled X, Y, and Z isn't relevant. The actual
12 language of the order is, and the language of the order, never
13 anywhere in there does it say that we were remanded specifically to
14 do a ZIP code thing. It says because we made that ZIP code
15 argument, that could, if true, support a conclusion that we met
16 Prong 3. Therefore, we are entitled to an evidentiary hearing on
17 Prong 3.

18 And we did the -- we did -- and separately, they made that
19 same argument in Department 23 and it was rejected. Even if you
20 disagree with me on the collateral estoppel argument I'll make later,
21 the Court -- it's still persuasive authority to Your Honor. It's a
22 similar -- court of similar jurisdiction. You should consider that
23 when you're making your decision.

24 And then, separately, it doesn't even make sense from a
25 policy standpoint that that would be the rule. If we get an

1 evidentiary hearing to prove up one legal prong of a challenge, and
2 it turns up much worse facts than what we thought were true come
3 out, it seems silly to just ignore those.

4 And so, ultimately, I don't think the State's argument of
5 the limited scope of remand should be persuasive.

6 And then I got a message from Ms. Dickenson that I want
7 to add back on the DETR records. One other argument with respect
8 to the change in the DETR records, is there's a case that came out,
9 *Ortiz*, that talks about why the DETR records are so relevant in these
10 fair cross-section challenge claims now. And so that also was a
11 change in his posture throughout the history of Valentine, kind of
12 pre-*Ortiz* and post-*Ortiz*.

13 THE COURT: Okay. So a few things. I don't think that
14 the -- I understand why the State sees the order as it sees the order.
15 I also understand the defendant's position. It -- there's a saying that
16 it only makes sense when you're in the position to get it, but it's,
17 like, you don't know what you don't know. And that's what
18 Mr. Gaston is saying, it's, like, well, we didn't know what we didn't
19 know. And now we know, and we can't put Pandora -- put -- you
20 know, back in the box.

21 So I believe that if I were to preclude the defense from
22 bringing in DETR, I can almost guarantee you we will be back here
23 with a rehearing asking me to look at those things. I could be
24 wrong, but I think that this has become such a critical issue that the
25 Supreme Court or the appellate court would ask me to review

1 those.

2 I think also, quite honestly, and I'm sticking to what I said
3 in the beginning, is that if we really are trying to figure out if there
4 is an issue and what to do about that issue, if one even exists, that
5 we should consider all points. So I do believe that they're relevant
6 and I believe that they should come in.

7 I will handle the estoppel issue in a moment.

8 That being said, I also believe, again, in both sides
9 walking in here feeling completely prepared to address all
10 questions from the Court, to be ready for a direct, to be ready for
11 cross, to be able to deal with experts. So if the State wishes to
12 continue so that they can have the opportunity to review these
13 documents, to prepare for what they believe to be a more effective
14 cross-examination, I am going to grant them their request to
15 continue. So I'll let the State think about that for a moment.

16 And I'm happy to hear from you about your estoppel
17 argument.

18 MR. GASTON: Okay. And I'll defer to the Court and the
19 State however they want to do the estoppel argument, if,
20 ultimately, the State wants to continue or accepts the Court's
21 remedy of a continuance, then we can --

22 THE COURT: We can do it in writing.

23 MR. GASTON: Then we can -- because we filed a bench
24 brief, but we could technically file a motion where they file their
25 opposition --

1 THE COURT: Correct.

2 MR. GASTON: -- and they review what we want and they

3 can point out the differences in the argument.

4 THE COURT: And, for the record, I have reviewed the

5 bench -- I don't want anyone to think that I haven't reviewed,

6 though. I have reviewed those --

7 MR. GASTON: Okay.

8 THE COURT: -- and I have reviewed the graphs and the --

9 but, like, that's what I was trying to say when we were off the

10 record, like, I feel like you guys have been in this for nine innings

11 and you guys are, like, at the last out, and I'm just coming in. So

12 trying to --

13 MR. GASTON: Sure.

14 THE COURT: -- look through all of the previous orders

15 and the minute orders and the judges, and it's just been a little bit

16 difficult.

17 MR. GASTON: Sure.

18 THE COURT: And so when I opened up the Exhibits A and

19 B, obviously, it's in a nice little graph, but I'm still trying to, like,

20 figure out exactly what those graphs mean and that's just probably

21 more lean to the State's point really, right?

22 MR. GASTON: Sure.

23 THE COURT: Like, even though it is a nice graph, I'm still

24 trying to figure out how I read that and recognize what it stands for.

25 MR. GASTON: Understand.

1 THE COURT: So --

2 MR. GASTON: I guess just summary -- I could summarize
3 briefly in my estoppel argument, if you want, and then if you want
4 to fully litigate it, I can go in a little more case citations for support.

5 But, generally, the real issue is that -- and I'm going to use
6 another analogy, but the real issue is that we're drawing marbles
7 from a pouch. Okay.

8 THE COURT: That we're what?

9 MR. GASTON: We're drawing marbles randomly from a
10 pouch.

11 THE COURT: Oh, from a pouch.

12 MR. GASTON: And the marbles that we get in our hand
13 is, essentially, the venire panel that we get in a specific jury trial.
14 And we want these marbles to be fairly representative of all the
15 marbles in the boxes, right? Which is the jurors in the community.

16 The pouch is the master list, so you reach in and you draw
17 the master list. And then the pouch is created by randomly
18 reaching into all these boxes and putting them in there. And if
19 everyone's done what they're supposed to do, then you're probably
20 going to get that handful, it's going to be a fair random
21 representation of what's in the pouch. And the pouch will be a fair
22 random representation of all the marbles in the boxes.

23 And the issue -- so what needs to be shown, essentially, is
24 that to prove that it's not fair is that the stuff in our hand doesn't
25 match up to the pouch in the boxes. And that's because in this case

2 6 t³³ h

1 I'll proffer, and what was proven in *Mungai*, is that the pouch, the
2 master list, wasn't fairly represented -- representative of the boxes.
3 And the boxes themselves, the State -- the problem is that the initial
4 creation of the marbles in the pouch or the jurors in the master list
5 was only created by reaching into two of the boxes.

6 And we care about the African-Americans and Hispanics
7 when we're arguing these minority groups are excluded, and I'll call
8 them the kind of green and red marbles or whatever. And the
9 problem is the boxes over here that aren't being touched are the
10 ones where all the green and red marbles are. And that's,
11 essentially, what we have to show, is that they weren't using voting
12 records and they -- even though they've been required to for a year,
13 and they weren't using the DETR records, which they were.

14 And then we have gone -- I think that's all we have to
15 show, but we can show even more, is that if they had used the
16 DETR records, it would make a difference, because the DETR
17 records are actually overrepresentative of these minority groups.

18 And then there's separate arguments with respect to
19 duplicate names and statutory obligations with respect to
20 maintaining duplicates. That is, essentially, the argument on the
21 third prong. It's not case-specific, really. I mean, Prong 2, that you
22 have a panel that wasn't --

23 THE COURT: Representative.

24 MR. GASTON: -- you know, representative, or whatever,
25 is case specific, right? And then I'm arguing about

1 African-Americans and Hispanics and preserved the objections that
2 the first trial was all kind of case-specific, make sure I didn't waive it
3 or was arguing something crazy of some group that isn't cognizably
4 recognizable.

5 But other than that, the issue is the same. It's the exact
6 same issue. Was the system that was in place in 2017,
7 post-July 1st, 2017, systemic -- systematically excluding minorities
8 and other groups, and -- or, essentially, was the pouch fair? And we
9 proved in *Munga* the answer is no. It's the exact same system that
10 was in place, and that's also proved in *Munga* here. It's the same
11 issue.

12 Now, so, essentially, when you have kind of these
13 estoppel arguments, it's kind of like -- I hate to keep using
14 analogies, but I guess I'll use one more, is when you have these big
15 plaintiffs, like a plane crash, right, and we're arguing it's negligent,
16 whatever, and you've got 37 plaintiffs all suing because the guy --
17 the plane company did something bad that caused people to get
18 hurt and killed. And, you know, instead of doing a class action, they
19 take one or two plaintiffs off, they branch it off, and they want to do
20 a bellwether case in Mississippi or whatever and they want to see
21 what happens.

22 And they take Plaintiff A to Mississippi and they do a
23 bellwether case and they see what happens, and they lose. They
24 might separately need to have trials to consider damages or
25 whatever for the other plaintiffs. But they're precluded, that's it.

1 They -- you know, they showed negligence, it's decided, they're
2 done. You don't get to relitigate every single plaintiff, whether the
3 airport was negligent or not, and hope to get better results.

4 And it's the exact same issue here. There's four cases that
5 got remanded. Now, one could be in a little different position,
6 because it's 2019, right, are different years. But the two that are
7 in 2017, *Mungai* and Valentine, are in the exact same position. And
8 we already -- and the State was a party, the public defender's office
9 was attorneys of record. The issue was the exact same.

10 Now, collateral estoppel in criminal cases often talks
11 about juries, right? Because it deals with a -- essentially, the
12 language is a final judgment. It's not that you just made a Motion
13 in Limine. You've granted a Motion in Limine in this case, and
14 that's controlling on Motion in Limines in *Mungai*, because that
15 doesn't make as much sense. But a final judgment, which is what
16 the *Mungai* decision was in Department 23, the State couldn't --
17 they were out of luck. I mean, that was it. They're stuck with that
18 answer.

19 And as a final judgment on the issue that would have
20 been decided, that was determinative of this whole framework of --
21 and -- of legal issues, the exact same. It doesn't make sense for
22 resources to redo this hearing over and over and over when it's the
23 exact same facts coming out. It doesn't make sense logically that
24 the State gets multiple bites to hope a different judge reaches a
25 different result. It doesn't -- what makes far more sense is that

1 because these issues were fully and fairly litigated, they -- the State
2 was a party to both, they're identical issues, that it's binding.

3 Now, counterargument a little bit, maybe I should just
4 save it for a reply. I'll just go ahead and say it now in case it gets
5 addressed and for the sake of thoroughness. The State could have
6 two counters to that, right? They could Counter Number 1, okay,
7 we'll look at all the differences between *Mungai* and here. Like, in
8 *Mungai* used a -- they used a 2020 DETR records to show that
9 inclusion, we had -- and this should have been 2017. Okay. Fair.
10 All right,

11 So they could argue *Mungai* dealt with African-Americans.
12 Because African -- in *Mungai* -- and in the issue of *Mungai* is they --
13 the group objective is African-Americans. And this case and trial,
14 we objected African-Americans and Hispanics. The judge found
15 that we met the Prong 2 on Hispanics.

16 So that's what we have. The judge didn't find we met the
17 prong with African-Americans, that they weren't unfairly
18 represented.

19 THE COURT: Right. Right, right, right.

20 MR. GASTON: Now, I disagree with that, but kind of, you
21 know, we're past that point. It is what it is.

22 So you could argue that *Mungai's* not controlling, because
23 it showed -- it dealt with African-Americans not being unfairly
24 represented, whereas we're dealing with Hispanics here.

25 And fair, I don't think that really makes a ton of sense, as

1 we're still talking about the unfairness of the system. But even if it
2 does, then the evidentiary hearing would be very -- and the scope,
3 it -- we would -- I wouldn't need to call the jury commissioner,
4 essentially, to relitigate all the ways in which, you know, our proffer
5 is that she was being negligent and not -- and just -- and, in fact, not
6 complying with statutory requirements, and that those were unfair.

7 I just need to show, essentially, that the DETR records -- I
8 just need to, essentially, show that -- if we're talking -- going back to
9 my pouch argument, if in *Munga* they talked about the unfairness
10 of the green marbles, I just need to do the same thing with red. I
11 need to show that -- we -- the pouch didn't have enough red
12 marbles in it, and that if they had drawn from all the boxes, you
13 would have got some more red marbles. And that, essentially, I
14 would just need to show the comparative disparity on the master
15 list with respect to the jurors and the community at large with
16 respect to Hispanics. And then I would just need to show the DETR
17 records with respect to their amount of Hispanics in the DETR
18 records and how it's overrepresentative, and the inclusion of DETR
19 records and, generally, because of a lot of large numbers, the
20 voting records would be relevant in this case.

21 So the evidentiary hearing which must be more narrow in
22 scope and I would really only need to call my expert to talk about
23 those kind of issues, and then the State could argue, uh-huh and
24 that's not fair and the Hispanics aren't, you know, they can make
25 their counterarguments that -- why they think the DETR records

1 don't deal with Hispanics and why Hispanics weren't, you know, et
2 cetera.

3 But the general issue of -- the general issues that were
4 litigated in *Mungai* with respect to the jury commissioner doing X,
5 Y, and Z, and with respect to not following the statutes was all
6 decided. And I think that that would be controlling on the Court.

7 Court's indulgence one second. I'm sorry.

8 And so that's my argument.

9 THE COURT: Okay, In regards to the estoppel, so we'll
10 all, you know, we'll all agree that I'm not bound by Judge Spell's
11 ruling in -- but in regards specifically to the estoppel, a couple of
12 things. I mean, I think like minds can look at the same presentation
13 of testimony and differ. I think that that's why we have the
14 Supreme Court.

15 I look back at my, you know, two years in civil on the
16 bench and two things come to mind. There are these tobacco cases
17 where individuals are suing the huge tobacco companies for, you
18 know, getting cancer and losing parts of their throat or their lung or
19 dying. And there's also HOA cases. And it is all over the board in
20 regards to how district court judges differ on those cases, especially
21 the HOA.

22 And they go up to the Supreme Court because
23 Department 4, 8, and 10 think this way, 12, 15, 22, 32 feel this -- see
24 it this way, and then the Supreme Court gets us some clarity.

25 And I understand what you're saying in regards to

1 efficiency, because that doesn't seem very efficient. But I do think
2 that this is an issue, ultimately, that needs to really be ferreted out
3 and represented. Hearings need to be held and then, ultimately,
4 like I said, we'll go up to the Supreme Court.

5 But I think that an evidentiary hearing is necessary on this
6 case, specifically. I'd like to hear, I'd like to look at the records, I'd
7 like to be able to hear from witnesses. I'd like to be able to hear
8 argument. So the estoppel argument I don't find to be persuasive.

9 So that brings us back to the State. Would you like time --
10 let me preface it with this: The fact that these cases go on for this
11 long is, like, the amount of anxiety it gives me is almost to the point
12 of hyperventilation. Like, I cannot believe these cases sit here and,
13 really, with COVID, to nobody's fault. But we're not -- we're going
14 to get this thing figured out and we're going to get it done.

15 So, State, knowing that, did you want to proceed today or
16 did you want time? And if wanted time, how much did you want?

17 MS. BOTELHO: We would want time, Your Honor. We
18 want 30 days.

19 THE COURT: Okay. All right. So the State's request to
20 continue is going to be granted for 30 days for them to be able to
21 look at the document. I am going to give both sides 10 days to
22 review everything, make sure that they have -- pretend that you're
23 doing the hearing on, like, the seventh day of the 10 days and that
24 everything you're ever going to want to use on both sides, or your
25 expert's going to rely on, on that tenth day, that's what you're

1 going to give over to each other. Otherwise, I am precluding it, you
2 guys. So the 10-day rule. So whatever 10 days is from today, that's
3 what you have to give to one another and experts to rely upon, et
4 cetera.

5 The 30 days, so that would be January, okay. I will talk to
6 Ms. Jacobs. We start two back-to-back death penalty cases, both
7 cases announced ready this morning at homicide trial readiness in
8 January. So I will talk to Ms. Jacobs. We could -- I'm sure, as you
9 guys know, we can't set special hearings ourselves, we have to
10 receive permission from DC7, because of our agreement with the
11 jail to get Mr. Valentine here. So I'll have Ms. Jacobs reach out to
12 DC7 and see what date we can get that going for you guys.

13 Any other issues?

14 MS. BOTELHO: Your Honor, just some clarifications.

15 THE COURT: Yeah.

16 MS. BOTELHO: Just so I know how to prepare for this --

17 THE COURT: Yeah.

18 MS. BOTELHO: -- Just so we, you know, outline the scope
19 of this hearing, and I completely understand the Court's ruling in
20 terms of, you know, the limited scope.

21 However, is it the Court's ruling that, at least with
22 Valentine, it's limited to the issue of systemic exclusion of
23 Hispanics?

24 THE COURT: Yes. Because -- yeah.

25 MS. BOTELHO: Okay. That was --

1 THE COURT: I mean, I --

2 MS. BOTELHO: -- the allegation --

3 THE COURT: I'll hear from defense on the point on their
4 position of it. But in my reading through everything, that was my
5 understanding.

6 MS. BOTELHO: And that's mine as well. And so I'd like
7 that clarified, please. And it seems as though when Mr. Gaston was
8 arguing, you know, the difference, okay, well, *Mungal* is
9 African-Americans here, it's not like he -- it's -- it didn't sound like
10 he was disputing it, although he was kind of going back and forth
11 and back and forth. It didn't seem like he was disputing that, at
12 least the issue, even in terms of, you know, the more -- the general
13 allegation now is the systemic exclusion of Hispanics, because they
14 did raise the issue as to the systemic exclusion of
15 African-Americans, and that was disposed of by the district court.
16 And so that wasn't -- and it wasn't taken up on -- by the Nevada
17 Supreme Court either, on the remand.

18 The other thing is in listening to the beginning of
19 Mr. Gaston's argument, it seems as though he may have conceded
20 the argument, at least, that was raised in Valentine concerning the
21 jury summons issue. I mean, my understanding, again, he tends to
22 go back and forth, was that, well, you know, we didn't know what
23 we didn't know back then, so our challenge was to, you know, the
24 jury summonses sent to certain ZIP codes. But now that, had we
25 had the hearing, we might have been able to get to this DETR issue,

1 you know, we've had hearings or there's been some development
2 in the ZIP code issue. And so now that's not viable, because they
3 learned, and I believe his words were they learned that that's not
4 how it's done.

5 And so, I mean, and I would set forth to the Court that
6 absolutely, that's true. That's not how it's done. There have been
7 cases, it's *Wheeler*, which Mr. Pesci and Mr. Brooks --

8 MR. GASTON: I don't mean to interrupt, I'm sorry.

9 MS. BOTELHO: -- by --

10 MR. GASTON: If I can just ask -- I was right, what's the
11 last thing you said? What's not the way? I just missed the last
12 thing, Your Honor.

13 THE COURT: It's okay. That it was right, that, ultimately,
14 it ended up being right. Like, how you said, you were, like, we
15 originally thought.

16 MR. GASTON: Oh. Okay.

17 THE COURT: But then later we found out.

18 MR. GASTON: Okay. I apologize. Thank you.

19 MS. BOTELHO: Yeah. Later you find out that the, you
20 know, the summons issue per ZIP code actually, you know, didn't
21 go down the way you all thought it did. And I would just tell the
22 Court *Wheeler versus State*, 492 P.3d, which is a Nevada case out
23 of 2021.

24 THE COURT: Yeah.

25 MS. BOTELHO: In August. Persuasive authority,

1 unpublished, court of appeals actually disposed of that issue. They
2 indicated that, you know, the testimony from Ms. Witt in that case
3 actually indicated that that's not how it's done. It's randomly
4 selected from certain ZIP codes to ensure the randomness,
5 whatever, et cetera, et cetera.

6 THE COURT: Okay.

7 MS. BOTELHO: And so I'd like clarification of whether or
8 not that issue's been conceded. Because that will actually do away
9 with a lot of, you know, the 3.5 million, you know, master list
10 summonses, at least in terms of the ZIP code issue. And so that'll
11 narrow it a little bit more.

12 THE COURT: Okay. So those two points, the first point,
13 not -- so don't go to the ZIP codes yet. The --

14 MR. GASTON: The first point to the African-American
15 discussion.

16 THE COURT: Yeah.

17 MR. GASTON: So I think the State and I are saying the
18 same thing in that Prong 1 and 2 are done and now is not the time
19 to relitigate those. And we're just litigating the systemic
20 underrepresentation.

21 THE COURT: Right.

22 MR. GASTON: And I also agree that Judge Scotti
23 disagreed with the defense that we had shown the
24 underrepresentation of African-Americans in the venire was not due
25 to random chance and whatnot.

1 I agree that that was the posture of the case, I agree that
2 this isn't the time to ask the Court to reconsider the ruling on
3 Prong 1 and 2, and that we have confined the systematic
4 underrepresentation.

5 However, with respect to -- I want to make a slightly
6 nuanced point. So I agree that I'm not asking the Court to relitigate
7 on Prong 2, et cetera. Slightly nuanced point, I do think it's
8 appropriate for the Court to consider the underrepresentation and
9 the exclusion of African-Americans when considering the
10 systematic underrepresentation of those two minority groups,
11 based on the way they were drawing a jury venire. And the reason
12 I would argue that is I would just compare it to *Batson*. In *Batson*,
13 you can -- the -- essentially, the objection isn't just on the behalf of
14 the defendant, it's on behalf of the juror group, or in that case the
15 individual juror. But juror groups that is excluded. The society has
16 a right to be fairly chosen and equally represented in the jury pool
17 and on the jury.

18 And so similarly in *Batson*, how you can make those
19 challenges, and the cases have held how it's on behalf of the jury
20 itself, as well, I think that -- I think -- to be fair, I think this -- what I'm
21 arguing has not been decided. But I think the parallel would be
22 similar.

23 I agree on Prong 1 and 2, but I think for a systematic
24 underrepresentation, I think the Court can still consider
25 African-Americans and Hispanics based on, essentially, the same

1 kind of rationale that even though Hispanics is what we're talking
2 about because of Prong 2, when we're showing the
3 underrepresentation of African-Americans as well, it's because they
4 have a cognizable interest on being part of the juror, the failure to
5 have them in the jury pool is an issue and it's a structural issue.

6 And so I think the analogy would be the same. I don't --

7 THE COURT: I think you can bring up the numbers. I
8 don't think you can go into the argument. Because when I read on
9 page 8:

10 Having alleged specific facts that could establish the
11 underrepresentation of Hispanics as inherent in the jury
12 selection process, Valentine was entitled to an evidentiary
13 hearing.

14 Had that evidentiary hearing gone forward as it was
15 supposed to have gone forward that day, you would not have
16 been -- I don't believe you would have been permitted to go into the
17 African-Americans. I think you would have only been permitted to
18 show the underrepresentation of Hispanics.

19 MR. GASTON: Okay. And it makes --

20 MS. BOTELHO: And I'm sorry, Your Honor --

21 MR. GASTON: Oh. Okay.

22 MS. BOTELHO: -- as to also on page 7, where it starts
23 with applying that standard --

24 THE COURT: Let me get there.

25 MS. BOTELHO: -- we conclude that Valentine was entitled

1 to an evidentiary hearing as to his allegation of systemic exclusion
2 of Hispanics. I mean, there it is in black and white.

3 MR. GASTON: And so, based on the -- I understand the
4 Court's ruling, but -- and based on that ruling, I don't think I would
5 really need to go into at the evidentiary hearing then, that
6 compared a disparity of X, Y, and Z with respect to
7 African-Americans and the panel, et cetera. I would just -- since I
8 guess it doesn't go -- come to the Court's [Indiscernible], it
9 wouldn't --

10 THE COURT: I just didn't know if you wanted --

11 MR. GASTON: It wouldn't have --

12 THE COURT: -- to lay your record, but.

13 MR. GASTON: I'll just submit it's like a proffer. So in the
14 event that someone ultimately agreed or the higher court ultimately
15 agrees with our defense that the issue could have been cited, as far
16 as the numbers that would have been shown, we would just proffer
17 that they had some same numbers that would have been shown in
18 the *Mungai*, because it's the same things that our expert would
19 have reviewed. And we submitted those documents as an exhibit.

20 And so I don't intend on getting into those at the
21 evidentiary hearing, since under the Court's ruling, I don't think
22 they would be relevant for this. But I would just submit so that the
23 numbers are part of the record.

24 THE COURT: That's fine.

25 MR. GASTON: It would have -- if we had done this and if

1 the Court had ruled differently, the numbers that we would have
2 proffered would have been the same numbers that would have
3 came out in *Mungai*.

4 THE COURT: Got it.

5 MR. GASTON: With respect to the second argument, the
6 State made -- or the second question or request, I guess, with
7 respect to are we conceding the ZIP code issue, yes.

8 THE COURT: Okay.

9 MR. GASTON: And by ZIP code issue, our original theory,
10 I don't -- it wasn't reckless, I didn't make it up, I mean, the jury
11 commissioner testified in a case that that's what was happening,
12 that's what we relied on. But now that we have the data, we saw
13 that that's not, in fact, the case.

14 THE COURT: Right.

15 MR. GASTON: They don't send equal numbers.

16 THE COURT: Sure. And I think that that's kind of where I
17 was going with -- or where you were going to with -- and I don't
18 remember which analogy it was, but the part where you're saying
19 we went in originally thinking it was this, we figured out it wasn't,
20 in fact, this, we found out it was this. Right? You don't know what
21 you don't know.

22 So I understand your concession and then how that
23 opened the door to a different canvass. So we're good with that.
24 Okay.

25 Ms. Dickens, did you wish to be -- Ms. Dickenson, excuse

1 me, did you wish to be heard on anything?

2 MS. DICKENSON: Nothing further, Your Honor, unless
3 the Court has any questions of me, because I've been involved in a
4 lot of the discovery.

5 THE COURT: Yeah. No, I understand. I think we're good.
6 I think that we'll be a lot better in 30 days, we'll all come in here.

7 I do want, though, guys, if anything -- if you find other
8 issues, let's -- because the procedural posture of the case, let's do it
9 in writing. And that'll give me, you know, time to look into the
10 issues and if I have to go back and specifically look at something
11 that was done, then I will do that. Okay.

12 MS. BOTELHO: And, Your Honor, I'm sorry, I don't mean
13 to interrupt.

14 THE COURT: That's okay.

15 MS. BOTELHO: But with the concession of the ZIP code
16 issue and now with your decision about kind of the DETR records
17 coming into play, I understand that the Court is setting a 30-day,
18 you know, timeline with the 10-day deadline in terms of discovery.
19 But I think I would be remiss in not mentioning to the Court that this
20 changes strategically how the State is preparing for this case.

21 THE COURT: Okay.

22 MS. BOTELHO: In that we might have to get an expert
23 now, which we had no way of having to, you know, at least in our
24 strategy, understanding that DETR was going to be in play in this
25 case.

1 And so at some point, I would like to reserve the
2 opportunity to file an expert notice, if we, you know, after speaking
3 today, Mr. Dickerson and myself, speaking today, having the
4 opportunity to do that. Because --

5 THE COURT: Can that decision be made in the next 30
6 days?

7 MS. BOTELHO: Yes.

8 THE COURT: Okay.

9 MS. BOTELHO: Yes.

10 THE COURT: Mr. Gaston.

11 MR. GASTON: I would object to any additional
12 continuance as necessitate by, essentially, what the State's arguing.
13 The State's argument, again, for there to be a remedy, there has to
14 be a violation there, and it has to -- the remedy has to be tied to the
15 violation. And in this instance, the Court ultimately gave the State a
16 remedy of a continuance for 30 days to prepare with the DETR
17 records --

18 THE COURT: But I did find there was a violation.

19 MR. GASTON: Because there was a -- because you found
20 that it could have been disclosed earlier, et cetera.

21 MS. BOTELHO: Not that it could have; that it should have.

22 MR. GASTON: Okay. So with respect to the argument by
23 the State that now, based on this ZIP code issue, that they're so
24 taken off guard that they need to have an expert, that's just no way
25 that's accurate. That we have told the State from the beginning that

1 we disagree with their reading of Valentine, that we disagree that
2 our scope is limited to the expert, that we are litigating it exactly the
3 way -- we could not have mapped it -- we literally mapped them out
4 the way that we were planning on going forward with this case,
5 because my questions pretty much line by line, the same questions
6 are asked in *Mungal*. We told the State this. They very confidently
7 disagreed with us and did not have much interest in discussing it.

8 So to turn around and be like --

9 MS. BOTELHO: I'm sorry, discussing what?

10 MR. GASTON: To turn around and then argue that now
11 that they -- we've litigated this issue, by the way, which was never
12 filed a motion, nothing like that, we waited till the evidentiary
13 hearing to actually litigate the issue, now that the district court
14 disagrees with the State's interpretation of the order of remand,
15 that they are now taken off guard and now they might want to do
16 an -- get an expert. I don't think that's excusable. I think this -- I
17 think, you know, preparation is key a little bit. I think the State
18 could have done this before. The State could have anticipated
19 potentially losing their argument on the scope of remand, hired an
20 expert in advance. They could have given their expert a lot of the
21 data that they wanted. They could have had their expert prepared.

22 And if that was the case, then it might make a little bit of
23 sense that they need a continuance with respect to giving their
24 expert and maybe their expert needs more time to go through the
25 DETR records and incorporate that into their thing. But to argue

1 that because of the late disclosure of the DETR records, and the
2 Court's ruling on the order of -- or the scope of remand, essentially,
3 for this evidentiary hearing, that now they need -- might need to
4 start from scratch with their own expert, it just -- It's just incorrect
5 that they could have -- there's no reason at all the State couldn't
6 have done this in the last two years and have to wait till the actual
7 evidentiary hearing was scheduled for the district court to disagree
8 with their reasoning and analysis on Valentine, and then be, like,
9 maybe I need an expert and maybe I should do these things.

10 Also, because if they decide they need an expert in 30
11 days, they're going to need time to give that expert the discovery,
12 the expert's going to need time to go over it, review our expert's -- I
13 mean, this is going to be a very long period of continuances all for
14 things that very well could have been done in advance.

15 And, you know, it's kind of common in preparing for
16 hearings and things in the law, that you prepare for contingencies if
17 you lose. And the State didn't do that. And so I think it would be
18 inappropriate to grant the State a continuance anything beyond
19 what the Court initially thought was appropriate for -- to remedy the
20 violation on the DETR records.

21 MS. BOTELHO: Your Honor, the State's objection
22 concerning DETR were triggered by the late and untimely
23 disclosure of the DETR records, which up until Tuesday of this week
24 were not in play. They can say all they want, that they said, oh,
25 we're going to, you know, trace, you know, *Mungai*, and we're

1 going to verbatim ask questions the same way that we did in
2 *Mungai*, that -- if that's their strategy, that's fine.

3 But for all intents and purposes, the State prepared, it had
4 every reason to rely on and only prepare for this ZIP code issue,
5 because that's the only type of discovery that we received in this
6 case.

7 MR. GASTON: I mean, that's not accurate, right? Because
8 they got the discovery on the master list, the millions of records
9 that we got from jury commissioner, they got the record -- they
10 got -- they knew that we were calling the expert to talk about the
11 list. Essentially, this -- the idea that they got no other discovery
12 related to anything that wasn't ZIP code issues is inaccurate.

13 They also had notice from us multiple times that we
14 disagreed and couldn't disagree more with their interpretation of
15 the scope of remand. So the fact that they took a narrow focus and
16 didn't do anything else to prepare in the event that the district court
17 disagreed with them is not a reason to justify a further continuance
18 than what the Court originally thought appropriate to remedy
19 anything with the DETR records.

20 THE COURT: All right. Everybody's coming in here fully
21 prepared with the expert that they want, and everybody's going to
22 give everyone else on the other side what they need to fairly
23 cross-examination that expert. So within 30 days, the State will
24 need to -- hold on, let me think about -- original 10 days was for you
25 guys to hand everything over, but if the expert comes up with stuff,

1 that's not going to work.

2 But -- so I said we were going to continue this for 30 days.
3 So State, how long is it going to take you to assess whether or not
4 you need an expert and then retain one? I don't know what
5 timeframes are with COVID.

6 MS. BOTELHO: Two weeks.

7 THE COURT: Okay. So do you guys want to set -- all
8 right. So in two weeks, we're going to have a status check. At that
9 status check, we're going to talk about anything that's been passed
10 back and forth. And then we're also going to get the name of the
11 expert. And from the State how long their expert needs to prepare
12 for the hearing.

13 MS. BOTELHO: Yes, Your Honor.

14 THE COURT: So let's see what we're dealing with. I really
15 want to be at this hearing. Okay. It doesn't look like I have -- all
16 right. So that's Christmas Eve, right? Or that's December 17th.

17 Do we have a -- do I have a homicide calendar on
18 the 17th? Oh, it's on the 10th that I have it. But I have my regular
19 calendar on the 16th, don't I?

20 THE CLERK: You do, only in the morning, up till noon.

21 THE COURT: Okay. So that would be one day short of
22 two weeks. State, would that work or do you guys want to go to
23 Tuesday, the 21st? So I'll be here on the 16th and I'll be here on
24 the 21st.

25 MS. BOTELHO: I'll defer to the Court and counsel.

1 THE COURT: Counsel, are you here -- I know it's
2 Christmas --

3 MR. GASTON: I can do either one. But if it doesn't matter
4 to anybody, I'd prefer the 16th.

5 THE COURT: Okay. 16th, please, for that.

6 THE CLERK: What time would you like?

7 THE COURT: We -- are regular calendar's at 11:00, so
8 we'll just do it -- we'll just add it to our regular calendar, please.

9 THE CLERK: It'll be December 16th at 11:00 a.m.,

10 MS. BOTELHO: And, Your Honor, may I make one more
11 request, please.

12 THE COURT: Yeah.

13 MS. BOTELHO: May I please request the transcripts from
14 this proceeding? And please, Madam Recorder.

15 And also, Your Honor, the State would also request a
16 written order and I can prepare one if the Court would like
17 concerning the concession by defense counsel as to the ZIP code
18 issue, as well as the scope issue.

19 THE COURT: Yeah. So write it up, pass it to them. If you
20 guys disagree, you submit competing orders.

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MS. BOTELHO: Thank you.

MR. GASTON: Sounds good. Thank you.

THE COURT: Great. Okay. That'll be it. We'll go off.

MS. BOTELHO: Thank you.

MR. GASTON: Thanks, Your Honor.

[Proceeding concluded at 2:30 p.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability. Please note: Technical glitches in the BlueJeans audio/video which resulted in distortion and/or audio cutting out completely were experienced and are reflected in the transcript.


Shawna Ortega, CET*562

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Dist. Ct. C-16-316081-1

THE STATE OF NEVADA,
Real Party in Interest.

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 26th day of May, 2022. Electronic Service of the

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5 I further certify that I served a copy of this document via e-mail:

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9 BY /s/ Carrie M. Connolly
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