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No. 83896

Electronically Filed
Mar 07 2022 07:39 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S APPENDIX VOLUME II PAGES 251-327

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INDEX
JEREMY BROWN-WHEATON
Case No. 83896

	<u>PAGE NO.</u>
Amended Indictment filed 02/22/21	170-172
Answer to the State's Return and Other Arguments Raised Regarding Petition for Writ of Habeas Corpus filed 02/02/21 Date of Hrg: 02/04/21	134-141
Defendant's Opposition to the State's Motion to Set Bail filed 12/07/20 Date of Hrg: 12/08/20	15-49
District Court Minutes from 11/19/20 through 11/04/21	195-
Guilty Plea Agreement filed 02/23/21	173-181
Indictment filed 11/19/20	1-3
Indictment Warrant filed 11/25/20	12-14
Judgment of Conviction (Plea of Guilty) filed 05/07/21	183-187
Motion for/or Bail Release, or, in the Alternative, For Setting of Reasonable Bail Due to Change in Circumstances filed 02/16/21 Date of Hrg: 02/23/21	161-168
Motion to Dismiss Due to Violation of Article III, Section I of the Nevada Constitution filed 02/10/21 Date of Hrg: 03/04/21	142-159
Motion to Place on Calendar to Address House Arrest filed 03/01/21 Date of Hrg: 03/09/21	182
Notice of Appeal filed 12/2/21	191-194
Notice of Hearing filed 11/19/20	11
Notice of Hearing filed 12/22/20	121
Notice of Hearing filed 02/10/21	160
Notice of Hearing filed 02/17/21	169
Order for Revocation of Probation and Amended Judgment of Conviction filed 11/10/21	188-190
Order for Writ of Habeas Corpus filed 12/22/20	122-124
Petition for Writ of Habeas Corpus filed 12/21/20 Date of Hrg: 01/05/21	50-120
State's Motion to Set Bail filed 11/19/20	4-10

1	State’s Response to Defendant’s Petition for Writ of Habeas Corpus filed 01/04/21	
2	Date of Hrg: 01/07/21	127-133
3	Writ of Habeas Corpus filed 12/24/20	
4	Date of Hrg: 01/07/21	125-126
5	<u>TRANSCRIPTS</u>	
6	Recorder’s Transcript	
7	All Pending Motions	
8	Date of Hrg: 02/04/21	267-278
9	Recorder’s Transcript	
10	Arraignment Continued	
11	Date of Hrg: 02/04/21	279-290
12	Recorder’s Transcript	
13	Defendant’s Motion to Dismiss Due to Violation of Article III, Section 1 of the Nevada Constitution	
14	Date of Hrg: 02/23/21	291-299
15	Recorder’s Transcript	
16	Motion to Place on Calendar to Address House Arrest	
17	Date of Hrg: 03/09/21	300-310
18	Recorder’s Transcript	
19	Revocation of Probation	
20	Date of Hrg: 11/04/21	311-327
21	Reporter’s Transcript	
22	Grand Jury	
23	Date of Hrg: 11/18/20	209-266
24		
25		
26		
27		
28		

11:40:07 1 Q And what kind of a call were you called out
2 on?

3 A An arrestee that escaped out of a patrol
4 vehicle.

11:40:16 5 Q Okay. And so when you responded to that
6 area what was your function in terms of the
7 investigation?

8 A So it was broadcast on our channel, the
9 officer was initially an officer out of the Northeast
11:40:31 10 Area Command, it was broadcast on our channel that there
11 was an arrestee that escaped out of the back of a patrol
12 car. The dispatcher asked were there any clear units
13 that could be assigned. I assigned myself. In the
14 midst of that they explained what the charges were so
11:40:48 15 when I assigned myself the dispatcher told me to set up
16 at Casino Center and Bonanza.

17 Q And did the dispatcher give you a
18 description of the person that you were looking for?

19 A She did.

11:40:59 20 Q And what was that description?

21 A Black male, I can't remember exactly what
22 he was wearing but they gave the clothing description.

23 Q And did you see somebody matching that
24 description?

11:41:10 25 A I did.

11:41:10 1 Q And do you think you'd recognize that
2 person if you saw them again?

3 A Yes.

4 Q I'm going to show you what's been marked as
11:41:17 5 Exhibit 3. Does that look like the person that you saw?

6 A Yes.

7 Q Okay. And when you saw that person where
8 was he?

9 A He was -- well, he jumped out of a trash
11:41:27 10 can.

11 Q Okay. And so were you engaged in a foot
12 pursuit?

13 A Yes.

14 Q Okay. Were you with Officer Levy?

11:41:37 15 A Yes.

16 Q Is Officer Levy the person who just came
17 out of this courtroom?

18 A Yes, he is.

19 Q Okay. The members of the Grand Jury have
11:41:43 20 previously seen an excerpt of Officer Levy's body cam
21 but I'm going to try to show it to you now.

22 A Okay.

23 Q Does that scene look familiar to you?

24 A Yes.

11:42:26 25 Q But this is not your body camera footage?

11:42:29 1 A No.

2 Q There's a specific portion that I want to
3 play for you starting at about three minutes. And let's
4 go back to three minutes and 21 seconds.

11:42:43 5 A Okay.

6 (Video playing.)

7 Q Okay. So that was obviously Officer Levy's
8 body camera, not your body camera. Did you see the
9 defendant run into a police car in that body camera
11:43:06 10 footage?

11 A Yes.

12 Q And when you were out there -- are you
13 actually visible in this footage? Are you visible?

14 A Oh, yes.

11:43:14 15 Q Can you point yourself out for the members
16 of the Grand Jury?

17 A Right in the middle.

18 Q You're the person in the middle?

19 A Yes.

11:43:21 20 Q Okay. Like to the left of the stop sign?

21 A Yes.

22 Q Okay. So when this event actually occurred
23 could you see Officer Levy?

24 A Yes.

11:43:34 25 Q And could you see the defendant?

11:43:36 1 A Yes.

2 Q And could you see what occurred between the
3 two of them?

4 A From my standpoint, from what it looked
11:43:43 5 like to me is when they were running and Officer Levy
6 went to go hands-on, from what I seen it seems as with
7 his right shoulder it looked like he shoulder bumped
8 Officer Levy from where I was standing.

9 Q When you say he you mean the defendant?

11:43:59 10 A Yes.

11 Q And can you describe for us where you were
12 standing?

13 A So we were like facing westbound Bonanza so
14 the vehicle was coming this way and then they were
11:44:14 15 running towards the vehicle and then I was standing
16 right over this way.

17 Q Okay. So you were closer to Officer Levy
18 than you were to the defendant?

19 A I can't recall.

11:44:25 20 Q Okay. How about this, were they both,
21 would you describe both of them as being right in front
22 of you?

23 A Yes.

24 Q Okay. And after you observed that did you
11:44:37 25 then see the defendant run into the police car?

11:44:40 1 A So it was like as he was running into the
2 police car it was like Levy was trying to go hands-on
3 and that's when I seen the shoulder bump and then he
4 turned around and then started running towards my
11:44:51 5 direction.

6 Q And was he eventually brought into custody?

7 A Yes, he was.

8 Q How was he brought into custody?

9 A I eventually tased him and then officers
11:45:00 10 went hands-on to take him into custody.

11 Q Okay. And at that point was he placed
12 under arrest or was he already under arrest?

13 A He was actually in handcuffs at that time
14 so I guess he went back under arrest.

11:45:12 15 Q Sure. At any point did you read him his
16 Miranda rights?

17 A I did not.

18 Q Did you observe any other officers read him
19 his Miranda rights?

11:45:21 20 A I did not.

21 MS. SCHEIBLE: I have no further questions
22 for this witness.

23 THE FOREPERSON: Any other questions?

24 MS. SCHEIBLE: Any questions from the Grand
11:45:27 25 Jury?

11:45:27 1 THE FOREPERSON: By law these proceedings
2 are secret and you are prohibited from disclosing to
3 anyone anything that transpired before us including any
4 evidence presented to the Grand Jury, any event
11:45:27 5 occurring or a statement made in the presence of the
6 Grand Jury or any information obtained by the Grand
7 Jury.

8 Failure to comply with this admonition is a
9 gross misdemeanor punishable up to 364 days in the Clark
11:45:28 10 County Detention Center and a \$2,000 fine. In addition
11 you may be held in contempt of court punishable by an
12 additional \$500 fine and 25 days in the Clark County
13 Detention Center.

14 Do you understand this admonition?

11:45:58 15 THE WITNESS: Yes.

16 THE FOREPERSON: Thank you and you're
17 excused.

18 MS. SCHEIBLE: And that concludes my
19 presentation for today. I will submit the proposed
11:46:17 20 Indictment with one amendment to conform with the
21 testimony. Officer Levy's first name is Ryan, therefore
22 his first name on lines 12 and 13 of page 2 should be R.
23 And I've left the disc in the computer in case you want
24 to review any of the body camera footage while you
11:46:41 25 deliberate and I will be standing by for the next 15

11:46:45 1 minutes.

2 A JUROR: Officer Bell's first name, how is
3 that spelled?

4 MS. SCHEIBLE: Huh? Oh, Officer Bell?

11:46:51 5 Shanice, S-H-A-N-I-C-E. And I'm leaving your exhibits
6 also on the computer.

7 (At this time, all persons, except the
8 members of the Grand Jury, exited the room at 11:47 and
9 returned at 11:50.)

11:50:29 10 THE FOREPERSON: Miss District Attorney, by
11 a vote of 12 or more Grand Jurors a true bill has been
12 returned against the defendant charging all counts in
13 Grand Jury case number 19BGJ225X.

14 We instruct you to prepare an Indictment in
11:50:43 15 conformance with the proposed Indictment previously
16 submitted to us.

17 MS. SCHEIBLE: Thank you very much. Thank
18 you all.

19 (Proceedings concluded.)

11:50:49 20 --oo0oo--

21

22

23

24

25

11:50:49

1

REPORTER'S CERTIFICATE

2

3

STATE OF NEVADA)

: ss

4

COUNTY OF CLARK)

11:50:49

5

6

I, Donna J. McCord, C.C.R. 337, do hereby

7

certify that I took down in Shorthand (Stenotype) all of

8

the proceedings had in the before-entitled matter at the

9

time and place indicated and thereafter said shorthand

11:50:49

10

notes were transcribed at and under my direction and

11

supervision and that the foregoing transcript

12

constitutes a full, true, and accurate record of the

13

proceedings had.

14

Dated at Las Vegas, Nevada,

11:50:49

15

November 30, 2020.

16

17

/S/DONNA J. MCCORD

18

Donna J. McCord, CCR 337

19

11:50:49

20

21

22

23

24

11:50:49

25

11:50:49

1

AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the preceding

11:50:49

5

TRANSCRIPT filed in GRAND JURY CASE NUMBER 19BGJ225X:

6

7

8

X Does not contain the social security number of any
person,

9

11:50:49

10

-OR-

11

____ Contains the social security number of a person as
required by:

12

13

A. A specific state or federal law, to-wit:
NRS 656.250.

14

-OR-

11:50:49

15

B. For the administration of a public program
or for an application for a federal or
state grant.

16

17

18

/S/DONNA J. MCCORD
Signature

November 30, 2020
Date

19

11:50:49

20

Donna J. McCord
Print Name

21

22

Official Court Reporter
Title

23

24

25

<p>A JUROR: [3] 28/13 39/8 49/1 BY A JUROR: [4] 28/15 28/22 29/10 39/21 BY MS. SCHEIBLE: [4] 9/11 31/9 39/11 42/6 MS. SCHEIBLE: [11] 5/7 28/9 29/4 29/8 30/7 41/3 47/20 47/23 48/17 49/3 49/16 THE FOREPERSON: [26] 8/9 8/16 8/23 9/3 28/12 28/14 28/21 29/7 29/9 29/14 30/4 30/10 30/17 30/24 31/2 39/7 40/10 40/25 41/5 41/12 41/19 41/23 47/22 47/25 48/15 49/9 THE WITNESS: [15] 8/15 8/22 8/25 9/4 30/3 30/6 30/16 30/23 31/1 40/24 41/2 41/11 41/18 41/21 48/14 \$ \$2,000 [3] 29/24 40/20 48/10 \$5,000 [1] 7/3 \$500 [3] 30/1 40/22 48/12 - --oo0oo [1] 49/20 -OR [2] 51/10 51/14 / /S/DONNA [2] 50/17 51/18 1 10:54 [1] 1/16 11:47 [1] 49/8 11:50 [1] 49/9 12 [2] 48/22 49/11 13 [1] 48/22 15 [1] 48/25 16 [1] 4/6 18 [3] 1/15 2/1 5/1 18034 [1] 26/2 19BGJ225X [4] 1/9 5/13 49/13 51/5 2 2020 [8] 1/15 2/1 5/1 9/24 25/18 26/18 50/15 51/18 21 [1] 45/4 23 [1] 4/9 239B.030 [1] 51/2 25 [4] 4/7 30/1 40/22 48/12 26 [1] 4/8 290 [1] 12/9 29th [7] 9/24 16/18 17/16 25/18 26/17</p>	<p>31/22 42/21 3 30 [2] 50/15 51/18 31 [1] 3/4 33 [1] 23/23 337 [3] 1/25 50/6 50/18 364 [3] 29/23 40/19 48/9 4 42 [1] 3/5 4300 [2] 10/19 11/10 45-degree [1] 35/10 6 656.250 [1] 51/13 7 7:00 [1] 10/4 A a.m [1] 1/16 ability [1] 5/7 able [3] 35/5 38/10 39/10 about [27] 5/12 8/5 8/13 11/5 13/5 14/23 15/6 20/4 23/23 26/4 26/24 26/25 30/14 31/14 33/11 33/18 34/15 36/22 38/4 38/7 38/14 38/18 38/21 38/25 41/9 45/3 46/20 abrupt [1] 40/1 abstain [2] 6/13 6/14 accurate [5] 16/22 24/11 25/20 26/16 50/12 accurately [1] 5/6 accusation [1] 6/5 acquire [1] 7/19 act [3] 6/13 7/15 7/16 action [1] 6/3 actions [1] 19/24 actually [5] 34/4 35/24 45/13 45/22 47/13 addition [3] 29/24 40/20 48/10 additional [4] 22/10 30/1 40/22 48/12 address [2] 10/18 23/20 administration [1] 51/15 admonition [6] 29/22 30/3 40/18 40/24 48/8 48/14 adult [1] 16/11 advantage [1] 7/19 advised [3] 8/17 30/18 41/13 advisement [3] 8/22 30/23 41/18 affirm [1] 51/4 AFFIRMATION [1] 51/1 AFORESAID [1] 1/4 after [11] 10/14 14/17</p>	<p>18/5 18/10 19/13 22/8 28/18 36/6 36/7 36/19 46/24 after you [1] 18/5 Afterwards [1] 22/8 again [5] 21/11 21/11 36/19 39/14 44/2 against [3] 6/6 6/22 49/12 ahead [2] 23/23 39/8 aka [1] 1/10 all [23] 5/19 12/1 13/16 14/6 20/12 23/7 24/6 24/11 24/14 24/17 26/14 26/21 28/7 30/8 32/6 33/11 33/13 33/22 38/16 49/7 49/12 49/18 50/7 already [7] 12/14 20/8 22/4 36/16 37/17 40/7 47/12 also [7] 2/22 5/19 15/3 18/6 18/25 36/3 49/6 am [6] 5/11 8/7 9/20 12/1 23/7 25/10 amendment [1] 48/20 angle [3] 33/21 35/10 35/12 angles [1] 36/22 announcing [1] 14/4 another [10] 6/10 6/11 6/12 7/8 7/12 7/19 16/11 26/24 32/4 32/4 answer [2] 14/1 14/5 any [48] 6/1 6/3 6/10 6/16 6/18 6/19 6/21 6/23 7/7 7/11 7/18 7/18 7/19 7/25 8/1 8/4 12/22 12/22 17/21 18/6 21/22 27/4 28/12 28/13 28/22 29/8 29/15 29/18 29/19 29/20 32/11 38/3 38/6 39/21 40/11 40/14 40/15 40/16 43/12 47/15 47/18 47/23 47/24 48/3 48/4 48/6 48/24 51/8 anybody [3] 14/1 14/10 38/20 anyone [3] 29/17 40/13 48/3 anything [10] 13/8 13/9 13/18 14/6 14/17 28/20 29/17 33/10 40/13 48/3 apartment [17] 11/11 11/12 11/14 12/6 12/8 12/9 12/13 12/24 13/13 13/15 14/13 16/8 16/17 17/16 18/3 19/6 19/8 appear [1] 39/17 appeared [1] 26/17 appears [1] 39/19 application [1] 51/15 applied [3] 7/14 27/7 27/10 applying [1] 37/1 Appreciate [1] 41/3</p>	<p>apprehend [1] 35/1 approached [3] 11/9 13/13 35/17 approximately [1] 10/4 are [22] 5/12 5/14 5/19 9/13 9/18 17/8 19/13 21/11 27/11 27/24 29/16 29/17 31/11 31/15 40/12 40/13 42/8 42/15 45/12 45/13 48/2 48/2 area [17] 9/18 9/20 9/22 31/15 31/17 31/19 31/21 32/4 32/15 32/24 33/24 42/15 42/19 42/20 42/23 43/6 43/10 argumentative [1] 17/23 arms [1] 35/9 around [10] 12/22 12/23 14/20 24/25 24/25 35/5 36/11 36/16 37/13 47/4 arrest [7] 6/1 8/1 22/4 37/17 47/12 47/12 47/14 arrestee [2] 43/3 43/11 arrive [1] 13/6 arrived [3] 10/17 13/11 17/15 Arturo [2] 10/16 14/20 ask [2] 28/19 38/13 asked [2] 32/10 43/12 asking [4] 14/25 18/21 19/13 32/12 assign [1] 13/16 assigned [14] 9/18 9/21 13/16 13/20 13/21 13/22 13/23 31/15 31/21 32/10 42/15 43/13 43/13 43/15 Assistant [1] 2/6 associated [1] 12/3 association [1] 6/17 attempts [1] 5/24 attention [1] 14/7 Attorney [3] 2/23 5/11 49/10 Attorney's [1] 38/21 August [8] 9/22 9/24 16/18 17/16 25/17 26/17 31/22 42/21 August 29th [5] 9/24 16/18 17/16 31/22 42/21 authority [1] 18/22 available [2] 32/11 32/12 avoid [2] 37/5 40/10 away [5] 36/12 37/5 37/14 40/7 40/9 B B-E-L-L [1] 41/23 baby [3] 16/10 16/20 17/17 back [16] 19/16 20/10 21/20 22/6 25/1 25/2</p>	<p>25/2 26/13 27/1 27/11 35/6 36/15 37/7 43/11 45/4 47/14 bare [1] 29/14 battery [7] 7/7 7/20 7/22 7/24 8/20 30/21 41/16 bedroom [2] 21/20 21/21 been [20] 5/5 5/15 6/1 9/7 9/16 11/3 15/22 16/12 23/8 25/10 26/8 31/5 31/13 31/18 33/16 39/16 42/2 42/13 44/4 49/11 before [17] 1/4 8/14 18/5 18/10 18/11 20/4 29/18 30/15 34/16 35/16 36/6 37/3 38/18 40/14 41/10 48/3 50/8 before-entitled [1] 50/8 beginning [1] 24/20 behind [7] 16/1 16/5 21/19 22/21 34/7 35/24 37/20 being [8] 5/22 14/19 15/9 15/13 17/23 26/15 34/8 46/21 believe [1] 33/5 BELL [6] 3/5 41/5 41/22 42/1 42/8 49/4 Bell's [1] 49/2 best [1] 5/7 better [1] 33/23 between [3] 12/15 12/18 46/2 beyond [1] 7/21 bill [1] 49/11 bit [1] 33/4 black [4] 16/11 27/21 32/22 43/21 bodies [1] 36/23 bodily [2] 7/10 7/11 body [19] 4/9 23/2 23/5 23/11 24/2 24/8 24/18 33/14 33/20 33/25 34/17 35/20 35/20 44/20 44/25 45/8 45/8 45/9 48/24 Bonanza [7] 31/25 32/17 32/17 33/4 42/24 43/16 46/13 booked [2] 17/8 17/11 both [12] 8/25 31/1 35/4 35/9 36/10 37/11 38/9 39/24 40/1 41/21 46/20 46/21 break [4] 8/19 29/12 30/20 41/15 breaks [1] 6/18 broadcast [2] 43/8 43/10 broke [1] 25/8 broken [4] 25/16 26/5 26/7 26/15 brought [2] 47/6 47/8 BROWN [10] 1/10 1/10 260</p>
---	--	---	--	---

B BROWN... [8] 5/14 8/21 16/9 17/5 18/9 18/14 30/22 41/17 BROWN-WHEATON [7] 1/10 5/14 8/21 16/9 17/5 30/22 41/17 Building [1] 12/9 bump [1] 47/3 bumped [1] 46/7	charged [2] 28/24 29/2 charges [5] 5/14 20/9 22/10 29/6 43/14 charging [1] 49/12 check [2] 39/23 40/4 Chief [1] 2/23 circumstances [1] 18/18 CLARK [10] 1/2 5/11 28/7 29/23 30/1 40/19 40/22 48/9 48/12 50/4 clear [1] 43/12 closed [1] 21/20 closer [2] 35/4 46/17 clothing [1] 43/22 coercion [3] 6/14 22/1 22/5 collided [1] 37/10 come [5] 5/20 16/4 17/20 32/2 37/20 coming [5] 35/24 37/11 40/1 40/8 46/14 command [11] 9/20 9/22 31/16 31/17 31/19 31/21 32/4 42/16 42/19 42/20 43/10 commands [1] 17/21 commit [1] 7/16 committed [2] 6/9 7/22 communication [1] 7/5 compel [1] 6/12 complaint [1] 6/7 complex [2] 11/11 11/12 comply [3] 29/22 40/18 48/8 computer [2] 48/23 49/6 concluded [1] 49/19 concludes [1] 48/18 confined [1] 5/22 confinement [2] 7/23 8/3 confirmed [1] 24/1 conform [1] 48/20 conformance [1] 49/15 consent [1] 6/22 constitutes [1] 50/12 contact [9] 12/17 12/20 18/19 35/19 36/18 36/19 36/23 38/15 38/21 contain [1] 51/8 Contains [1] 51/11 contempt [3] 29/25 40/21 48/11 continue [1] 36/15 continued [3] 33/12 34/23 37/14 continuing [1] 19/18 conversation [2] 18/10 38/18 conversations [1] 18/11 copy [3] 5/16 11/23 21/6 Correct [6] 20/11 26/23 35/13 36/25 37/15 39/1	COSENTINO [1] 2/4 could [8] 14/10 15/1 34/25 37/3 43/13 45/23 45/25 46/2 couldn't [2] 40/6 40/8 couldn't tell [1] 40/8 counts [1] 49/12 COUNTY [10] 1/2 5/11 28/8 29/24 30/1 40/20 40/22 48/10 48/12 50/4 court [7] 1/1 1/5 5/17 29/25 40/21 48/11 51/22 courtroom [1] 44/17 covered [4] 14/19 15/4 15/9 15/14 crime [3] 5/25 9/19 18/17 custody [22] 5/23 5/25 6/3 6/8 7/23 7/25 8/3 17/25 18/2 18/10 18/13 18/15 19/2 19/5 20/8 22/12 37/19 37/24 38/11 47/6 47/8 47/10 cut [1] 35/3 cutting [1] 34/24	did [80] didn't [4] 12/23 21/22 28/19 35/22 different [4] 15/23 15/24 19/24 20/6 direction [3] 34/9 47/5 50/10 directives [1] 5/18 disc [2] 33/18 48/23 disclosing [3] 29/17 40/13 48/2 dispatch [3] 11/4 32/9 32/10 dispatched [4] 10/13 10/18 18/15 32/9 dispatcher [3] 43/12 43/15 43/17 disregarded [1] 17/22 distress [3] 14/18 14/23 14/24 DISTRICT [6] 1/1 1/5 2/23 5/11 38/21 49/10 disturbance [3] 10/25 11/2 12/15 do [50] 6/12 6/14 8/4 8/12 8/16 8/22 8/23 10/2 10/6 10/17 11/3 11/13 12/5 12/20 13/12 13/14 13/19 13/24 14/15 16/14 17/1 17/6 18/21 18/23 18/24 20/5 21/12 21/25 22/2 22/2 25/7 25/11 26/9 28/11 28/14 30/3 30/4 30/13 30/17 30/23 37/23 39/7 39/9 40/24 40/25 41/8 41/18 44/1 48/14 50/6 does [11] 6/6 7/17 10/23 23/10 23/12 23/20 39/17 44/5 44/23 51/4 51/8 doing [6] 6/13 6/14 18/21 22/3 24/21 24/24 domestic [10] 10/25 11/1 11/7 12/2 12/15 19/22 19/25 20/10 28/24 29/2 don't [9] 10/24 11/17 18/22 18/23 20/23 20/25 21/2 29/5 37/9 done [1] 7/15 Donna [7] 1/25 5/4 50/6 50/17 50/18 51/18 51/20 door [16] 11/9 11/10 13/25 14/1 14/9 14/21 15/20 15/22 15/23 15/24 15/25 16/2 16/3 16/6 21/18 21/21 doubt [1] 7/21 down [4] 11/20 19/15 21/3 50/7 Downtown [5] 31/17 31/18 31/21 42/19 42/20 driver's [2] 22/21 22/25 driving [2] 24/8 32/24 duly [4] 5/5 9/7 31/5	42/2 E each [8] 13/17 34/23 35/2 35/4 36/24 37/10 38/9 40/3 early [2] 10/4 10/10 east [1] 35/3 eastbound [1] 36/14 easy [1] 22/19 EIGHTH [1] 1/1 either [3] 36/11 37/5 40/8 else [2] 14/6 22/9 employed [3] 9/13 31/11 42/8 empty [2] 34/6 34/8 encounter [2] 32/25 33/3 end [2] 19/10 37/8 ended [1] 40/2 engaged [1] 44/11 entitled [1] 50/8 entry [2] 14/12 14/15 escape [5] 5/24 5/25 8/19 30/20 41/15 escaped [2] 43/3 43/11 escapes [1] 5/24 established [1] 7/20 even [1] 5/18 event [5] 12/3 29/19 40/15 45/22 48/4 eventually [7] 14/12 14/14 14/15 16/7 25/4 47/6 47/9 ever [3] 38/13 38/17 38/20 everyday [1] 18/20 everything [1] 17/22 evidence [4] 5/20 29/18 40/14 48/4 exact [1] 10/18 exactly [2] 10/24 43/21 EXAMINATION [3] 9/11 31/9 42/6 EXAMINED [1] 3/2 except [1] 49/7 excerpt [1] 44/20 excused [3] 30/6 41/2 48/17 EXHIBIT [14] 4/4 4/5 4/6 4/7 4/8 4/9 5/16 16/13 23/8 24/15 25/11 33/17 39/17 44/5 Exhibit 3 [3] 16/13 39/17 44/5 Exhibit 4 [1] 25/11 Exhibit 6 [2] 24/15 33/17 exhibits [3] 4/1 4/3 49/5 exited [1] 49/8 explain [1] 18/12 explained [1] 43/14
C C.C.R [2] 1/25 50/6 C352265 [1] 1/9 call [16] 8/6 9/25 10/2 10/20 10/25 11/2 11/6 18/16 30/8 31/24 32/2 32/9 37/23 37/25 42/23 43/1 called [1] 43/1 calls [1] 18/20 cam [6] 23/2 23/5 23/11 24/9 33/20 44/20 came [11] 10/3 10/15 10/22 32/3 34/3 34/4 35/2 35/22 37/4 39/24 44/16 camera [11] 4/9 24/2 24/18 33/14 33/25 34/17 44/25 45/8 45/8 45/9 48/24 can [22] 18/12 22/2 22/24 23/15 25/23 27/14 27/17 27/17 27/20 29/1 29/6 33/8 33/9 33/20 33/22 33/24 34/2 34/12 34/19 44/10 45/15 46/11 can't [4] 23/19 33/19 43/21 46/19 cannot [1] 22/11 car [20] 19/15 22/15 22/17 22/19 22/22 22/23 24/6 25/2 27/1 28/2 28/4 34/17 35/2 35/5 35/22 40/10 43/12 45/9 46/25 47/2 Casada [6] 10/16 12/25 13/6 13/22 14/20 15/20 case [9] 1/9 1/9 5/12 5/13 5/14 38/18 48/23 49/13 51/5 Casino [5] 31/25 32/17 33/5 42/24 43/16 category [1] 7/6 cause [3] 6/8 7/10 22/4 CCDC [1] 17/9 CCR [1] 50/18 Center [11] 29/24 30/2 31/25 32/17 33/5 40/20 40/23 42/24 43/16 48/10 48/13 CERTIFICATE [1] 50/1 certify [1] 50/7 chance [1] 23/4 changed [1] 11/3 channel [2] 43/8 43/10 charge [3] 6/5 6/7 22/5	COSENTINO [1] 2/4 could [8] 14/10 15/1 34/25 37/3 43/13 45/23 45/25 46/2 couldn't [2] 40/6 40/8 couldn't tell [1] 40/8 counts [1] 49/12 COUNTY [10] 1/2 5/11 28/8 29/24 30/1 40/20 40/22 48/10 48/12 50/4 court [7] 1/1 1/5 5/17 29/25 40/21 48/11 51/22 courtroom [1] 44/17 covered [4] 14/19 15/4 15/9 15/14 crime [3] 5/25 9/19 18/17 custody [22] 5/23 5/25 6/3 6/8 7/23 7/25 8/3 17/25 18/2 18/10 18/13 18/15 19/2 19/5 20/8 22/12 37/19 37/24 38/11 47/6 47/8 47/10 cut [1] 35/3 cutting [1] 34/24	D damage [1] 7/4 DANIEL [1] 2/6 date [2] 31/24 51/18 Dated [1] 50/14 day [1] 17/15 days [6] 29/23 30/1 40/19 40/22 48/9 48/12 DC [1] 1/9 deal [1] 18/19 defacing [1] 6/20 defendant [19] 1/11 6/6 6/9 7/9 7/11 7/17 7/22 7/22 22/7 24/21 26/25 34/13 39/2 45/9 45/25 46/9 46/18 46/25 49/12 degree [1] 35/10 deliberate [1] 48/25 Department [2] 9/15 42/10 depends [1] 30/9 depicted [2] 25/12 26/12 depiction [4] 16/22 24/12 25/20 26/16 deprived [2] 6/2 8/1 Deputy [3] 2/4 2/23 5/10 describe [5] 15/10 34/13 34/19 46/11 46/21 description [6] 32/22 33/1 43/18 43/20 43/22 43/24 destroying [1] 6/20 details [2] 32/23 32/24 Detention [6] 29/24 30/2 40/20 40/23 48/10 48/13 device [1] 27/8	did [80] didn't [4] 12/23 21/22 28/19 35/22 different [4] 15/23 15/24 19/24 20/6 direction [3] 34/9 47/5 50/10 directives [1] 5/18 disc [2] 33/18 48/23 disclosing [3] 29/17 40/13 48/2 dispatch [3] 11/4 32/9 32/10 dispatched [4] 10/13 10/18 18/15 32/9 dispatcher [3] 43/12 43/15 43/17 disregarded [1] 17/22 distress [3] 14/18 14/23 14/24 DISTRICT [6] 1/1 1/5 2/23 5/11 38/21 49/10 disturbance [3] 10/25 11/2 12/15 do [50] 6/12 6/14 8/4 8/12 8/16 8/22 8/23 10/2 10/6 10/17 11/3 11/13 12/5 12/20 13/12 13/14 13/19 13/24 14/15 16/14 17/1 17/6 18/21 18/23 18/24 20/5 21/12 21/25 22/2 22/2 25/7 25/11 26/9 28/11 28/14 30/3 30/4 30/13 30/17 30/23 37/23 39/7 39/9 40/24 40/25 41/8 41/18 44/1 48/14 50/6 does [11] 6/6 7/17 10/23 23/10 23/12 23/20 39/17 44/5 44/23 51/4 51/8 doing [6] 6/13 6/14 18/21 22/3 24/21 24/24 domestic [10] 10/25 11/1 11/7 12/2 12/15 19/22 19/25 20/10 28/24 29/2 don't [9] 10/24 11/17 18/22 18/23 20/23 20/25 21/2 29/5 37/9 done [1] 7/15 Donna [7] 1/25 5/4 50/6 50/17 50/18 51/18 51/20 door [16] 11/9 11/10 13/25 14/1 14/9 14/21 15/20 15/22 15/23 15/24 15/25 16/2 16/3 16/6 21/18 21/21 doubt [1] 7/21 down [4] 11/20 19/15 21/3 50/7 Downtown [5] 31/17 31/18 31/21 42/19 42/20 driver's [2] 22/21 22/25 driving [2] 24/8 32/24 duly [4] 5/5 9/7 31/5	face [1] 21/20 facing [3] 36/13 37/4 261

<p>F</p> <p>facing... [1] 46/13</p> <p>fact [6] 22/8 24/1 24/18 28/18 38/8 38/17</p> <p>Failure [3] 29/22 40/18 48/8</p> <p>fair [6] 16/22 24/11 25/20 26/16 26/21 36/1</p> <p>faithfully [1] 5/5</p> <p>familiar [2] 5/19 44/23</p> <p>federal [2] 51/13 51/15</p> <p>feet [3] 29/14 29/14 35/2</p> <p>felony [1] 7/6</p> <p>female [5] 11/6 12/16 14/23 16/11 20/14</p> <p>female's [1] 14/18</p> <p>females [3] 18/6 20/13 20/18</p> <p>few [1] 14/16</p> <p>figured [2] 34/6 34/24</p> <p>file [1] 33/17</p> <p>filed [1] 51/5</p> <p>finally [1] 32/16</p> <p>fine [6] 29/24 30/1 40/20 40/22 48/10 48/12</p> <p>FINKOWSKI [1] 2/7</p> <p>fire [1] 7/5</p> <p>first [33] 5/5 8/6 8/24 9/1 9/2 9/7 10/13 12/4 12/10 12/12 12/19 12/21 13/15 16/14 21/15 23/16 30/25 31/5 33/17 34/3 34/14 34/22 35/23 36/21 36/22 38/24 40/7 41/20 41/22 42/2 48/21 48/22 49/2</p> <p>five [1] 13/7</p> <p>flip [1] 16/25</p> <p>floor [3] 12/10 12/11 12/12</p> <p>following [1] 5/6</p> <p>follows [3] 9/9 31/7 42/4</p> <p>foot [2] 34/5 44/11</p> <p>footage [8] 4/9 24/18 33/25 34/13 44/25 45/10 45/13 48/24</p> <p>force [5] 6/15 7/8 7/9 37/1 39/25</p> <p>foregoing [1] 50/11</p> <p>Foreperson [5] 2/3 2/4 9/7 31/5 42/2</p> <p>formal [1] 6/6</p> <p>found [2] 19/25 21/10</p> <p>four [2] 33/11 42/14</p> <p>freedom [1] 6/3</p> <p>front [7] 15/22 16/3 34/14 34/24 35/1 38/22 46/21</p> <p>full [2] 39/25 50/12</p> <p>function [1] 43/6</p> <p>further [4] 28/10 28/20 39/6 47/21</p> <p>G</p> <p>gave [4] 32/15 32/22</p>	<p>32/23 43/22</p> <p>GERALD [1] 2/13</p> <p>get [9] 14/7 18/15 20/3 22/19 22/21 22/25 25/4 40/7 40/9</p> <p>GILLENWATER [1] 2/8</p> <p>girlfriend [7] 16/11 17/14 19/17 19/19 20/16 20/17 20/20</p> <p>give [7] 8/13 8/18 30/14 30/19 41/9 41/14 43/17</p> <p>GJ [1] 1/9</p> <p>glass [3] 26/14 26/20 26/21</p> <p>go [14] 8/9 12/16 13/18 15/18 21/22 22/6 27/23 32/13 34/25 39/8 41/5 45/4 46/6 47/2</p> <p>God [3] 8/15 30/16 41/11</p> <p>going [28] 8/7 8/9 10/24 11/5 12/6 12/18 13/17 13/17 16/12 19/3 19/3 19/24 21/10 23/7 23/23 24/14 25/10 26/8 27/16 33/13 33/16 33/18 34/7 34/10 36/15 39/16 44/4 44/21</p> <p>gone [1] 28/5</p> <p>good [2] 5/9 11/4</p> <p>GOODMAN [1] 2/9</p> <p>got [10] 10/13 10/25 11/1 12/13 12/21 20/4 21/17 23/17 35/1 35/24</p> <p>gotten [1] 21/19</p> <p>GPS'd [1] 32/16</p> <p>grab [1] 37/21</p> <p>grabbed [2] 21/19 38/8</p> <p>GRAND [37] 1/4 2/1 2/22 4/3 5/10 5/13 8/4 8/14 9/8 18/13 23/8 24/15 27/17 27/18 28/11 29/19 29/20 29/21 30/15 31/6 34/20 39/7 40/15 40/16 40/17 41/10 42/3 44/19 45/16 47/24 48/4 48/6 48/6 49/8 49/11 49/13 51/5</p> <p>grant [1] 51/16</p> <p>great [1] 5/21</p> <p>gross [3] 29/23 40/19 48/9</p> <p>GRUBER [1] 2/10</p> <p>guess [1] 47/14</p> <p>guilty [3] 5/25 6/14 6/25</p> <p>guys [1] 10/17</p> <p>H</p> <p>had [18] 15/17 15/22 19/1 19/2 19/25 20/1 20/7 21/16 21/17 21/19 21/21 22/4 23/4 37/16 38/15 38/17 50/8 50/13</p> <p>half [1] 31/20</p> <p>hand [4] 8/11 24/4 30/11 41/6</p>	<p>handcuffed [1] 27/2</p> <p>handcuffs [3] 19/6 29/13 47/13</p> <p>hands [6] 13/18 35/9 37/4 46/6 47/2 47/10</p> <p>hands-on [4] 13/18 46/6 47/2 47/10</p> <p>happen [1] 28/7</p> <p>happened [5] 19/12 20/4 35/14 35/16 35/23</p> <p>happens [1] 13/18</p> <p>hard [1] 15/15</p> <p>harm [1] 7/11</p> <p>has [9] 6/1 6/13 17/1 23/8 26/8 33/16 37/6 39/16 49/11</p> <p>have [25] 5/15 5/15 8/4 9/16 12/14 13/16 21/9 23/4 23/6 24/1 26/24 28/10 28/11 29/9 31/13 31/18 33/23 38/17 38/20 39/6 39/9 41/4 42/13 44/19 47/21</p> <p>having [6] 5/5 9/7 12/5 21/12 31/5 42/2</p> <p>he [86]</p> <p>he'd [1] 34/7</p> <p>he's [2] 19/3 34/14</p> <p>head [5] 11/18 11/19 21/1 32/11 32/16</p> <p>heading [1] 34/9</p> <p>hear [5] 5/12 13/8 14/10 15/1 24/21</p> <p>heard [7] 11/6 12/22 14/17 14/17 21/18 21/18 21/24</p> <p>hearing [1] 38/25</p> <p>held [5] 7/18 7/25 29/25 40/21 48/11</p> <p>help [7] 8/15 11/24 14/25 15/1 21/7 30/16 41/11</p> <p>her [19] 5/7 14/19 14/23 15/3 15/9 15/10 15/13 16/11 20/22 20/25 21/14 21/19 21/19 21/20 21/20 21/21 21/21 22/3 41/5</p> <p>here [6] 5/11 8/17 16/4 30/19 34/7 41/13</p> <p>hereby [2] 50/6 51/4</p> <p>hey [1] 16/3</p> <p>him [46] 8/8 16/1 16/1 16/5 17/7 17/9 17/11 17/12 17/17 17/20 17/24 18/2 18/13 19/2 19/5 19/6 19/13 22/10 22/19 28/1 28/17 28/19 28/19 33/10 34/5 35/1 35/3 35/3 35/7 35/19 35/21 35/22 36/3 36/8 37/17 37/18 37/21 38/9 38/10 39/14 40/8 40/8 47/9 47/10 47/15 47/18</p> <p>his [17] 6/2 8/1 16/10 16/23 17/6 17/14 19/16 28/1 28/17 29/12 29/14 35/20 40/6 46/7 47/15</p>	<p>47/19 48/22</p> <p>hit [4] 34/7 34/10 36/3 36/10</p> <p>hitting [2] 40/3 40/10</p> <p>hobbles [3] 27/7 27/11 27/24</p> <p>hold [1] 35/22</p> <p>holding [3] 16/10 16/20 17/16</p> <p>hood [1] 25/25</p> <p>house [4] 18/18 20/10 20/13 21/23</p> <p>household [1] 18/7</p> <p>how [25] 9/13 9/16 11/2 11/7 13/5 14/3 14/15 17/6 17/12 20/20 23/15 25/7 25/17 25/23 31/11 31/13 31/18 32/2 34/2 40/2 42/8 42/13 46/20 47/8 49/2</p> <p>Huh [1] 49/4</p> <p>I</p> <p>I'll [1] 41/5</p> <p>I'm [19] 5/10 5/18 5/19 9/14 16/12 18/5 21/10 23/23 24/14 26/8 27/16 30/9 33/16 33/18 34/10 39/16 44/4 44/21 49/5</p> <p>I've [1] 48/23</p> <p>identification [1] 16/13</p> <p>identified [3] 4/3 17/7 17/12</p> <p>identifiers [1] 17/1</p> <p>identify [3] 20/13 20/20 39/11</p> <p>identifying [1] 39/10</p> <p>imagine [1] 39/7</p> <p>impairment [1] 7/4</p> <p>IMPANELED [1] 1/4</p> <p>implies [1] 7/15</p> <p>incident [5] 12/18 19/22 26/25 38/4 38/14</p> <p>includes [1] 7/25</p> <p>including [3] 29/18 40/14 48/3</p> <p>INDEX [2] 3/1 4/1</p> <p>indicated [1] 50/9</p> <p>INDICTMENT [4] 4/4 48/20 49/14 49/15</p> <p>individually [1] 6/16</p> <p>inform [1] 22/9</p> <p>information [5] 12/14 20/4 29/20 40/16 48/6</p> <p>initially [3] 10/13 32/14 43/9</p> <p>injure [4] 7/18 8/19 30/20 41/15</p> <p>injures [1] 6/18</p> <p>injuring [1] 6/19</p> <p>injury [1] 6/11</p> <p>inside [6] 14/10 16/8 18/3 19/16 21/21 21/23</p> <p>instruct [1] 49/14</p> <p>instructions [4] 4/5 5/15 6/4 8/5</p> <p>intent [3] 6/12 7/15 7/18</p>	<p>intentional [1] 7/13</p> <p>intentionally [1] 40/4</p> <p>intentions [1] 40/6</p> <p>interested [1] 11/14</p> <p>interfere [1] 6/24</p> <p>interview [1] 38/13</p> <p>investigate [1] 20/10</p> <p>investigating [3] 18/16 38/12 38/16</p> <p>investigation [11] 8/13 8/18 19/10 19/19 19/20 19/21 30/14 30/19 41/9 41/14 43/7</p> <p>involuntary [1] 8/2</p> <p>involving [3] 8/20 30/22 41/16</p> <p>is [58]</p> <p>issue [2] 18/24 18/25</p> <p>it [64]</p> <p>it's [10] 11/3 11/12 18/24 18/25 25/23 26/5 26/7 27/7 27/19 33/5</p> <p>its [2] 6/21 7/17</p> <p>J</p> <p>J-O-N-A-T-H-A-N [1] 9/2</p> <p>jail [4] 32/5 32/6 32/7 32/8</p> <p>JEFFREY [1] 2/10</p> <p>JEREMY [8] 1/10 1/10 5/13 8/20 16/9 17/5 30/22 41/16</p> <p>job [1] 12/16</p> <p>JOHN [2] 2/7 2/12</p> <p>JONATHAN [4] 3/3 8/7 9/1 9/6</p> <p>JUDICIAL [1] 1/1</p> <p>jumped [2] 33/9 44/9</p> <p>jumping [1] 33/8</p> <p>JURORS [2] 2/1 49/11</p> <p>JURY [35] 1/4 2/22 4/3 5/10 5/13 8/4 8/14 9/8 18/13 23/8 24/15 27/17 27/18 28/11 29/19 29/20 29/21 30/15 31/6 34/20 39/7 40/15 40/16 40/17 41/10 42/3 44/19 45/16 47/25 48/4 48/6 48/7 49/8 49/13 51/5</p> <p>just [17] 8/5 12/17 14/16 15/8 16/14 17/22 20/1 23/16 27/7 27/19 33/4 34/25 37/10 38/8 40/9 40/9 44/16</p> <p>K</p> <p>keep [2] 33/12 37/6</p> <p>kept [2] 8/2 24/25</p> <p>kicked [4] 14/21 15/20 15/25 16/7</p> <p>kicking [1] 27/9</p> <p>kind [12] 10/20 11/5 12/21 12/23 14/16 27/20 35/9 37/10 37/11 37/20 38/3 43/1</p> <p>kinds [1] 18/19</p> <p>knees [1] 27/9</p> <p>262</p>
---	--	--	--	---

<p>K knew [3] 11/7 15/17 19/2 knock [1] 14/3 knocked [2] 13/15 13/25 knocking [3] 14/8 15/23 21/18 know [9] 10/24 11/3 13/18 15/17 17/1 17/6 20/5 32/21 37/23 KRAUS [1] 2/11</p> <hr/> <p>L L-E-V-Y [1] 31/2 Lamont [3] 9/25 10/19 11/10 Las [6] 1/14 5/1 9/14 14/4 42/9 50/14 last [8] 8/25 9/1 9/3 21/15 31/1 34/5 41/21 41/23 law [6] 7/18 8/1 29/16 40/12 48/1 51/13 lawful [4] 5/23 7/23 8/1 18/22 lead [1] 38/13 leaving [1] 49/5 left [6] 21/21 25/8 27/19 28/4 45/20 48/23 legs [2] 27/8 28/1 less [2] 13/7 37/2 leverage [1] 37/6 LEVY [11] 3/4 31/2 31/4 31/11 44/14 44/16 45/23 46/5 46/8 46/17 47/2 Levy's [3] 44/20 45/7 48/21 Lexa [2] 21/15 21/24 liberty [1] 8/2 like [27] 11/10 14/18 14/19 14/23 14/24 15/3 15/9 15/11 15/12 15/13 16/3 23/10 23/20 27/20 34/1 35/9 35/14 36/13 37/19 39/24 44/5 45/20 46/5 46/7 46/13 47/1 47/2 line [1] 11/6 lines [1] 48/22 listen [4] 11/5 18/23 19/3 19/4 listened [1] 12/21 listening [2] 17/21 18/20 little [3] 15/13 33/4 34/25 located [1] 12/24 logged [1] 10/10 long [6] 7/12 9/16 13/5 31/13 31/18 42/13 look [6] 11/15 20/23 23/10 23/20 44/5 44/23 looked [5] 12/5 12/23 25/17 46/4 46/7 looking [7] 12/4 21/6 21/11 32/21 32/23 33/1</p>	<p>43/18 looks [1] 34/1 loss [2] 7/1 7/3 lot [2] 34/6 34/8 low [2] 15/13 15/16 LURVEY [1] 2/3 LVMPD [3] 12/2 17/13 21/19</p> <hr/> <p>M M-I-R-A-N-D-A [1] 9/3 ma'am [4] 11/25 21/5 24/19 27/25 made [10] 14/23 15/6 29/19 35/3 35/8 35/19 36/19 36/23 40/15 48/5 Main [1] 32/17 make [10] 12/16 12/17 12/20 14/12 14/15 18/18 21/22 36/18 38/3 38/6 male [4] 11/6 12/16 32/22 43/21 maliciously [1] 6/24 manner [1] 6/23 MANOLO [1] 2/14 many [1] 14/3 MARK [1] 2/9 marked [8] 5/15 16/13 23/8 25/11 26/9 33/17 39/17 44/4 matched [1] 32/25 matching [1] 43/23 matter [1] 50/8 may [3] 29/25 40/21 48/11 maybe [2] 14/17 35/1 McCord [7] 1/25 5/4 50/6 50/17 50/18 51/18 51/20 MCT [2] 32/23 32/24 me [16] 21/17 34/24 35/4 35/21 35/24 36/2 36/12 37/4 37/9 37/20 37/20 40/8 40/9 40/10 43/15 46/5 mean [2] 10/23 46/9 meaning [3] 7/17 25/2 35/12 means [1] 7/7 meeting [1] 39/25 Melanie [2] 2/23 5/10 members [13] 5/9 8/4 18/12 23/7 24/15 27/17 27/18 28/11 34/19 39/7 44/19 45/15 49/8 memory [1] 34/21 mentioned [1] 15/19 met [1] 34/23 Metro [6] 9/16 14/4 31/12 31/13 33/11 42/11 Metropolitan [2] 9/15 42/9 middle [5] 27/20 35/14 35/17 45/17 45/18 midst [1] 43/14 minutes [6] 13/7 23/24</p>	<p>33/18 45/3 45/4 49/1 MIRANDA [13] 3/3 8/7 9/2 9/6 9/13 12/2 16/4 21/10 23/10 24/17 28/17 47/16 47/19 misdemeanor [3] 29/23 40/19 48/9 misplaced [1] 21/9 Miss [1] 49/10 moment [3] 16/2 18/17 19/11 more [9] 6/17 7/4 15/12 18/24 22/1 29/9 37/2 41/4 49/11 morning [3] 5/9 10/4 10/5 most [1] 5/17 motion [1] 35/8 motor [3] 8/20 30/21 41/16 mouth [4] 14/19 15/4 15/9 15/13 moving [2] 24/25 27/9 Mr. [1] 18/9 Mr. Brown-Wheaton [1] 18/9 much [1] 49/17 muffled [1] 15/8 mugshots [1] 17/13 Multiple [1] 14/4 my [15] 5/10 5/17 8/6 10/10 10/14 11/19 12/24 14/20 25/15 25/15 30/8 46/4 47/4 48/18 50/10 myself [2] 43/13 43/15</p> <hr/> <p>N name [21] 5/10 8/25 9/1 9/2 9/2 9/3 17/2 17/4 17/6 20/22 20/25 21/14 21/15 21/15 31/1 41/21 41/22 48/21 48/22 49/2 51/20 named [1] 41/23 near [3] 27/19 31/25 42/23 need [4] 7/9 7/10 11/15 20/23 needed [1] 20/3 neighborhood [1] 33/24 NEVADA [8] 1/2 1/7 1/14 5/1 5/11 28/8 50/3 50/14 never [2] 37/9 38/15 new [2] 19/20 19/21 next [8] 13/14 16/1 16/11 19/12 20/5 21/25 30/9 48/25 no [22] 1/9 1/9 1/25 8/5 12/17 14/2 14/5 14/11 21/2 22/20 28/10 36/20 37/18 38/5 38/8 38/15 38/19 38/23 39/4 39/6 45/1 47/21 NOEL [1] 2/5 noise [1] 21/22</p>	<p>northbound [3] 35/6 36/17 37/22 Northeast [3] 9/20 9/21 43/9 not [24] 6/6 7/9 7/10 7/17 11/19 13/10 17/21 18/20 18/21 19/3 19/3 21/22 22/22 26/21 28/19 30/9 33/21 37/19 38/5 44/25 45/8 47/17 47/20 51/8 notable [1] 13/9 noted [1] 29/6 notes [2] 20/23 50/10 nothing [7] 8/15 9/9 14/9 30/16 31/7 41/11 42/4 notice [1] 35/22 November [5] 1/15 2/1 5/1 50/15 51/18 now [10] 8/8 8/13 30/14 31/14 33/23 34/10 34/14 35/7 41/9 44/21 NRS [2] 51/2 51/13 number [12] 5/16 12/3 12/6 12/8 23/8 25/25 26/1 26/9 49/13 51/5 51/8 51/11</p> <hr/> <p>O observe [1] 47/18 observed [2] 20/1 46/24 obstructing [3] 18/25 19/1 20/9 obstruction [2] 28/25 29/3 obtained [3] 29/21 40/17 48/6 obviously [2] 18/16 45/7 occupants' [1] 14/7 occurred [5] 19/25 21/16 34/20 45/22 46/2 occurring [3] 29/19 40/15 48/5 off [10] 11/17 11/19 20/25 35/3 36/15 37/6 37/12 37/20 37/22 38/10 offense [2] 6/9 7/1 offenses [3] 8/19 30/20 41/15 office [1] 38/21 officer [36] 5/23 6/2 8/7 9/13 9/14 10/16 12/2 15/19 18/24 19/1 21/10 23/10 24/17 31/11 31/12 32/4 32/14 34/15 39/10 41/5 42/8 42/12 42/13 43/9 43/9 44/14 44/16 44/20 45/7 45/23 46/5 46/8 46/17 48/21 49/2 49/4 officer-safety [1] 18/24 officers [6] 38/7 38/12 38/13 38/16 47/9 47/18</p>	<p>Official [1] 51/22 Oh [3] 32/8 45/14 49/4 okay [72] once [2] 13/11 21/24 one [8] 6/17 11/10 29/9 34/22 34/22 41/4 42/18 48/20 only [3] 6/7 11/10 36/23 oo0oo [1] 49/20 operation [2] 6/21 6/25 order [2] 12/20 20/5 original [2] 37/25 38/15 other [24] 5/23 6/17 13/17 27/4 27/6 28/22 29/8 29/15 34/23 35/2 35/4 36/13 36/24 37/7 37/10 37/13 37/19 38/6 38/9 39/21 40/3 40/11 47/18 47/23 our [7] 5/16 11/4 12/16 17/21 39/25 43/8 43/10 out [29] 10/3 10/22 17/20 19/25 25/4 25/8 25/16 26/5 27/18 32/2 32/3 32/15 32/23 33/8 33/9 34/3 34/4 34/12 34/25 35/6 37/23 43/1 43/3 43/9 43/11 44/9 44/17 45/12 45/15 outside [3] 8/7 22/6 30/10 over [7] 11/2 16/4 16/25 26/14 26/21 32/23 46/16 owner [1] 6/23</p> <hr/> <p>P page [5] 12/2 16/14 16/25 21/11 48/22 page 2 [1] 48/22 pain [1] 7/10 paper [1] 11/15 paragraph [2] 12/4 21/12 parking [1] 34/8 parole [1] 7/24 part [3] 6/18 12/16 24/14 particular [4] 6/9 9/18 31/15 42/15 parties [3] 12/17 12/20 18/19 partner [6] 10/12 10/14 10/15 12/25 13/1 14/20 parts [1] 6/19 passenger [3] 22/22 22/23 25/8 patrol [4] 26/13 27/1 43/3 43/11 Paul [3] 1/10 2/8 17/5 PELKEY [1] 2/12 pending [3] 8/14 30/15 41/10 permanently [1] 6/21 person [28] 5/23 6/1 6/10 6/11 6/11 6/13</p>
---	---	---	---	---

<p>P</p> <p>person... [22] 6/16 7/8 7/12 7/25 8/1 16/15 16/17 16/20 16/23 17/1 17/8 33/1 33/3 33/6 43/18 44/2 44/5 44/7 44/16 45/18 51/9 51/11</p> <p>person's [1] 17/4</p> <p>persons [2] 6/17 49/7</p> <p>pertaining [3] 8/18 30/20 41/14</p> <p>photo [3] 25/12 25/14 26/12</p> <p>photograph [8] 4/6 4/7 4/8 16/14 16/15 26/25 27/14 27/16</p> <p>physical [4] 13/18 13/21 13/23 38/21</p> <p>physically [1] 6/2</p> <p>picture [2] 26/7 26/10</p> <p>piece [1] 5/20</p> <p>pillar [1] 27/19</p> <p>pinched [1] 37/12</p> <p>place [1] 50/9</p> <p>placed [5] 6/1 22/15 22/17 37/17 47/11</p> <p>Plaintiff [1] 1/8</p> <p>play [2] 34/10 45/3</p> <p>playing [3] 24/16 34/11 45/6</p> <p>please [6] 8/10 8/24 30/12 30/25 41/7 41/20</p> <p>point [19] 11/21 18/6 18/14 18/15 18/24 18/25 19/1 20/7 22/1 22/4 22/11 27/18 34/12 34/12 37/16 37/24 45/15 47/11 47/15</p> <p>police [22] 6/2 7/5 9/14 9/15 14/5 19/1 19/15 22/15 22/17 25/15 31/12 33/12 34/17 34/20 35/2 38/22 42/9 42/12 42/13 45/9 46/25 47/2</p> <p>policy [1] 13/1</p> <p>portion [1] 45/2</p> <p>position [1] 23/19</p> <p>possible [1] 18/17</p> <p>preceding [1] 51/4</p> <p>predicated [1] 6/8</p> <p>prepare [1] 49/14</p> <p>presence [3] 29/20 40/16 48/5</p> <p>present [2] 2/1 2/22</p> <p>presentation [1] 48/19</p> <p>presented [3] 29/18 40/14 48/4</p> <p>pretty [1] 11/4</p> <p>prevent [2] 6/24 27/9</p> <p>preventing [2] 6/21 22/3</p> <p>previously [5] 26/3 26/20 26/22 44/20 49/15</p> <p>Print [1] 51/20</p> <p>prison [2] 5/22 5/24</p> <p>prisoner [8] 5/22 7/20</p>	<p>7/23 7/24 8/20 30/21 32/3 41/16</p> <p>probable [2] 6/8 22/4</p> <p>probably [3] 11/7 33/19 34/7</p> <p>probation [1] 7/23</p> <p>proceed [1] 8/6</p> <p>proceedings [8] 1/20 5/7 29/16 40/12 48/1 49/19 50/8 50/13</p> <p>process [1] 7/25</p> <p>program [1] 51/15</p> <p>prohibited [3] 29/17 40/13 48/2</p> <p>proportionate [1] 7/1</p> <p>proposed [3] 4/4 48/19 49/15</p> <p>prosecuting [1] 5/12</p> <p>protection [1] 7/6</p> <p>proves [1] 7/21</p> <p>provide [1] 5/16</p> <p>provided [1] 5/15</p> <p>public [3] 7/1 7/4 51/15</p> <p>publish [2] 24/14 27/16</p> <p>pull [1] 35/4</p> <p>pulled [1] 21/20</p> <p>punishable [6] 29/23 29/25 40/19 40/21 48/9 48/11</p> <p>purpose [4] 6/19 6/22 7/16 39/3</p> <p>purposes [2] 16/14 20/9</p> <p>pursuant [2] 5/17 51/2</p> <p>pursuit [2] 34/5 44/12</p> <p>push [2] 36/15 37/6</p> <p>pushed [3] 37/9 37/12 38/9</p> <p>pushing [3] 37/5 37/6 37/8</p> <p>put [4] 19/6 27/1 27/8 28/1</p> <hr/> <p>Q</p> <p>question [5] 7/16 22/24 26/24 29/1 29/6</p> <p>questions [15] 8/5 8/6 28/10 28/12 28/13 28/22 29/8 29/15 38/13 39/6 39/21 40/11 47/21 47/23 47/24</p> <p>quiet [1] 15/16</p> <hr/> <p>R</p> <p>R-Y-A-N [1] 31/2</p> <p>radio [3] 11/2 11/4 34/4</p> <p>raise [3] 8/10 30/11 41/6</p> <p>ran [7] 35/4 35/5 36/1 36/2 36/6 37/13 38/9</p> <p>read [5] 8/5 21/12 28/17 47/15 47/18</p> <p>reading [1] 5/18</p> <p>really [3] 23/19 32/15 37/9</p> <p>rear [1] 25/8</p> <p>reasonable [1] 7/21</p>	<p>recall [3] 20/24 22/11 46/19</p> <p>recent [1] 5/17</p> <p>recognize [6] 16/15 25/11 26/9 34/2 39/13 44/1</p> <p>recollection [2] 11/24 21/7</p> <p>record [8] 8/25 12/1 21/9 29/7 31/1 33/22 41/21 50/12</p> <p>recording [1] 24/9</p> <p>refresh [2] 11/24 21/7</p> <p>refused [1] 28/19</p> <p>regarding [1] 19/21</p> <p>REID [1] 2/13</p> <p>related [1] 11/8</p> <p>remember [11] 10/2 10/6 10/17 11/13 11/17 12/5 20/25 21/12 24/12 34/3 43/21</p> <p>removed [2] 19/8 19/13</p> <p>removes [1] 6/18</p> <p>repeat [2] 22/24 29/1</p> <p>report [7] 11/20 11/23 12/3 21/4 21/6 21/9 38/3</p> <p>Reported [1] 1/25</p> <p>reporter [2] 5/17 51/22</p> <p>REPORTER'S [2] 1/20 50/1</p> <p>request [1] 2/22</p> <p>require [2] 6/6 7/17</p> <p>required [1] 51/12</p> <p>requires [1] 6/7</p> <p>resisting [1] 20/1</p> <p>respond [4] 9/25 10/9 31/24 42/23</p> <p>responded [5] 10/7 23/21 32/18 32/20 43/5</p> <p>responding [1] 10/21</p> <p>restrained [1] 27/4</p> <p>restraint [3] 8/2 27/6 27/8</p> <p>resulting [1] 7/2</p> <p>results [1] 7/4</p> <p>retrieve [2] 8/8 41/5</p> <p>returned [2] 49/9 49/12</p> <p>review [2] 23/4 48/24</p> <p>reviewing [1] 11/23</p> <p>right [34] 6/13 8/8 8/10 10/10 12/1 14/6 15/17 16/1 16/1 20/2 20/6 20/12 20/18 23/7 24/6 24/11 24/14 24/17 30/8 30/11 34/14 35/7 35/12 35/16 35/24 36/22 38/1 39/25 40/2 41/6 45/17 46/7 46/16 46/21</p> <p>rights [3] 28/17 47/16 47/19</p> <p>roadway [1] 35/18</p> <p>role [1] 42/11</p> <p>roles [2] 13/16 13/16</p> <p>room [1] 49/8</p> <p>rope [1] 27/20</p> <p>route [3] 32/4 32/7</p>	<p>32/8</p> <p>run [8] 34/7 34/23 35/6 36/8 37/14 39/2 45/9 46/25</p> <p>running [11] 6/25 32/3 33/12 34/6 36/16 37/22 40/1 46/5 46/15 47/1 47/4</p> <p>RYAN [4] 3/4 31/2 31/4 48/21</p> <hr/> <p>S</p> <p>S-H-A-N-I-C-E [2] 41/23 49/5</p> <p>SAEMZ [1] 2/14</p> <p>safety [3] 13/3 18/24 20/9</p> <p>same [2] 15/22 39/25</p> <p>saw [6] 16/9 37/3 39/13 44/2 44/5 44/7</p> <p>saying [3] 17/22 19/23 21/18</p> <p>scene [1] 44/23</p> <p>Scheible [2] 2/23 5/10</p> <p>scope [2] 17/13 17/14</p> <p>screaming [1] 12/22</p> <p>screen [1] 14/9</p> <p>seat [6] 22/21 22/22 22/23 22/25 26/21 27/11</p> <p>second [3] 12/11 16/25 34/22</p> <p>seconds [2] 14/16 45/4</p> <p>secret [3] 29/16 40/12 48/2</p> <p>Secretary [2] 2/5 2/6</p> <p>security [2] 51/8 51/11</p> <p>seeing [2] 8/5 24/12</p> <p>seems [1] 46/6</p> <p>seen [4] 34/5 44/20 46/6 47/3</p> <p>Self [1] 32/10</p> <p>service [1] 18/16</p> <p>set [1] 43/15</p> <p>severe [1] 7/10</p> <p>shall [5] 6/23 6/25 8/14 30/15 41/10</p> <p>SHANICE [4] 3/5 41/22 42/1 49/5</p> <p>she [10] 14/18 14/25 15/11 21/16 21/17 21/18 21/18 22/2 22/2 43/19</p> <p>shift [1] 10/10</p> <p>shorthand [2] 50/7 50/9</p> <p>shortly [1] 34/16</p> <p>should [1] 48/22</p> <p>shoulder [5] 39/23 40/4 46/7 46/7 47/3</p> <p>shouting [2] 12/22 14/5</p> <p>show [9] 16/12 21/10 23/7 25/10 26/8 33/16 39/16 44/4 44/21</p> <p>showing [1] 12/1</p> <p>side [1] 27/19</p> <p>sidewalk [3] 33/23</p>	<p>34/15 35/6</p> <p>sign [1] 45/20</p> <p>Signature [1] 51/18</p> <p>significant [1] 6/3</p> <p>simply [1] 7/15</p> <p>Simpson [2] 21/15 21/25</p> <p>sir [2] 9/4 29/10</p> <p>sitting [1] 26/14</p> <p>skip [2] 23/23 33/18</p> <p>slight [1] 7/11</p> <p>so [60]</p> <p>social [2] 51/8 51/11</p> <p>solemnly [3] 8/12 30/13 41/8</p> <p>some [7] 5/21 11/21 17/1 18/6 27/7 32/15 39/9</p> <p>somebody [2] 19/5 43/23</p> <p>someone [5] 15/9 18/20 18/21 22/9 32/25</p> <p>something [5] 15/18 17/17 21/3 22/2 24/22</p> <p>somewhat [1] 35/1</p> <p>somewhere [1] 27/12</p> <p>sorry [3] 18/5 22/22 26/4</p> <p>sound [3] 14/24 15/6 15/15</p> <p>sounded [7] 14/18 14/19 14/22 15/3 15/8 15/8 15/13</p> <p>southbound [1] 34/6</p> <p>speak [3] 18/6 19/19 29/6</p> <p>speaking [1] 15/11</p> <p>specific [3] 6/12 45/2 51/13</p> <p>specifically [2] 9/24 11/13</p> <p>spell [3] 8/25 31/1 41/21</p> <p>spelled [4] 9/2 41/23 41/23 49/3</p> <p>spend [1] 5/21</p> <p>spoke [1] 19/16</p> <p>spot [1] 37/11</p> <p>ss [1] 50/3</p> <p>STACK [1] 2/6</p> <p>stand [1] 8/9</p> <p>standing [8] 16/5 16/9 23/16 33/6 46/8 46/12 46/15 48/25</p> <p>standpoint [1] 46/4</p> <p>started [3] 14/8 24/20 47/4</p> <p>starting [3] 19/20 19/21 45/3</p> <p>state [9] 1/7 5/13 7/21 8/24 30/25 41/20 50/3 51/13 51/16</p> <p>State's [4] 16/13 25/11 26/9 33/17</p> <p>statement [3] 29/19 40/15 48/5</p> <p>statements [1] 38/6</p> <p>Stenotype [1] 50/7</p>
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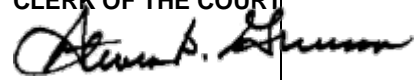
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WITNESSES [1] 3/1
word [2] 6/7 7/14
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	CASE NO. C-20-352265-1
Plaintiff,)	DEPT. NO. XVIII
vs.)	
JEREMY BROWN-WHEATON)	
aka JEREMY PAUL BROWN-)	
WHEATON,)	
Defendant.)	

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE
THURSDAY, FEBRUARY 4, 2021

**RECORDER'S TRANSCRIPT OF HEARING:
ALL PENDING MOTIONS**

APPEARANCES:

For the State: ALICIA A. ALBRITTON, ESQ.
Chief Deputy District Attorney

For the Defendant: CHRISTOPHER PETERSON, ESQ.
BENJAMIN R. SAXE, ESQ
Deputy Public Defenders
[Appeared via videoconference]

RECORDED BY: YVETTE SISON, COURT RECORDER

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Las Vegas, Nevada; Thursday, February 4, 2021

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[Hearing commenced at 11:40 a.m.]

THE COURT CLERK: State of Nevada versus Jeremy Brown-Wheaton, C352265.

THE DEFENDANT: Good morning, Your Honor, or afternoon.

THE COURT: Good morning.

MR. PETERSON: Your Honor, Chris Peterson from the Clark County Public Defender's Office.

MS. ALBRITTON: Alicia Albritton on behalf of the State.

MR. PETERSON: Your Honor, I think we're on for the petition of Writ of Habeas Corpus.

THE COURT: We are? Go ahead, Mr. Peterson.

MR. PETERSON: Thank you, Your Honor. So I just want to cite a few things from our Writ of Habeas Corpus. Obviously, we raised arguments related to all three counts. However, before I go into that. I did add an addition to our answer related to whether or not Mr. Brown-Wheaton had waived his speedy trial right because the State had made that claim at the trial readiness calendar and that -- my understanding is again at the last court date as we've laid out in our answer and made clear in our argument, 34.700 does not require him to waive his rights to speedy trial. And we made it clear we followed the other option that was available to us. So at this point he should not have been deemed to have waived his right to speedy trial.

Now going into our actual argument, the substance of our

1 argument, there are three counts. And, I actually want to start with
2 Count 3. Count 3 was not in the charging document going back to
3 Justice Court. It was added. There was an amended complaint, and
4 then there was a -- they included it in their charges for Grand Jury.
5 Obviously, the Court had a chance to review our argument and also the
6 transcript from the Grand Jury that I provided. And then there are two
7 serious problems with the State's claim for Count 3. One, an accidental
8 contact can't qualify as a battery. And the State has offered no evidence
9 of intent that this was an intentional contact on behalf of Mr. Wheaton,
10 Brown-Wheaton with Officer Levy.

11 And in fact, the Grand Jury asked Officer Levy directly, was
12 the contact intentional? And Officer Levy said he didn't know. And
13 obviously, if an officer believed that he made intentional contact, he
14 could have said, in my opinion, this was -- there was intentional contact
15 from what he observed, but that's what Officer Levy said. And I suspect
16 that's why it wasn't charged originally.

17 Now, the other aspect of this is even if they had offered some
18 evidence of intentional contact, which they did not, the other question
19 was whether or not Mr. Brown-Wheaton was considered in custody.
20 Now the State I think confuses the term prisoner and status as a
21 prisoner when in custody. As clearly stated in the law, the State has to
22 show both that he is a prisoner and in custody, in lawful custody.

23 In lawful custody requires physical control as established by
24 testimony from Officer Levy when the contact occurred. There wasn't
25 physical control over Mr. Brown-Wheaton. The State establishes that's

1 the real question, is there physical control? If the Defendant is running
2 down the street, he is not considered in physical control; therefore, he is
3 not in custody. And that's exactly what we have here, and based upon
4 the facts offered at the Grand Jury. So, again, Count 3 for two separate
5 reasons must be dismissed.

6 Now going to Count 2, again, to establish the charge under
7 Count 2, the State needs to show either a certain value or that the
8 damage impacted police protection. In this situation they did not offer
9 any evidence of value, and in turn the officer did not testify at all about
10 the impact the damage to the window did to the vehicle or its use in
11 police protection. In this particular situation the State's tries to claim that
12 it can speculate as to what that damage caused or what trouble it
13 caused for that vehicle. But the reality is the law is very clear. Grand
14 Jury cannot speculate. The officer may need to actually testify as to the
15 impact, which did not happen here. He simply testified that damage
16 occurred nothing about the impact. So Count 2 must be dismissed
17 because they didn't offer enough evidence of an essential element.

18 And further Count 1, I think something that's important to note
19 about Count 1 is that the charge term of escape is predicated on -- if it's
20 predicated on a felony, there's different treatment than if it's predicated
21 on a misdemeanor. The evidence that was offered before the Grand
22 Jury indicated that Mr. Brown-Wheaton was arrested for obstructing.
23 That's a misdemeanor. That means he should have been charged with
24 gross misdemeanor escape not felony escape. While the State try to
25 establish that it was felony coercion, they didn't offer evidence of felony

1 coercion. What the officer kept going back to and is actually seen in the
2 State's own response is the concept of obstructing. And so this is being
3 mischarged.

4 Again, it [indiscernible] needs to be dismissed. The State has
5 the opportunity to go back to the Grand Jury, obviously, as they want to
6 and offer proper evidence into the record to establish these charges.
7 But so far what was actually offered on the record to the Grand Jury is
8 insufficient.

9 And I think that's actually their arguments in their response are
10 somewhat telling about the lack of evidence on the record because the
11 State not once, but twice refers to evidence that is not on the record.
12 They referred to -- oh, the idea the jury can watch body camera that
13 wasn't offered to the Grand Jury. That is not acceptable. That is an
14 improper argument. The Court can only consider the evidence that was
15 given to the Grand Jury. Otherwise, the Court is speculating about what
16 the grand -- what the outcome would have been. So at the end of the
17 day, Your Honor, all three counts must be struck.

18 THE COURT: Thank you. State? State. Is the State there?

19 MS. ALBRITTON: Hello, can you hear me?

20 THE COURT: I can now.

21 MS. ALBRITTON: Okay. I'm sorry about that. I don't know
22 what happened.

23 Yes, Your Honor, number one, it is the State's position by
24 filing the writ that he has waived his right to a speedy trial. Number two,
25 in regards to an intentional act, I think that in response to his answer

1 willful, in regards to a battery. Battery is a general intent crime; it is not a
2 specific intent crime. So we're looking at willful actions caused by --
3 essentially what he was doing whether it was known that it could cause
4 that sort of result. That's exactly what we have here.

5 Moreover, if you look at the testimony, regardless of whether
6 the one officer indicated he was not sure if it was intentional or an
7 accident, there was body camera footage presented. And you also had
8 the second officer who was there who witnessed it, and essentially
9 called it a shoulder check, which essentially is an intentional act upon
10 not simply just running into this officer and accidentally hitting him.

11 Number two, I don't see anywhere as specifically an answer
12 where it cites to any case law in regards to in custody meaning actual
13 physical control of this person. Specifically, when you look at the
14 definition of a prisoner, it's a person held in custody under process of
15 law or under lawful arrest. And that's exactly what we have in the instant
16 case. He had been placed under arrest for felony coercion. He was
17 being taken to Clark County Detention Center and essentially escaped
18 at that point in time. Under the Defendant's theory essentially no one
19 can ever be charged if they actually are escaping because they are not
20 in the physical control of the officer at the time.

21 And then just lastly -- just briefly in regards to the damage to
22 the car, well, the officer did not testify specifically about the value of the
23 impact. There are photographs presented and testimony in regards to
24 that damage of the car. It is essentially common sense, which the jury,
25 even Grand Jury, to give them instructions in regards to relying upon

1 their common sense. It is a patrol cruiser. The window has been kicked
2 out. That places the vehicle out of commission. The vehicle cannot
3 further be used by officers when it has no rear window.

4 So, essentially, the State evidenced the full side of marginal
5 evidence for all of these charges. The State has proved that at the
6 Grand Jury [indiscernible] and there was sufficient evidence in regards
7 to that felony coercion specifically when they come even the young lady
8 informed the officers that essentially she was held in a room by this
9 Defendant, not allowed to leave or even speak to them, and was trying
10 to make sounds, which is essentially how they finally heard her. So in
11 light of all that the State feels it has met slight or marginal evidence, and
12 the State would ask that all of the counts remain in regards to this case.

13 THE COURT: Okay. Anything further, Mr. Peterson?

14 MR. PETERSON: Yes, Your Honor. I'd like to simply state
15 the State did not offer any legal citations to support the arguments they
16 just made there. I'm going to start first with the fact that again to
17 establish -- the State says he's waived his rights to speedy trial, but the
18 State offers no legal citation to support that claim. 34.700 controls.
19 34.700 gives two options to a Defendant.

20 Mr. Brown-Wheaton has not chosen the option to waive his
21 60-day trial right. He has chosen the other option. As far as the Court
22 can make a decision, more than 15 days before trial, there is no issue. If
23 it is within 15 days of trial, then the Court can reset it at any time that the
24 Court deems appropriate. That is what the law says. The State has
25 offered no law in support of its position.

1 Two, as far as the idea of battery being able to be oh, it's
2 possible contact could be made. That is not what the law says. We
3 have cited law to support our position. Specifically looking at what the
4 Supreme Court has said about this one must intend to use force against
5 another to commit a battery. That's what the law says.

6 Now, I think the State confuses no intent with specific intent
7 and general intent. General intent isn't no intent. It means that if I
8 intentionally make contact but there are other consequences for my
9 actions, right, from that contact, while I didn't mean for it to be malicious,
10 but I intended to make contact, and I may still be liable. Specific intent, I
11 would have had to specifically intended to have contact to cause a
12 particular outcome.

13 But the idea that no contact -- an accidental contact, an
14 unintentional contact would be sufficient to establish battery or reckless
15 that is not the standard, and that's not what the Supreme Court has said
16 about the standard for battery. You would have to show the content --
17 contact was intentional. An accident doesn't cut it.

18 As far as the idea of prisoner versus in custody, the State
19 cited something -- definition dictionary -- a dictionary definition is not
20 binding on this Court. What is binding on this Court is *Dumaine*. And
21 again *Dumaine* talks about custody.

22 Now we actually go back to the law itself. It specifically says a
23 prisoner who is in lawful custody or confinement, which suggests not all
24 prisoners would be covered by this. It has to be a prisoner who is also
25 again the term being modified, in lawful custody. *Dumaine* deals with

1 the idea of what is lawful custody. If I'm not in your physical control, I
2 am not in your lawful custody. That's how you make that determination.
3 It's not an on -- it's not a switch where it just goes in one direction and
4 then you're on. It's a factual based question. Am I in your physical
5 control? And in this particular situation, I mean, it's undisputed he was
6 not in their physical control when the contact occurred.

7 Now, again, going back to Count 2, the State again is
8 suggesting that someone -- yet, there is a difference between common
9 sense and speculation. Actually, it's interesting to look at the State's
10 response to one of the few places where they cited the law where they
11 talked about *von Brincken* and suggested that that would allow for them
12 to draw certain conclusions, but the reality is that *von Brincken* says you
13 can use circumstantial evidence. That ties back into common sense.
14 But the reality is if you have an element that you must establish -- and
15 the law does not say damage to a police vehicle is sufficient to establish
16 this element. That's not in there, nor is there a presumption in that
17 regard. The State actually has to show it impacts police protection.
18 That means they have to show what the damage did to the vehicle.
19 What was that impact, and they offered no evidence of that. That's
20 literally the language in the statute not all damage to a police vehicle
21 would qualify. You have to show impact and speculation is not permitted
22 as made clear by *von Brincken* itself.

23 Then finally again, the State talks about Count 1, and I do
24 want to emphasize something. At the end of the day they wanted the
25 insight of this one -- they could have her testify. They had these officers

1 testify about a different thing that they arrested him on. They testified
2 they arrested him for obstruction. That's what they were testifying to,
3 and that's what I'm seeing in the response. They can charge someone
4 under Nevada law for escaping from an obstruction charge. However,
5 that's a gross misdemeanor not a D Felony as charged in this case.

6 So, again the State may be able to establish its evidentiary
7 burden if it goes back to the Grand Jury and does this properly, but it did
8 not do it properly here. It did not establish sufficient evidence on the
9 record. And, again, I'd point out when you start talking about evidence
10 that is not on the record, the body camera that was not admitted, that in
11 turn is a sign that it's -- they don't have enough evidence to establish the
12 charges against Mr. Brown-Wheaton based on what they presented to
13 the Grand Jury.

14 MS. ALBRITTON: Just for the record, Your Honor, the
15 definition of prisoner is defined in NRS 208.085. And it's specifically
16 prisoner includes any person held in custody under process of law or
17 under lawful arrest.

18 MR. PETERSON: And to be clear we are not disputing the
19 idea that he is a prisoner --

20 THE COURT: Okay.

21 MR. PETERSON: -- but they have to show that he is in
22 custody not just a prisoner --

23 THE COURT: Okay.

24 MR. PETERSON: -- generally, but specifically in custody and
25 *Dumaine* establishes what that definition is. The State has not

1 established a definition for that.

2 THE COURT: Thank you. I'm going to deny the writ as set
3 forth in the State's opposition with the exception I am going to find that
4 he has not yet waived his 60-day right.

5 MR. PETERSON: Thank you, Your Honor. Can we set his
6 trial date, Your Honor?

7 THE COURT: Yep. Sixty days.

8 THE COURT CLERK: We either have a March 29th date or
9 April 5th.

10 MR. PETERSON: Your Honor, I'm going to -- if I can get the
11 April 5th date, I'd appreciate it. That would give me more time to
12 prepare. I did -- just to let the Court know, I intend to file a motion to
13 reconsider related to his bail because there have been some changing
14 circumstances. I just haven't had a chance to do that yet. But I would
15 prefer the April 5th date, if possible.

16 THE COURT: Okay.

17 THE COURT CLERK: Calendar call would be March 30th at
18 11:00 a.m. Jury Trial would be April 5th at 1:00 p.m. and essential trial
19 readiness date would be March 3rd at 2:00 p.m. in Department 7.

20 MR. PETERSON: Thank you, Your Honor. I appreciate it.

21 THE COURT: Thank you.

22 MR. PETERSON: Mr. Brown-Wheaton, I'll give you call, okay.

23 THE DEFENDANT: Okay. Is it possible you can discuss
24 custody status?

25 MR. PETERSON: As you -- as we discussed previously, I

1 intend to file a motion on that for the reason we discussed in our
2 previous conversation, okay?

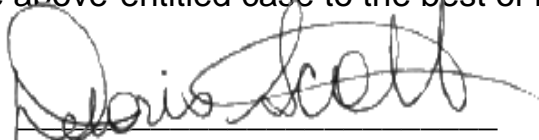
3 THE DEFENDANT: Okay.

4 MR. PETERSON: All right, man. I'll talk to you soon.

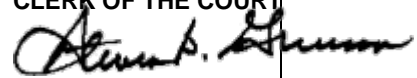
5 [Hearing concluded at 11:55 a.m.]

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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
23 ability.

24 

25 Deloris Scott
Court Recorder/Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	CASE NO. C-20-352037-1
Plaintiff,)	DEPT. NO. XVIII
vs.)	
JEREMY BROWN-WHEATON)	
aka JEREMY PAUL BROWN-)	
WHEATON,)	
Defendant.)	

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE
THURSDAY, FEBRUARY 4, 2021

**RECORDER'S TRANSCRIPT OF HEARING:
ARRAIGNMENT CONTINUED**

APPEARANCES:

For the State:	ALICIA A. ALBRITTON, ESQ. Chief Deputy District Attorney [Via Videoconference]
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For the Defendant:	BENJAMIN R. SAXE, ESQ. Deputy Public Defender
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RECORDED BY: YVETTE G. SISON, COURT RECORDER

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Las Vegas, Nevada; Thursday, February 4, 2021

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[Hearing commenced at 11:56 a.m.]

THE COURT CLERK: State of Nevada versus Jeremy Brown-
Wheaton, C352037.

MS. ALBRITTON: Alicia Abritton on behalf of the State.

MR. SAXE: Judge, I'm handling that for Mr. Bassett.

THE COURT: What are we doing with this?

THE DEFENDANT: Which case is this, Your Honor? I wasn't
in front of you to hear it. I'm sorry.

MR. SAXE: This is --

MS. ALBRITTON: We're set -- go ahead [indiscernible - audio
distortion] --

MR. SAXE: This is -- this is the case with Alex Bassett, the
gross misdemeanor.

THE DEFENDANT: Oh okay.

THE COURT: Right.

THE DEFENDANT: I'm ready to proceed if you are, Your
Honor.

THE COURT: Is it -- is this an entry of plea?

MR. SAXE: Correct. Guilty Plea Agreement was filed
December 3rd.

THE COURT: Was that after the other case or before? Well, I
guess it doesn't matter. What's -- the point is we're negotiating these
separately; is that correct?

1 MR. SAXE: Correct.

2 MS. ALBRITTON: That is correct.

3 THE COURT: All right. What are the negotiations?

4 MR. SAXE: Today he would be prepared to enter a guilty plea

5 to one gross misdemeanor count of battery on an officer. Parties are

6 recommending probation. The State retains the right to argue the terms

7 and conditions of probation.

8 THE COURT: Is that correct?

9 THE DEFENDANT: Yes, Your Honor.

10 MS. ALBRITTON: That is correct, Your Honor.

11 THE DEFENDANT: Oh.

12 THE COURT: What is your true name?

13 THE DEFENDANT: Jeremy Brown-Wheaton.

14 THE COURT: How old are you?

15 THE DEFENDANT: Twenty-two.

16 THE COURT: How far did you go -- do you read, write, and

17 understand the English language?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: How far did you go in school?

20 THE DEFENDANT: I finished high school. High school

21 graduate.

22 THE COURT: Did you have any sort of learning disability?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Have you recently been treated for mental

25 illness or addiction?

1 THE DEFENDANT: No, not recently [indiscernible - audio
2 distortion] --

3 THE COURT: Are you currently under the influence of any
4 drug or medication or alcohol?

5 THE DEFENDANT: No.

6 THE COURT: Have you reviewed the Information charging
7 you with battery on an officer?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand the nature of the charges in
10 the Information?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Have you discussed this case with your
13 attorney?

14 THE DEFENDANT: Yes.

15 THE COURT: Are you satisfied with the representation,
16 advice given to you by your attorney?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you plead guilty or not guilty to the charges
19 in the Information? Do you plead guilty or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: Are you making this plea freely and voluntarily?

22 THE DEFENDANT: Yes.

23 THE COURT: Has anyone forced or threatened you or
24 anyone close to you to get you to plead guilty?

25 THE DEFENDANT: No.

1 THE COURT: Has anyone made you any promises other than
2 what's contained in the Guilty Plea Agreement to get you to plead guilty?

3 THE DEFENDANT: No.

4 THE COURT: A guilty plea has been filed in your case due to
5 Corona Virus precautions. The signature on page 5 indicates that it was
6 signed by your attorney on your behalf at your direction; is that correct?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Did you agree for your attorney to sign in place
9 of your actual signature?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Before directing your attorney to sign for you,
12 did you read the Guilty Plea Agreement, or was it read to you or did you
13 talk to your attorney about the terms of the Guilty Plea Agreement?

14 THE DEFENDANT: Yes, I spoke with him, and it was read to
15 me.

16 THE COURT: Did you knowingly, willingly, and voluntarily
17 direct your attorney to sign the agreement for you?

18 THE DEFENDANT: Yes.

19 THE COURT: Did you discuss that having your attorney sign
20 for you would be the same as if you actually signed the agreement?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you agree that the signature placed on the
23 agreement by your attorney to be treated the same as if you signed the
24 Guilty Plea Agreement?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Did your lawyer fully and completely answer all
2 your questions about your guilty plea including how this guilty plea was
3 signed?

4 THE DEFENDANT: Yes.

5 THE COURT: You understand everything contained in the
6 Guilty Plea Agreement?

7 THE DEFENDANT: Yes.

8 THE COURT: You understand the constitutional and
9 appellate rights you're giving up by pleading guilty?

10 THE DEFENDANT: Yes.

11 THE COURT: You understand that if you're not a United
12 States citizen entering a plea guilty may have immigration
13 consequences including deportation?

14 THE DEFENDANT: Yes.

15 THE COURT: You understand the range of punishment is up
16 to 364 days in the Clark County Detention Center. And you may be
17 fined up to \$2,000?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you understand the sentencing is up to the
20 Court and including whether cases or counts run concurrently or
21 consecutively?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you understand that no one is in a position
24 to promise you probation, leniency, or any special treatment?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: It says here in the Information that on or
2 between July 2nd, 2020 and July 11th, 2020 that you did here in Las
3 Vegas, Clark County, Nevada willfully, unlawfully, and knowingly used
4 force or violence upon K. Beckley and/or F. Villasenor who were
5 performing their duty as Peace Officers employed with Las Vegas
6 Metropolitan Police Department, and you knew or should have known
7 they were officers and you struck them in the head with your elbow or
8 punched them in the back. Is that what you did?

9 THE DEFENDANT: Them -- that's the allegations, yes,
10 ma'am, Your Honor.

11 THE COURT: Is that what happened? Did you do that?

12 THE DEFENDANT: They are not exactly how it happened,
13 Your Honor, but yes, ma'am.

14 THE COURT: What did you do?

15 THE DEFENDANT: Am I supposed to explain that to you?

16 THE COURT: Well, you're pleading guilty to battery on an
17 officer so, what battery did you commit on what officer?

18 THE DEFENDANT: Well, if I'm being honest with you, Your
19 Honor, I know there wasn't video footage presented. If that was able to
20 be presented it would have not have shown that. So I don't really know
21 the answer to give you, Your Honor.

22 THE COURT: Okay. We'll come back. When you've -- if
23 you're not guilty, plead not guilty, okay?

24 THE DEFENDANT: I can't fight against the police, Your
25 Honor. I would not try to do that and make things worse on myself, Your

1 Honor.

2 THE COURT: All right. Well, Counsel, if you end up wanting
3 to redo it as an *Alford* or something let me know; otherwise, we'll go
4 ahead and set this for -- do you we need --

5 MR. SAXE: If we could just status check this week or
6 may be --

7 THE COURT: Sure. Do you we need an amended
8 Information?

9 MR. SAXE: I doubt it. Well, I mean I don't know for sure this
10 isn't --

11 THE COURT: I don't know what the originally charges were.

12 MS. ALBRITTON: The original charges were multiple counts
13 of battery on the officer -- on an officer, Your Honor. So we would need
14 an amended.

15 THE COURT: Okay.

16 THE DEFENDANT: So, would I --

17 THE COURT: We'll put it over a week for the amended.

18 THE DEFENDANT: Well, would this be going on behalf of
19 what you just read to me, Your Honor?

20 MR. SAXE: Just hold off until you speak with Mr. Bassett, Mr.
21 Brown-Wheaton.

22 THE DEFENDANT: I've done that already. I just -- I'm just
23 trying to get the best understanding here today so we can move forward.
24 I know we've already trailed this once or twice actually.

25 THE COURT: We'll come back in a week if the --

1 MR. SAXE: Or Tuesday if it's open.

2 THE COURT: When?

3 MR. SAXE: Or Tuesday.

4 THE COURT: What works for you? He is in on the other case

5 anyway, right?

6 MS. ALBRITTON: Yes, Your Honor. I believe so. I have not

7 checked, but I believe so.

8 THE COURT: Okay.

9 MS. ALBRITTON: That's why Mr. Peterson was going to file

10 another motion regarding his custody status.

11 [Colloquy between staff and Court]

12 THE COURT: Guys, which date you want? We don't care.

13 They're both full.

14 THE DEFENDANT: If I may, Your Honor. I would like to move

15 forward with it. It may have been a [indiscernible] but -- but --

16 MR. SAXE: Perhaps --

17 THE COURT: I'm sorry which date?

18 MR. SAXE: It sounds like he wants to be recanvassed, but I'll

19 prefer --

20 MS. ALBRITTON: Whichever date is good with the State,

21 Your Honor --

22 MR. SAXE: -- Tuesday.

23 MS. ALBRITTON: -- on Court's pleasure. And at this point

24 the State would not be comfortable in having him plead today.

25 MR. SAXE: If we could get --

1 THE COURT: He's still not admitting guilt even now so I'm not
2 going to -- you need to talk to your lawyer. If you didn't do anything, I
3 don't want you pleading guilty.

4 MR. SAXE: Can we get Tuesday?

5 THE COURT: Tuesday, please

6 THE COURT CLERK: February 9th at 11:00 a.m.

7 THE DEFENDANT: I understand that, Your Honor. I just --
8 it's just difficult for me to fight against -- you know, in the court of law,
9 you know.

10 THE COURT: And that's fine. But that's something you need
11 to talk to your attorney about, not me.

12 THE DEFENDANT: I just want to [indiscernible] --

13 THE COURT: Okay.

14 THE DEFENDANT: -- the charge that is presented today if
15 that's possible.

16 THE COURT: We'll come back on Tuesday, and then we'll
17 see what shakes up; all right?

18 THE DEFENDANT: Is it the same thing as today? Just so I
19 have a better understanding?

20 THE COURT: Yes, as far as I know.

21 THE DEFENDANT: Okay.

22 MR. SAXE: Mr. Bassett would be in contact with you before.

23 THE DEFENDANT: Mr. Saxe, I spoke with Mr. Bassett not to,
24 you know, keep going, I just -- we've already had this discussion, and I
25 was pleading guilty to the charges in what was presented here today.

1 MR. SAXE: You know, we can --

2 THE COURT: Well, you need to have another conversation
3 with him because when it came down to it, you didn't actually plead
4 guilty. You said the words, but you didn't acknowledge the action. So
5 we need to pass it.

6 MR. SAXE: I can have Mr. Bassett call the in custody room if you
7 want to trail it?

8 THE DEFENDANT: Please.

9 THE COURT: I only have --

10 MS. ALBRITTON: And the State would simply ask for the next
11 date, Your Honor. It's too much back and forth. He hasn't
12 acknowledged it even at this point. Essentially the State would have
13 concerns about him withdrawing his plea --

14 THE COURT: And we've only got --

15 MS. ALBRITTON: -- feeling that he --

16 THE COURT: -- we've only got two more cases left.

17 MS. ALBRITTON: -- was coerced into taking it.

18 THE COURT: We've only got a couple more cases left, so I
19 don't think we'll have time. He's going to be in custody anyway so we'll
20 do it Tuesday.

21 MS. ALBRITTON: Thank you.

22 THE DEFENDANT: I'm pleading guilty to the charges, yes
23 Your Honor.

24 THE COURT: No, no, no. I want you to talk -- I want you to
25 talk to Mr. Bassett, okay?

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THE DEFENDANT: Okay, Your Honor.

THE COURT: You can have him call him over there if they
get it done in time, but I'm not going to continue this. So I want to get a
Tuesday date, and if you want -- if we get a chance, we can recall it,
okay?

THE DEFENDANT: Okay, Your Honor.

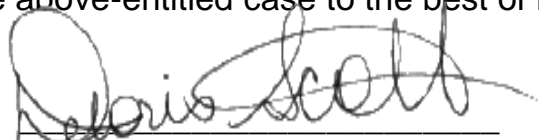
MS. ALBRITTON: Thank you.

THE COURT CLERK: February 9th at 11:00 a.m.

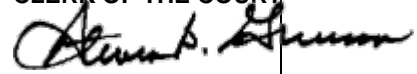
[Hearing concluded at 12:06 p.m.]

* * * * *

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.

A handwritten signature in cursive script, appearing to read "Deloris Scott", written over a horizontal line.

Deloris Scott
Court Recorder/Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

JEREMY BROWN-WHEATON,
Defendant.

CASE NO: C-20-352265-1
DEPT. XVIII

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE
TUESDAY, FEBRUARY 23, 2021

**RECORDER'S TRANSCRIPT OF HEARING RE:
DEFENDANT'S MOTION TO DISMISS DUE TO VIOLATION OF
ARTICLE III, SECTION 1 OF THE NEVADA CONSTITUTION**

APPEARANCES:

For the State:

CHARLES W. THOMAN, ESQ.
Chief Deputy District Attorney

For the Defendant:

CHRISTOPHER PETERSON, ESQ.
Deputy Public Defender

RECORDED BY: YVETTE G. SISON, COURT RECORDER

1 Las Vegas, Nevada; Tuesday, February 23, 2021

2 * * * * *

3 [Proceeding commenced at 12:16 p.m.]

4 THE COURT CLERK: State of Nevada versus Jeremy Brown-
5 Wheaton, C352265.

6 MR. PETERSON: And thank you. My name -- and Chris
7 Peterson from the Clark County Public Defender's Office appearing on
8 behalf of Mr. Brown-Wheaton. He is present and in custody.

9 MR. THOMAN: Cal Thoman on behalf of the State, Your
10 Honor.

11 THE DEFENDANT: Morning, Your Honor.

12 THE COURT: Good morning or afternoon. Yeah, anyway.

13 THE DEFENDANT: Oh, yeah, afternoon.

14 THE COURT: All right. I have here a Guilty Plea Agreement
15 that's been filed. What are the negotiations?

16 MR. PETERSON: The negotiations are as follows: it is going
17 to be -- we are going to be waiving defects in the pleading. He will be
18 pleading guilty to one count of Harboring a Fugitive, C Felony. The terms
19 are as follows: the State has no opposition to probation and no
20 opposition to the sentence running concurrent to case C352037. The
21 parties stipulate to an Own Recognizance Release with mid-level
22 electronic monitoring at entry of plea. The parties stipulate to a
23 withdrawal of this plea with a dropdown to Conspiracy to Escape, a gross
24 misdemeanor, with credit for time served if the Defendant is honorably
25 discharged from probation.

1 If the Defendant violates the terms of mid-level monitoring, the
2 Mid-level Electronic Monitoring Program, State will retain right to argue
3 and will have discretion to remove the dropdown provision from the plea.
4 The Defendant waives any defects in the charging document for
5 purposes of this negotiation. Just to be clear what the defect is, there
6 wasn't another person. Normally, you'd be harboring a separate fugitive.
7 Obviously, there was no one else involved in this situation, but we'll be
8 waiving the defects in the pleading to accept the plea.

9 THE COURT: Is that correct, Mr. Brown-Wheaton?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: What's your true name?

12 THE DEFENDANT: Jeremy Brown-Wheaton.

13 THE COURT: How old are you?

14 THE DEFENDANT: Twenty-three years old.

15 THE COURT: Do you read, write, and understand the English
16 language?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: How far did you go in school?

19 THE DEFENDANT: High school graduate.

20 THE COURT: Do you have any sort of learning disability?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Have you recently been treated for a mental
23 illness or addiction?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Are you currently under the influence of any

1 drug, medication, or alcohol?

2 THE DEFENDANT: No ma'am.

3 THE COURT: Have you reviewed the Information charging
4 you with Harboring a Fugitive?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand the nature of that charge in
7 the Information?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Have you discussed this case with your
10 attorney?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Are you satisfied with the representation and
13 advice given to you by your attorney?

14 THE DEFENDANT: By far, Your Honor.

15 THE COURT: Do you plead guilty or not guilty to the charges
16 in this Information?

17 THE DEFENDANT: Guilty.

18 THE COURT: Are you making this plea freely and voluntarily?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Has anyone forced or threatened you or
21 anyone close to you to plead guilty?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Has anyone made you promises other than
24 what's in the Guilty Plea Agreement to get you to plead guilty?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: A Guilty Plea Agreement has been filed in your
2 case. Due to Coronavirus precautions, I understand you were unable to
3 physically sign that Guilty Plea Agreement; is that correct?

4 THE DEFENDANT: Correct.

5 THE COURT: And did you direct Mr. Peterson to sign on your
6 behalf?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Did you agree that your attorney would sign in
9 place of your actual signature?

10 THE DEFENDANT: Yes.

11 THE COURT: Before directing your attorney to sign for you,
12 did you read the Guilty Plea Agreement or was it read to you, and did you
13 talk to your attorney about the terms of the Guilty Plea Agreement?

14 THE DEFENDANT: Yes, it was read to me. We went over it.
15 Yes, ma'am.

16 THE COURT: Okay. Did you knowingly, willingly, and
17 voluntarily direct your attorney to sign the agreement for you?

18 THE DEFENDANT: Yes.

19 THE COURT: Did you discuss having your attorney sign for
20 you would be the same as if you actually signed it?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you agree for the signature placed on the
23 agreement by your attorney to be treated the same as if you signed it
24 yourself?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Did your lawyer fully and completely answer all
2 your questions about your guilty plea including how this Guilty Plea
3 Agreement was signed?

4 THE DEFENDANT: What was that? I didn't -- I didn't --

5 THE COURT: Did -- it's basically the same as the other five
6 questions but a little different.

7 THE DEFENDANT: Yes, yes. Yes, Your Honor.

8 THE COURT: Did your lawyer fully and completely answer all
9 of your questions about your guilty plea including about how --

10 THE DEFENDANT: Yes.

11 THE COURT: -- this Guilty Plea Agreement was signed?

12 THE DEFENDANT: Hundred percent, yes, ma'am.

13 THE COURT: All right. Do you understand everything
14 contained in the Guilty Plea Agreement?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: Do you understand the constitutional appellate
17 rights you're giving up by pleading guilty?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you understand if you're not a United States
20 citizen entering a plea of guilty may have immigration consequences,
21 including deportation?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand the range of punishment is
24 one to five years in Nevada Department of Corrections and you could be
25 fined up to \$5,000?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you understand that sentencing is up to the
3 Court, including whether cases or counts run concurrent or consecutive?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that no one is in a position
6 to promise you probation, leniency or any special treatment?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: In the Information it says, on or about August
9 29th, 2020, you did willfully, unlawfully and feloniously conceal or harbor
10 for purposes of concealment, yourself, who was a prisoner wanted for
11 the charge of Escape, a felony, after escaping from the custody of Las
12 Vegas Metropolitan Police Department by fleeing from a patrol unit. Is
13 that what happened?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Both sides waive defects?

16 MR. PETERSON: Yes, Judge

17 MR. THOMAN: Yes, Your Honor.

18 THE COURT: Thank you. Do you have any questions you
19 want to ask me or your attorney before I accept your plea?

20 THE DEFENDANT: No.

21 THE COURT: Anything else from the State?

22 MR. THOMAN: No, Judge. Thank you very much.

23 THE COURT: The Court finds the Defendant's plea of guilty is
24 freely and voluntarily made and the Defendant understands the nature of
25 the offenses, the consequences of his plea and, therefore, accepts his

1 plea of guilty. Pursuant to the negotiation, Defendant will be released on
2 his own recognizance with med-level electronic monitoring and is --

3 MR. PETERSON: And --

4 THE COURT: The matter is referred to the Department of
5 Parole and Probation for a Presentence Investigation report and set for
6 sentencing.

7 MR. PETERSON: And, Your Honor, for the setting of
8 sentencing could we do an in-custody date? My only concern with the
9 monitoring is I know they had a lack of monitors.

10 THE COURT: Sure.

11 MR. PETERSON: I've already discussed that with Mr. Brown-
12 Wheaton, but I want to make sure that if he gets stuck that we don't have
13 this drag out for too long.

14 THE COURT: Yeah.

15 Mr. Brown-Wheaton, you're to report to parole and probation
16 within two business days of your release.

17 And is there anything else? I feel like there was something
18 else I wanted to say here. Oh, I know what I wanted to say.

19 Mr. Brown-Wheaton?

20 THE DEFENDANT: Yes.

21 THE COURT: You've got a really good deal. The OR is an
22 opportunity to mess it up. Be careful.

23 THE DEFENDANT: It's not going to happen.

24 THE COURT: All right. Stay out of trouble. Don't mess up
25 your electronic monitoring. Good luck.

1 THE DEFENDANT: Yes, ma'am. Thank you.

2 THE COURT: Thank you.

3 THE COURT CLERK: April 13th at 12:30.

4 MR. PETERSON: Thank you, Your Honor.

5 [Colloquy between the Court and court clerk]

6 THE COURT: Yeah, vacate the trial date; vacate the central
7 trial calendar readiness --

8 THE LAW CLERK: Motions.

9 THE COURT: -- all motions.

10 THE DEFENDANT: Was that April 13th?

11 THE COURT: We had a writ on, I think. Everything is
12 vacated except the sentencing date now.

13 MR. PETERSON: All right. I appreciate it, Your Honor. And
14 it's April 13th.

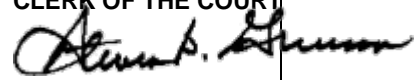
15 THE DEFENDANT: All right. Thank you, Chris.

16 [Proceeding concluded at 12:23 p.m.]

17 * * * * *

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

20 
21 KRISTINE SANTI
22 Court Recorder/Transcriber
23
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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	CASE NO. C-20-352265-1
Plaintiff,)	
)	DEPT. XVIII
vs.)	
)	
JEREMY BROWN-WHEATON,)	
)	
Defendant.)	

BEFORE THE HONORABLE MARY KAY HOLTHUS,
DISTRICT COURT JUDGE
TUESDAY, MARCH 9, 2021

**RECORDER'S TRANSCRIPT OF PROCEEDINGS RE:
MOTION TO PLACE ON CALENDAR TO ADDRESS HOUSE ARREST**

APPEARANCES:

For the State:

TINA SINGH TALIM, ESQ.
Chief Deputy District Attorney

For the Defendant:

CHRISTOPHER PETERSON, ESQ.
Deputy Public Defender

RECORDED BY: YVETTE SISON, COURT RECORDER

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Las Vegas, Nevada; Tuesday, March 9, 2021

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[Proceeding commenced at 11:30 a.m.]

THE COURT CLERK: State of Nevada versus Jeremy Brown-
Wheaton, C352265.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Good morning.

MR. PETERSON: Your Honor, Chris Peterson from the Clark
County Public Defender's Office appearing on behalf of Mr. Brown-
Wheaton.

MS. TALIM: Tina Talim for the State.

MR. PETERSON: And, Your Honor, we're here today because
chambers passed along an email that was sent in by CCDC asking for
the Court to reconsider the order to place him on mid-level monitoring.

THE COURT: Is that what we're here for?

MR. PETERSON: And that was something we had agreed
upon as part of the negotiation, but I don't know what the Court's position
on this --

THE COURT: Oh, did he plead guilty in front of me or
downstairs?

MR. PETERSON: He pled guilty in front of you, Your Honor,
and you're the one that ordered him to mid-level monitoring.

THE COURT: Okay. Well, something happened.

MR. PETERSON: Well, it's -- the basis they're saying is
entirely what's in the police report. There is no other facts they're offering

1 that are not in the police report and the prelim --

2 THE COURT: Wait. I don't have -- I don't have anything. I'm
3 sorry. I -- did we -- you guys put this on calendar.

4 MR. PETERSON: That's correct but the email -- it's because
5 there was an email sent to your chambers that your chambers passed
6 along to us.

7 THE COURT: I did?

8 MR. PETERSON: Yes.

9 THE COURT: Hang on. I don't have any recall of that, and I
10 don't -- I don't know that I saw it. I was under the impression that this
11 was something you all decided to do.

12 MR. PETERSON: No, no. We are standing by our negotiation.
13 And we are happy with the negotiation we have with the Court and we
14 are happy with the negotiation that we had with the State. We are not
15 backing off of that. Our concern is that there was an email sent to the
16 DA's Office and to chambers that was not sent to us but chambers was
17 kind enough to pass in our direction that the Las Vegas Metropolitan
18 Police Department House Arrest had indicated that it may not follow the
19 court order, and I wanted to confirm that the court order was going to be
20 followed.

21 THE COURT: I didn't realize that that was optional but --

22 THE DEFENDANT: Me either.

23 MR. PETERSON: I didn't think so either, Your Honor.

24 MS. TALIM: Your Honor, I think that it may not have come to
25 your chambers but it went to the DA on -- in court --

1 THE COURT: To who?

2 MS. TALIM: -- as well as [indiscernible].

3 THE COURT: What date did it supposedly come to chambers?

4 We -- we're not finding it.

5 MR. PETERSON: It was sent -- so it was sent February 28th,
6 2021. It looks like it was directed specifically to your JEA, Ms. Tibbs, and
7 she was kind enough to send it to us. It was also emailed to Nell
8 Christensen, IAC Deputy, House Arrest Eligibility Coordinator. It was
9 from a Joe Cradachay [phonetic], Quadachay. It looks like a sergeant
10 from House Arrest.

11 THE COURT: And it says that they didn't know if they were
12 going to comply with my order? Is that what it says?

13 MR. PETERSON: Well, it says that Las Vegas Metropolitan --

14 MS. TALIM: Your Honor --

15 MR. PETERSON: Specifically, I mean it -- I -- if you want I can
16 resend the email that I have.

17 THE COURT: No. I got it. Well, I don't know what -- Mr.
18 Peterson, all the email says is they have a court order for mid-level
19 monitoring. However, the Defendant has an active Henderson warrant.
20 They've added them -- him or her to the next transportation list. Once the
21 Defendant returns, they'll continue with the AMP process. They're not --

22 THE LAW CLERK: Kelly just sent one back.

23 MR. PETERSON: Your Honor, that's not the email that was
24 sent --

25 THE COURT: Oh, wait. Is there another one?

1 MR. PETERSON: There's another one sent on the 28th.
2 Would -- Your Honor, would you like me to send that email again to your
3 clerk?

4 THE COURT: No. I think we're finding it.

5 MR. PETERSON: Okay.

6 [Pause in proceedings]

7 THE COURT: All right. State, what's your position?

8 MS. TALIM: Your Honor, I'm just going to submit it to the
9 Court's discretion because I understand that there were negotiations
10 entered into addressing some conditions of Defendant's release and this
11 seems like it's outside anything that the State should take a position on
12 because it's just coming straight from House Arrest. So I'll submit it to
13 the Court.

14 MR. PETERSON: And, Your Honor, I want to emphasize. In
15 reviewing this, these are all facts that we were all aware of when we
16 entered into the negotiation and in turn when the --

17 THE COURT: Was I?

18 MR. PETERSON: Yes, Your Honor, because we had filed
19 multiple writs that included a prelim, preliminary hearing transcript and
20 reports, but these are all things the Court was aware of. I mean we
21 litigated -- I -- you know, Your Honor knows how I practice. I litigate
22 pretty fully and so the Court would have had access to all the
23 documentation. The State would have been aware of this as well and --

24 THE COURT: Well, I'm just -- I'm -- here's my questioning.

25 MR. PETERSON: Yes.

1 THE COURT: As I read it, I don't know how much in detail I
2 considered all these -- all of these things -- and if they have concerns for
3 their officers, you know --

4 MR. PETERSON: Your Honor, I think my problem is this.
5 Ultimately speaking, they're saying that -- again, they're not offering any
6 facts that we were not aware of, one. Two, they say this without
7 specifying what about these actions would lead to officer danger. There's
8 no allegations of him hurting any officers or attacking any officers.

9 THE COURT: Well, I think the fact that he becomes
10 combative with officers then is indicative that he may become combative
11 in the future, and he continues to kick it out even once he's in custody. It
12 is a bit of a lack of respect, I suppose, at minimum.

13 MR. PETERSON: And I think that what it come back to is that
14 they -- they don't have the authority to question the court order. They
15 actually do not have that authority to ask reconsideration. They don't
16 have the authority under their own regulations to do that, let alone under
17 the law to do that. So I'm not sure exactly where they're getting --

18 THE COURT: Yeah. I don't --

19 MR. PETERSON: -- their position from to ask for the -- to
20 refuse to follow a court order.

21 Additionally, he says something about putting him on high-level
22 without specifying what the difference would be. That would create,
23 quote, unquote, more safety. So I think that we'd be in a different
24 position if the jail had suggested there were facts that the Court was
25 unaware of, but the State -- the Court -- the jail has not done that, nor has

1 the -- they offered any facts that are outside just the police report that
2 was in front of us.

3 We entered into negotiation with the State. Presumably, if
4 CCDC had a problem they should have been in contact with the State
5 about it. But on top of that, Your Honor, again all these facts were facts
6 that were laid out in the preliminary hearing transcript and in the police
7 reports that were filed in previous motions including the petition for a
8 Habeas Corpus and also --

9 THE COURT: Right, but, Mr. Peterson, in fairness to me, was
10 any of that argued or brought up at the time of entry of plea in the
11 ordering of the mid-level electronic monitoring?

12 MR. PETERSON: Well, Your Honor, why would -- why would
13 we have brought it up, Your Honor? I mean I'm not trying to criticize
14 Your Honor's --

15 THE COURT: Well, I understand that I try to go along with
16 negotiations --

17 MR. PETERSON: Yeah.

18 THE COURT: -- but I'm also not entirely a rubber stamp.

19 MR. PETERSON: Correct, Your Honor.

20 THE COURT: And so I do think that there are times when you
21 all may agree to something but another party might have the right to
22 weigh in on some level because that's the person that's going to, in
23 theory --

24 MR. PETERSON: Well --

25 THE COURT: -- be impacted by it the most.

1 MR. PETERSON: Well, Your Honor, there's two things I'd say
2 about that. The first one is Your Honor actually did comment at the time
3 of release about the fact that you believed that Mr. Brown-Wheaton was
4 getting a good deal because you had been familiar with the underlying
5 facts of the case. That was something you had commented upon at the
6 time we entered the plea. It looked like you were weighing whether or
7 not to accept the plea and you decided to accept the plea as is and follow
8 the negotiation. I mean this is a case, again, where some folks that --

9 THE COURT: But that doesn't necessarily mean -- here's what
10 I'm going to do.

11 MR. PETERSON: And, Your Honor, one other thing I just want
12 to mention. The law is very clear about when people can weigh in and
13 who has the authority to. So, for example, victims have the right to weigh
14 in, right, under Marsy's Law?

15 THE COURT: Right.

16 MR. PETERSON: The law articulates that. The law does not
17 articulate that the CCDC has the legal right to weigh in on this particular
18 subject.

19 THE DEFENDANT: Can I speak?

20 MR. PETERSON: Mr. Brown.

21 THE DEFENDANT: Never mind.

22 THE COURT: Oh, it's kind of my belief. It's not like a right, but
23 it's just bringing information to be sure I was aware of it when I made the
24 decision, and I'm not sure that I was. But if you say that I commented on
25 it and I was -- what are the full negotiations in this?

1 MR. PETERSON: Full negotiations are that -- let me pull up
2 his file.

3 MS. TALIM: [Indiscernible] to have no opposition to probation
4 and no opposition to the sentence running concurrent with another case.
5 The parties stipulated to an Own Recognizance Release with mid-level
6 electronic monitoring program at entry of plea. The parties further
7 stipulated to the withdrawal of the plea and then a dropdown to
8 Conspiracy to Commit, a gross misdemeanor, with credit for time served.

9 The point also that I wanted to state. If the Defendant violates
10 terms of the mid-level electronic monitoring program, the State would
11 then retain our right to argue and the discretion to remove the dropdown.

12 THE COURT: All right. I ordered what I ordered. I'm not going
13 to change it at this point.

14 I tell though, Mr. Brown-Wheaton --

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: -- you aren't going to get a quarter of an inch
17 break from me.

18 THE DEFENDANT: Okay.

19 THE COURT: If you aren't 150 percent compliant with mid-
20 level monitoring, if you don't yes, sir and no, sir and do everything you're
21 told to do while you are on that monitoring, there won't be a second
22 chance. I don't care what the State comes in and rights to argue for.

23 THE DEFENDANT: Not a problem. I just want to be -- have
24 the best understanding that they're going to approve it this time and not
25 deny it again.

1 THE COURT: I can't promise anything. I'm making the record
2 that I've reconsidered and based upon the State's agreement and the
3 negotiations of my previous accepting of it I'm leaving it as is.

4 THE DEFENDANT: Okay. Is it possible that -- I mean I would
5 just like to -- I mean I take full advantage of, you know, being in court. If I
6 could just, you know, have the best opportunity possible to be back at
7 home with my son and be part of society again; not only that but, you
8 know, so I can start my college courses and be a father to my two-year-
9 old who's learning numbers, ABCs, you know, and be a big brother to my
10 two little younger brothers so they have something -- somebody to look
11 up to, you know.

12 MR. PETERSON: Mr. Brown-Wheaton, so it's good to mention
13 that now, but we're going to mention it again at sentencing before the
14 Court, just to make sure the Court knows that she -- you know that this
15 deal is the right deal.

16 And, Your Honor, that also your statement to him today is a --
17 is consistent with your previous statement when you ordered him to mid-
18 level monitoring, so we're aware that the Court is watching this case very
19 closely.

20 THE COURT: Okay.

21 THE DEFENDANT: Would Your Honor be in agreeance to
22 just a regular OR?

23 THE COURT: Don't -- are you pushing me?

24 MR. PETERSON: And we did not agree to that, Mr. Brown-
25 Wheaton, so.

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THE DEFENDANT: What was that, Chris?

THE COURT: You -- quit while you're ahead. Quit while you're ahead, sir.

MR. PETERSON: Mr. Brown-Wheaton, we're -- we got what we sought today, all right? So we agreed to an OR with mid-level supervision. The Court's reordering you to mid-level monitoring.

THE DEFENDANT: Okay. I just wanted it to go smoothly. That's all.

MR. PETERSON: Yes. And we'll make sure it runs smoothly. If there's any additional problems we're bringing it back to the Court's attention.

THE DEFENDANT: That's fine.

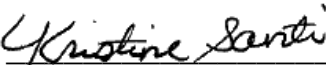
THE COURT: Okay, thank you.

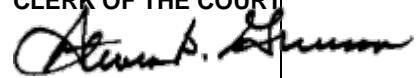
THE DEFENDANT: Thank you.

[Proceeding concluded at 11:43 a.m.]

* * * * *

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


KRISTINE SANTI
Court Recorder/Transcriber



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 JEREMY BROWN-WHEATON, aka
12 JEREMY PAUL BROWN WHEATON,
13 Defendant.

CASE#: C-20-352265-1,
C-20-352037-1

DEPT. VI

14 BEFORE THE HONORABLE JACQUELINE M. BLUTH,
15 DISTRICT COURT JUDGE

16 THURSDAY, NOVEMBER 4, 2021

17 RECORDER'S *DRAFT* TRANSCRIPT OF HEARING:
18 **REVOCATION OF PROBATION**

19 APPEARANCES: [All appearances via videoconference]

20 For the State:

MELANIE SCHEIBLE, ESQ.
Deputy District Attorney

21 For the Defendant:

ALEXANDER BASSETT, ESQ.
Deputy Public Defender

22 ALSO PRESENT:

23 From Parole and Probation

QUIANA PASCALAU

24
25 RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

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Las Vegas, Nevada, Thursday, November 4, 2021

[Case called at 11:11 a.m.]

THE COURT: This is State of Nevada versus Jeremy Wheaton Brown, C33 - C352265-1 and then there is another case as well, C352037-1. He is present in custody via BlueJeans.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Good morning. And if everyone could state their appearances, I know I have a probation officer as well.

MR. BASSETT: Alex Bassett --

MS. SCHEIBLE: Melanie Scheible --

MR. BASSETT: -- on behalf of Mr. Brown Wheaton.

THE PROBATION OFFICER: Officer Pascalau P&P present.

MS. SCHEIBLE: Melanie Scheible for the State.

THE COURT: All right. Where are we at with Mr. Brown Wheaton?

THE DEFENDANT: Can I get a quick call with the Public Defender just for a minute?

THE COURT: Sure thing.

MR. BASSETT: You need to speak to me, Mr. Brown Wheaton?

THE DEFENDANT: Just briefly, yes.

MR. BASSETT: All right. I'm sorry, what is the extension for the inmates?

THE CORRECTIONS OFFICER: 8334.

1 MR. BASSETT: Thank you. I'll call you right now.

2 THE DEFENDANT: Thank you.

3 [Case trailed at 11:12 a.m.]

4 [Case recalled at 11:55 a.m.]

5 THE COURT: Let's recall State of Nevada versus Jeremy
6 Brown Wheaton on both cases. All parties are present.

7 All right, Mr. Bassett, --

8 THE DEFENDANT: Good morning.

9 THE COURT: Yes ,where are we at with this one?

10 MR. BASSETT: Your Honor, I believe we are going to stipulate
11 to the violations to a degree and argue, although we disagree about the
12 technical versus non-technical nature of the violation. But I think that can
13 be handled in argument.

14 THE COURT: Okay. Alrighty, just give me one sec.

15 All right, Mr. Wheaton.

16 THE DEFENDANT: Yes, ma'am, or yes, Judge.

17 THE COURT: It looks like -- are you stipulating to the fact that
18 on July 30th of 2021 Metro was called out for what they referred to as a
19 domestic violence call involving yourself and the mother of your child.
20 Details were as follows: the detectives were made aware of a domestic
21 violence call at the specific address. The call involved yourself. There
22 was damage to the structure, but officers weren't sure about your standing
23 in the apartment and no arrest was made. The female half, Ms. Simpson,
24 arrived. They helped her leave the area. There was another domestic
25 violence call that day at Paradise Road with Simpson. This time

1 Simpson's father alleged that you have a firearm but that was not
2 substantiated. Do you agree with that paragraph?

3 THE DEFENDANT: Mr. Bassett.

4 THE COURT: Mr. Bassett, he's asking you whether he agrees
5 with --

6 MR. BASSETT: Sorry. Yeah, Your Honor, basically we are
7 stipulating that there were two 911 calls made that day but no arrests
8 were made or charges were filed.

9 THE DEFENDANT: Did you want me to explain --

10 MR. BASSETT: You don't need to explain.

11 THE DEFENDANT: Okay.

12 MR. BASSETT: If you agree with what I just said, Mr. Brown
13 Wheaton, say that you agree that there were 911 calls made but no
14 arrests or charges.

15 THE DEFENDANT: Correct. But I was not -- only until now
16 was I aware of the second 911 call. I was not aware of that at all.

17 THE COURT: Okay.

18 THE DEFENDANT: Just so that's clear, Your Honor.

19 THE COURT: All right. So on August 17th the Division made
20 contact with you, you were advised to stay out of trouble. And if there
21 were any issues -- further issues revolving around your girlfriend that you
22 wouldn't be allowed to reside at the current residence. And you were also
23 advised that if you were to violate the probation further the Division would
24 seek revocation. Do you remember that conversation?

25

1 THE DEFENDANT: Correct, yes, Judge. My P&P officer did
2 tell me to not have any more mishaps with my girlfriend.

3 THE COURT: Okay. And then on August 25th you were served
4 with a temporary protective order against Ms. Simpson that was effective
5 until September, is that correct?

6 THE DEFENDANT: Correct, Your Honor.

7 THE COURT: On September 26th you were arrested by Metro
8 officers and charged with domestic battery, same victim. Were you
9 arrested?

10 THE DEFENDANT: I couldn't hear you; you kind of cut out.

11 THE COURT: That's okay. Were you arrested for another
12 domestic violence on September 26th?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. You're currently enrolled in ABC
15 Therapies Domestic Violence. You have missed a total of the 10 of the 15
16 classes with three of those being unexcused. Is that correct?

17 THE DEFENDANT: Correct. The 7 is only because I've been
18 in custody, just so that's clear.

19 MR. BASSETT: We'll explain that, don't worry.

20 THE DEFENDANT: Okay.

21 THE COURT: And then you're behind in your payments?

22 THE DEFENDANT: Did you say something before that? I
23 didn't hear you besides the payments.

24 THE COURT: That you're just behind --

25 MR. BASSETT: She didn't.

1 THE COURT: -- you're behind in your payments?

2 THE DEFENDANT: Yes, but if I am released I can catch up to
3 date with that. My working situation is a lot better now. My financial
4 situation has gotten better, so I can by all means catch up --

5 THE COURT: Okay. All right. The defendant --

6 THE DEFENDANT: -- all in one.

7 THE COURT: The defendant has stipulated to the specific
8 violations that he has alluded to on the record. At this point in time, I'm
9 happy to hear from the probation officer as well as the State before I hear
10 from the defendant as well as Mr. Bassett. Who would like to go first Ms.
11 Scheible or the officer?

12 MS. SCHEIBLE: Doesn't matter to me.

13 THE PROBATION OFFICER: If the State could go first that
14 would be great.

15 MS. SCHEIBLE: Okay. Your Honor, I am requesting
16 revocation in this case and the suspended sentences in both cases be
17 imposed. I think that the defendant has clearly demonstrated an inability
18 to perform under supervision. This case has been, you know, ongoing for
19 over -- well it's been a year now since he was first arrested. And in that
20 time he has done nothing but pick up new cases, continue to harass
21 Alexis Simpson, continue to engage in violent behavior and be
22 unsupervisable for both house arrest officers and for P&P officers.

23 In this case I want to point out that we are talking about a -- one
24 of the most serious violations that we deal with are the violation of no
25 contact and TPO orders and that is what he has done. In addition to the

1 things I'm going to get into next, he has continued to harass and batter
2 Alexis Simpson who is his girlfriend. And he has been given specific
3 instructions not to. There was also a TPO in place. And even after being
4 served with that TPO, being explained by P&P what that TPO was about,
5 he still goes back to the Alexis Simpson and he still gets arrested for
6 another battery domestic violence incident. And so I don't think that there
7 is anything that we can do to prevent these kinds of incidents from
8 occurring again except for putting the defendant in prison.

9 He also has failed to comply with other mandates of probation.
10 He's not keeping up with his counseling. He's not doing his classes. And
11 it's my understanding Your Honor, that this case originated in DC 18 and
12 Judge Holthus was the sentencing judge and she indicated at the time of
13 sentencing that the defendant would be given no second chances for any
14 kinds of violations. He was given a gift of probation in this case after he
15 broke the window of a patrol car and ran for over a mile barefoot through
16 the broken glass away from officers before he was finally apprehended in
17 the instant case.

18 And so even after demonstrating this complete lack of respect
19 for authority, he was given the opportunity to do probation and he simply
20 squandered it. I think those are the exact words used by the P&P officer
21 in the first paragraph of the violation report, because it is accurate. He
22 has not done any of the things that he needed to do or was supposed to
23 do to demonstrate the he could be supervised. He's demonstrated that he
24 continues to be violent. He continues to be -- frankly, Your Honor, the
25 defendant is out of control. And I don't see any reason that he should be

1 given another opportunity to go back to harassing Alexis and to go back to
2 committing acts of violence and to go back to not complying with the rules.
3 And at this point it is -- the only option is to send him to prison.

4 THE COURT: Thank you. Officer, did you have anything to
5 add? P&P Officer, do you have anything to add?

6 THE PROBATION OFFICER: Oh, yes Your Honor, just briefly
7 piggybacking on what the State said. I just want to bring attention to the
8 fact that Jeremy's only 23 years old and he has an extensive criminal
9 history that revolves around physical violence, so battery, domestic
10 violence, resisting a public officer, violating a TPO. And at that end of the
11 day, my concern is just the safety of not only Ms. Simpson but the safety
12 of the community.

13 I've had multiple conversations with Jeremy where I've told him
14 you know, what you're doing and what your record shows you have a
15 violent criminal history. You have to make better decisions. Mr. Brown
16 Wheaton does not take accountability for any of his actions. Going over
17 his criminal history with him, everything he said was oh I didn't do it. That
18 didn't happen that way. It was a misunderstanding. And so that's what
19 concerns me the most is that he makes these decisions and then he's not
20 taking accountability for it. And we're just not getting anywhere with him.

21 THE COURT: Okay. Thank you.

22 All right, sir, do you have anything to add before I hear from
23 your attorney?

24 MR. BASSETT: Your Honor, if it's all right I prefer to speak first
25 and then if I leave anything out he can speak, if that's all right with you?

1 THE COURT: It's really it's up to him. It's his right so whatever
2 he's like to do. Would you like Mr. --

3 THE DEFENDANT: That's fine, Your Honor.

4 THE COURT: Okay. Sounds good.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Mr. Bassett, go ahead, sir.

7 MR. BASSETT: Yes, thank you, Your Honor. Your Honor, as
8 righteous as the DA's outrage was, she grossly overstated the nature of
9 this offense. She was correct that Mr. -- this case is relatively old. It does
10 -- both of the cases that he has open stem from incidents that occurred
11 approximately a year ago. And in that year, up until his arrest on
12 September 26th, Mr. Brown Wheaton had stayed out of trouble.

13 Both the District Attorney and the officer's statements primarily
14 hinged on re-litigating Mr. Brown Wheaton's past that occurred before this
15 incident. I understand that the DA here does not like the deal that Mr.
16 Brown Wheaton got, but arguing that he should now be punished at this
17 point because of things that occurred before this negotiation went into
18 effect makes no sense.

19 Also the State claimed that the defendant violated a TPO. That
20 is patently provably not true. It is not alleged in the violation report. There
21 was a TPO in place for 8 days. It was not violated. So a claim that he
22 violated the TPO is inaccurate.

23 Moreover, Your Honor, the crux of the argument is before I
24 even get into, you know, addressing how overstated the District Attorney's
25 arguments were about Mr. Brown Wheaton's behavior. The fact of the

1 matter is, Your Honor, that this is not a non-technical violation. This is a
2 technical violation. And so asking for revocation is an illegal ask.

3 And the reason for that is simple. Mr. Brown-Wheaton was
4 arrested for a domestic violence charge on September 26th. That was
5 filed in City. That case at trial was dismissed. So at this point, Mr. Brown
6 Wheaton does not have a new charge. He does not have a new case.
7 He does not have a new allegation. What he has is an arrest and an
8 arrest is a violation -- is a technical violation.

9 But NRS 176A.630 clearly lays out the grounds for a non-
10 technical violation. And they are the commission of felony or gross
11 misdemeanor, the commission of a domestic violence or DUI, the violation
12 of a TPO or absconding. Mr. Brown Wheaton has done none of those
13 things. An arrest is not the commission of a crime. The State has not
14 proved anything occurred other than the fact that the police arrested him.

15 Now getting arrested is a violation of the terms of probation,
16 which is why we acknowledge this is a technical violation and the fact that
17 he hasn't been complete -- you know, that he's missed three of his
18 domestic violence classes for unexcused absences. That is a technical
19 violation. But the fact is an accusation does not a commission make.

20 Somebody who is accused of murder but then has those
21 charges dropped would never be said to have committed murder. It's a
22 similar analogy here, Your Honor. Mr. Brown Wheaton was accused of a
23 domestic violence. But then when asked to produce evidence the State
24 could not do it and the case was dismissed. He has not committed a new
25

1 domestic violence charge. Therefore, this report is mislabeled. This is
2 not a non-technical violation. It is a technical violation.

3 This is Mr. Brown Wheaton's first revocation hearing. It is his
4 first technical violation. Under that same NRS 176 that I quoted earlier,
5 that means that the maximum punishment that Mr. Brown Wheaton could
6 receive on a technical violation would be 30 days in custody. He's already
7 been in custody for 41 days as a result of this arrest and as a result of
8 waiting for this hearing to be heard and under -- excuse me, I understand
9 that this hearing was delayed in order to see what the outcome was in his
10 domestic violence case, which was again dismissal.

11 So at this point, Your Honor, I understand that the State does
12 not like Mr. Brown Wheaton, that it does not approve of his behavior and I
13 get that. But the fact of the matter is Mr. Brown Wheaton has not
14 committed a non-technical violation. He is not eligible to be revoked
15 today.

16 And even if he was I think again the State was doing it
17 admittedly effective job of scare mongering and trying to make Mr. Brown
18 Wheaton sound like he's the worst person in the world. He works fulltime.
19 The victim in this incident, Lexa, the subject of these issues is his wife.
20 They live together. They have a child together. And they are -- I can say,
21 because she left a voicemail on my machine, she is not scared of him.

22 So I do not believe that the State fairly characterized Mr. Brown
23 Wheaton's character. I don't believe they fairly characterized the fact that
24 he's been on probation for 6 months without any issue. He's more than
25 halfway through his probation at this point. But moreover, and most

1 importantly this is not a non-technical violation. Mr. Brown Wheaton is not
2 eligible to be revoked because he was not found to have committed a
3 new crime.

4 So what I'd ask Your Honor is find him guilty of the technical
5 violation, which puts him in danger of getting a dishonorable discharge
6 from probation. But to acknowledge the fact that he has been waiting 41
7 days for this hearing to occur and to give him credit for time served.

8 If, Your Honor if not inclined to do that, I would ask on the
9 technical violation to give him 15 or 20 additional days in custody, but then
10 to reinstate him to probation so he can continue to be successful at it. I'll
11 submit.

12 THE COURT: Okay. Thank you.

13 So we have received no clarity in regards to 176A.510. There
14 are individuals that believe that it has to be an adjudication and conviction.
15 And there are individuals that only believe it needs to be an arrest. There
16 is no clarity in the statute and so different judges see it differently. I have
17 asked for clarity. I'm hoping that in one of these cases we will get it soon.
18 However, I do see -- what I'm confused about is while he may have not
19 been found to have violated the TPO, he has an active TPO on August
20 25th with an effective date until September 2nd. Did that then lapse on
21 September 2nd or was it extended?

22 THE DEFENDANT: No, it --

23 MR. BASSETT: My understanding is -- oh sorry

24 THE DEFENDANT: [Indiscernible]

25 MR. BASSETT: My understanding --

1 THE DEFENDANT: [Indiscernible]

2 MR. BASSETT: Hold on, Mr. Brown Wheaton, she's talking to
3 me. My understanding about it is that it lapsed. Because I'm sure if it had
4 not lapsed --

5 THE COURT: Right.

6 MR. BASSETT: -- that would have been noted in the violation
7 report.

8 THE COURT: Okay. I just wanted to make sure that I
9 understood factually where it was. I mean, here's the thing, I agree with
10 Mr. Bassett in the part of, you know, he can't be punished for receiving the
11 deal and the sentence that he originally got. I agree with that. I do think it
12 was a good sentence. I think in looking at this history, this is clearly
13 someone who has some major impulse control issues, violence issues,
14 when we look at all the domestic batteries, the violation of the temporary
15 orders, battery on a protected person, coercion, and then what we have
16 going after going on here that was see in the report.

17 The fact of the matter is, is I do not believe that Mr. Brown
18 Wheaton is supervisable in any shape or form. I think that he's a danger
19 to not only Ms. Simpson but to the community. I do think that it's a
20 technical violation under 176A. -- or excuse me, 176A.150, because it
21 does no discuss an adjudication or conviction. So for that --

22 THE DEFENDANT: Excuse me, Your Honor --

23 MR. BASSETT: Mr. Brown Wheaton, don't speak, sir.

24 THE DEFENDANT: I apologize, Your Honor.

25

1 THE COURT: For that -- well, yeah, okay so if, Mr. Brown
2 Wheaton, if there is something that you'd like to say. I did let -- say you
3 could speak last after Ms. Bassett -- Mr. Bassett. So if that is something
4 you want to do right now, that is fine, sir.

5 MR. BASSETT: I would urge you to keep it very brief, sir.

6 THE DEFENDANT: Understood. I just wanted to point out, like
7 Mr. Bassett pointed out, I have managed to definitely stay out of trouble.
8 I've been consistent with my check ins, with my classes. The only reason
9 with that was just because of the Zoom not being able to function
10 correctly.

11 But moreover, I have more than numerous amount of
12 opportunities that lead to success for myself and for my family. Me and
13 my fiancé have talked over things many times. We have come to a lot
14 better understanding over the past just year and a half of us being
15 together, let alone the 5 years that we've been together. You know, I just
16 recently got my amazing job with the union that I've been trying to get
17 since I was 19. Not only that, but I'm also a business owner with my own
18 business, my landscaping business. So I have opportunities to be
19 successful. And with being successful keep myself out of trouble.

20 I've never, with my P&P officer, given her a hard time nor not
21 been compliant. So it's just -- as my attorney stated, you know, it's just -- I
22 understand behavior does play a big part, but my point is I know that I
23 need to be there for my son. So in order to do that I'm -- like I'm willing to
24 accept and not only accept but step up to the plate as a young man and
25 be there for him and do the things that it's going to take to be there for him

1 and not only for him, for my family for my fiancé who is pregnant now I just
2 found out. I know the steps I need to take. And I've explained that to her,
3 my P&P officer.

4 The report that she has and the report that you have and the
5 State has. It makes -- I think it helps perceive me in a fashion that I am
6 not.

7 MR. BASSETT: Mr. Brown Wheaton.

8 THE DEFENDANT: And that's -- I'll suffice on that.

9 THE COURT: Okay. Thank you, sir. I mean, here's the deal.
10 One of the things that your probation officer discusses is she talks in the
11 violation report and today is that you do not take responsibility for any of
12 your actions. And you talk about you have all these opportunities. That's
13 what probation was. That was your opportunity to do what you should
14 have been doing. So I am sticking with my original I'm sentencing--

15 THE DEFENDANT: And I can continue to do that.

16 THE COURT: -- Mr. Brown Wheaton --

17 MR. BASSETT: Mr. Brown Wheaton, stop talking, sir.

18 THE COURT: -- is revoked --

19 THE DEFENDANT: I apologize.

20 THE COURT: -- 24 to 60 months is imposed. He has 35 days
21 credit for time served as of today.

22 MR. BASSETT: What -- I'm sorry, Your Honor, I thought you
23 said that you found that this was a technical violation.

24 THE COURT: No, sorry.

25 MR. BASSETT: Because there was no adjudication.

1 THE COURT: I apologize. I originally started reading 176A.630
2 as a technical. In regards to the technical violations, I said it excludes
3 absconding the new felony or gross misdemeanors, and certain
4 misdemeanors, battery domestic violence. And that's why I was saying it
5 doesn't say an adjudication. It talks about just a commission. So I don't
6 agree with you. I do believe that you can be violated for an arrest.

7 MR. BASSETT: Even though no independent magistrate found
8 that he committed a crime?

9 THE COURT: Right. Yeah, if you're arrested -- that's why I
10 said -- if you disagree that that's why this needs to be sent up, because
11 people are getting revoked every day for simply being arrested, because
12 the statute does not say adjudication. So that's --

13 THE DEFENDANT: We are doing -- me and my fiancé are
14 doing amazing, Your Honor.

15 THE COURT: Okay.

16 THE DEFENDANT: We're expecting a baby.

17 THE COURT: Thank you, sir. I appreciate that.

18 [Colloquy between the Judge and staff]

19 THE DEFENDANT: So what is the outcome, Your Honor? I
20 didn't --

21 THE COURT: You've been revoked, sir.

22 [Colloquy between the Judge and staff]

23 THE DEFENDANT: So I do another 30 days or 60 days?

24 MR. BASSETT: No, your full sentence was imposed. I'll call
25 you.

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THE DEFENDANT: All right.

[Hearing concluded at 12:16 a.m.]

* * * * *

ATTEST: Pursuant to Rule 3C (d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.



Jessica Kirkpatrick
Court Recorder/Transcriber

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JEREMY BROWN-WHEATON,) No. 83896
)
Appellant,)
)
v.)
)
THE STATE OF NEVADA,)
)
Respondent.)
)

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I hereby certify that this document was filed electronically with the Nevada Supreme Court 7th on the day of March, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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BY /s/ Rachel Howard
Employee, Clark County Public Defender's Office