

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERALD LEE WHATLEY, JR.,
Appellant(s),

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK,
Respondent(s),

Electronically Filed
May 02 2023 10:11 AM
Elizabeth A. Brown
Clerk of Supreme Court

Case No: C-21-357412-1
Related Case A-22-861330-W
Docket No: 86185

RECORD ON APPEAL VOLUME 1

ATTORNEY FOR APPELLANT
GERALD LEE WHATLEY, JR. # 48057,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

I N D E X

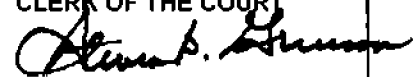
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INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHAD LEXIS
Chief Deputy District Attorney
Nevada Bar #010391
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

I.A. 08/03/21
10:00 AM
L. PARK

THE STATE OF NEVADA,
Plaintiff,

-vs-

GERALD LEE WHATLEY JR., aka,
Gerald L. Whatley Jr., #275395,
Defendant.

CASE NO: C-21-357412-1

DEPT NO: XX

INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

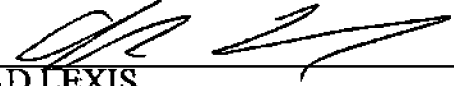
STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That GERALD LEE WHATLEY JR., aka, Gerald L. Whatley Jr., the Defendant(s) above named, having committed the crime of **RECKLESS DRIVING (Category B Felony - NRS 484B.653 - NOC 53896)**, on or about the 23rd day of November, 2019, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did then and there willfully, unlawfully, and feloniously drive a motor vehicle on a highway or premises to which the public has access, located at Desert Inn Road and Theme, Las Vegas, Clark County, Nevada, with willful or wanton disregard for the safety of persons or property, by driving said vehicle without paying full time and attention to his driving, and/or failing to

1 exercise due care, and/or failing to drive in a careful and prudent manner, which acts, or neglect
2 of duties, proximately causing the death of or substantial bodily harm to an unknown person.

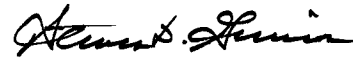
3 STEVEN B. WOLFSON
4 Clark County District Attorney
5 Nevada Bar #001565

6 BY


7 CHAD LEXIS
8 Chief Deputy District Attorney
9 Nevada Bar #010391
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27 19M24489X/td/vcu
28 LVMPD EV#191100108577
(TK11)

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
3 - 48
WILL FOLLOW VIA
U.S. MAIL


CLERK OF THE COURT

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

Gerald Lee Whatley, Jr,

Defendant

District Court Case No.: **C-21-357412-1**
XX

Justice Court Case No.: 19M24489X

CERTIFICATE

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as
the same appear in the above case.

Dated this 30th day of July, 2021



Justice of the Peace, Las Vegas Township

1
2 **JUSTICE COURT, LAS VEGAS TOWNSHIP**
3 **CLARK COUNTY, NEVADA**

4 STATE OF NEVADA,

5 Plaintiff,

6 vs.

7 Gerald Lee Whatley, Jr

8 Defendant
9

District Court Case No.: C-21-357412-1

Justice Court Case No.: 19M24489X

10 **BINDOVER and ORDER TO APPEAR**

11 An Order having been made this day by me that **Gerald Lee Whatley, Jr** be held
12 to answer before the Eighth Judicial District Court, upon the charge(s) of **DUI of alcohol**
13 **and/or controlled or prohibited substance, with prior felony DUI conviction [53916]**
14 committed in said Township and County, on November 23, 2019 .

15 **IT IS FURTHER ORDERED** that said defendant is commanded to appear in the
16 Eighth Judicial District Court, Regional Justice Center, Las Vegas, Nevada on August 3,
17 2021 at 10:00 AM, Department 20, Courtroom 12A for arraignment and further
18 proceedings on the within charge(s).

19 Dated this 30th day of July, 2021

20 

21 Justice of the Peace, Las Vegas Township
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JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

2020 JUN 11 A 10:22

THE STATE OF NEVADA,

Plaintiff,

-vs-

GERALD LEE WHATLEY JR., aka,
Gerald L. Whatley Jr. #2753951,

Defendant.

JUSTICE COURT
LAS VEGAS NEVADA

CASE NO: 19M24489X

DEPT NO: 13

DA CASE NO:

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of DRIVING UNDER THE INFLUENCE (Category B Felony - NRS 484C.110, 484C.410, 484C.105 - NOC 53916) and OPERATION OF MOTOR VEHICLE WITHOUT SECURITY (Misdemeanor - NRS 485.185, 485.187, 485.360 - NOC 54095), in the manner following, to wit: That the said Defendant, on or about the 23rd day of November, 2019, at and within the County of Clark, State of Nevada,

COUNT 1 - DRIVING UNDER THE INFLUENCE

did willfully and unlawfully drive and/or be in actual physical control of a motor vehicle on a highway or on premises to which the public has access at Desert Inn Road and Theme, Las Vegas, Clark County, Nevada, Defendant being responsible in one or more of the following ways and/or under one or more of the following theories, to wit: 1) while under the influence of intoxicating liquor to any degree, however slight, which rendered him incapable of safely driving and/or exercising actual physical control of a vehicle, 2) while he had a concentration of alcohol of .08 or more in his blood, and/or 3) when he was found by measurement within two (2) hours after driving and/or being in actual physical control of a vehicle to have a concentration of alcohol of .08 or more in his blood, Defendant having previously been convicted of a violation of NRS 484C.110 that is punishable as a felony pursuant to paragraph (c) of subsection 1 of NRS 484C.400, and/or a violation of a law of any other jurisdiction that prohibits the same or similar conduct as a violation of NRS 484C.110

19M24489X
CRM
Criminal Complaint
12406400

\\CLARKCOUNTYDA.NET\CRM\CASE2\2019\594\53\FILING\201959453C-COMP-(GERALD L WHATLEY JR)-001.DOCX



1 that is punishable as a felony pursuant to paragraph (c) of subsection 1 of NRS 484C.400
2 and/or paragraph (b) of subsection 1 of NRS 484C.400 that was reduced from a felony
3 pursuant to NRS 484C.340, to wit:

4 Conviction: January 8, 2013, Case No. C-12-279225-1,
5 Eighth Judicial District Court, Las Vegas, Clark County, Nevada.

6 COUNT 2 - OPERATION OF MOTOR VEHICLE WITHOUT SECURITY

7 being the operator of a motor vehicle registered in the State of Nevada, or the operator
8 of a motor vehicle not registered, but present in the State of Nevada, did drive on Desert Inn
9 Road and Theme, Las Vegas, Clark County, Nevada, and willfully and unlawfully fail to
10 continuously provide security as proof of financial responsibility for payment of tort liabilities
11 arising from maintenance or use of said motor vehicle by a contract of insurance for a motor
12 vehicle liability policy, or by qualifying as a self insurer, pursuant to Nevada Revised Statute,
13 Chapter 485.

14 All of which is contrary to the form, force and effect of Statutes in such cases made and
15 provided and against the peace and dignity of the State of Nevada. Said Complainant makes
16 this declaration subject to the penalty of perjury.

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27 19M24489X/mab
28 LVMPD EV# 191100108577
(TK11)

NOTICE OF INTENT TO USE AFFIDAVIT OR DECLARATION

Please be advised that, pursuant to NRS 50.315 and 50.325, upon the trial of this matter, the State of Nevada intends to offer into evidence the affidavit or declaration made under penalty of perjury of the person who withdrew the sample of whole blood from the Defendant for the purposes set forth in NRS 50.315(4). A copy of said affidavit or declaration is included in the discovery provided in this matter.

The person who withdrew the sample of whole blood in this matter is:

B. ROUNDS

SUNRISE HOSPITAL

3186 South Maryland Parkway

Las Vegas, Nevada

**Justice Court, Las Vegas Township
Clark County, Nevada**

Department: PC

Court Minutes



L011770499

PC19M24489X State of Nevada vs. Whatley, Gerald Lee

**11/24/2019 1:30:00 PM Initial Appearance
Justice Court (PC Review)**

Result: Matter Heard

PARTIES PRESENT:	State Of Nevada	Walsh, Jessica
	Defendant	Whatley, Gerald Lee

Judge: Baucum, Suzan

Court Clerk: Cardenas, Pompeya

PROCEEDINGS

Hearings:	1/6/2020 7:30:00 AM: Status Check on Filing of Criminal Complaint	Added
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Events: **72-Hour Hearing Completed**

Probable Cause Found

Counsel Provisionally Appointed

J. Bayudan, esq. Counsel provisionally appointed for limited purposes of first appearance hearing.

Bail Argument Heard

The Court has heard arguments from the prosecution and defense counsel regarding custody of the Defendant

State Requests Additional Time for Filing of Complaint

Release Order - Own Recognizance

Counts: 001; 002

Bail Condition - Options Alcohol Monitoring

**Justice Court, Las Vegas Township
Clark County, Nevada**

Department: PC

Court Minutes



L011982643

PC19M24489X State of Nevada vs. Whatley, Gerald Lee

**1/6/2020 7:30:00 AM Status Check on Filing of
Criminal Complaint (O/R with Options Alcohol
Monitoring)**

Result: Matter Heard

PARTIES	State Of Nevada	Malkova, Mariya
PRESENT:	Attorney	Park, Leslie A.
Judge:	Baucum, Suzan	
Court Reporter:	Morichetti, R.	
Court Clerk:	Ward, Karen	

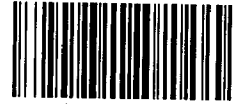
PROCEEDINGS

Attorneys:	Park, Leslie A.	State of Nevada	Added
Hearings:	5/5/2020 7:30:00 AM: Status Check on Filing of Criminal Complaint		Added
Events:	Counsel Confirms as Attorney of Record <i>L. Park, Esq.</i> State Requests Additional Time for Filing of Complaint Continued for Status Check on filing of Criminal Complaint Bail Condition - Options Alcohol Monitoring		

**Justice Court, Las Vegas Township
Clark County, Nevada**

Department: PC

Court Minutes



L012238718

PC19M24489X State of Nevada vs. Whatley, Gerald Lee

Lead Atty: Leslie A. Park

**3/18/2020 7:30:00 AM Status Check (O/R with
Options Alcohol Monitoring - ICOC)**

Result: Matter Heard

PARTIES PRESENT:	State Of Nevada	Bauman, Eric
	Attorney	Park, Leslie A.
	Defendant	Whatley, Gerald Lee

Judge: Pro Tempore, Judge

Court Reporter: Morichetti, R.

Court Clerk: Bush, Samara

Pro Tempore: Walsh, Robert J

PROCEEDINGS

Hearings:	5/5/2020 7:30:00 AM: Status Check on Filing of Criminal Complaint	Canceled
	6/24/2020 7:30:00 AM: Status Check on Filing of Criminal Complaint	Added

Events: **State Requests Additional Time for Filing of
Complaint**
90 days
**Continued for Status Check on filing of Criminal
Complaint**
Future Court Date Vacated
5/5/20 at 7:30 am
Release Order - From Options Alcohol Monitoring
Release Order - Own Recognizance
Counts: 001; 002

**Justice Court, Las Vegas Township
Clark County, Nevada**

Department: 13

Court Minutes



L012445628

19M24489X

State of Nevada vs. Whatley, Gerald Lee, Jr

Lead Atty: Leslie A. Park

6/24/2020 7:30:00 AM Arraignment (O/R)

Result: Matter Heard

PARTIES
PRESENT: State Of Nevada Bauman, Eric
Attorney Park, Leslie A.

Judge: Baucum, Suzan
Court Reporter: Morichetti, R.
Court Clerk: Bush, Samara

PROCEEDINGS

Hearings: 10/1/2020 8:00:00 AM: Bench Trial

Added

Events: **Arraignment Completed**

Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint

Discovery Given to Counsel in Open Court

Plea of Not Guilty Entered

**Justice Court, Las Vegas Township
Clark County, Nevada**

Department: 13

Court Minutes



L013585618

19M24489X

State of Nevada vs. Whatley, Gerald Lee, Jr

Lead Atty: Leslie A. Park

4/1/2021 8:00:00 AM Bench Trial (O/R)

Result: Matter Heard

PARTIES	State Of Nevada	Bauman, Eric
PRESENT:	Attorney	Park, Leslie A.
Judge:	Baucum, Suzan	
Court Reporter:	Morichetti, R.	
Court Clerk:	Garcia, Maria D.	

PROCEEDINGS

Hearings:	7/14/2021 8:00:00 AM: Bench Trial	Added
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Events:	Motion to Continue - Defense
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Motion Granted

Bench Trial Date Reset

**Justice Court, Las Vegas Township
Clark County, Nevada**

Department: 13

Court Minutes



L013821945

19M24489X

State of Nevada vs. Whatley, Gerald Lee, Jr

Lead Atty: Leslie A. Park

7/14/2021 8:00:00 AM Bench Trial (O/R)

Result: Bound Over

PARTIES	State Of Nevada	Bauman, Eric
PRESENT:	Attorney	Park, Leslie A.
	Defendant	Whatley, Gerald Lee, Jr
Judge:	Baucum, Suzan	
Court Reporter:	Morichetti, R.	
Court Clerk:	Cardenas, Pompeya	

PROCEEDINGS

Events: Defendant Waives the Right to Trial

Admonishment of Rights - DUI

Filed in open Court

Bifurcated Charges Bound over To District Court

Review Date: 7/15/2021

District Court Appearance Date Set (T11)

Aug 3 2021 10:00AM: Department 20 - Courtroom 12A - O/R

Judgment Entered

Case Closed - Bound Over

Order for Breath Ignition Interlock Device

Filed in Open Court

Charges: Amended: 002: Driving under the influence of alcohol and/or controlled or prohibited substance, 1st offense

Per Negotiations

Plea/Disp: 001: DUI of alcohol and/or controlled or prohibited substance, with prior felony DUI conviction [53916]

Disposition: Waiver of Preliminary Hearing - Bound Over to District Court

002: DUI of alcohol and/or controlled or prohibited substance, 1st offense [53900]

Plea: Nolo Contendere

Disposition: Guilty as Amended

Sentence: Misdemeanor Sentence

Credit for Time Served 7/14/2021 -

Satisfied (7/14/2021)

Breath Interlock Device 7/14/2021 - 1/15/2022

Closed (7/14/2021)

185 DAYS

Options Diversionary Programs, LLC
Options Smart Monitoring

COMPLIANT STATUS REPORT

Nov 26, 2019

COURT INFORMATION

3562 W. Cheyenne Ave., Ste. 100
N. Las Vegas, NV 89032

JC 13
Judge Baucum

CLIENT: Gerald Whatley

CASE #: 19M24489x

CRD: Jan 6, 2020

Outstanding Balance: \$125.00

Comments:

Client completed Options Alcohol Monitoring intake on 11/26/19 and is now being monitored. Options will continue to update the court as required.

BAC ALCOHOL MONITORING

MONITORING START DATE	MONITORING END DATE	MONITORING STATUS	BALANCE
Nov 26, 2019		Compliant	\$125.00

The client's current balance is: \$125.00

Clients are expected to remain Alcohol, Drug and Narcotic medication free for the duration of monitoring. Compliance is defined as successfully responding to all random and triggered BAC alerts within the given time frame. BAC results must be registered at a 0.00 level. Failure to comply with notifications will result in client having to submit to a random UA request by Options. Positive or Dilute specimen will be considered a VIOLATION and reported back to the referring jurisdiction.

Respectfully,

Options Monitoring Program

PC19M24489X
OMR
Options Monitoring Report
11781879



Options Diversionary Programs, LLC
Options Smart Monitoring

VIOLATION REPORT

Mar 5, 2020

COURT INFORMATION

3562 W. Cheyenne Ave., Ste. 100
N. Las Vegas, NV 89032

JC 13
Judge Baucum

CLIENT: Gerald Whatley

CASE #: 19M24489x

CRD: May 5, 2020

Outstanding Balance: \$780.00

Comments:

03/05/20- Mr. Whatley is NON-COMPLIANT with Options Alcohol Monitoring. Client stopped responding to his Random BAC alerts on March 2. Due to the Failed check-ins and no contact with Mr. Whatley, Options located our client In-Custody at CCDC. Client has been remanded on a District Court case C-19-338413-1.

Test Comments:

Respectfully,

Options Monitoring Program

PC19M24489X
OMR
Options Monitoring Report
12190889



NOTICE OF INTENT TO USE AUDIOVISUAL TECHNOLOGY PURSUANT TO NRS
171.1975 TO PRESENT LIVE TESTIMONY AT PRELIMINARY EXAMINATION DUE TO
COVID-19 OUTBREAK

FILED

Pursuant to NRS 171.1975, if the preliminary hearing in this matter is conducted during the COVID-19 outbreak, the State of Nevada intends to present the testimony of all victims and witnesses, regardless of geographical location, through the use of audiovisual technology. The court must allow the use of such audiovisual technology if good cause exists.¹

JUN 11 A 10:22
THE COURT
LAS VEGAS, NEVADA
JNV

Prior to the preliminary hearing in this matter, the witness will be sworn and will sign the previously provided declaration, which acknowledges that "the witness understands that he or she is subject to the jurisdiction of the courts of this state and may be subject to criminal prosecution for the commission of any crime in connection with his or her testimony, including, without limitation, perjury, and that the witness consents to such jurisdiction."²

BY _____
DEPUTY

There is good cause existing to limit in-person testimony at a preliminary hearing during the COVID-19 outbreak due to the following facts and circumstances:

On March 11, 2020, the World Health Organization, noting their deep concern as to "both [] the alarming levels of spread and severity, and [] the alarming levels of inaction," to the COVID-19 outbreak, officially declared the outbreak as a **pandemic**. While doing so, the WHO noted they "have never before seen pandemic that can be controlled," and since they were first notified, they have "called everyday [sic] for countries to take urgent and aggressive action," further noting, "[w]e have rung the alarm bell loud and clear."³

Since this classification of the COVID-19 outbreak as a pandemic, Federal, State, County, and Local governments across the United States of America have taken swift and significant action to prevent the spread of this disease.

On Friday, March 13, President Trump declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.⁴ Three days after this initial proclamation, President Trump and the White House Coronavirus Task Force issued stronger guidelines in an effort to slow the spread of this disease. Notably, the guidelines stated "[e]ven if you are young, or otherwise healthy, you are at risk and your activities can increase the risk for others. It is critical that you do your part to slow the spread of the coronavirus." President Trump called for gatherings to be no larger than ten people and to avoid eating and drinking in bars, restaurants, or food courts.⁵ Finally, the Director of the National Institute of Allergy and Infectious Diseases

¹ NRS 171.1975.1 "... if good cause otherwise exists, the magistrate must allow the witness to testify at the preliminary examination through the use of audiovisual technology."

² NRS 171.1975.2

³ <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

⁴ <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak>

⁵ <https://www.whitehouse.gov/briefings-statements/coronavirus-guidelines-america/>

https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf

19M24489X
NOIAT
Notice of Intent - Audiovisual Technology
12406401



noted: “[w]hen you’re dealing with an emerging infectious disease outbreak, you are always behind where you think you are....”⁶

Governor Sisolak issued a Declaration of Emergency in the State of Nevada on March 12, 2020. On Sunday, March 15, 2020, Governor Sisolak ordered all K-12 schools in the State of Nevada closed through April 6, 2020. Later that same day, he announced further directives, which included: closing state offices to the public, a call to transition to working as much as possible over the phone or online for essential services, and strongly encouraged gaming properties to close to the public. Governor Sisolak stated these efforts are required “protect the health and safety of the public and our state workforce while ensuring that the important work of our state government does not grind to a halt.” Further, he noted that we all “must do what we can to be part of the solution and share[] responsibility for each other as Nevadans.”⁷

Clark County, as well as many cities therein, issued their own Declarations of Emergency in response to the COVID-19 outbreak.⁸ Federal, state, and local courts also responded to the outbreak with varying administrative orders, citing the COVID-19 outbreak as good cause to suspend court proceedings or scale back operations.

The U.S. District Court for the District of Nevada continued all trials through April 20, 2020, among other modifications and visitor restrictions “to do its part in slowing the spread of COVID-19.”⁹

The Nevada Supreme Court and Court of Appeals imposed visitor restrictions to minimize exposure, noting, “... the best way to prevent illness is to avoid being exposed to the virus.”¹⁰

The Eighth Judicial District Court issued Administrative Order 20-01, which suspended all jury trials for 30 days and encouraged any essential hearings to be heard through alternative means to in-person appearances. Additionally, the order provided restrictions on public and employee entry into the courthouse.¹¹ Three days later, through Administrative Order 20-02, the court discontinued in-person meetings or gatherings and issued a direction to conduct court business through social distancing.¹²

The Las Vegas Justice Court issued Administrative Order 20-03, which provided for amended procedures due to the COVID-19 outbreak. However, all preliminary hearings, regardless of

⁶ <https://www.nytimes.com/2020/03/16/us/politics/trump-coronavirus-guidelines.html>, https://twitter.com/ABC/status/1239638144955437056?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1239638144955437056&ref_url=https%3A%2F%2Fwww.redditmedia.com%2Fmediaembed%2Ffr106%3Fresponsive%3Dtrue%26is_nightmode%3Dfalse

⁷ <https://nvhealthresponse.nv.gov/preparation-in-nv/>, http://gov.nv.gov/News/Press/2020/Governor_Sisolak_Updates_Public_on_State_Action_and_Guidance_Regarding_COVID-19/

⁸ https://www.fox5vegas.com/coronavirus/las-vegas-clark-county-surrounding-cities-declare-state-of-emergency/article_7e1d4c6a-672d-11ea-be3d-6f2ce56da2c4.html

⁹ <https://www.clarkcountybar.org/wp-content/uploads/USDC-NV-03-16-2020-Press-Release-Final.pdf>

¹⁰ <https://nvcourts.gov/COVID-19-restrictions/>

¹¹ http://www.clarkcountycourts.us/res/rules-and-orders/2020-03-14_11_43_36_admin%20order%2020-1.pdf

¹² http://www.clarkcountycourts.us/res/rules-and-orders/2020-03-16_09_07_52_administrative%20order%2020-02.pdf

custody status, are still expected to proceed in person, although alternative appearances for the attorneys are “encouraged when possible.”¹³

While there are precautionary measures in place to screen for those exhibiting symptoms of the virus before entering the courthouse, the courthouse is open to the public as of March 16, 2020. A person infected with this virus, and who is contagious, may take up to two weeks to exhibit the symptoms that are the current focus of any screening. Further, multiple new studies strongly suggest that those who are infected, but are asymptomatic, are likely a significant force driving the spread of COVID-19.¹⁴ Finally, President Trump declared COVID-19 an “invisible enemy.”¹⁵

Considering preliminary hearings are still scheduled and expected to be heard in the Las Vegas Justice Court, where attorneys are encouraged to use alternative methods to appear, limiting the in-person testimony of all victims and witnesses is required in the interest of public health and the safety of our community. Therefore, the State of Nevada intends to introduce such testimony at the preliminary hearing through the use of audiovisual technology should this hearing proceed during the COVID-19 outbreak.

¹³ <http://www.lasvegasjusticecourt.us/Admin%20Order%202020-03.pdf>

¹⁴ <https://www.cnn.com/2020/03/14/health/coronavirus-asymptomatic-spread/index.html>,
<https://science.sciencemag.org/content/early/2020/03/13/science.abb3221?rss=1>,
<https://www.sciencenews.org/article/coronavirus-most-contagious-before-during-first-week-symptoms>,
<https://www.foxnews.com/media/dr-siegel-bars-concerts-coronavirus-highly-contagious>

¹⁵ <https://www.politico.com/news/2020/03/16/trump-recommends-avoiding-gatherings-of-more-than-10-people-132323>

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff,

-vs-

Gerald Whalley

Defendant(s),

CASE NUMBER: 20

DEPT. NO.: JC Department 13

19M24489X

LAS VEGAS JUSTICE COURT
FILED IN OPEN COURT

BY:

JUL 14 2021

DUI ADMONISHMENT OF RIGHTS (FOR OFFENSES COMMITTED ON OR AFTER OCTOBER 1, 2018)

I am the Defendant in this case. At this time, I am charged with willfully and unlawfully driving or being in actual physical control of a motor vehicle on a highway or on premises to which the public has access in the County of Clark, State of Nevada, while under the influence of intoxicating liquor; AND/OR a controlled substance; AND/OR a prohibited substance; AND/OR while having a concentration of alcohol of 0.08 or more in my blood or breath (0.04 or more if I was driving a commercial vehicle); AND/OR while having a concentration of alcohol of 0.08 or more in my blood or breath (0.04 or more if I was driving a commercial vehicle) within two hours after driving or being in actual physical control of a motor vehicle, in violation of NRS 484C.110.

I AM AWARE THAT I HAVE EACH OF THE FOLLOWING RIGHTS AND THAT I WILL BE WAIVING THESE RIGHTS IF I PLEAD GUILTY OR NOLO CONTENDERE:

1. The right to a speedy trial;
2. The right to require the State to prove the charge(s) against me beyond a reasonable doubt;
3. The right to confront and question all witnesses against me;
4. The right to subpoena witnesses on my behalf and compel their attendance;
5. The right to remain silent and not be compelled to testify if there were a trial; and
6. The right to appeal my conviction except on constitutional or jurisdictional grounds.

I AM ALSO AWARE THAT BY PLEADING GUILTY OR NOLO CONTENDERE I AM ADMITTING THE STATE COULD FACTUALLY PROVE THE CHARGE[S] AGAINST ME. I AM ALSO AWARE THAT MY PLEA OF GUILTY OR NOLO CONTENDERE MAY HAVE THE FOLLOWING CONSEQUENCES:

1. I understand the State will use this conviction, and any other prior conviction from this or any other State which prohibits the same or similar conduct, to enhance the penalty for any subsequent offense;
2. I understand that, as a consequence of my plea of guilty or nolo contendere, if I am not a citizen of the United States, I may, in addition to other consequences provided by law, be removed, deported or excluded from entry into the United States or denied naturalization;
3. I understand that sentencing is entirely up to the court and the following penalties for committing the offense described above will apply:

FIRST OFFENSE WITHIN 7 YEARS (MISDEMEANOR):

At least 2 days, but not more than 6 months in the Clark County Detention Center or at least 48 hours, but not more than 96 hours of community service; a fine of not less than \$400 nor more than \$1,000 in addition to certain fees and assessments that are required by statute; required attendance at DUI school with tuition required to be paid by me; required attendance at the Victim Impact Panel. If I was found to have a concentration of alcohol of 0.18 or more in my blood or breath or if I was under 21 years of age when I committed this violation, the Court must, before sentencing, require an alcohol/drug dependency evaluation, and I will be assessed a \$100 fee. If I was found to have had a concentration of alcohol of less than 0.18 in my blood or breath, the Court must order a Breath Interlock Device installed on any vehicle I own or operate for not less than 185 days, at my own expense, as a condition to obtaining a restricted license pursuant to NRS 483.490 or as a condition of reinstatement of my driving privilege. If I was found to have had a concentration of alcohol of 0.18 or more in my blood or breath, the Court must order a Breath Interlock Device installed on any vehicle that I own or operate for not less than 12 months or more than 36 months, at my own expense, as a condition to obtaining a restricted license pursuant to NRS 483.490 or as a condition of reinstatement of my driving privilege. Further, the Department of Motor Vehicles will revoke or suspend my driver's license for at least 185 days and impose a \$35 civil penalty. Also, if I was found to have a concentration of alcohol of 0.18 or more in my blood or breath, I will be required to attend a program of treatment for the abuse of alcohol or drugs.

SECOND OFFENSE WITHIN 7 YEARS (MISDEMEANOR):

At least 10 days, but not more than 6 months in the Clark County Detention Center or in residential confinement; a fine of not less than \$750 nor more than \$1,000 in addition to certain fees and assessments that are required by statute, or an equivalent number of hours of community service; and required attendance at the Victim Impact Panel. In addition, the Court must, before sentencing, require an alcohol/drug dependency evaluation, and I will be assessed a \$100 fee. Further, the Department of Motor Vehicles will revoke or suspend my driver's license for at least 1 year, impose a \$35 civil penalty, and suspend my registration for at least five days. If I was found to have had a concentration of alcohol of less than 0.18 in my blood or breath, the Court must order a Breath Interlock Device installed on any vehicle I own or operate for not less than 185 days, at my own expense, as a condition to obtaining a restricted license pursuant to NRS 483.490 or as a condition of reinstatement of my driving privilege. If I was found to have had a concentration of alcohol of 0.18 or more in my blood or breath, the Court must order a Breath Interlock Device installed on any vehicle that I own or operate for not less than 12 months or more than 36 months, at my own expense, as a condition to obtaining a restricted license pursuant to NRS 483.490 or as a condition of reinstatement of my driving privilege. Also, the Court must order me to attend a program of treatment for the abuse of alcohol or drugs.

DEFENDANT'S INITIALS: GW

DEFENDANT'S ATTORNEY'S INITIALS (if applicable):

CRS - DUI Admonis

19M24489X

DUAD

Admonishment of Rights - DUI

13821207



Revised October 1, 2018

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

DUI ADMONISHMENT OF RIGHTS (CONT'D) CASE NO:

THIRD OFFENSE WITHIN 7 YEARS (FELONY):

Incarceration in the Nevada State Prison for a non-probationable sentence of at least 1 year, but not more than 6 years; a fine of not less than \$2,000 nor more than \$5,000 in addition to certain fees and assessments that are required by statute; and required attendance at the Victim Impact Panel. The Court must order a breath interlock device installed on any vehicle I own or operate for not less than 12 months nor more than 36 months upon my release from prison at my expense. Further, the Department of Motor Vehicles will revoke or suspend my driver's license for at least 3 years, impose a \$35 civil penalty, and suspend my registration for at least five days. Before sentencing, the Court must also require me to be evaluated to determine whether I am an abuser of alcohol or drugs and whether I can be treated successfully for that condition.

SPECIAL WARNING

A person who has previously been convicted of: (a) A violation of NRS 484C.110 or 484C.120 that is punishable as a felony pursuant to paragraph (c) of subsection 1; (b) A violation of NRS 484C.430; (c) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484C.110, NRS 484C.130, or NRS 484C.430; (d) A violation of a law of any other jurisdiction that prohibits the same or similar conduct as set forth in paragraph (a), (b) or (c); or (e) A violation of NRS 484C.110 or 484C.120 that is punishable pursuant to paragraph (b) of subsection 1 of NRS 484C.400 that was reduced from a felony pursuant to NRS 484C.340, and who violates the provisions of NRS 484C.110 or 484C.120, is guilty of a category B felony and shall be punished by imprisonment in the Nevada State Prison for a nonprobationable sentence of at least 2 years, but not more than 15 years, and shall be further punished by a fine of not less than \$2,000 nor more than \$5,000 in addition to certain fees and assessments that are required by statute, along with required attendance at the Victim Impact Panel. A The Court must order a Breath Interlock Device installed on any vehicle that the person owns or operates for not less than 12 months nor more than 36 months upon release from prison at the person's own expense. Further, the Department of Motor Vehicles will revoke or suspend that person's license for at least 3 years, impose a \$35.00 civil penalty, and if the person is convicted of a second or subsequent violation of NRS 484C.110 or 484C.430 within 7 years, the Court must issue an order directing the Department of Motor Vehicles to suspend the registration of that person for at least 5 days. Before sentencing the offender, the Court must also require the person to be evaluated to determine whether he is an abuser of alcohol or drugs and whether he can be treated successfully for his condition.

VEHICULAR HOMICIDE

A person who commits vehicular homicide after three prior DUI offenses is guilty of a category A felony and shall be punished by imprisonment in the state prison: (a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or (b) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served. The person may also be subjected to certain fees and assessments that are required by statute. In addition, the person is required to attend the Victim Impact Panel. The Court must also order a Breath Interlock Device on any vehicle that the person owns or operates for not less than 12 months nor more than 36 months upon the person's release from prison, at the person's own expense. Further, the Department of Motor Vehicles will revoke or suspend that person's driver's license for at least 3 years, the Department of Motor Vehicles may impose a \$35.00 civil penalty, and the person's registration will be suspended for at least 5 days. Before sentencing the offender, the Court must also require the person to be evaluated to determine whether he is an abuser of alcohol or drugs and whether he can be treated successfully for his condition.

ALL DEFENDANTS MUST INITIAL EITHER #1 OR #2 BELOW--DO NOT INITIAL BOTH

1. I am represented by an attorney in this case. My attorney has fully discussed these matters with me and advised me about my legal rights. My attorney is Lester R.
2. I have declined to have an attorney represent me and I have chosen to represent myself. I have made this decision even though there are dangers and disadvantages in self-representation in a criminal case, including but not limited to, the following:
- (a) Self-representation is often unwise, and a defendant may conduct a defense to his or her own detriment;
 - (b) a defendant who represents himself is responsible for knowing and complying with the same procedural rules as lawyers, and cannot expect help from the Judge in complying with those procedural rules;
 - (c) a defendant representing himself will not be allowed to complain on appeal about the competency or effectiveness of his or her representation;
 - (d) the state is represented by experienced professional attorneys who have the advantage of skill, training and ability;
 - (e) a defendant unfamiliar with legal procedures may allow the prosecutor an advantage, may not make effective use of legal rights, and may make tactical decisions that produce unintended consequences; and
 - (f) the effectiveness of the defense may well be diminished by a defendant's dual role as attorney and accused.

DEFENDANT'S SIGNATURE	DATE OF BIRTH	DATE
<u>[Signature]</u>	<u>08/15/71</u>	<u>1-14-21</u>

I HAVE REVIEWED THIS ADMONISHMENT WITH MY CLIENT AND HE/SHE UNDERSTANDS THE RIGHTS HE/SHE IS WAIVING AND THE CONSEQUENCES OF HIS/HER PLEA OF GUILTY/NOLO CONTENDERE TO THIS DUI CHARGE.

DEFENDANT'S ATTORNEY (if applicable)

BAR NUMBER

**JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY REGIONAL JUSTICE CENTER
200 LEWIS AVENUE
LAS VEGAS, NEVADA 89101
COURT 128**

DISPOSITION NOTICE AND JUDGMENT

Court Case Number: 19M24489X

State of Nevada vs. Whatley, Gerald Lee, Jr	ID#: 2753951
AKA: Whatley, Gerald Lee, Jr	Arrest Date: 11/23/2019
Citation:	Submit Date: 7/15/2021
Department: 13	Disposition Date: 7/14/2021

Sentencing Information

**002 Driving under the influence of alcohol and/or controlled or prohibited substance, 1st offense
[53900] (11/23/2019) (M) PCN/SEQ: 0025871224 002**

Arrested As: Drive with revoked drivers license [53723] (M)

Filed As: Operator - proof of insurance required [54095] (M)

Plea: Nolo Contendere (7/14/2021)

Disp: Guilty as Amended (7/14/2021)

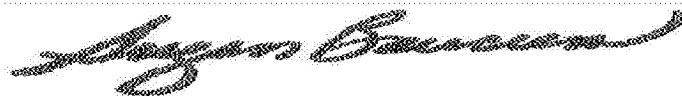
Misdemeanor Sentence

7/14/2021

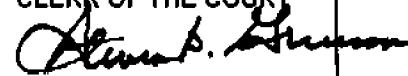
Credit for Time Served

Breath Interlock Device

185 DAYS



Justice Of The Peace



1 **GPA**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHAD LEXIS
6 Chief Deputy District Attorney
7 Nevada Bar #010391
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: C-21-357412-1

12 GERALD LEE WHATLEY JR., aka,
13 Gerald L. Whatley Jr., #275395,

DEPT NO: XX

14 Defendant

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: **RECKLESS DRIVING (Category B Felony - NRS**
17 **484B.653 - NOC 53896)**, as more fully alleged in the charging document attached hereto as
18 Exhibit "1".

19 My decision to plead guilty is based upon the plea agreement in this case which is as
20 follows:

21 Both parties stipulate to an underlying sentence of TWENTY-EIGHT (28) to
22 SEVENTY-TWO (72) months in the Nevada Department of Corrections (NDOC). Probation
23 is not to exceed THREE (3) years.

24 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
25 and/or impounded in connection with the instant case and/or any other case negotiated in
26 whole or in part in conjunction with this plea agreement.

27 I understand and agree that, if I fail to interview with the Department of Parole and
28 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,

1 by affidavit review, confirms probable cause against me for new criminal charges including
2 reckless driving or DUI, but excluding minor traffic violations, the State will have the
3 unqualified right to argue for any legal sentence and term of confinement allowable for the
4 crime to which I am pleading guilty, including the use of any prior convictions I may have to
5 increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without the
6 possibility of parole, life with the possibility of parole after ten (10) years, or a definite twenty-
7 five (25) year term with the possibility of parole after ten (10) years.

8 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
9 plea agreement.

10 CONSEQUENCES OF THE PLEA

11 I understand that by pleading guilty I admit the facts which support all the elements of
12 the offense to which I now plead as set forth in Exhibit "1".

13 I understand that as a consequence of my plea of guilty, the Court must sentence me to
14 imprisonment in the Nevada Department of Corrections for a minimum term of not less than
15 ONE (1) year and a maximum term of not more than SIX (6) years. The minimum term of
16 imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I
17 understand I will be fined a minimum of \$2,000.00 and a maximum of \$5,000.00.

18 I further understand and agree, that as a consequence of accepting the negotiations in
19 the instant case, I will not ask for nor receive treatment under NRS 458.300 et seq.

20 I understand that the law requires me to pay an Administrative Assessment Fee.

21 I understand that, if appropriate, I will be ordered to make restitution to the victim of
22 the offense to which I am pleading guilty and to the victim of any related offense which is
23 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
24 reimburse the State of Nevada for any expenses related to my extradition, if any.

25 I understand that I am eligible for probation for the offense to which I am pleading
26 guilty. I understand that except as otherwise provided by statute, the question of whether I
27 receive probation is in the discretion of the sentencing judge.

28 I understand that I must submit to blood and/or saliva tests under the Direction of the

1 Division of Parole and Probation to determine genetic markers and/or secretor status.

2 I understand that if more than one sentence of imprisonment is imposed and I am
3 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
4 the sentences served concurrently or consecutively.

5 I understand that information regarding charges not filed, dismissed charges, or charges
6 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

7 I have not been promised or guaranteed any particular sentence by anyone. I know that
8 my sentence is to be determined by the Court within the limits prescribed by statute.

9 I understand that if my attorney or the State of Nevada or both recommend any specific
10 punishment to the Court, the Court is not obligated to accept the recommendation.

11 I understand that if the offense to which I am pleading guilty was committed while I
12 was incarcerated on another charge or while I was on probation or parole that I am not eligible
13 for credit for time served toward the instant offense.

14 I understand that if I am not a United States citizen, any criminal conviction will likely
15 result in serious negative immigration consequences including but not limited to:

- 16 1. The removal from the United States through deportation;
- 17 2. An inability to reenter the United States;
- 18 3. The inability to gain United States citizenship or legal residency;
- 19 4. An inability to renew and/or retain any legal residency status; and/or
- 20 5. An indeterminate term of confinement, with the United States Federal
21 Government based on my conviction and immigration status.

22 Regardless of what I have been told by any attorney, no one can promise me that this
23 conviction will not result in negative immigration consequences and/or impact my ability to
24 become a United States citizen and or a legal resident.

25 I understand that the Division of Parole and Probation will prepare a report for the
26 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
27 sentencing, including my criminal history. This report may contain hearsay information
28 regarding my background and criminal history. My attorney and I will each have the

1 opportunity to comment on the information contained in the report at the time of sentencing.
2 Unless the District Attorney has specifically agreed otherwise, the District Attorney may also
3 comment on this report.

4 WAIVER OF RIGHTS

5 By entering my plea of guilty, I understand that I am waiving and forever giving up the
6 following rights and privileges:

- 7 1. The constitutional privilege against self-incrimination, including the right
8 to refuse to testify at trial, in which event the prosecution would not be
allowed to comment to the jury about my refusal to testify.
- 9 2. The constitutional right to a speedy and public trial by an impartial jury,
10 free of excessive pretrial publicity prejudicial to the defense, at which
trial I would be entitled to the assistance of an attorney, either appointed
11 or retained. At trial the State would bear the burden of proving beyond
a reasonable doubt each element of the offense(s) charged.
- 12 3. The constitutional right to confront and cross-examine any witnesses who
would testify against me.
- 13 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 14 5. The constitutional right to testify in my own defense.
- 15 6. The right to appeal the conviction with the assistance of an attorney,
16 either appointed or retained, unless specifically reserved in writing and
agreed upon as provided in NRS 174.035(3). I understand this means I
17 am unconditionally waiving my right to a direct appeal of this conviction,
including any challenge based upon reasonable constitutional,
18 jurisdictional or other grounds that challenge the legality of the
proceedings as stated in NRS 177.015(4). However, I remain free to
19 challenge my conviction through other post-conviction remedies
including a habeas corpus petition pursuant to NRS Chapter 34.

21 VOLUNTARINESS OF PLEA

22 I have discussed the elements of all of the original charges against me with my attorney
23 and I understand the nature of the charges against me.

24 I understand that the State would have to prove each element of the charges against me
25 at trial.

26 I have discussed with my attorney any possible defenses, defense strategies and
27 circumstances which might be in my favor.

28 All of the foregoing elements, consequences, rights, and waiver of rights have been

1 thoroughly explained to me by my attorney.

2 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
3 that a trial would be contrary to my best interest.

4 I am signing this agreement voluntarily, after consultation with my attorney, and I am
5 not acting under duress or coercion or by virtue of any promises of leniency, except for those
6 set forth in this agreement.

7 I am not now under the influence of any intoxicating liquor, a controlled substance or
8 other drug which would in any manner impair my ability to comprehend or understand this
9 agreement or the proceedings surrounding my entry of this plea.

10 My attorney has answered all my questions regarding this guilty plea agreement and its
11 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

12 DATED this 13 day of July, 2021.

13 August

14 *L. Lee Felix for Gerald Whately*
15 GERALD LEE WHATLEY JR., aka,
16 Gerald L. Whately Jr.
17 Defendant

18 Signed at Defendant's
19 Request Due to Covid-19

20 AGREED TO BY:


21 *L. Lee Felix*
22 CHAD LEE FELIX
23 Chief Deputy District Attorney
24 Nevada Bar #010391
25
26
27
28

CERTIFICATE OF COMPLIANCE

I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.
 2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.
 3. I have inquired of Defendant facts concerning Defendant's immigration status and explained to Defendant that if Defendant is not a United States citizen any criminal conviction will most likely result in serious negative immigration consequences including but not limited to:
 - a. The removal from the United States through deportation;
 - b. An inability to reenter the United States;
 - c. The inability to gain United States citizenship or legal residency;
 - d. An inability to renew and/or retain any legal residency status; and/or
 - e. An indeterminate term of confinement, by with United States Federal Government based on the conviction and immigration status.
- I have also explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.
4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.
 5. To the best of my knowledge and belief, the Defendant:
 - a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement;
 - b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily; and
 - c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

Dated: This 3 day of ~~July~~ August, 2021.


LESLIE PARK, ESQ.

td/ven

1 **INFM**

2 STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

3 CHAD LEXIS
Chief Deputy District Attorney
4 Nevada Bar #010391
200 Lewis Avenue
5 Las Vegas, Nevada 89155-2212
(702) 671-2500
6 Attorney for Plaintiff

7 L.A. 08/03/21

DISTRICT COURT
CLARK COUNTY, NEVADA

8 10:00 AM

L. PARK

9 THE STATE OF NEVADA,

10 Plaintiff

CASE NO: C-21-357412-1

11 -vs-

DEPT NO: XX

12 GERALD LEE WHATLEY JR., aka,
13 Gerald L. Whatley Jr., #255395,

14 Defendant.

INFORMATION

15 STATE OF NEVADA)

16 COUNTY OF CLARK)

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That GERALD LEE WHATLEY JR., aka, Gerald L. Whatley Jr., the Defendant(s)
20 above named, having committed the crime of **RECKLESS DRIVING (Category B Felony -**
21 **NRS 484B.653 - NOC 53896)**, on or about the 23rd day of November, 2019, within the
22 County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such
23 cases made and provided, and against the peace and dignity of the State of Nevada, did then
24 and there willfully, unlawfully, and feloniously drive a motor vehicle on a highway or premises
25 to which the public has access, located at Desert Inn Road and Theme, Las Vegas, Clark
26 County, Nevada, with willful or wanton disregard for the safety of persons or property, by
27 driving said vehicle without paying full time and attention to his driving, and/or failing to
28

exercise due care, and/or failing to drive in a careful and prudent manner, which acts, or neglect of duties, proximately causing the death of or substantial bodily harm to an unknown person.

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

IV

CHAD LEXIS
Chief Deputy District Attorney
Nevada Bar #010391

19M24489X/td/ven
I VMPD FV#191100108572
(TK1)

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
76 - 86
WILL FOLLOW VIA
U.S. MAIL**



1 CASE NO.: C-21-357412

2 DEPT. NO.: 13

3

4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

5 COUNTY OF CLARK, STATE OF NEVADA

6 -oOo-

7 STATE OF NEVADA,)

8)

9 Plaintiff,)

10)

11 vs.)

12)

13 GERALD LEE WHATLEY, JR.,)

14)

15 Defendant.)

16)

17

18

19 REPORTER'S TRANSCRIPT OF

20 UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

21 BEFORE THE HONORABLE SUZAN BAUCUM

22 JUSTICE OF THE PEACE

23

24 WEDNESDAY, JULY 14, 2021

25

APPEARANCES:

26

For the State: CHAD LEXIS, ESQ.

27

Deputy District Attorney

28

29 For the Defendant: LESLIE PARK, ESQ.

30

31 Reported by: Rose R. Morichetti, CCR No. 817

1 LAS VEGAS, NEVADA; JULY 14, 2021; 8:42 A.M.

2

3 -oOo-

4

5

6 THE COURT: Miss Park, on the 8:00 o'clock
7 calendar, Gerald Whatley, 19M24489X.

8 MS. PARK: He's outside. Can I go grab him.

9 (Whereupon, unrelated matters were heard.)

10 THE COURT: Miss Parks, recalling Gerald
11 Whatley, 19M24489X.

12 MS. PARK: Good morning, Your Honor. He is
13 present. We do have the matter resolved.

14 Today Mr. Whatley will be unconditionally
15 waiving his right to a preliminary hearing. In
16 District Court he will plead guilty to one count of
17 felony reckless and also one count of misdemeanor DUI.

18

19 The State will have to opposition to
20 probation with a stipulated underlying sentence of 28
21 to 72 months and probation not to exceed three years.

22 MR. LEXIS: Correct.

23 THE COURT: Do you have a signed admonishment
24 and waiver of rights form?

25 MS. PARK: I thought we were doing that in

1 District Court. No? We're doing it here?

2 THE COURT: We do that here for the
3 misdemeanor.

4 MS. PARK: Oh, my fault. Okay.

5 THE COURT: That's all right. Fill that out
6 and let me know when you're ready.

7 (Whereupon, unrelated matters were heard.)

8 THE COURT: Miss Park, are you ready?

9 MR. THOMAS: Yes.

10 THE COURT: Would you approach with the
11 admonishment? Is he going to get credit for time
12 served on the DUI?

13 MS. PARK: Yes.

14 MR. LEXIS: Mr. Whatley, do you understand
15 and accept the negotiations stated today on the record,
16 sir?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand by accepting
19 these negotiations you would be giving up your right to
20 a trial, your right to cross-examine witnesses against
21 you, and the right to testify on your own behalf?

22 THE DEFENDANT: Yes.

23 THE COURT: You reviewed the driving under
24 the influence Admonishment and Waiver of Rights form.
25 Did you read and sign this yellow paper?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand if you were to
3 receive a second DUI within a period of seven years you
4 would spend a minimum of ten days but as long as six
5 months in the Clark County Detention Center, pay a fine
6 as high as \$1,000, and be ordered to complete
7 additional requirements?

8 THE DEFENDANT: Yes.

9 THE COURT: A third DUI within a period of
10 seven years does become a felony punishable by
11 imprisonment in the Nevada State Prison where you would
12 spend a minimum of one year in prison, you could spend
13 six years in prison, pay fines as high as \$5,000, and
14 be ordered to complete additional requirements.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: The Court finds that the
18 defendant has knowingly, willingly, and voluntarily
19 waived his rights today to a trial.

20 How do you plead today to Count 2,
21 misdemeanor driving under the influence?

22 THE DEFENDANT: No contest.

23 THE COURT: Do you stipulate, Miss Park?

24 MS. PARK: Yes, Your Honor.

25 THE COURT: The Court will accept the no

1 contest plea. You will be adjudicated guilty and given
2 credit for time served.

3 With regard to the felony reckless count, do
4 you understand and accept the representations that were
5 stated today on the record?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you unconditionally waive your
8 right today to a preliminary hearing?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand by waiving your
11 right today to a preliminary hearing you'd be giving up
12 your right to testify or to cross-examine any witnesses
13 at this stage of the proceeding?

14 THE DEFENDANT: Yes.

15 THE COURT: You also understand you will not
16 return to this court but you will answer to the
17 District Court, which is the higher court?

18 THE DEFENDANT: Yes.

19 THE COURT: The Court finds that the
20 defendant has knowingly, willingly, voluntarily, and
21 unconditionally waived his rights to a preliminary
22 hearing.

23 You will be bound over to the Eighth Judicial
24 District Court. Your bind over date is:

25 THE CLERK: August 3 at 10:00 a.m. in

1 Department 20, Courtroom 12B.

2 THE COURT: Thank you.

3

4 (The proceedings concluded.)

5

6 * * * * *

7

8 ATTEST: Full, true, and accurate
9 transcript of proceedings.

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13 /S/ Rose Morichetti

14 ROSE MORICHETTI, CCR No. 817

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1 REPORTER'S CERTIFICATION

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

4

5 I, Rose Morichetti, a certified court
6 reporter in and for the State of Nevada, hereby certify
7 that pursuant to NRS 239B.030 I have not included the
8 Social Security number of any person within this
9 document.

10 I further certify that I am not a relative or
11 employee of any party involved in said action nor a
12 person financially interested in the action.

13 Dated in Las Vegas, Nevada this 27th day of
14 October, 2021.

15

16

17

18 /S/ Rose Morichetti

19 ROSE MORICHETTI, CCR No. 817

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AINF
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHAD LEXIS
Chief Deputy District Attorney
Nevada Bar #010391
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GERALD LEE WHATLEY JR., aka,
Gerald L. Whatley Jr., #2753951,

Defendant.

CASE NO. C-21-357412-1

DEPT NO. XX

AMENDED
INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss:

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

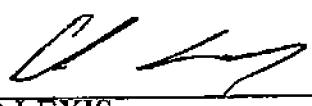
That GERALD LEE WHATLEY JR., aka, Gerald L. Whatley Jr., the Defendant(s) above named, having committed the crime of **DRIVING UNDER THE INFLUENCE (Category B Felony - NRS 484C.110, 484C.410, 484C.105 - NOC 53916)**, on or about the 23rd day of November, 2019, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did willfully and unlawfully drive and/or be in actual physical control of a motor vehicle on a highway or on premises to which the public has access at Desert Inn Road and Theme, Las Vegas, Clark County, Nevada, Defendant being responsible in one or more of the following ways and/or under one or more of the following theories, to wit: 1) while under the influence of intoxicating liquor to any degree, however slight, which

1 rendered him incapable of safely driving and/or exercising actual physical control of a vehicle,
2 2) while he had a concentration of alcohol of .08 or more in his blood, and/or 3) when he was
3 found by measurement within two (2) hours after driving and/or being in actual physical
4 control of a vehicle to have a concentration of alcohol of .08 or more in his blood, Defendant
5 having previously been convicted of a violation of NRS 484C.110 that is punishable as a
6 felony pursuant to paragraph (c) of subsection 1 of NRS 484C.400, and/or a violation of a law
7 of any other jurisdiction that prohibits the same or similar conduct as a violation of NRS
8 484C.110 that is punishable as a felony pursuant to paragraph (c) of subsection 1 of NRS
9 484C.400 and/or paragraph (b) of subsection 1 of NRS 484C.400 that was reduced from a
10 felony pursuant to NRS 484C.340, to wit:

11 Conviction: January 8, 2013, Case No. C-12-279225-1,
12 Eighth Judicial District Court, Las Vegas, Clark County, Nevada.

13 STEVEN B. WOLFSON
14 Clark County District Attorney
15 Nevada Bar #001565

16 BY


17 CHAD LEXIS
18 Chief Deputy District Attorney
19 Nevada Bar #010391
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27 DA#19M24489X/td/vcu
28 LVMPD EV#191100108577
(TK11)



NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHAD LEXIS
Chief Deputy District Attorney
Nevada Bar #010391
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

GERALD LEE WHATLEY JR., aka,
Gerald L. Whatley Jr., #2753951,
Defendant.

CASE NO: C-21-357412-1

DEPT NO: XX

STATE'S NOTICE OF WITNESSES AND/OR EXPERT WITNESSES
[NRS 174.234]

TO: GERALD LEE WHATLEY JR., aka, Gerald L. Whatley Jr., Defendant; and

TO: LESLIE PARK, ESQ., Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief:

HEINEMAN, DENISE, P #9724, A Forensic Scientist II or Designee - Las Vegas
Metropolitan Police Department. she is an expert in the area of crime scene analysis and will
give opinions related thereto. She is expected to testify about the testing of defendant's blood
and/or other bodily fluids, results, effects, and amounts regarding the existence of alcohol
and/or drugs and/or other substances in the blood and/or other bodily fluids.

WHITEFIELD, STACY, P #14498, A Forensic Scientist II or Designee - Las Vegas
Metropolitan Police Department. she is an expert in the area of crime scene analysis and will
give opinions related thereto. She is expected to testify about the testing of defendant's blood

1 and/or other bodily fluids, results, effects, and amounts regarding the existence of alcohol
2 and/or drugs and/or other substances in the blood and/or other bodily fluids.

3	<u>NAME</u>	<u>ADDRESS</u>
4	BOUNDS, BRIAN	SUNRISE HOSPITAL
5		3186 S. Maryland Pkwy, LVN 89109
6	CASTELLI, DEBRA	District Attorney Process Server
7	CASTILLO, OSCAR	3826 Purple Blood Ct., LVN 89122
8	CUSTODIAN OF RECORDS	CCDC
9	CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
10	CUSTODIAN OF RECORDS	LVMPD RECORDS
11	FROST, RAINIER	LVMPD #14888
12	GROSS, KEITH	District Attorney Investigator
13	MANGINELLI, ANTHONY	LVMPD #15931
14	POLION, MICHAEL	LVMPD #9800
15	SKILBRED, JERRY	4300 N. Lamont St. #211, LVN 89115

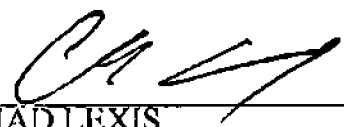
16 These witnesses are in addition to those witnesses endorsed on the Information or
17 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert
18 Witnesses has been filed.

19 The substance of each expert witness' testimony and copy of all reports made by or at
20 the direction of the expert witness has been provided in discovery.

21 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

22 STEVEN B. WOLFSON
23 Clark County District Attorney
Nevada Bar #001565

24
25 BY


26 CHAD LEXIS
27 Chief Deputy District Attorney
28 Nevada Bar #010391

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing State's Notice Of Witnesses
And/Or Expert Witnesses, was made this 29th day of December, 2021, by electronic
transmission to:

LESLIE PARK, ESQ.
EMAIL: leslieparklaw@gmail.com

BY: Theresa Dodson
Theresa Dodson
Secretary for the District Attorney's Office

td/vcu

Las Vegas Metropolitan Police Department
Forensic Laboratory

CURRICULUM VITAE

Date: 06/04/2021

Name: Denise K. Heineman P#: 9724 Classification: Forensic Scientist

Current Discipline of Assignment: Toxicology

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Seized Drugs		Toxicology/Blood Alcohol	X
Toolmarks		Toxicology/Breath Alcohol	
Trace Materials		Toxicology/Drugs	X
Arson Analysis		Firearms	
Latent Prints		Crime Scene Investigations	
Serology		Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	
Quality Assurance	X	Technical Support / DNA	
EDUCATION			
Institution	Dates Attended	Major	Degree Completed
Ohio University	09/1987 to 08/1993	Forensic Chemistry	BS
ADDITIONAL TRAINING / SEMINARS			
Course / Seminar	Location	Dates	
2021 Current Trends in Forensic Toxicology Symposium from cfsre-ForensicED (Webinar)	Las Vegas, NV	06/01/2021 to 06/04/2021	
2018 Current Trends in Forensic Toxicology Symposium from RTI International and cfsre-ForensicED (Webinar)	Las Vegas, NV	05/06/2019	
Analysis of Volatile Compounds by GC-Headspace from Honeywell/International Labmate Ltd. (Webinar)	Las Vegas, NV	3/15/2018	
California Association of Toxicologists Meeting	Las Vegas, NV	11/06/2017 to 11/07/2017	
Forward Extrapolation	LVMPD	04/28/2016	
American Academy of Forensic Sciences 68 th Annual Scientific Meeting	Las Vegas, NV	02/22/2016 to 02/27/2016	

Las Vegas Metropolitan Police Department
Forensic Laboratory

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Basic Instructor Development	LVMPD	11/09/2015 to 11/13/2015
Workplace Safety and OSHA Compliance	Las Vegas, NV	09/14/2015
Retrograde Extrapolation	LVMPD	06/24/2015
Forensic Alcohol Interpretation from California Criminalistics Institute	Corona Del Mar, CA	04/13/2015 to 04/16/2015
California Association of Toxicologists Meeting	Las Vegas, NV	09/20/2013 to 09/21/2013
Comprehensive Capillary GC Seminar from Restek	Pasadena, CA	04/16/2012
Non Mass Selective Detectors from RTI (Webinar)	Las Vegas, NV	12/16/2011
Perkin Elmer Manufacturer Training	Las Vegas, NV	12/14/2011 to 12/15/2011
Robert F. Borkenstein Course on Alcohol and Highway Safety @ Indiana University	Bloomington, IN	12/4/2011 to 12/9/2011
Forensic Toxicology from The Forensic Science Initiative at West Virginia University Continuing Education for Forensic Professionals Program	Las Vegas, NV	06/18/2009
Immunoassay Training from Orasure	Las Vegas, NV	01/27/2009
Viva-E System With WinTox Basic Education	Glasgow, DE	10/20/2008 to 10/24/2008
DSX Operation Training	Las Vegas, NV	10/08/2008

COURTROOM EXPERIENCE		
<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
Municipal Court of Clark County in Las Vegas, NV	Blood Alcohol	7
Justice Court of Clark County in Las Vegas, NV	Blood Alcohol	14
Eighth Judicial District Court of Clark County in Las Vegas, NV	Blood Alcohol	5
Fifth Judicial District Court of Nye County in Pahrump, NV	Blood Alcohol	1
Grand Jury of Clark County in Las Vegas, NV	Blood Alcohol	1
Juvenile Court of Nye County, Pahrump, NV	Blood Alcohol	1

Las Vegas Metropolitan Police Department
Forensic Laboratory

EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
LVMPD Forensic Laboratory	Forensic Scientist	03/2011 to Present
LVMPD Forensic Laboratory	Forensic Lab Technologist	06/2007 to 03/2011
LVMPD Forensic Laboratory	Forensic Lab Aide	11/2006 to 06/2007
Pro Caps Laboratories	Quality Assurance Technician	09/2004 to 11/2006
Serrot International	Quality Assurance Specialist	09/1998 to 09/2000
PROFESSIONAL AFFILIATIONS		
<i>Organization</i>		<i>Date(s)</i>
American Chemical Society		2010 to Present
California Association of Toxicologists		2013 to Present
PUBLICATIONS / PRESENTATIONS:		
<p>Michael P. Stypa, Denise K. Heineman, Darby A. Lanz and Jennifer O. Rattanaprasit. <i>Statistical Assessment of Toxicology Cases Submitted to the Las Vegas Metropolitan Police Department (LVMPD) From 2000 Through 2014</i>. Oral Presentation at the 68th Annual Meeting of the American Academy of Forensic Sciences. Rio All-Suite Hotel. Las Vegas, NV. February 25th, 2016.</p>		
<p>Jennifer O. Rattanaprasit, Michael P. Stypa, Marlissa Collins, Denise K. Heineman, Darby A. Lanz, Christine Maloney, Nastasha Ortiz, Dana C. Russell, Theresa A. Suffecool, Nicole L. Van Aken, Stacy A. Wilkinson. <i>Performing Retrograde Extrapolation of Blood Alcohol in Driving Under the Influence (DUI) Trials</i>. Poster Presentation at the 70th Annual Meeting of the American Academy of Forensic Sciences. Washington State Convention Center. Seattle, WA. February 21st, 2018.</p>		
<p><i>Forensic Laboratory Overview</i>. Training presented at LVMPD Headquarters, Las Vegas, NV. March 13th, 2018.</p>		
<p>Darby A. Lanz, Denise K. Heineman and Stacy A. Whitefield. <i>LVMPD Forensic Laboratory Toxicology Details Overview</i>. Presentation per the request of the Traffic Safety Resource Prosecutor (TSRP) for Southern Nevada Prosecutors. LVMPD Forensic Laboratory. Las Vegas, NV. April 3rd, 2018.</p>		
<p>Marlissa Collins, Denise K. Heineman and Stacy A. Whitefield. <i>LVMPD Forensic Laboratory Toxicology Details Overview</i>. Presentation per the request of the Traffic Safety Resource Prosecutor (TSRP) for Southern Nevada Prosecutors. LVMPD Forensic Laboratory. Las Vegas, NV. July 11th, 2018.</p>		
OTHER QUALIFICATIONS:		
None		

Las Vegas Metropolitan Police Department
Forensic Laboratory

CURRICULUM VITAE

Date: 05/18/21

Name: Stacy Whitefield (Wilkinson) P#: 14498 Classification: Forensic Scientist

Current Discipline of Assignment: Toxicology

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Seized Drugs		Toxicology/Blood Alcohol	
Toolmarks		Toxicology/Breath Alcohol	
Trace Materials		Toxicology/Drugs	✓
Arson Analysis		Firearms	
Latent Prints		Crime Scene Investigations	
Serology		Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	
Quality Assurance		Technical Support / DNA	
EDUCATION			
Institution	Dates Attended	Major	Degree Completed
California State University, Los Angeles, CA	2009-2011	Criminalistics	M.S.
Fullerton College, CA	2008-2009	General Biology	n/a
University of California, Irvine, CA	2003-2008	Chemistry	B.S.
ADDITIONAL TRAINING / SEMINARS			
Course / Seminar	Location	Dates	
RTI Fundamentals of Immunoanalysis Testing in Toxicology Webinar	Online	March 2013	
Ethics for Forensic Professionals Webinar	Online	April 2013	
CAT(California Association of Toxicologists) Spring 2013 Meeting	San Francisco, CA	May 3-4, 2013	
Orasure Drug Screening Reagent & Dynex Instrument Training	Las Vegas, NV	July 29, 2013	
LVMPD CL13042-002 Courtroom testimony/officer report writing	LVMPD HQ, Las Vegas, NV	August 22, 2013	
CAT/SAT (California Association of Toxicologists/Southwest Association of Toxicologists) Fall 2013 Meeting	Las Vegas, NV	September 20-21, 2013	
RTI Specimen Validity Testing: The Workplace Experience Webinar	Online	September 26, 2013	

Las Vegas Metropolitan Police Department
Forensic Laboratory

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
EMIT instrument/software via Siemens staff	Las Vegas, NV	November 13, 2013
RTI Fundamental of Sample Preparation used in Toxicology	Online	March 31, 2014
Borkenstein Drug Course	Philadelphia, PA	September 22-26, 2014
West Virginia University GC MS Workshop	Las Vegas, NV	April 27-29, 2015
RTI Fundamentals of Chromatography Webinar	Las Vegas, NV	May 7, 2015
RTI/Agilent Method Validation of Amphetamine, Phentermine, Designer Drugs for LCMSMS Webinar	Las Vegas, NV	June 5, 2015
SOFT: Society of Forensic Toxicologists Annual Meeting	Atlanta, GA	October 18-23, 2015
Agilent LC MSMS Training including MassHunter	Las Vegas, NV	July 19-21 2016
Agilent GC/MSD Training for Chemstation	Alpharetta, GA	October 24-28, 2016
CAT (California Association of Toxicologists) Fall 2017 Meeting	Las Vegas, NV	November 6-7, 2017
Agilent LC MSMS Training including MassHunter	Las Vegas, NV	June 4-7, 2018
RTI Zzz Drugs From Analysis to Interpretation Webinar	Las Vegas, NV	February 22, 2019
FEMA Incident Command System Courses 100/200/700	Online	November 2019
Current Trends In Forensic Toxicology	Online	June 8-12, 2020
COURTROOM EXPERIENCE		
<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
Las Vegas Justice Court (NV) Year: 2016	Toxicology - Drugs	1
Las Vegas Justice Court (NV) Year: 2017	Toxicology - Drugs	1
Las Vegas Justice Court (NV) Year: 2018	Toxicology - Drugs	1
Las Vegas Municipal Court (NV) Year: 2018	Toxicology - Drugs	1
Las Vegas Municipal Court (NV) Year: 2019	Toxicology - Drugs	1
Las Vegas Justice Court (NV) Year: 2019	Toxicology - Drugs	2
Las Vegas Justice Court (NV) Year: 2021	Toxicology - Drugs	2
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
Orange County Crime Laboratory, CA	Toxicology Intern	2010 - 2011
Air Quality Management District, CA	Chemistry Technician	Summer 2011
Las Vegas Metropolitan Police Department, NV	Forensic Laboratory Aide	09/19/11 – 03/03/13

Las Vegas Metropolitan Police Department
Forensic Laboratory

EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department, NV	Forensic Scientist Trainee	03/04/13 – 03/03/14
Las Vegas Metropolitan Police Department, NV	Forensic Scientist	03/04/14 – present
PROFESSIONAL AFFILIATIONS		
<i>Organization</i>	<i>Date(s)</i>	
American Chemical Society (ACS)	2008 – Present	
California Association of Criminalistics (CAC)	2010 – Present	
California Association of Toxicologists (CAT)	2013 – Present	
Society of Forensic Toxicologists (SOFT)	2016 – Present	
PUBLICATIONS / PRESENTATIONS:		
Serology/DNA/Impression evidence lectures and demonstrations for the general public, California State University Los Angeles, January – April 2011		
A.L. Gomez, T.L. Lewis, S.A. Wilkinson, and S.A. Nizkorodov. Stoichiometry of ozonation of atmospherically relevant olefins in non-participating solvents. Environ: Sci. Tech. 42 (2008) 3582-3587		
A Decade of Deaths in The OC Where Drugs Were Detected Wayne Moorehead MS, Ines Collision* PhD, Jan Jones BS, Terry Baisz BS, Robert Bunny BS, Jennifer Harmon BS, Robin Kott D.V.M., Mary June Stanford BS, Nick Casassa BS, Chelsea Johnson, Stacy Wilkinson BS, Taylor Wilkinson, April Denison BS OC Crime Lab, 320 N Flower St., Santa Ana, CA 92688 (2011 presentation)		
Suchard J, Nizkorodov S, Wilkinson S. 1,4-Butanediol content of aqua dots children's craft toy beads. Journal of Medical Toxicology: Official Journal of the American College of Medical Toxicology. 5: 120-4.		
Stypa MP, Rattanaprasit JO, Van Aken NL, Wilkinson SA, Suffecool TA, Rutledge BS, Nelson BW. Driving under the influence of drugs (DUID) "per se" laws: practical application and the inclusion of inactive metabolites (K41). In the Proceedings of the 69 th Annual Meeting of the American Academy of Forensic Sciences. 2017;23:1282-3.		
Jennifer O. Rattanaprasit, Michael P. Stypa, Marissa Collins, Denise K. Heineman, Darby A. Lanz, Christine Maloney, Nastasha Ortiz, Dana C. Russell, Theresa A. Suffecool, Nicole L. Van Aken, Stacy A. Wilkinson. <i>Performing Retrograde Extrapolation of Blood Alcohol in Driving Under the Influence (DUI) Trials</i> . Poster Presentation at the 70 th Annual Meeting of the American Academy of Forensic Sciences. Washington State Convention Center. Seattle, WA. February 21 st , 2018.		
Heineman, D.; Lanz, D.; Whitefield, S. (2018). LVMPD Toxicology Detail Overview. Las Vegas, NV.		
Collins, M.; Heineman, D.; Whitefield, S. (2018). LVMPD Toxicology Detail Overview. Las Vegas, NV.		
OTHER QUALIFICATIONS:		
n/a		

ORIGINAL

AINF
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHAD LEXIS
Chief Deputy District Attorney
Nevada Bar #010391
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 25 2022
BY *Kathryn L. McDowell*
KATHRYN L. MCDOWELL, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

C-21-357412-1
AINF
Amended Information
4990082



THE STATE OF NEVADA,
Plaintiff,

-vs-

GERALD LEE WHATLEY JR., aka,
Gerald L. Whatley Jr., #2753951,
Defendant.

CASE NO. C-21-357412-1

DEPT NO. XX

SECOND AMENDED
INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss:


STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That GERALD LEE WHATLEY JR., aka, Gerald L. Whatley Jr., the Defendant(s) above named, having committed the crime of **DRIVING UNDER THE INFLUENCE (Category B Felony - NRS 484C.110, 484C.410, 484C.105 - NOC 53916)**, on or about the 23rd day of November, 2019, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did willfully and unlawfully drive and/or be in actual physical control of a motor vehicle on a highway or on premises to which the public has access at Desert Inn Road and Theme, Las Vegas, Clark County, Nevada, Defendant being responsible in one or more of the following ways and/or under one or more of the following theories, to wit: 1) while under the influence of intoxicating liquor to any degree, however slight, which

1 rendered him incapable of safely driving and/or exercising actual physical control of a vehicle,
2 2) while he had a concentration of alcohol of .08 or more in his blood, and/or 3) when he was
3 found by measurement within two (2) hours after driving and/or being in actual physical
4 control of a vehicle to have a concentration of alcohol of .08 or more in his blood.

5 STEVEN B. WOLFSON
6 Clark County District Attorney
7 Nevada Bar #001565

8 BY


9 CHAD LEXIS
10 Chief Deputy District Attorney
11 Nevada Bar #010391
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27 DA#19M24489X/td/vcu
28 LVMPD EV#191100108577
(TK11)

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 25 2022

BY 
KATHRYN L. MCDOWELL, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA



STATE OF NEVADA

Plaintiff(s),

-vs-

GERALD WHATLEY, JR.

Defendant(s).

CASE NO C357412

DEPT. NO. XX

JURY LIST

- | | |
|------------------------------|-------------------------------|
| 1. 002 - JOSEPH PAPAY | 8. 053 - STEPHEN PADILLA |
| 2. 008 - TAMMY ESPOSITO | 9. 070 - LAURIE QUINTO'OCASIO |
| 3. 010 - QUINN DENSLEY | 10. 163 - CLETO ARCEO |
| 4. 019 - KANOKWAN CASTANEDA | 11. 091 - THOMAS ELMER |
| 5. 021 - GUILLERMO BOJORQUEZ | 12. 092 - CAROL OMANDAC |
| 6. 024 - BETTE THOMAS | 13. 115 - CARRIE ROBINSON |
| 7. 160 - STEVE VALDEZ | 14. 117 - MYRA CALARA |

ALTERNATES

Secret from above

APR 26 2022

BY Kathryn L. McDowell
KATHRYN L. MCDOWELL, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff(s),

-vs-

GERALD WHATLEY, JR.

Defendant(s).

CASE NO. C357412

DEPT. NO. XX

C-21-357412-1
JURL
Jury List
4990301



JURY

- | | |
|------------------------------|-------------------------------|
| 1. 002 - JOSEPH PAPAY | 7. 160 - STEVE VALDEZ |
| 2. 008 - TAMMY ESPOSITO | 8. 053 - STEPHEN PADILLA |
| 3. 010 - QUINN DENSLEY | 9. 070 - LAURIE QUINTO'OCASIO |
| 4. 019 - KANOKWAN CASTANEDA | 10. 163 - CLETO ARCEO |
| 5. 021 - GUILLERMO BOJORQUEZ | 11. 091 - THOMAS ELMER |
| 6. 024 - BETTE THOMAS | 12. 092 - CAROL OMANDAC |

ALTERNATES

- | | |
|--------------------------|----------------------|
| 1. 115 - CARRIE ROBINSON | 2. 117 - MYRA CALARA |
|--------------------------|----------------------|

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 26 2022

BY, *Kathryn L. McDowell*
KATHRYN L. MCDOWELL, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

C-21-357412-1
INST
Instructions to the Jury
4990300



THE STATE OF NEVADA,
Plaintiff,

-vs-

GERALD LEE WHATLEY JR., aka,
Gerald L. Whatley Jr.

Defendant.

CASE NO: C-21-357412-1

DEPT NO: XX

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you on the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

An Amended Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Information that GERALD LEE WHATLEY JR., aka, Gerald L. Whatley Jr., the Defendant above named, having committed the crime of DRIVING UNDER THE INFLUENCE, on or about the 23rd day of November, 2019, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did willfully and unlawfully drive and/or be in actual physical control of a motor vehicle on a highway or on premises to which the public has access at Desert Inn Road and Theme, Las Vegas, Clark County, Nevada, Defendant being responsible in one or more of the following ways and/or under one or more of the following theories, to wit: 1) while under the influence of intoxicating liquor to any degree, however slight, which rendered him incapable of safely driving and/or exercising actual physical control of a vehicle, and/or 2) when he was found by measurement within two (2) hours after driving and/or being in actual physical control of a vehicle to have a concentration of alcohol of .08 or more in his blood.

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of the offense charged.

The elements of Driving and/or Being in Actual Physical Control of a Motor Vehicle While Under the Influence of an Intoxicating Liquor or Alcohol are:

(1) A person is driving a vehicle on or off the highway or on premises to which the public has access;

(2) The person, while driving:

a. Is under the influence of an intoxicating liquor to a degree that renders him incapable of safely driving the vehicle; or

b. Is found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.08 or more in his blood;

“Physical control” means a person has existing or present influence, domination, or regulation of a motor vehicle.

In deciding whether someone has existing or present influence, domination, or regulation of a vehicle, the trier of fact must weigh a number of considerations, including:

- (1) where, and in what position, the person is found in the vehicle;
- (2) whether the vehicle’s engine is running or not;
- (3) whether the occupant is awake or asleep;
- (4) whether, if the person is apprehended at night, the vehicle’s lights are on;
- (5) the location of the vehicle’s keys;
- (6) whether the person was trying to move the vehicle or did move the vehicle;
- (7) whether the property on which the vehicle is located is public or private; and
- (8) whether the person must, out of necessity, have driven to the location where apprehended.

These considerations should be taken as a whole and considered together. No one consideration is dispositive in determining actual physical control.

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INSTRUCTION NO. 6

“Motor vehicle” means every vehicle which is self-propelled but not operated upon rails. A car or a van is a motor vehicle.

“Highway” means the entire width between the boundary lines of every way dedicated to a public authority when any part of the way is open to the use of the public for purposes of vehicular traffic, whether or not the public authority is maintaining the way.

Desert Inn and Theme are highways.

“Premises to which the public has access” means property in private or public ownership onto which members of the public regularly enter, are reasonably likely to enter, or are invited or permitted to enter as invitees or licensees, whether or not access to the property by some members of the public is restricted or controlled by a person or a device.

The term includes, but is not limited to:

- (1) A parking deck, parking garage or other parking structure;
- (2) A paved or unpaved parking lot or other paved or unpaved area where vehicles are parked or are reasonably likely to be parked;
- (3) A way that provides access to or is appurtenant to:
 - a. A place of business;
 - b. A governmental building;
 - c. An apartment building;
 - d. A mobile home park;
 - e. A residential area or residential community which is gated or enclosed or the access to which is restricted or controlled by a person or a device; or
 - f. Any other similar area, community, building or structure.

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INSTRUCTION NO. 9

“Under the influence” means impaired to a degree that renders a person incapable of safely driving or exercising actual physical control of a vehicle.

“Incapable of Safely Driving” does not mean that a person is incapable of reaching his destination in safety, but rather that the person’s mental or physiological functions are diminished so that the risk of an accident is unreasonably increased.

INSTRUCTION NO. __ 11 __

“Concentration of alcohol of 0.08 or more in his blood” means 0.08 grams or more of alcohol per 100 milliliters of the blood of a person.

The State has alleged that the Defendant is criminally liable for the charge of Driving and/or Being in Actual Physical Control of a Motor Vehicle While Under the Influence of an Intoxicating Liquor or Alcohol under one or more of the following principles of criminal liability:

(1) That Defendant was under the influence of an intoxicating liquor to a degree that rendered him incapable of safely driving the vehicle; or

(2) That Defendant was found by measurement within two (2) hours after driving a vehicle to have a concentration of alcohol of 0.08 or more of alcohol in his blood.

Your verdict must be unanimous as to the charge. You do not have to be unanimous on the principle of criminal liability. It is sufficient that each of you find beyond a reasonable doubt that the crime committed was Driving and/or Being in Actual Physical Control of a Motor Vehicle While Under the Influence of an Intoxicating Liquor, regardless of which principle of criminal liability you find.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

The Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. __15__

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. __16__

You are here to determine whether the Defendant is guilty or not guilty from the evidence in the case. You are not called upon to return a verdict as to the guilty or not guilty of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. ____21____

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the Defendant is guilty or not guilty.

During the course of this trial, and your deliberations, you are not to:

- (1) communicate with anyone in any way regarding this case or its merits-either by phone, text, Internet, or other means;
- (2) read, watch, or listen to any news or media accounts or commentary about the case;
- (3) do any research, such as consulting dictionaries, using the Internet, or using reference materials;
- (4) make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case on your own.

When you retire to consider your verdict, you must select one of your member to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

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2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you may send a note through the marshal, signed
4 by any one or more of you. No member of the jury should ever attempt to communicate with
5 me except by a signed writing, and I will respond to the jury concerning the case only in writing
6 or here in open court. If you send out a question, I will consult with the lawyers before
7 answering it, which may take some time. You may continue your deliberations while waiting
8 for the answer to any questions. Remember that you are not to tell anyone - including me -
9 how the jury stands, numerically or otherwise, on any question submitted to you, including the
10 question of the guilt of the defendant, until after you have reached a unanimous verdict or have
11 been discharged.


12 Playbacks of testimony are time-consuming and are not encouraged unless you deem it
13 a necessity. Should you require a playback, you must carefully describe the testimony to be
14 played back so that the court recorder can arrange her notes. Remember, the court is not at
15 liberty to supplement the evidence.

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INSTRUCTION NO. 25

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:

4-26-22

DISTRICT JUDGE

1 **VER**

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5 DISTRICT COURT
CLARK COUNTY, NEVADA

6 THE STATE OF NEVADA,
7
8 Plaintiff,

9 -vs-

10 GERALD LEE WHATLEY JR., aka,
Gerald L. Whatley Jr.

11 Defendant.

CASE NO: C-21-357412-1

DEPT NO: XX

12 **VERDICT**

13 We, the jury in the above-entitled case, find the Defendant, as follows:

14
15 **COUNT 1** - DRIVING AND/OR BEING IN ACTUAL PHYSICAL CONTROL OF A
16 MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN
17 INTOXICATING LIQUOR OR ALCOHOL

18 *(Please check the appropriate box, select only one)*

- 19 ☐ Guilty of Driving and/or Being in Actual Physical Control of a Motor
Vehicle While Under the Influence of an Intoxicating Liquor or Alcohol
20 ☐ Not Guilty

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22 DATED this _____ day of April, 2022

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24 _____
25 FOREPERSON
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FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 26 2022 4:15 PM

BY Kathryn L. McDowell
KATHRYN L. MCDOWELL, DEPUTY

C-21-357412-1
VER
Verdict
4990299



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

GERALD LEE WHATLEY JR., aka,
Gerald L. Whatley Jr.

Defendant.

CASE NO: C-21-357412-1

DEPT NO: XX

VERDICT

We, the jury in the above-entitled case, find the Defendant, as follows:

COUNT 1 - DRIVING AND/OR BEING IN ACTUAL PHYSICAL CONTROL OF A
MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN
INTOXICATING LIQUOR OR ALCOHOL

(Please check the appropriate box, select only one)

- ☒ Guilty of Driving and/or Being in Actual Physical Control of a Motor
Vehicle While Under the Influence of an Intoxicating Liquor or Alcohol
☐ Not Guilty

DATED this 26th day of April, 2022

Stephen Paulus
FOREPERSON

STEPHEN PAULUS



AINF
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHAD LEXIS
Chief Deputy District Attorney
Nevada Bar #010391
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GERALD LEE WHATLEY JR., aka,
Gerald L. Whatley Jr., #2753951,

Defendant.

CASE NO. C-21-357412-1

DEPT NO. XX

THIRD AMENDED
INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss:


STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That GERALD LEE WHATLEY JR., aka, Gerald L. Whatley Jr., the Defendant(s) above named, having committed the crime of **DRIVING AND/OR BEING IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR ALCOHOL**, on or about the 23rd day of November, 2019, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did willfully and unlawfully drive and/or be in actual physical control of a motor vehicle on a highway or on premises to which the public has access at Desert Inn Road and Theme, Las Vegas, Clark County, Nevada, Defendant being responsible in one or more of the following ways and/or under one or more of the following theories, to wit: 1)

1 while under the influence of intoxicating liquor to any degree, however slight, which rendered
2 him incapable of safely driving and/or exercising actual physical control of a vehicle, 2) while
3 he had a concentration of alcohol of .08 or more in his blood, and/or 3) when he was found by
4 measurement within two (2) hours after driving and/or being in actual physical control of a
5 vehicle to have a concentration of alcohol of .08 or more in his blood.

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY


10 CHAD LEXIS
11 Chief Deputy District Attorney
12 Nevada Bar #010391

13 Yu Meng for
14 14741

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27 DA#19M24489X/td/vcu
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(TK11)



AINF
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHAD LEXIS
Chief Deputy District Attorney
Nevada Bar #010391
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

GERALD LEE WHATLEY JR., aka,
Gerald L. Whatley Jr., #2753951,
Defendant.

CASE NO. C-21-357412-1

DEPT NO. XX

FOURTH AMENDED
INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss:

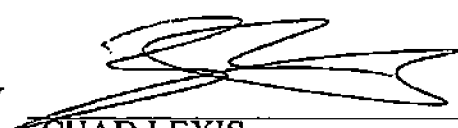
STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That GERALD LEE WHATLEY JR., aka, Gerald L. Whatley Jr., the Defendant(s) above named, having committed the crime of **DRIVING AND/OR BEING IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR ALCOHOL (Category B Felony - NRS 484C.110, 484C.410, 484C.105 - NOC 53916)**, on or about the 23rd day of November, 2019, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did willfully and unlawfully drive and/or be in actual physical control of a motor vehicle on a highway or on premises to which the public has access at Desert Inn Road and Theme, Las Vegas, Clark County, Nevada, Defendant being responsible in one or more of the

1 following ways and/or under one or more of the following theories, to wit: 1) while under the
2 influence of intoxicating liquor to any degree, however slight, which rendered him incapable
3 of safely driving and/or exercising actual physical control of a vehicle, 2) while he had a
4 concentration of alcohol of .08 or more in his blood, and/or 3) when he was found by
5 measurement within two (2) hours after driving and/or being in actual physical control of a
6 vehicle to have a concentration of alcohol of .08 or more in his blood.

7 STEVEN B. WOLFSON
8 Clark County District Attorney
9 Nevada Bar #001565

10 BY


11 CHAD LEXIS
12 Chief Deputy District Attorney
13 Nevada Bar #010391

14 Yu Meng for
15 #14741
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27 DA#19M24489X/td/vcu
28 LVMPD EV#191100108577
(TK11)

**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
140 - 150
WILL FOLLOW VIA
U.S. MAIL**

Heather A. Hume
CLERK OF THE COURT

COSCC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

State of Nevada
vs
Gerald Whatley, Jr.

Case No.: C-21-357412-1
Department 20

CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Nolle Prosequi (before trial)
- ☐ Dismissed (after diversion)
- ☐ Dismissed (before trial)
- ☐ Guilty Plea with Sentence (before trial)
- ☐ Transferred (before/during trial)
- ☐ Bench (Non-Jury) Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☐ Guilty Pleas with Sentence (during trial)
 - ☐ Conviction
- ☒ Jury Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☐ Guilty Plea with Sentence (during trial)
 - ☒ Conviction
- ☐ Other Manner of Disposition

Dated this 1st day of June, 2022

DATED this 27th day of May, 2022

Eric Johnson

ERIC JOHNSON
DISTRICT COURT JUDGE

**4EB 713 5818 C823
Eric Johnson
District Court Judge**

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 State of Nevada

CASE NO: C-21-357412-1

7 vs

DEPT. NO. Department 20

8 Gerald Whatley, Jr.
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10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
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Heather A. Shuman

CLERK OF THE COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GERALD LEE WHATLEY, JR., aka
Gerald L. Whatley Jr.
#2753951

Defendant.

CASE NO. C-21-357412-1

DEPT. NO. XX

JUDGMENT OF CONVICTION

(JURY TRIAL)

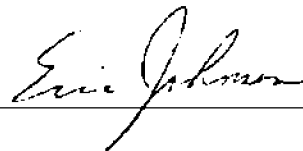
The Defendant previously entered a plea of not guilty to the crime of DRIVING UNDER THE INFLUENCE (Category B Felony) in violation of NRS 484C.110, 484C.410, 484C.105, and the matter having been tried before a jury and the Defendant having been found guilty of the crime of DRIVING AND/OR BEING IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR ALCOHOL (Category B Felony) in violation of NRS 484C.110, 484C.410, 484C.105; thereafter, on the 26th day of May, 2022, the Defendant was present in court for sentencing with counsel LESLIE A. PARK, Esq., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said felony offense(s) and, in addition to the \$25.00 Administrative Assessment Fee, \$2,000.00 Fine and \$150.00 DNA Analysis Fee including testing to determine genetic markers, WAIVED if previously

1 taken, plus \$3.00 DNA Collection Fee, the Defendant is SENTENCED to the Nevada
2 Department of Corrections (NDC) as follows: a MAXIMUM of FIFTEEN (15) YEARS
3 with a MINIMUM parole eligibility of FOUR (4) YEARS; with THIRTY-ONE (31) DAYS
4 credit for time served.
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6 COURT FURTHER ORDERED, pursuant to NRS 484C.340, 484C.460, prior to
7 any reinstatement of driving privileges, the Defendant shall have an Interlock Device
8 installed and inspected on Defendant's vehicle at Defendant's expense for a period of
9 36 months, said period to commence after any period of imprisonment, residential
10 confinement, confinement in a treatment facility or on parole or probation.
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17 Dated this 1st day of June, 2022

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21 1FA AD4 30E2 ABF0
22 Eric Johnson
23 District Court Judge
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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 State of Nevada

CASE NO: C-21-357412-1


7 vs

DEPT. NO. Department 20

8 Gerald Whatley, Jr.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
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REQT

LESLIE PARK, ESQ.
Nevada State Bar No. 8870
633 South Fourth Street, Suite 8
Las Vegas, NV 89101
P: (702) 382-3847
F: (702) 382-2828

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)	Case No.: C-21-357412-1
)	
Plaintiff,)	Dept. No.: XX
)	
vs.)	
)	
GERALD WHATLEY,)	
)	
Defendant.)	
)	TRANSCRIPT REQUEST

TO: Angie Cavillo
Court Recorder
Department XX
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, NV 89155

Please take notice that Gerald Whatley, the Defendant in the above-entitled case, by and through counsel Leslie Park, requests the preparation of transcripts of certain portions of the proceedings held in the Eighth Judicial District Court, as follows:

JUDGE: Hon. Eric Johnson, Department XX

DATES: December 18, 2021 (Original Sentencing Date),
April 26, 2022 (Trial); April 27, 2022 (Trial), April 28, 2022 (Trial);
May 26, 2022 (Sentencing)

PORTIONS: Trial.

COPIES: 2 (1 original, 2 to counsel, certificate of service with Nevada Supreme Court pursuant to NRAP 9(c)(2)).

This notice requests a transcript of only those portions of the district court proceedings that counsel reasonably and in good faith believes are necessary to determine whether appellate issues are present. Voir dire examination of jurors, opening statements and closing arguments of trial counsel, and the reading of the jury instructions shall not be transcribed unless specifically requested above.

DATED this 16th day of June, 2022

/s/ Leslie Park_____

LESLIE A. PARK
Nevada Bar No. 8870
Attorney for Gerald Whatley

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CERTIFICATE OF SERVICE

I hereby certify that I am a person competent to serve papers, that I am not a party to the above-entitled action, and that on June 16, 2022, I served the foregoing document on:

Angie Cavillo
Court Recorder
Eighth Judicial District Court

District Court Department XX
200 Lewis Avenue
Las Vegas, NV 89155
Via email: calvilloA@clarkcountycourts.us

Steven B. Wolfson, Esq.
Clark County District Attorney's Office

200 Lewis Avenue
Las Vegas, NV 89155
Via email: motions@clarkcountyda.com

DATED this 16th day of June, 2022

/s/ Leslie Park _____
LESLIE A. PARK, ESQ.
Nevada Bar No. 8870
Attorney for Gerald Whatley

LESLIE PARK, ESQ.
Nevada State Bar No. 8870
633 South Fourth Street, Suite 8
Las Vegas, NV 89101
P: (702) 382-3847
F: (702) 382-2828

STATE OF NEVADA,
Plaintiff,
vs.
GERALD WHATLEY,
Defendant.

TO: Angie Cavillo
Court Recorder
Department XX
Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, NV 89155

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Steven B. Wolfson, Esq.
Clark County District Attorney's Office

200 Lewis Avenue
Las Vegas, NV 89155
Via email: motions@clarkcountyda.com

DATED this 20th day of June, 2022

/s/ Leslie Park
LESLIE A. PARK, ESQ.
Nevada Bar No. 8870
Attorney for Gerald Whatley



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

GERALD LEE WHATLEY JR.,

Defendant.

CASE NO, C-21-357412-1

DEPT. NO. XX

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

THURSDAY, DECEMBER 16, 2021

RECORDER'S TRANSCRIPT OF PROCEEDING:

SENTENCING

APPEARANCES:

For the State:

CHAD N. LEXIS, ESQ.
Chief Deputy District Attorney

For the Defendant:

LESLIE A. PARK, ESQ.

RECORDED BY: MICHELLE RAMSEY, COURT RECORDER

1 Las Vegas, Nevada; Thursday, December 16, 2021

2 [Proceeding commenced at 10:45 p.m.]

3
4 THE COURT: All right. State of Nevada versus Gerald
5 Whatley, case number C357412. Counsel, please note your
6 appearances.

7 MR. LEXIS: Chad Lexis for the State.

8 MS. PARK: And Leslie Park for Mr. Whatley.

9 THE COURT: Okay. Mr. Whatley is present here in the
10 courtroom. All right. This was on for sentencing or is on for sentencing
11 on defendant's guilty plea on August 3 of 2021. We were previously
12 here before. Report indicated that it had serious concerns with following
13 the recommendation of the parties in regard to sentencing in this matter
14 and asked for an explanation. At that point, the State requested a
15 continuance. So where are we on this then because I have some
16 serious issues with this negotiation and you expect me to follow it?

17 I'm not hearing anyone so if someone's saying something it's -
18 - they're on mute.

19 MR. LEXIS: Well, I'll go first. I mean, Judge, it's a felony.
20 Once a felon always a felon. That's why it's a felony. It's basically --

21 THE COURT: He has 14 felonies so we aren't achieving too
22 much with that.

23 MR. LEXIS: Okay. Well, it was -- there's evidentiary issues.
24 The cops showed up at the hospital. They weren't on the scene. It was
25 heavily witnessed, intensive as far as actual physical control. And the

1 State at the time of -- had proven but not -- what we had could not
2 establish that.

3 THE COURT: Explain to me again your evidentiary issues
4 with this because I'm looking at the facts of this case and essentially, he
5 had failed to stop at a red light, failed to maintain a travel lane, ran off
6 the road, and struck a barrier. The officers found a large amount of
7 marijuana in an open container in the vehicle. They made contact with
8 the driver at the hospital and he blew a .249.

9 MR. LEXIS: Exactly, Judge. They made contact with him at
10 the hospital so it was heavily witnessed intensive as far as lay witnesses
11 and we did not have them.

12 THE COURT: You didn't have what? I'm sorry.

13 MR. LEXIS: We did not have the proper witnesses we
14 needed to establish actual physical control. This was not officer
15 initiated. The officers responded back when he was at the hospital.

16 THE COURT: And you had no witnesses relating to a van
17 that ran off the road and the -- the defendant was taken to the hospital?

18 MR. LEXIS: I did not have the witnesses I needed to establish
19 the actual physical control.

20 THE COURT: Well, I'm looking at a criminal history here, Mr.
21 Lexis, that includes repeated DUIs and driving under the influence. I
22 have a hard time justifying giving an individual probation.

23 MS. PARK: [indiscernible - audio distortion]

24 THE COURT CLERK: That's Ms. Park.

25 THE COURT: All right. Ms. Park, did you say something?

1 THE COURT CLERK: Okay. She's now muted.

2 THE COURT: Okay. All right. I didn't know if you had
3 something you wanted to say, Ms. Park.

4 Ms. Park, I'm -- I'm not inclined under the facts and
5 circumstances that are here before me to grant the probation. Do you
6 want to make a motion to withdraw your plea?

7 THE COURT CLERK: And we lost her.

8 THE COURT: Okay.

9 THE COURT RECORDER: Oh, there she is.

10 THE CLERK: Oh, there she is.

11 MS. PARK: Well, Your Honor, you know, I -- I would ask that
12 you follow the recommendation.

13 THE COURT: I understand you would ask but I'm the one
14 that has to live -- live with this. And I'm -- I'm willing to let you withdraw
15 the plea so that you don't feel that you've been backstabbed by the
16 Court here, but --

17 MS. PARK: Okay. I mean, I guess --

18 THE COURT: You want to have the chance to think about it?

19 MS. PARK: Could I -- could I relay a few things to the Court to
20 see if the Court would maybe change its mind before we make that
21 decision?

22 THE COURT: Sure.

23 MS. PARK: I did send some letters over to your chambers on
24 behalf of Mr. Whatley; did you receive those?

25 THE COURT: Yes. I did receive those.

1 MS. PARK: Okay. You know, the -- the thing is Mr. Whatley's
2 -- he's a homeowner. He's employed. At the time this happened, he
3 was going through a divorce. Things were, you know, his life wasn't
4 going so well. Most of his history is -- is fairly old and, you know, he's --
5 he's doing really well.

6 THE COURT: Well, I appreciate what you're saying here and
7 I -- but I said I'm looking at a person with 14 felonies and repeated,
8 repeated driving under the influences. And this was a serious event
9 where he ran off of a road, went through a stop sign, there but for the
10 grace of God, somebody could've been seriously hurt or killed. And I -- I
11 -- I'm the one who's responsible for these sentences. I love it when you
12 guys say, oh, we made this deal, you know, so it's important to follow it.
13 That's great. Nobody sits there and says on paper and the public
14 doesn't sit there and go, oh, the prosecutor and the defense attorney
15 made a deal. It's the Judge gave him this sentence. So I'm the one
16 who lives with this.

17 And I have a real concern with this at this point in time. And
18 so, I mean, I think you got a beneficial negotiation with reckless driving
19 plea here in this case but I'm not inclined to grant probation. So, I mean,
20 if you want to think about it, I'll give you a chance to -- to think about it
21 and we'll come back after the holidays and either sentence the
22 defendant at that time or allow you to make a motion to withdraw your
23 plea.

24 MS. PARK: Okay.

25 THE COURT: Is that what you want to do or you want to go

1 forward today?

2 MS. PARK: Okay. So you're asking me to file a motion to
3 withdraw the plea?

4 THE COURT: You don't -- well, the State should have an
5 opportunity to respond. So if you want to make a motion, you know,
6 something short on the basis of the Court no longer is -- is indicated a
7 willingness to consider in view of the fact that he's not prepared to follow
8 the request for probation. So if the State wants to make some
9 argument, that they can make an argument. That's fine with me. If you
10 can do -- I'd say file that by next Tuesday the 21st because this isn't --
11 shouldn't be anything long. And then the State can file something two
12 weeks after that.

13 MR. LEXIS: I have no opposition, Judge for the -- for them
14 withdrawing. I told the Court what -- what the issue was and if the Court
15 wants to withdraw that's fine with me.

16 MS. PARK: If -- if they're not opposing it and you're willing to
17 just let us do that today, that's what we would like to do.

18 THE COURT: Okay. I'll grant the withdrawal of plea.

19 MS. PARK: Okay. Thank you.

20 THE COURT: Thasnk you.

21 MS. PARK: So do we need to set a --

22 THE COURT: We'll never to set a new trial date, I guess.
23 Setting it in the ordinary course sufficient?

24 MS. PARK: Yes, please.

25 THE COURT CLERK: One moment. Calendar call will be

1 April 19th at 8:30. Jury trial is April 25th at 9 a.m.

2 MS. PARK: Thank you.

3 THE COURT: All right. Thank you.

4 [Proceeding concluded at 10:54 a.m.]

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

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23 _____
24 Aimee Curameng
25 Court Recorder/Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

GERALD LEE WHATLEY, JR,

Defendant.

CASE NO, C-21-357412-1

DEPT. NO. XX

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

THURSDAY, MAY 26, 2022

RECORDER'S TRANSCRIPT OF PROCEEDING:

SENTENCING

APPEARANCES:

For the State:

YU MENG, ESQ.
Deputy District Attorney

For the Defendant:

LESLIE A. PARK, ESQ.,

RECORDED BY: DELORIS SCOTT, COURT RECORDER

1 Las Vegas, Nevada; Thursday, May 26, 2022

2 [Proceeding commenced at 9:08 a.m.]

3
4 THE COURT: State versus Whatley, case number C-21-
5 357412. Counsel, please note your appearances for the record.

6 MS. PARK: Good morning, Your Honor. Leslie Park for
7 Gerald Whatley. He's present in custody.

8 MR. MENG: Morning, Your Honor. Yu Meng for the State,
9 14741.

10 THE COURT: All right. I am showing this on for sentencing
11 on the jury verdict of April the 26th of 2022; are we ready to go forward
12 today?

13 MS. PARK: Yes, Your Honor.

14 MR. MENG: We are, Your Honor.

15 THE COURT: All right. This is then on for sentencing on
16 defendant's guilty verdict to driving and/or being in actual physical
17 control of a motor vehicle while under the influence of an intoxicated
18 liquor or alcohol. Turning to the -- the presentenced investigation report
19 dated May 10, 2022; Ms. Park, have you read that? Have you read the
20 May 10th, 2022 presentenced investigation report?

21 MS. PARK: Yes, Your Honor.

22 THE COURT: Anything in there that you saw that needed to
23 be correct or brought to my attention?

24 MS. PARK: No, Your Honor.

25 THE COURT: All right. Mr. Whatley, have you read your

1 presentenced investigation report?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Had a chance to discuss it with your attorney?

4 THE DEFENDANT: Yes.

5 THE COURT: She answered any questions you had about it?

6 THE DEFENDANT: Yes.

7 THE COURT: Anything in there you saw that needed to be
8 corrected or brought to my attention?

9 THE DEFENDANT: No.

10 THE COURT: All right. Then pursuant to the jury verdict in
11 this case, I do find you guilty of driving under and/or being in actual
12 physical control of a motor vehicle while under the influence of an
13 intoxicated liquor or alcohol in violation of Nevada Revised Statutes
14 484C.110 and 484C.410 and 484C.0105. Does the State wish to make
15 any statement?

16 MR. MENG: Yes, Your Honor. Before that, Your Honor, I just
17 want to make sure we did mark the prior conviction as exhibit during trial
18 I believe on the first day before jury selection. We'll just mark that as a -
19 - a to show Your Honor his prior conviction.

20 THE COURT: Okay.

21 MR. MENG: I have a copy for Your Honor to take judicial
22 notice on just in case.

23 THE COURT: All right. If I remember -- I do remember that --

24 MR. MENG: Yeah.

25 THE COURT: -- as being done before trial. And do you have

1 --

2 MR. MENG: And I'll --

3 THE COURT: -- don't have any issue with this conviction?

4 MS. PARK: No.

5 THE COURT: All right. And we'll make this part of the court
6 record.

7 THE CLERK: Okay.

8 MR. MENG: Thank you, Your Honor. And with that -- with
9 that, Your Honor, I think there's no *Stockmeier* issues.

10 Your Honor, in this case, Your Honor heard the facts of the
11 case and I won't regurgitate. I do want to highlight certain things. Oscar
12 and Jerry were the lay witnesses in this case. Those two people could
13 very well have been hurt by this incident. If you recall, Oscar was in the
14 car with three of his children. The oldest children been 10 years old.
15 Had they not stop -- stopped at the red light -- the green light for them,
16 the defendant run the red light they would have stricken by the -- struck
17 by the defendant.

18 Jerry -- when the defendant run over the stop sign, Jerry was
19 also in her car with her child. And she was -- as she testified on the
20 stand, even though she wasn't struck, she was crying afterwards. That
21 just shows you how dangerous the defendant's driving behavior was.
22 And if you look at his alcohol level at .249 and what didn't -- and what
23 wasn't transpired at trial was the fact there was a bag of weed found in
24 the defendant's car, Your Honor.

25 In this case, because of the alcohol level, back then 2019 the

1 lab didn't test for other substances if the blood alcohol level reaches
2 certain level. So in this case Your Honor has circumstantial evidence
3 although was not transpired -- did not transpire at trial is a -- if he had
4 any weed or marijuana in his system, you know there was a bag -- bag
5 of marijuana in the car. And this individual -- as Oscar testified, attempt
6 to leave the scene after causing a huge crash -- his car -- a huge van
7 making contact with concrete barriers.

8 So, Your Honor, all those testimonies -- I won't highlight that
9 but I do want to remind Your Honor is his felony convictions. Fourteen
10 felonies, seven DUI's, one hit and run, and this is an individual who just
11 had a DUI in this jurisdiction from -- from a 2013 in C279225. In that
12 case, I did review the PSI. He was speeding under the influence of
13 drugs. He evaded officers in the vehicle after officers had stopped him.
14 He fled on foot. He was eventually captured and in that PSI it's almost
15 the same story, yeah you know what, I learned my lesson, I want to get
16 treatment, I won't -- I won't do this again. So that was just 2013.
17 Apparently that wasn't a lesson that he didn't learn a lesson from that
18 case.

19 And the most recent entry to his criminal history is, Your
20 Honor, after this case before Your Honor he picked up C338413. That
21 was a conspiracy to robbery case committed after committing --
22 committing this crime before Your Honor. He was placed on probation,
23 but he did plead to a -- a violent crime, conspiracy to commit robbery.

24 So, Your Honor, on the spectrum of reasonableness with
25 someone with seven DUI's, I don't know at what point we say we give

1 someone the max. Because this is someone who drives a van is the
2 biggest bullet you can have on the road. Everyone has to take chances
3 with this individual. So I at this point I -- the only thing going for
4 defendant -- I do want to note that is the defendant has been complying
5 on his probation in that -- in that robbery case.

6 So, Your Honor, balance this history, balance the facts of this
7 case against his good performance on probation, I do think 4 to 10 is the
8 appropriate sentencing in this case and he has 31 days credit for time
9 served as of today.

10 THE COURT: All right. Thank you. Ms. Park.

11 MS. PARK: Thank you, Your Honor.

12 Your Honor, I know the State has brought up the -- the case
13 he's on probation for and -- and technically same to robbery. That was a
14 situation where he was basically trying to assist and defend his wife. His
15 wife had someone worked on her car. The car got towed because they
16 put it on the street. They had to pay to get the car out of the tow yard
17 and they were trying to talk to this person about giving her the money for
18 the -- that he caused her have to pay to get the car out of tow yard.

19 So I don't want that to be characterize as he just walks up to
20 somebody and -- and tried to rob them. He took responsibility in that
21 case. He's been on probation for that case. He's been very compliant
22 doing everything he's supposed to do. He's been working. He -- he
23 bought a house. I mean he -- he's really -- since this case and being put
24 on probation on the other case, he has been a model citizen.

25 Your Honor, you know he's -- he's lost his job. He's lost his

1 house. He's -- he's lost everything that he worked hard for because of
2 this. And, you know, I know he knows that this was a situation that was
3 a dangerous situation. He's very regretful for that. I have talked to his --
4 his mother. She lives in California with the rest of his family. The
5 intention is when he's released that he will go back to California with his
6 family to have a little bit more support for the issues that he has. But he
7 -- he understands that he has some issues that need to be resolved and
8 from -- I think he's going to address the Court now and explain that to
9 the Court.

10 THE COURT: All right. Sir.

11 THE DEFENDANT: First of all, Your Honor, I would like to
12 apologize for sending the Courts through all the trials and tribulations
13 that I went through. I just ask for mercy of the Courts right now. Just by
14 hearing the testimonies and the witnesses of my trial, it really hurts me
15 to hear that I put lives in jeopardy driving under the influence. I've
16 always had -- had alcohol problem for a long time that I really need help
17 with. And I ask again, mercy of the Courts to please get me help.
18 Sending me to prison is not going to help.

19 THE COURT: I'll -- I'll be frank, you know, the record here is -
20 - is extreme, seven DUI's, then this DUI and it was the DUI that went to
21 trial. So I don't know that you really accepted any responsibility for this
22 is falling on somewhat deaf ears for this Court. You are a danger. Let's
23 be just plain and simple, you are a danger. Yes, alcohol is a problem.
24 I'm sorry that it is a problem. I know is a tough issue for a lot of people.
25 But I don't see you taking any steps to deal with that and you have a

1 responsibility to do that too, not just the Court.

2 THE DEFENDANT: But, Your Honor [indiscernible – multiple
3 speakers] --

4 THE COURT: I -- I am done talking. Considering the issue of
5 deterrence of the defendant, considering deterrence of others, the
6 chance of rehabilitation and the nature of the crime and the State's
7 summary of the evidence is correct you had two witnesses who were
8 lucky that they didn't get hit by the defendant's conduct in this case.

9 I will sentence the defendant to a term of four to fifteen years
10 in Nevada Department of Corrections. I'll provide for the \$25
11 administrative assessment, \$3 DNA administrative assessment, \$150
12 DNA testing fee. And order that the defendant submit to -- let's see,
13 he's previously -- I'm sure. Yeah, he's previously been tested for DNA.
14 Do we have an agreement as far for credit time served?

15 MR. MENG: Thirty-one days --

16 MS. PARK: Thirty-one.

17 MR. MENG: -- appear to be correct, Your Honor.

18 THE COURT: Thirty-one days credit for time served.

19 MR. MENG: And, Your Honor, we also do have the award
20 fine.

21 THE COURT: Oh, that's right. I have to fine you -- I'll fine two
22 -- \$5,000 -- let's see, I'll fine the minimum \$2,000.

23 MR. MENG: And also the interlock device after, yeah.

24 THE COURT: Oh. And I'll order that when he's released from
25 custody that he place -- interlock device be placed on his car at his

1 expense for -- on any vehicle he drives or has custody or control at his
2 expense for thirty-six months.

3 MR. MENG: Thank you, Your Honor.

4 MS. PARK: Thank you, Your Honor.

5 [Proceeding concluded at 9:19 a.m.]
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19 ATTEST: I do hereby certify that I have truly and correctly transcribed
20 the audio/video proceedings in the above-entitled case to the best of my
21 ability.

22 
23

24 _____
25 Connie Coll
Court Recorder/Transcriber



NOASC
Leslie Park, Esq.
Nevada Bar No. 8870
Law Office of Leslie A. Park
633 South 4th Street, Suite 8
Las Vegas, Nevada 89101
(702) 382-3847
Attorney for Appellant

No. C-21-357412-1

Dept. No. XX

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

STATE OF NEVADA }
 }
v. }
GERALD LEE WHATLEY JR., AKA GERALD L. WHATLEY JR.)

NOTICE OF APPEAL

Notice is hereby given that Gerald Lee Whatley Jr., Defendant above named, hereby appeals to the Supreme Court of Nevada from the final judgment of the jury verdict entered in this action on the 1st day of June, 2022.

Dated this 22 day of June

 /s/ Leslie A. Park
LESLIE A. PARK, ESQ.
ATTORNEY FOR DEFENDANT
NEVADA BAR NO. 8870
633 SOUTH FOURTH STREET, SUITE 8
LAS VEGAS, NEVADA 89101

Certificate of service

I hereby certify that I am a person competent to serve papers, that I am not a party to the above-entitled action, and that on July 22, 2022, I served the foregoing document on:

Steven B. Wolfson, Esq.

Chad Lexis

Clark County District attorney's office Via e-mail: motions@clarkcountyda.com

200 Lewis Avenue

Las Vegas, Nevada 89155

No. C-21-357412-1

Dept. No. XX




State of Nevada, Plaintiff)
v.)
Gerald Lee Whatley, Jr.)

CASE APPEAL STATEMENT

1. **Name of appellant filing this case appeal statement:** Department XX, Eighth Judicial District Court.
2. **Identify the judge issuing the decision, judgment, or order appealed from:** Eric Johnson, Department XX, Eighth Judicial District Court.
3. **Identify each appellant and the name and address of counsel for each appellant:** Appellant Gerald Lee Whatley, Jr.; counsel Leslie Park, 633 South 4th Street, Suite 8, Las Vegas, Nevada 89101.
4. **Identify each respondent and the name and address of appellate counsel, if known for each respondent:** Respondent, State of Nevada, Counsel Steven B. Wolfson, Esq., Clark County District Attorney.
5. **Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada, and if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):** No
6. **Indicate whether appellant is represented by retained or appointed counsel in the district court:** Retained.
7. **Indicate whether appellant is represented by appointed or retained counsel on appeal:** Retained.
8. **Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:** Not Applicable.
9. **Indicate the date the proceedings commenced in the district court (e. g., date complaint, indictment, information, or petition was filed):** August 2, 2021.
10. **Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:** Judgment of conviction following jury trial on charges of driving and/or being in actual physical control of a motor vehicle while under the influence.
11. **Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:** No.
12. **Indicate whether this appeal involves child custody or visitation:** No.
13. **If this is a civil case, indicate whether this appeal involves the possibility of settlement:** Not Applicable

Dated this 1st day of June, 2022

/s/ Leslie Park_____
Nevada Bar No. 8870
Law Office of Leslie A. Park
633 South 4th Street, Suite 8
Las Vegas, Nevada 89101
702-382-3847



NOASC
Leslie Park, Esq.
Nevada Bar No. 8870
Law Office of Leslie A. Park
633 South 4th Street, Suite 8
Las Vegas, Nevada 89101
(702) 382-3847
Attorney for Appellant

No. C-21-357412-1

Dept. No. XX

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

STATE OF NEVADA }
 }
v. }
GERALD LEE WHATLEY JR., AKA GERALD L. WHATLEY JR.)

NOTICE OF APPEAL

Notice is hereby given that Gerald Lee Whatley Jr., Defendant above named, hereby appeals to the Supreme Court of Nevada from the final judgment of the jury verdict entered in this action on the 1st day of June, 2022.

Dated this 22 day of June

 /s/ Leslie A. Park
LESLIE A. PARK, ESQ.
ATTORNEY FOR DEFENDANT
NEVADA BAR NO. 8870
633 SOUTH FOURTH STREET, SUITE 8
LAS VEGAS, NEVADA 89101

Certificate of service

I hereby certify that I am a person competent to serve papers, that I am not a party to the above-entitled action, and that on July 22, 2022, I served the foregoing document on:

Steven B. Wolfson, Esq.

Chad Lexis

Clark County District attorney's office Via e-mail: motions@clarkcountyda.com

200 Lewis Avenue

Las Vegas, Nevada 89155

COURT RECORDER'S INVOICE

DATE OF INVOICE:	8/1/22				
CASE # / NAME:	C-21-357412-1 State v. Gerald Whatley, Jr.				
HEARING DATE(S) / DESCRIPTION:	12/16/21, 4/25/22, 4/26/22, 5/26/22				
DEPARTMENT #:	20				
COURT RECORDER DEPARTMENT INFO:	Name: Angie Calvillo Phone/Ext: 702-671-4436				
ORDERED BY:	Leslie Park, Esq.				
FIRM:	Leslie Park, Esq.				
EMAIL:	Les_law60@hotmail.com				
PAYABLE TO COUNTY:					
PAY ONLINE: https://payments.clarkcountycourts.us **A service fee of 2.65% per credit card transaction will be charged** PAY BY PHONE OR IN-PERSON PAYMENT: Clerk's Office - Finance Department (702) 671-0726 [NOTE: Hours – Monday to Friday 9am-4pm] MAKE CHECK PAYABLE TO: District Court Clerk's Office (Include case number on check) MAILING ADDRESS: District Court Attn: Clerk's Office - Finance Clerk 200 Lewis Avenue, 3 rd Floor Las Vegas, NV 89155					
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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

GERALD LEE WHATLEY JR.,

Defendant.

CASE NO, C-21-357412-1

DEPT. NO. XX

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

THURSDAY, DECEMBER 16, 2021

RECORDER'S TRANSCRIPT OF PROCEEDING:

SENTENCING

APPEARANCES:

For the State:

CHAD N. LEXIS, ESQ.
Chief Deputy District Attorney

For the Defendant:

LESLIE A. PARK, ESQ.

RECORDED BY: MICHELLE RAMSEY, COURT RECORDER

1 Las Vegas, Nevada; Thursday, December 16, 2021

2 [Proceeding commenced at 10:45 p.m.]

3
4 THE COURT: All right. State of Nevada versus Gerald
5 Whatley, case number C357412. Counsel, please note your
6 appearances.

7 MR. LEXIS: Chad Lexis for the State.

8 MS. PARK: And Leslie Park for Mr. Whatley.

9 THE COURT: Okay. Mr. Whatley is present here in the
10 courtroom. All right. This was on for sentencing or is on for sentencing
11 on defendant's guilty plea on August 3 of 2021. We were previously
12 here before. Report indicated that it had serious concerns with following
13 the recommendation of the parties in regard to sentencing in this matter
14 and asked for an explanation. At that point, the State requested a
15 continuance. So where are we on this then because I have some
16 serious issues with this negotiation and you expect me to follow it?

17 I'm not hearing anyone so if someone's saying something it's -
18 - they're on mute.

19 MR. LEXIS: Well, I'll go first. I mean, Judge, it's a felony.
20 Once a felon always a felon. That's why it's a felony. It's basically --

21 THE COURT: He has 14 felonies so we aren't achieving too
22 much with that.

23 MR. LEXIS: Okay. Well, it was -- there's evidentiary issues.
24 The cops showed up at the hospital. They weren't on the scene. It was
25 heavily witnessed, intensive as far as actual physical control. And the

1 State at the time of -- had proven but not -- what we had could not
2 establish that.

3 THE COURT: Explain to me again your evidentiary issues
4 with this because I'm looking at the facts of this case and essentially, he
5 had failed to stop at a red light, failed to maintain a travel lane, ran off
6 the road, and struck a barrier. The officers found a large amount of
7 marijuana in an open container in the vehicle. They made contact with
8 the driver at the hospital and he blew a .249.

9 MR. LEXIS: Exactly, Judge. They made contact with him at
10 the hospital so it was heavily witnessed intensive as far as lay witnesses
11 and we did not have them.

12 THE COURT: You didn't have what? I'm sorry.

13 MR. LEXIS: We did not have the proper witnesses we
14 needed to establish actual physical control. This was not officer
15 initiated. The officers responded back when he was at the hospital.

16 THE COURT: And you had no witnesses relating to a van
17 that ran off the road and the -- the defendant was taken to the hospital?

18 MR. LEXIS: I did not have the witnesses I needed to establish
19 the actual physical control.

20 THE COURT: Well, I'm looking at a criminal history here, Mr.
21 Lexis, that includes repeated DUIs and driving under the influence. I
22 have a hard time justifying giving an individual probation.

23 MS. PARK: [indiscernible - audio distortion]

24 THE COURT CLERK: That's Ms. Park.

25 THE COURT: All right. Ms. Park, did you say something?

1 THE COURT CLERK: Okay. She's now muted.

2 THE COURT: Okay. All right. I didn't know if you had
3 something you wanted to say, Ms. Park.

4 Ms. Park, I'm -- I'm not inclined under the facts and
5 circumstances that are here before me to grant the probation. Do you
6 want to make a motion to withdraw your plea?

7 THE COURT CLERK: And we lost her.

8 THE COURT: Okay.

9 THE COURT RECORDER: Oh, there she is.

10 THE CLERK: Oh, there she is.

11 MS. PARK: Well, Your Honor, you know, I -- I would ask that
12 you follow the recommendation.

13 THE COURT: I understand you would ask but I'm the one
14 that has to live -- live with this. And I'm -- I'm willing to let you withdraw
15 the plea so that you don't feel that you've been backstabbed by the
16 Court here, but --

17 MS. PARK: Okay. I mean, I guess --

18 THE COURT: You want to have the chance to think about it?

19 MS. PARK: Could I -- could I relay a few things to the Court to
20 see if the Court would maybe change its mind before we make that
21 decision?

22 THE COURT: Sure.

23 MS. PARK: I did send some letters over to your chambers on
24 behalf of Mr. Whatley; did you receive those?

25 THE COURT: Yes. I did receive those.

1 MS. PARK: Okay. You know, the -- the thing is Mr. Whatley's
2 -- he's a homeowner. He's employed. At the time this happened, he
3 was going through a divorce. Things were, you know, his life wasn't
4 going so well. Most of his history is -- is fairly old and, you know, he's --
5 he's doing really well.

6 THE COURT: Well, I appreciate what you're saying here and
7 I -- but I said I'm looking at a person with 14 felonies and repeated,
8 repeated driving under the influences. And this was a serious event
9 where he ran off of a road, went through a stop sign, there but for the
10 grace of God, somebody could've been seriously hurt or killed. And I -- I
11 -- I'm the one who's responsible for these sentences. I love it when you
12 guys say, oh, we made this deal, you know, so it's important to follow it.
13 That's great. Nobody sits there and says on paper and the public
14 doesn't sit there and go, oh, the prosecutor and the defense attorney
15 made a deal. It's the Judge gave him this sentence. So I'm the one
16 who lives with this.

17 And I have a real concern with this at this point in time. And
18 so, I mean, I think you got a beneficial negotiation with reckless driving
19 plea here in this case but I'm not inclined to grant probation. So, I mean,
20 if you want to think about it, I'll give you a chance to -- to think about it
21 and we'll come back after the holidays and either sentence the
22 defendant at that time or allow you to make a motion to withdraw your
23 plea.

24 MS. PARK: Okay.

25 THE COURT: Is that what you want to do or you want to go

1 forward today?

2 MS. PARK: Okay. So you're asking me to file a motion to
3 withdraw the plea?

4 THE COURT: You don't -- well, the State should have an
5 opportunity to respond. So if you want to make a motion, you know,
6 something short on the basis of the Court no longer is -- is indicated a
7 willingness to consider in view of the fact that he's not prepared to follow
8 the request for probation. So if the State wants to make some
9 argument, that they can make an argument. That's fine with me. If you
10 can do -- I'd say file that by next Tuesday the 21st because this isn't --
11 shouldn't be anything long. And then the State can file something two
12 weeks after that.

13 MR. LEXIS: I have no opposition, Judge for the -- for them
14 withdrawing. I told the Court what -- what the issue was and if the Court
15 wants to withdraw that's fine with me.

16 MS. PARK: If -- if they're not opposing it and you're willing to
17 just let us do that today, that's what we would like to do.

18 THE COURT: Okay. I'll grant the withdrawal of plea.

19 MS. PARK: Okay. Thank you.

20 THE COURT: Thasnk you.

21 MS. PARK: So do we need to set a --

22 THE COURT: We'll never to set a new trial date, I guess.
23 Setting it in the ordinary course sufficient?

24 MS. PARK: Yes, please.

25 THE COURT CLERK: One moment. Calendar call will be

1 April 19th at 8:30. Jury trial is April 25th at 9 a.m.

2 MS. PARK: Thank you.

3 THE COURT: All right. Thank you.

4 [Proceeding concluded at 10:54 a.m.]

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

22 

23 _____
24 Aimee Curameng
25 Court Recorder/Transcriber



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

GERALD LEE WHATLEY, JR,

Defendant.

CASE NO, C-21-357412-1

DEPT. NO. XX

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

THURSDAY, MAY 26, 2022

RECORDER'S TRANSCRIPT OF PROCEEDING:

SENTENCING

APPEARANCES:

For the State:

YU MENG, ESQ.
Deputy District Attorney

For the Defendant:

LESLIE A. PARK, ESQ.,

RECORDED BY: DELORIS SCOTT, COURT RECORDER

1 Las Vegas, Nevada; Thursday, May 26, 2022

2 [Proceeding commenced at 9:08 a.m.]

3
4 THE COURT: State versus Whatley, case number C-21-
5 357412. Counsel, please note your appearances for the record.

6 MS. PARK: Good morning, Your Honor. Leslie Park for
7 Gerald Whatley. He's present in custody.

8 MR. MENG: Morning, Your Honor. Yu Meng for the State,
9 14741.

10 THE COURT: All right. I am showing this on for sentencing
11 on the jury verdict of April the 26th of 2022; are we ready to go forward
12 today?

13 MS. PARK: Yes, Your Honor.

14 MR. MENG: We are, Your Honor.

15 THE COURT: All right. This is then on for sentencing on
16 defendant's guilty verdict to driving and/or being in actual physical
17 control of a motor vehicle while under the influence of an intoxicated
18 liquor or alcohol. Turning to the -- the presentenced investigation report
19 dated May 10, 2022; Ms. Park, have you read that? Have you read the
20 May 10th, 2022 presentenced investigation report?

21 MS. PARK: Yes, Your Honor.

22 THE COURT: Anything in there that you saw that needed to
23 be correct or brought to my attention?

24 MS. PARK: No, Your Honor.

25 THE COURT: All right. Mr. Whatley, have you read your

1 presentenced investigation report?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Had a chance to discuss it with your attorney?

4 THE DEFENDANT: Yes.

5 THE COURT: She answered any questions you had about it?

6 THE DEFENDANT: Yes.

7 THE COURT: Anything in there you saw that needed to be
8 corrected or brought to my attention?

9 THE DEFENDANT: No.

10 THE COURT: All right. Then pursuant to the jury verdict in
11 this case, I do find you guilty of driving under and/or being in actual
12 physical control of a motor vehicle while under the influence of an
13 intoxicated liquor or alcohol in violation of Nevada Revised Statutes
14 484C.110 and 484C.410 and 484C.0105. Does the State wish to make
15 any statement?

16 MR. MENG: Yes, Your Honor. Before that, Your Honor, I just
17 want to make sure we did mark the prior conviction as exhibit during trial
18 I believe on the first day before jury selection. We'll just mark that as a -
19 - a to show Your Honor his prior conviction.

20 THE COURT: Okay.

21 MR. MENG: I have a copy for Your Honor to take judicial
22 notice on just in case.

23 THE COURT: All right. If I remember -- I do remember that --

24 MR. MENG: Yeah.

25 THE COURT: -- as being done before trial. And do you have

1 --

2 MR. MENG: And I'll --

3 THE COURT: -- don't have any issue with this conviction?

4 MS. PARK: No.

5 THE COURT: All right. And we'll make this part of the court
6 record.

7 THE CLERK: Okay.

8 MR. MENG: Thank you, Your Honor. And with that -- with
9 that, Your Honor, I think there's no *Stockmeier* issues.

10 Your Honor, in this case, Your Honor heard the facts of the
11 case and I won't regurgitate. I do want to highlight certain things. Oscar
12 and Jerry were the lay witnesses in this case. Those two people could
13 very well have been hurt by this incident. If you recall, Oscar was in the
14 car with three of his children. The oldest children been 10 years old.
15 Had they not stop -- stopped at the red light -- the green light for them,
16 the defendant run the red light they would have stricken by the -- struck
17 by the defendant.

18 Jerry -- when the defendant run over the stop sign, Jerry was
19 also in her car with her child. And she was -- as she testified on the
20 stand, even though she wasn't struck, she was crying afterwards. That
21 just shows you how dangerous the defendant's driving behavior was.
22 And if you look at his alcohol level at .249 and what didn't -- and what
23 wasn't transpired at trial was the fact there was a bag of weed found in
24 the defendant's car, Your Honor.

25 In this case, because of the alcohol level, back then 2019 the

1 lab didn't test for other substances if the blood alcohol level reaches
2 certain level. So in this case Your Honor has circumstantial evidence
3 although was not transpired -- did not transpire at trial is a -- if he had
4 any weed or marijuana in his system, you know there was a bag -- bag
5 of marijuana in the car. And this individual -- as Oscar testified, attempt
6 to leave the scene after causing a huge crash -- his car -- a huge van
7 making contact with concrete barriers.

8 So, Your Honor, all those testimonies -- I won't highlight that
9 but I do want to remind Your Honor is his felony convictions. Fourteen
10 felonies, seven DUI's, one hit and run, and this is an individual who just
11 had a DUI in this jurisdiction from -- from a 2013 in C279225. In that
12 case, I did review the PSI. He was speeding under the influence of
13 drugs. He evaded officers in the vehicle after officers had stopped him.
14 He fled on foot. He was eventually captured and in that PSI it's almost
15 the same story, yeah you know what, I learned my lesson, I want to get
16 treatment, I won't -- I won't do this again. So that was just 2013.
17 Apparently that wasn't a lesson that he didn't learn a lesson from that
18 case.

19 And the most recent entry to his criminal history is, Your
20 Honor, after this case before Your Honor he picked up C338413. That
21 was a conspiracy to robbery case committed after committing --
22 committing this crime before Your Honor. He was placed on probation,
23 but he did plead to a -- a violent crime, conspiracy to commit robbery.

24 So, Your Honor, on the spectrum of reasonableness with
25 someone with seven DUI's, I don't know at what point we say we give

1 someone the max. Because this is someone who drives a van is the
2 biggest bullet you can have on the road. Everyone has to take chances
3 with this individual. So I at this point I -- the only thing going for
4 defendant -- I do want to note that is the defendant has been complying
5 on his probation in that -- in that robbery case.

6 So, Your Honor, balance this history, balance the facts of this
7 case against his good performance on probation, I do think 4 to 10 is the
8 appropriate sentencing in this case and he has 31 days credit for time
9 served as of today.

10 THE COURT: All right. Thank you. Ms. Park.

11 MS. PARK: Thank you, Your Honor.

12 Your Honor, I know the State has brought up the -- the case
13 he's on probation for and -- and technically same to robbery. That was a
14 situation where he was basically trying to assist and defend his wife. His
15 wife had someone worked on her car. The car got towed because they
16 put it on the street. They had to pay to get the car out of the tow yard
17 and they were trying to talk to this person about giving her the money for
18 the -- that he caused her have to pay to get the car out of tow yard.

19 So I don't want that to be characterize as he just walks up to
20 somebody and -- and tried to rob them. He took responsibility in that
21 case. He's been on probation for that case. He's been very compliant
22 doing everything he's supposed to do. He's been working. He -- he
23 bought a house. I mean he -- he's really -- since this case and being put
24 on probation on the other case, he has been a model citizen.

25 Your Honor, you know he's -- he's lost his job. He's lost his

1 house. He's -- he's lost everything that he worked hard for because of
2 this. And, you know, I know he knows that this was a situation that was
3 a dangerous situation. He's very regretful for that. I have talked to his --
4 his mother. She lives in California with the rest of his family. The
5 intention is when he's released that he will go back to California with his
6 family to have a little bit more support for the issues that he has. But he
7 -- he understands that he has some issues that need to be resolved and
8 from -- I think he's going to address the Court now and explain that to
9 the Court.

10 THE COURT: All right. Sir.

11 THE DEFENDANT: First of all, Your Honor, I would like to
12 apologize for sending the Courts through all the trials and tribulations
13 that I went through. I just ask for mercy of the Courts right now. Just by
14 hearing the testimonies and the witnesses of my trial, it really hurts me
15 to hear that I put lives in jeopardy driving under the influence. I've
16 always had -- had alcohol problem for a long time that I really need help
17 with. And I ask again, mercy of the Courts to please get me help.
18 Sending me to prison is not going to help.

19 THE COURT: I'll -- I'll be frank, you know, the record here is -
20 - is extreme, seven DUI's, then this DUI and it was the DUI that went to
21 trial. So I don't know that you really accepted any responsibility for this
22 is falling on somewhat deaf ears for this Court. You are a danger. Let's
23 be just plain and simple, you are a danger. Yes, alcohol is a problem.
24 I'm sorry that it is a problem. I know is a tough issue for a lot of people.
25 But I don't see you taking any steps to deal with that and you have a

1 responsibility to do that too, not just the Court.

2 THE DEFENDANT: But, Your Honor [indiscernible – multiple
3 speakers] --

4 THE COURT: I -- I am done talking. Considering the issue of
5 deterrence of the defendant, considering deterrence of others, the
6 chance of rehabilitation and the nature of the crime and the State's
7 summary of the evidence is correct you had two witnesses who were
8 lucky that they didn't get hit by the defendant's conduct in this case.

9 I will sentence the defendant to a term of four to fifteen years
10 in Nevada Department of Corrections. I'll provide for the \$25
11 administrative assessment, \$3 DNA administrative assessment, \$150
12 DNA testing fee. And order that the defendant submit to -- let's see,
13 he's previously -- I'm sure. Yeah, he's previously been tested for DNA.
14 Do we have an agreement as far for credit time served?

15 MR. MENG: Thirty-one days --

16 MS. PARK: Thirty-one.

17 MR. MENG: -- appear to be correct, Your Honor.

18 THE COURT: Thirty-one days credit for time served.

19 MR. MENG: And, Your Honor, we also do have the award
20 fine.

21 THE COURT: Oh, that's right. I have to fine you -- I'll fine two
22 -- \$5,000 -- let's see, I'll fine the minimum \$2,000.

23 MR. MENG: And also the interlock device after, yeah.

24 THE COURT: Oh. And I'll order that when he's released from
25 custody that he place -- interlock device be placed on his car at his

1 expense for -- on any vehicle he drives or has custody or control at his
2 expense for thirty-six months.

3 MR. MENG: Thank you, Your Honor.

4 MS. PARK: Thank you, Your Honor.

5 [Proceeding concluded at 9:19 a.m.]
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19 ATTEST: I do hereby certify that I have truly and correctly transcribed
20 the audio/video proceedings in the above-entitled case to the best of my
21 ability.

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23 _____

24 Connie Coll
25 Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,
9 Plaintiff,

CASE#: C-21-357412-1
DEPT. XX

10 vs.

11 GERALD LEE WHATLEY, JR.,
12 Defendant.

13 BEFORE THE HONORABLE ERIC JOHNSON
14 DISTRICT COURT JUDGE
MONDAY, APRIL 25, 2022

15 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 1**

16
17 APPEARANCES

18 For the Plaintiff:

CHAD N. LEXIS, ESQ.
YU MENG, ESQ.

19
20 For the Defendant:

LESLIE A. PARK, ESQ.

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25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

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FOR THE STATE

MARKED

RECEIVED

None

FOR THE DEFENDANT

MARKED

RECEIVED

None

1 Las Vegas, Nevada, Monday, April 25, 2022

2

3 [Case called at 9:17 a.m.]

4 THE COURT: Call State of Nevada v. Gerald Whatley Jr., case
5 number C357412.

6 Counsel, go ahead and make your formal appearances for
7 the record.

8 MR. LEXIS: Chad Lexis for the State.

9 MS. PARK: Leslie Park for Gerald Whatley. He is present, out
10 of custody.

11 THE COURT: Okay. All right.

12 THE CLERK: [Indiscernible]

13 THE COURT: I'm sorry, what's wrong?

14 THE CLERK: I'm sorry. They're transporting inmates, and --

15 THE COURT: Oh, okay.

16 THE CLERK: -- I couldn't hear her.

17 THE COURT: All right. I've got the second amended
18 information. I assume that's what we're going to be operating under?

19 MR. LEXIS: Correct.

20 THE COURT: Okay. And then --

21 MR. LEXIS: That was for the benefit of the defendant,
22 obviously, to take out prior language. So I took out the prior language,
23 and I'll be admitting it as a Court exhibit right now -- the judgment of
24 conviction that makes it a felony.

25 THE COURT: Okay. Have you showed that to --

1 MR. LEXIS: Yep.

2 THE COURT: -- defense counsel? All right.

3 And I assume you don't have any issue in the prior

4 convictions?

5 MS. PARK: No issue.

6 THE COURT: All right. So do you allow that to be admitted

7 as a document for the Court record?

8 MS. PARK: I do.

9 THE COURT: Okay. All right.

10 THE CLERK: [Indiscernible]

11 THE COURT: Hmm-hmm?

12 THE CLERK: Does the Court receive it?

13 THE COURT: Yeah. Should we make it a Court exhibit or a

14 file exhibit?

15 MR. LEXIS: In my ex-felon cases, Judge, I make that a Court

16 exhibit, but whatever you'd like, Judge. I just need to make a record

17 that --

18 THE COURT: No, I understand --

19 MR. LEXIS: -- personal proof of --

20 THE COURT: -- just deciding what's probably -- in terms of --

21 is Court exhibit available to everybody?

22 MR. LEXIS: Just not the jury.

23 THE CLERK: Just not the jury.

24 THE COURT: Just not the jury?

25 THE CLERK: It won't go to the jury.

1 THE COURT: Well, no, I understand that, but in terms of the
2 public record?

3 THE CLERK: I believe maybe. I mean, it gets filed with
4 everything.

5 THE COURT: Okay. As long -- I mean, that's the main thing
6 is to make sure we've got a public record of it. Okay.

7 [Court and Clerk confer]

8 THE COURT: Do you guys want to move at all? All right.

9 THE MARSHAL: Watch your head.

10 THE COURT: Something different every day.

11 THE MARSHAL: They were just moving back and forth.
12 They're already [indiscernible].

13 THE COURT: All right. Anyway, well --

14 MR. LEXIS: Also joining me is going to be Yu Meng, but he
15 ain't going to be here until this afternoon, and he'll be here for the rest of
16 the trial.

17 THE COURT: Okay, very good. All right. Let's see. What
18 else do we've got to cover? Anything we need to cover before we get
19 started from you guys' angle?

20 MR. LEXIS: I see the paper the Court's given me is 10, 10,
21 and 4, but I see 11 chairs in the back. Do you plan on following the
22 paper --

23 THE COURT: Yeah.

24 MR. LEXIS: -- where it's 10, 10, and 4?

25 THE COURT: Yeah. We'll --

1 MR. LEXIS: Okay.

2 THE COURT: We'll have the 10 people sit in the back, and 10
3 people sit in the next row, and 4 people sit in the front row.

4 MR. LEXIS: Okay.

5 THE COURT: So that will be the plan, and we shouldn't -- I
6 think we only need two alternates. You all indicated you didn't think this
7 trial would go very long.

8 MR. LEXIS: We'll be done by Wednesday.

9 THE COURT: Okay. So that's what I can tell -- now, you
10 needed --

11 MS. PARK: I'm good through Wednesday. I got some
12 coverage on the other issue, so --

13 THE COURT: Okay. Because tomorrow and Wednesday,
14 we'll start probably around 11:00 and go straight through.

15 MS. PARK: Okay.

16 THE COURT: And so we'll go from there. All right. Well,
17 that will make them happy to know that they -- that this will be over by
18 Wednesday. That will also probably make it easier to find -- to get the
19 jury together.

20 Does either side expect the jury selection process to go very
21 long?

22 MR. LEXIS: I anticipate to be done today, and if you want to
23 do opening statements, we can do that, too.

24 MS. PARK: I agree.

25 THE COURT: Do you think so? Okay.

1 MS. PARK: Yeah.

2 THE COURT: All right. Well, we'll get started with that.
3 You've never been in trial with me before -- that's my recollection?

4 MS. PARK: I don't believe so.

5 THE COURT: We'll have 10 in the back, 10 in the next row, 4
6 in the front. I don't refer to them by their badge numbers. I refer to the
7 jurors by their last name or by their seat number. Seats 1 through 10 are
8 up against the wall. Seats 11 through 20 are in the next row and then
9 seats 21 through 24 are the ones out here. The alternates will always
10 come from 21 through 24. I'll give you each one preempt for that to get
11 our alternates. When I say it comes from 21 through 24, if you were to
12 waive -- one side or the other was to waive their peremptory challenge,
13 you aren't moving anybody into an alternate position. It's going to come
14 out of 21 through 24.

15 During the jury selection process, I don't want you to move --
16 to remove anybody for cause in front of the other jurors. We'll do any
17 cause motions at a sidebar or during a break. If, like, for instance, the
18 first break, we remove jurors, potential jurors, 2, 17, and 24, I don't have
19 the jurors stand up and scoot down. The next person in the gallery on
20 the list will go into 2. The next person will go into 17, and the next
21 person will go into 24.

22 There's a red line on the floor with some tape. Don't go in
23 front of that. I will call you back.

24 Do you want -- I will ask Plaintiff's counsel to introduce
25 themselves and give a list of witnesses and a short, short summary of

1 the case.

2 I'll ask you, then, to introduce yourself, any witnesses. Do
3 you want me to invite you to give a short summary of your defense?

4 MS. PARK: No. I think I'll just state [indiscernible].

5 THE COURT: That's fine. You know, some people do --

6 MS. PARK: Yeah.

7 THE COURT: -- some people don't, and I don't want to put
8 you on the spot. So that's why I wanted to ask you now.

9 I can't think of anything else. Can you guys? All right. Any
10 other questions?

11 MR. LEXIS: No.

12 MS. PARK: No.

13 THE COURT: Okay, all right. As soon as we get the group up
14 here, we'll get started then.

15 [Recess from 9:24 a.m. to 10:21 a.m.]

16 THE COURT: We've got our potential jury panel outside.
17 Anything else we need to talk about before we bring them and get
18 started?

19 MR. LEXIS: No, Judge.

20 MS. PARK: No.

21 THE COURT: All right. Let's go ahead and bring them on in.

22 THE MARSHAL: Yes, sir.

23 [Prospective jurors in at 10:22 a.m.]

24 THE MARSHAL: All rise for the potential jury.

25 THE COURT: All right. Do the parties stipulate to the

1 presence of the voir dire panel?

2 MR. LEXIS: Yes, Judge.

3 MS. PARK: Yes, Your Honor.

4 THE COURT: Okay. All right. Everybody get seated. And
5 yep, it's still morning. Good morning, ladies and gentlemen.

6 GROUP RESPONSE: Good morning, Your Honor.

7 THE COURT: Good to see you guys. My name is Eric
8 Johnson. I'm the District Court judge here in Department 20 for the 8th
9 Judicial District Court. Sometimes people will ask me what's the
10 significance of Department 20. It's, like, a geographic area like our
11 assembly people -- our senators, where we represent a specific
12 geographic area. And Department 20 doesn't mean really anything. It's
13 an organizational term. Essentially, we have 32 general jurisdiction
14 judges here in the 8th Judicial District Court, and so for organization
15 purposes, please sign each judge a department, and so I have
16 Department 20.

17 Some people will ask me what is a general jurisdiction judge.
18 And quite simply, a general jurisdiction judge is a judge that handles
19 criminal and civil jury trials. And that's why you're all here today is to be
20 considered for possible service in what will be a criminal jury trial.

21 Are the headphones working okay? Oops, well, for a
22 moment, they were working okay.

23 THE CLERK: You can adjust it if you want.

24 THE COURT: Yeah, all right.

25 Again, I want to thank everybody for being here today. I

1 thank you, the entire court thanks you. The parties all thank you. We're
2 not under any delusion that you're all thrilled about being here. I don't
3 think that you all, when you got that summons in the mail, started doing
4 a happy dance around your dining room table saying I got a summons
5 for jury duty. I'm not under that misconception. But what you are doing
6 today in being here is very important. It is critical that we have people
7 out of the community that come, meet their civic responsibilities, and
8 make themselves available to be considered as possible jurors in the
9 cases that are handled here in the 8th Judicial District Court, which is the
10 court for Clark County.

11 And sometimes people will say why is it so important that
12 we have jurors -- people come in and be jurors? Why can't we just have
13 the judge decide it, or let's have a panel of judges decide it, or a group of
14 professional jurors that decide these things. And what I like to say in
15 explaining why the jury system is so critical to our justice system is that
16 you, as members of the community, give our community confidence in
17 the decisions that come out of this Court. And what do I mean by that?

18 Well, let's think about what a jury is. A jury is a group of
19 people -- and what we're going to try to do today is find a group of
20 people who don't have any real knowledge about the case, don't have
21 any knowledge or familiarity with the parties to the case, the evidence
22 that's in the case -- a group of people that can -- out of the community --
23 that can listen to the evidence, look at the exhibits, and then go back as a
24 group and deliberate and represent the community in making a decision.

25 And it is important for you to understand that you guys do

1 represent the community here in town. You were all selected totally at
2 random from a system that's set up to select people random from all the
3 different zip codes and addresses that we have here. It's a system with
4 1.6 million names in it. So in essence, you all were pulled from 1.6
5 million names. It's sort of like you won a lottery, but there's no cash
6 prize at the end of it. But we try to pull all of you from all sections of the
7 community. And I would tell you, if you have the time today, to chat
8 with everybody here, you'll find that you came from all -- you all come
9 from all sorts of sections, so different economic backgrounds, different
10 work backgrounds, different educational backgrounds, different parts of
11 the Valley. You are representative of our community.

12 And what we try to do is find that group that can listen to the
13 evidence and then go back as a group -- as a community -- and
14 deliberate and reach a verdict in a criminal case, whether someone's
15 guilty or not guilty, in a civil case, whether somebody's been wrongly
16 injured and deserves some sort of compensation. You're the ones who
17 do that -- the community. And because of that, you give our community
18 confidence in the decisions that come out of the court. I don't decide
19 who is guilty or not guilty. I don't decide who deserves some sort of
20 compensation. The governor doesn't decide it, the County Commission
21 doesn't decide it, the city council doesn't decide it. It's you, the
22 community that decides it.

23 And this right to a jury trial has been thought to be an
24 essential right of all of us for literally hundreds of years. And I want to
25 emphasize that point. This is a right for all of us. And if you all or a

1 close family member or a close family friend ever become involved in
2 the justice system, you have a right to a jury trial. And I always like to
3 emphasize that point because I can see lots of people come in here and
4 think, why am I having to come here, I don't know anybody here, I don't
5 know anything about this case. Why am I having to do this.

6 But it's important for you to realize that you also have the
7 same right to a jury trial that the parties in this case have if you ever
8 become involved in the justice system. And I'll suggest you, that if you
9 or a close family member or a close friend ever become involved in the
10 justice system, there is no branch of government that will touch you on a
11 more personal level than the justice system. And if that happens, you
12 have the same right to jury trial.

13 And as I said, this has been thought to be an essential right
14 of all of us for hundreds of years. When the Magna Carta was written in
15 England, one of the earliest written constitutions, the right to jury trial
16 was included in that document. When the United States Constitution
17 was created in the 1780s, the right to a jury trial was included in the Bill
18 of Rights. And when the Nevada Constitution was written in the 17 -- or
19 the 1860s, the right to a jury trial was included in the Nevada
20 Constitution. So this has been thought to be an essential right for all of
21 us for hundreds of years.

22 And in the course of that time, it's been a right that millions
23 of people have in serving in our military fought for and defended. And
24 I'd like to make that point at this time is that our military, people, the
25 millions of people who have served in the military, the millions of people

1 who have fought in our military and sometimes many who have died in
2 her military, they did that to defend our rights and our interests --
3 including our right to a jury trial. And I emphasize that point because
4 this is an opportunity for all of you as members of our community to
5 provide a very real service just like those in our military provide to our
6 country.

7 And I'd like you to think about those in the military,
8 especially -- and at any one time today we have about 2.1 million people
9 serving in active and reserve status and about 200,000 people serving
10 overseas. And in meeting their obligations and responsibilities, those
11 individuals can't come home at many times and do the things many time
12 that we all take for granted, especially those serving overseas. They
13 can't necessarily come home and be there for the birth of a child, be
14 there for the first ballgame, be there for Christmas or Passover, be there
15 for the dance or the barbecue with friends. They give up a lot in serving
16 their country to make sure we all are able to preserve our freedom and
17 our rights including our right to jury trial.

18 And I emphasize that point because there will come a time
19 today when I ask if the schedule in this case is going to be a hardship on
20 anyone. And before you throw up your hand and you say, oh, I've got
21 school, I've got work, I've got this or that with the family, I want you to
22 think about the fact that this is an opportunity for you to provide a very
23 real service to your community as those who have served our military
24 and are serving in our military have provided to our community and
25 country for hundreds of years.

1 The last thing I want to note before we go on with the
2 process here today is if you are ultimately selected to be on the jury, I do
3 think you'll find it to be a very meaningful and good experience. Prior to
4 coming onto the bench about seven years ago, I was with the United
5 States Department of Justice for the most part of that time for about 32
6 years. And for the most part of that time, I was involved in the organized
7 crime program for the Department. And so during my history as a
8 litigator, I worked with juries and trials that lasted a couple months to
9 trials that lasted a couple days.

10 And after every one of those trials, I would try to meet with at
11 least some of the jurors to find out what I did well or what I did bad,
12 how I could approve -- treat each trial as a learning experience. And I
13 always asked the jurors how did they find the experience. And I will tell
14 you that during the course of my 32 years working with the Department
15 and doing litigation, I didn't speak to any juror who didn't tell me that
16 they didn't find it to be a very good and meaningful experience.

17 Since coming onto the bench about seven years ago, I've
18 done numerous criminal and civil jury trials. And after each one of those
19 trials, like to take the jurors back into the jury deliberation room to
20 personally thank them for their service, but also to find out what we as a
21 court possibly could do better in terms of the process today or working
22 with you, or having that evidence presented to you.

23 And I always ask the jurors -- how did you find -- how did you
24 find the experience serving on the jury. And I haven't spoken to anyone
25 who didn't tell me that they didn't feel that it was a good, meaningful

1 experience that gave them a very real sense of the importance of the jury
2 in our justice system. I had a jury just two weeks ago in which I went in
3 afterwards and one of the women who served in the jury commented
4 that she really didn't want to be on the jury. She had tried to sort of get
5 off the jury. I didn't let her off of the jury, and she was glad that I didn't
6 let her off. She was glad that she had the opportunity to serve and to
7 participate and it was a very good and meaningful experience. So I do
8 think that if you all are -- whoever is selected to be on the jury, you will
9 find it to be a very good and meaningful experience.

10 Well, I've introduced myself. Let me introduce some of the
11 other faces that you'll see during the course of the process today and
12 during the trial if you're selected as jurors. Sitting over here, is
13 Catherine [phonetic]. She's our court clerk. She's really the brains of the
14 operation here. She keeps track of all the evidence that is admitted, all
15 the witnesses who testify, and most importantly, she makes sure that I
16 don't screw up and forget to do something or I do something wrong. So
17 she'll be here throughout the trial and working with all of us to get the
18 trial to go through.

19 Next to her is Angie. Angie is our court recorder, and that's
20 exactly what she does. She records everything that goes on here or said
21 that goes on here in the courtroom. If you look around the room, you'll
22 see these black things with little red lights. Those are microphones. We
23 record everything that's said here so that we have a record to preserve
24 for the future. Consequently, during the process today, it's very
25 important that we know who's speaking at any time.

1 So we may, at times, interrupt you and say hey, I'm sorry, so-
2 and-so is speaking. Or there may be times when we interrupt you and
3 say don't talk over each other. Because what will happen inevitably, I'm
4 guilty as the next person, is I'll start to ask you a question or an attorney
5 will start to ask you a question, and before I'm done asking the question
6 or they're done asking the question, you'll anticipate what the question
7 is, and you'll start to answer it. And then I'll listen to answer, and I'll
8 anticipate how you're going to finish it, and I'll start to ask the next
9 question.

10 And so we have issues at times with people talking over each
11 other, and that makes it difficult for us to be able to discern what's being
12 said. So we may, at times, interrupt, say please, one at a time or juror
13 number X or Y or Z is speaking. We're not trying to be rude or anything.
14 It's just critical that we get a very good record of everything that's said
15 here during the course of the proceedings.

16 Next to Angie is someone you've already met, our marshal,
17 Marshal Trimidol [phonetic]. He's responsible for courtroom security
18 here when we are in session. He's also responsible for working with all
19 of you today, and if you are selected as jurors, working with you as
20 jurors.

21 So if anything comes up today -- you have a question about
22 parking, question above vending machines, questions about this that or
23 the other thing, you see something that concerns you or you hear
24 something that concerns you, go to the marshal. Tell him what -- ask
25 him your question or tell him your concern. And if he feels it's

1 appropriate, he'll bring that matter to me, and I'll pass it on to the
2 attorneys.

3 During the course of the process today, and during the
4 course of the trial if you're selected as jurors, as a general rule, the
5 parties, the attorneys, my court staff won't speak to you even if we
6 should happen to walk by you in the hall or meet you -- be in the elevator
7 with you -- not even say hi. And it's not that we're trying to be antisocial,
8 it's just that we're bound by ethics to avoid having anything said to you
9 that may, in some way, contaminate or affect your verdict.

10 And so to better guarantee that doesn't happen, as a general
11 rule, the attorneys, the parties, my staff won't speak to you. But you can
12 speak to the marshal. So if something comes up, go ahead and ask him
13 about it as long as it doesn't have anything to do with the facts of the
14 case that we're going to be talking about, and he'll pass that on to me.

15 During the course of the trial, you may, at times, see Tiffany.
16 She's my law clerk. She's a recent Boyd -- UNLV Boyd School of Law
17 graduate and a recent admittee to the Bar. She works with me on legal
18 issues that may come up during the trial or other problems that might
19 come up during the trial, so she may come in at different times. You
20 also may see Kelly, my judicial assistant, from time to time come into the
21 courtroom. All right. So those of the people you need to be introduced
22 to.

23 Now, at this point in time, I'm going to issue two orders to all
24 of you. And these are orders. You're legally required to follow these
25 orders. I'm, at the same time, going to ask you to do the things that I'm

1 about to order you to do. And hopefully, you'll understand why I'm
2 asking you to do the things that I'm about to order. The first order is
3 until you are excused as potential jurors, or if you're selected as jurors
4 until you're excused as jurors -- until you're excused as jurors, do not go
5 on the Internet, social media, any of the websites or applications, or
6 social media in any way discuss this case or your possible participation
7 in it.

8 I'm only limiting you as to this case and your possible
9 participation in it. I'm not limiting you if you want to go on and talk
10 about the NBA playoffs, or you know, what's going on in politics or in
11 whatever you're interested in. But as to this case and your possible
12 participation in it, don't go on Facebook or WhatsApp or anything and
13 text or enter anything about it. That's an order. I'm also asking you not
14 to do that. And hopefully, again, you understand why I'm asking you not
15 to do that.

16 If you go out in front of the regional justice building and take
17 a selfie of yourself and say hey, I'm here for consideration in a criminal
18 case about XYZ, you post that on Facebook or whatever, people can
19 respond to that, comment on it, or say something. And their comments
20 or their response could be something inappropriate for you to see or be
21 made aware of as a potential juror in this case. So to avoid that, I'm
22 asking you -- don't go on the Internet and social media and discuss in
23 any way your participation in this case and the case itself.

24 The second thing I'm going to order -- and again, I'm
25 emphasizing this as an order, order you not to do -- I'm going to order

1 you not to go on your smartphones, not to go on your laptops or iPads,
2 or desktop computers and do any sort of research or investigation about
3 this case. The parties, the case, the attorneys, the Court -- don't go and
4 do any research about the case. I'm ordering you not to do that. I'm
5 also asking you not to do that. And again, hopefully, you understand
6 why I'm asking you not to do that.

7 If you were to go on the Internet or your smartphone and
8 type in the name or type in a location, you'll get information that
9 possibly, under our rules of evidence, you shouldn't have. It would be
10 inappropriate. It would be information that the other jurors wouldn't
11 have. And that would be unfair to the parties if you received information
12 that other jurors should have our information that you shouldn't have
13 had in the first place.

14 And so to ensure that we don't have a situation like that, just
15 don't go on and do any research about this case. You're not limited in
16 any other way in terms of your use of your smartphones or computers or
17 whatever. But in terms of this case, the parties and the attorneys don't
18 go on and do any investigation or research.

19 All right. I'm going to do a roll call of our first 24 jurors and
20 make sure that we've got everybody seated in the right place. During
21 the course of this process, I'm going to refer to you by your last name or
22 by your seat number. And so seats 1 through 10 are against the wall
23 over here. Seat number 1 is to my left, your right; seat number 10 is to
24 my right, your left. The next row up is seats 11 through 20. Again, 11
25 will be to my left, your right; and 20 will be to my right, your left. And

1 then the four seats up here are 21 through 24. And so during the trial,
2 I'm going to refer to you by seat number or I'm going to refer to you by
3 your name, last name, and so that's how we'll do it. Let's see if we got
4 everybody where they're supposed to be. All right.

5 Now, as I go through this, it's a roll call. I need you to say
6 out loud, here, present, whatever you want, but make some signal loud
7 enough that that red light is going to be able to pick you up. So in seat
8 number one should be Mr. Papay.

9 PROSPECTIVE JUROR 002: Here.

10 THE COURT: That's perfect.

11 Seat number 2 should be Ms. Esposito?

12 PROSPECTIVE JUROR 008: Here.

13 THE COURT: Thank you.

14 Seat number 3 should be Mr. Densley.

15 PROSPECTIVE JUROR 010: Present.

16 THE COURT: Thank you.

17 Seat number 4 should be Ms. Castaneda.

18 PROSPECTIVE JUROR 019: Here.

19 THE COURT: Okay, good.

20 Seat number 5 should be Mr. Bojorquez.

21 PROSPECTIVE JUROR 021: Here.

22 THE COURT: Okay.

23 Seat number 6 should be Ms. Thomas.

24 PROSPECTIVE JUROR 024: Here.

25 THE COURT: Thank you.

1 Seat number 7 should be Ms. Sosa Rizo.
2 PROSPECTIVE JUROR 032: Here.
3 THE COURT: Thank you.
4 Seat number 8 should be Ms. Wong.
5 PROSPECTIVE JUROR 051: Here.
6 THE COURT: Thank you.
7 Seat number 9 should be Mr. Padilla.
8 PROSPECTIVE JUROR 053: Here.
9 THE COURT: Thank you.
10 And then, seat number 10 should be Ms. Andrews.
11 PROSPECTIVE JUROR 055: Here.
12 THE COURT: Okay.
13 So far so good. All right. We're going to go down now to
14 seat number 11. That should be Ms. Heldt.
15 PROSPECTIVE JUROR 058: Here.
16 THE COURT: Thank you.
17 Seat number 12 should be Ms. Lacayo.
18 PROSPECTIVE JUROR 063: Here.
19 THE COURT: Okay. I was going to say I need a little louder.
20 All right. Seat number 13 should be Ms. Maki.
21 PROSPECTIVE JUROR 068: [Muh' kee].
22 THE COURT: [Muh' kee]?
23 PROSPECTIVE JUROR 068: Yes. Okay. All right, thank you.
24 Seat number 14 should be Ms. Quinto'Ocasio.
25 PROSPECTIVE JUROR 070: Here.

1 THE COURT: Okay, thank you.
2 Seat number 15 should be Mr. Maier.
3 PROSPECTIVE JUROR 075: [My' er], here.
4 THE COURT: [My' er]? Okay.
5 Seat number 16 should be Ms. Cortes-Leon.
6 PROSPECTIVE JUROR 077: Present.
7 THE COURT: Thank you.
8 Seat number 17 should be Mr. Lobianco.
9 PROSPECTIVE JUROR 083: Here.
10 THE COURT: Thank you.
11 Seat number 18 should be Ms. Mecham.
12 PROSPECTIVE JUROR 086: [Meek' um], here.
13 THE COURT: [Meek' um]? All right.
14 Seat number 19 should be Mr. Elmer.
15 PROSPECTIVE JUROR 091: Here.
16 THE COURT: Thank you. And then seat number 20 should
17 be Ms. Omandac.
18 PROSPECTIVE JUROR 092: Here.
19 THE COURT: All right. So again, so far so good. Now this
20 row here in front of the bar. Seat number 21 should be Mr. Harvey.
21 PROSPECTIVE JUROR 100: Here.
22 THE COURT: All right. Seat number 2 should be Ms.
23 Robinson.
24 PROSPECTIVE JUROR 115: Here.
25 THE COURT: And then seat number 3 should be Ms. Calara?

1 PROSPECTIVE JUROR 117: Here.

2 THE COURT: And then seat number 4 should be Mr.

3 Soquena.

4 PROSPECTIVE JUROR 136: [Suh qwine' uh].

5 THE COURT: [Suh qwin' uh].

6 All right. All right. Everybody's where they're supposed to
7 be at. At this point in time, I'm going to ask everybody over here in the
8 box and out in the gallery, if you're able, to rise and be sworn in by the
9 clerk.

10 THE COURT: Raise your right hands.

11 [The Prospective Jury was sworn]

12 GROUP RESPONSE: I do.

13 THE COURT: All right.

14 THE CLERK: Thank you. Go ahead and be seated.

15 THE COURT: Thank you, guys. All right. At this point in
16 time, I'm going to ask each side to this case to introduce themselves and
17 to give you a list of witnesses so that you sort of have an idea of what
18 the case is about. I'm going to start off with the State and ask the
19 attorney representing the State of Nevada to introduce himself, give a
20 list of witnesses, and then give a very short summary as to what this
21 case concerns. And then we'll go over have defense counsel introduce
22 herself and the defendant and add any additional witnesses that they
23 might call.

24 As you hear the list of witnesses, don't get terrified. I don't
25 know -- frequently, the list of witnesses is going to be much, much

1 longer than those who will actually testify at trial. The goal in reading
2 these list of witnesses is to essentially cover anyone who possibly could
3 testify during the trial.

4 So if you hear a bunch of names, don't be scared by it. The
5 parties have indicated to me the trial should be over by the end of
6 Wednesday, so this is not a very long trial. So like I said, don't get too
7 intimidated by any length of witnesses. I do ask you to listen to the list
8 of witnesses given by the parties. If you think you know one of them, put
9 that in the back of your mind. There will come a point here pretty soon
10 where I'll ask if you think you know any of the witnesses who may
11 testify. Like I said, if you hear the name and you think you might know
12 that person, just put in the back of the mind. We'll figure out later if
13 that's the John Doe or Jane Doe that you know.

14 So with that, I'd ask State's counsel to introduce himself, give
15 us a list of witnesses and a short summary of the case.

16 MR. LEXIS: Good morning. My name is Chad Lexis. Joining
17 me in a little bit will be a guy named Yu Meng. We are Deputy District
18 Attorneys at the Clark County District Attorney's Office. We represent
19 the People of the State of Nevada, and we're prosecuting this case. The
20 defendant is charged with one count of a felony, driving under the
21 influence for an event that took place on November 23rd, 2019 in the
22 area of Desert Inn and Theme Street.

23 Please listen to the following list of names as they may be
24 witnesses. As the Court said, only a fraction of these people are actually
25 going to testify, but I still need to read all of them to you. Brian Bounds,

1 Denise Heineman, Stacy Whitefield (phonetic), Debra Cristilli (phonetic),
2 Oscar Castillo, Officer Rainier Frost, Keith Gross, (phonetic), Officer
3 Anthony Manginelli (phonetic), Officer Michael Polion, and Jerry
4 Skilbred. Thank you.

5 THE COURT: All right. Thank you, counsel.

6 I'd ask now for defense counsel to introduce herself, her
7 client, and then any additional witnesses they may call.

8 MS. PARK: Thank you, Your Honor.

9 Hello, everyone. My name is Leslie Park, and I represent
10 Gerald Whatley who is sitting here beside me, and we will not be
11 introducing any witnesses of our own.

12 THE COURT: Okay.

13 MS. PARK: Thank you.

14 THE COURT: All right. Thank you very much. All right,
15 ladies and gentlemen. At this point in time, were going to move into the
16 process of talking to all of you and asking you some questions. I want to
17 emphasize that there is no right answer, there is no wrong answer to any
18 of these questions. All we're looking for is an honest answer. I've had
19 potential jurors in the past say to me that, you know, I was concerned
20 about answering that question because it may suggest that I have some
21 sort of biased or prejudice. That's totally all right. Don't feel afraid to
22 answer a question because it might suggest a bias or prejudice. That's
23 what we're trying to find out. But we generally find out is that -- and
24 what studies have shown happens -- is if you're aware of a possible bias
25 or prejudice, you can usually put that bias or prejudice aside and be fair

1 to both sides in a case.

2 So the fact that you may have had a life experience or been
3 presented with something that might suggest a bias or prejudice isn't
4 necessarily a problem. The next question is, do you feel that you can put
5 that aside and be fair to both sides. And as I said, studies have generally
6 shown that if we're aware of that and want to try to do that, we can put
7 aside potential biases and prejudice and be fair to both sides. So all
8 we're looking for is honest answers here today in terms of the questions
9 that I ask.

10 If I ask a question or the attorneys ask a question, and you
11 don't hear it, just ask for the question to be repeated. If I ask a question,
12 and you don't understand it, or the attorneys ask a question and you say
13 you don't understand it, ask us to rephrase it, and we'll be glad to
14 rephrase it. If during the course of this I ask a question or the attorneys
15 ask the question of you that you feel uncomfortable answering in front of
16 everybody here, ask for us what we call a sidebar.

17 And then what will happen at that point in time is we'll go
18 back behind the whatever it is behind me, and the attorneys will go and
19 come back. It will be recorded, but you can answer the question back
20 there without having to answer it in front of everybody here in the
21 courtroom. So if that makes it easier for you to give us an honest
22 answer, then go ahead and request a sidebar. I don't encourage that
23 because obviously that takes longer, but if it's something we need to do
24 to get an honest answer, don't hesitate to ask to do that.

25 Now, in this process, I'm going to start with this group --

1 focused primarily on this group of 24 that is sitting over here. For those
2 of you out in the gallery, it's absolutely critical that you listen to the
3 questions I ask, and the attorneys ask. And if you would answer any of
4 those questions, put that in the back of your mind and be ready to
5 answer those questions if you're called upon. Because what will
6 inevitably happen during the course of the process here today is that
7 some of the people over here in this group of 24 are going to get
8 excused. And when they get excused, you all out in the gallery will
9 come in and fill in those seats.

10 And what will happen is you'll come, and you'll fill in a seat,
11 and I'll say good morning or good afternoon, depending on what time of
12 day it is, and then I'll ask, had you had an opportunity to hear the
13 questions that I asked earlier today. And if you say yes, I'll say would
14 you have answered any of those questions. And if you say yes, I
15 would've, then I'll say, which questions would you have answered and
16 what's your answer. And you can go through and say I would've
17 answered this question or that question, or the other question.

18 Now, if you're called up, and you replace somebody in one of
19 the chairs, and I say good afternoon or good morning and then ask you --
20 did you hear all the questions that I asked earlier today, and you say no,
21 then I've got to go back and repeat all those questions. And everybody
22 here is going to look at you real angry-like because that's going to slow
23 up the process in terms of getting done with the jury selection thing
24 today. So it's really, really important that you listen to the questions that
25 I and the attorneys ask and be ready to answer those as we go through

1 the questions today.

2 All right. The first question I have, though, is for everyone --
3 the 24 over here in the box and all of you out in the gallery, and that is
4 language. Is there anyone who's having trouble understanding me
5 because English is not your native language or because you have some
6 hearing impediment that makes it difficult to hear me? And let's go over
7 to number 13, Ms. Maki.

8 PROSPECTIVE JUROR 068: Hiro Maki.

9 THE COURT: I'm sorry?

10 PROSPECTIVE JUROR 068: Hiro Maki. My name is --

11 THE COURT: Okay.

12 PROSPECTIVE JUROR 068: -- Hiro Maki, yes.

13 THE COURT: And Ms. Maki, is the problem you're having is
14 that English is not a native language?

15 PROSPECTIVE JUROR 068: My native language is Japanese.

16 THE COURT: Japanese?

17 PROSPECTIVE JUROR 068: Okay. How long have you lived
18 here in the United States?

19 PROSPECTIVE JUROR 068: United States, oh, so actually still
20 back and forth, Japan and here --

21 THE COURT: Okay.

22 PROSPECTIVE JUROR 068: -- Japan to U.S. then so I moved
23 here from San Diego --

24 THE COURT: Uh-huh.

25 PROSPECTIVE JUROR 068: -- and so California, so not so

1 many speak English, so I'm not fluent, really.

2 THE COURT: All right.

3 PROSPECTIVE JUROR 068: Japanese -- many [indiscernible]
4 Japanese.

5 THE COURT: Well, you seem to understand pretty much
6 what I'm saying to you today.

7 PROSPECTIVE JUROR 068: Yeah, so -- so far I think the half
8 of the -- 50 percent.

9 THE COURT: Okay. Well, where do you work?

10 PROSPECTIVE JUROR 068: Well, right, now, just retired.

11 THE COURT: You're retired? What did you do before?

12 PROSPECTIVE JUROR 068: Before this all [indiscernible] --
13 how to say the export business.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR 068: Import, export.

16 THE COURT: Was that here in Las Vegas, or was that down
17 in San Diego?

18 PROSPECTIVE JUROR 068: So before San Diego. Then I also
19 retired here -- moved to here.

20 THE COURT: All right, okay. Well, thank you very much for
21 letting me know your concerns. I appreciate that.

22 PROSPECTIVE JUROR 068: Yeah.

23 THE COURT: What I'm going to ask you today is listen to the
24 things I say, and if you really don't understand something that I say, you
25 just tell me you don't understand, and we'll make sure we repeat it for

1 you to understand it, okay? Okay?

2 PROSPECTIVE JUROR 068: Yes.

3 THE COURT: Okay. All right, thank you.

4 PROSPECTIVE JUROR 068: Thank you.

5 THE COURT: All right. I think that was the only hand I saw --
6 oh, no. I see another hand. Number 7 -- oh, hold on.

7 Marshal, it's over here.

8 Ms. Sosa Rizo, number 7.

9 PROSPECTIVE JUROR 032: I don't speak English.

10 THE COURT: All right. What is your native language?

11 PROSPECTIVE JUROR 032: Espanol.

12 THE COURT: All right. How long have you been here?

13 PROSPECTIVE JUROR 032: Six years.

14 THE COURT: Okay. What do you do here? What's your
15 employment or work here?

16 PROSPECTIVE JUROR 032: No -- nothing.

17 THE COURT: You don't have any employment?

18 PROSPECTIVE JUROR 032: No.

19 THE COURT: Okay. All right. How much of what I've said so
20 far do you think you understand?

21 PROSPECTIVE JUROR 032: A little bit.

22 THE COURT: A little bit?

23 PROSPECTIVE JUROR 032: Yeah.

24 THE COURT: Do you think you understand 80 percent, 50
25 percent?

1 PROSPECTIVE JUROR 032: Twenty.
2 THE COURT: Twenty percent?
3 PROSPECTIVE JUROR 032: Yes.
4 THE COURT: Okay. All right. If we were able to get a
5 translator, would you possibly be able to understand more?
6 PROSPECTIVE JUROR 032: Yes.
7 THE COURT: Okay, all right. Thank you very much for letting
8 us know.
9 Anybody else then over the group of 24 over here? All right,
10 not seeing any other hands. And then we'll hand that back to the corner
11 back there.
12 PROSPECTIVE JUROR 251: The juror number 104928576.
13 THE COURT: Are you --
14 UNIDENTIFIED SPEAKER: 39?
15 PROSPECTIVE JUROR 251: Daniel.
16 THE COURT: 39? Mr. Lie?
17 PROSPECTIVE JUROR 251: Yes.
18 THE COURT: Okay, Mr. Lie. What is your concern? Is
19 English not your native language?
20 PROSPECTIVE JUROR 251: No, no English, sir.
21 THE COURT: Okay. How long have you lived here?
22 PROSPECTIVE JUROR 251: Ten years.
23 THE COURT: Okay. What country did you come from?
24 PROSPECTIVE JUROR 251: Indonesia.
25 THE COURT: Okay. And what is your native language? I'm

1 sorry? What's your native language?

2 PROSPECTIVE JUROR 251: Indonesian.

3 THE COURT: Indonesian? Okay, all right. What do you do
4 here in town?

5 PROSPECTIVE JUROR 251: Working at the warehouse.

6 THE COURT: Okay. What company?

7 PROSPECTIVE JUROR 251: Flooring.

8 THE COURT: Okay. How much of what I've said so far do
9 you feel you understand -- 50 percent, 80 percent?

10 PROSPECTIVE JUROR 251: Thirty percent.

11 THE COURT: Thirty percent? Okay. All right. If I've -- I'm
12 not sure if we have an Indonesian translator. If I had an Indonesian
13 translator, would that help you?

14 PROSPECTIVE JUROR 251: Yes.

15 THE COURT: Okay, all right. Thank you very much for letting
16 us know.

17 PROSPECTIVE JUROR 251: Thank you.

18 THE COURT: All right. Anybody else's hand I've missed?
19 Okay, all right. Thank you.

20 All right. Now, I am going to start focusing on that group
21 over here, the first 24. The first question -- is there anyone who is not a
22 United States citizen? All right. Oh, I rarely see a hand. Let's go down
23 to number --

24 PROSPECTIVE JUROR 077: 16.

25 THE COURT: 16. Ms. Cortes-Leon.

1 PROSPECTIVE JUROR 077: I am not a citizen. I'm a
2 permanent resident. I don't know if there's a difference.

3 THE COURT: I know there is a little bit.

4 PROSPECTIVE JUROR 077: Right.

5 THE COURT: Okay, all right. But you're sure you're not a
6 citizen?

7 PROSPECTIVE JUROR 077: No, I am not.

8 THE COURT: Okay, very good. Thank you. Anybody else
9 who is not a United States citizen? Okay. Let the record reflect no other
10 hands. Is there anyone who's been convicted of a felony? Let the record
11 reflect no hands. Is there anyone with a prejudice or bias for or against
12 any individuals relating to age, gender, sexual orientation, religion, or
13 ethnic origin? All right. Let the record reflect no hands. All right.

14 The Deputy District Attorney, Mr. Lexis, has introduced
15 himself. Is there anybody who knows -- he mentioned Mr. Yu Meng,
16 who's going to be his co-counsel. Is there anyone who thinks they may
17 know, have any information about, heard of, or have any knowledge in
18 any way about Mr. Lexis or Mr. Meng? Let the record reflect no hands.
19 Is there anyone who knows anyone who works at the Clark County
20 District Attorney's Office either as an attorney or as a staff member in
21 some way -- usually get one or two people. All right. All right, let the
22 record reflect no hands.

23 Now, defense counsel, Ms. Park, has introduced herself. Is
24 there anyone who thinks they know anything about Ms. Park, heard of
25 her, seen her before, have any information, knowledge in any way about

1 Ms. Park? All right. And then, she's also introduced Mr. Whatley, the
2 defendant in this case. Is there anyone who thinks they know of, heard
3 of, seen before, any information at all about Mr. Whatley? All right. Let
4 the record reflect no hands as to those questions. All right.

5 You did hear the State read off a list of witnesses. Is there
6 anyone who thinks they may possibly know any of the witnesses listed
7 off by the State? Okay. I see number 9, Mr. Padilla's hand up.

8 Who do you think you might know?

9 PROSPECTIVE JUROR 053: I wouldn't say -- not by name,
10 but if any of them happen to be, like, a police officer that's driving a
11 motorcycle, I may know them.

12 THE COURT: Okay. Do you socialize with a bunch --

13 PROSPECTIVE JUROR 053: I do.

14 THE COURT: -- of police officers that drive motorcycles?

15 PROSPECTIVE JUROR 053: I do.

16 THE COURT: Okay. All right. But you didn't recognize any
17 of the names that Mr. --

18 PROSPECTIVE JUROR 053: Not the names --

19 THE COURT: -- Lexis --

20 PROSPECTIVE JUROR 053: -- no. But we hang out at the
21 same place.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR 053: I see a lot of them almost daily.

24 THE COURT: All right.

25 PROSPECTIVE JUROR 053: But I don't know -- by names, no,

1 I didn't -- I didn't recognize any.

2 THE COURT: All right. Anything about your association with
3 those guys -- and is it a club or just people who --

4 PROSPECTIVE JUROR 053: Just people I know.

5 THE COURT: People you -- is there anything about your
6 association with them that would affect your ability to be a fair juror in
7 this case?

8 PROSPECTIVE JUROR 053: No.

9 THE COURT: All right. Did you feel would you be able to
10 follow my instructions on the law and fairly and unbiasedly [sic] apply
11 those instructions to the evidence admitted?

12 PROSPECTIVE JUROR 053: Yes.

13 THE COURT: All right, thank you, Mr. Padilla.

14 All right. Anybody else think they possibly may know any of
15 the witnesses listed off by the State? Let the record reflect no other
16 hands. All right. Does anyone believe they know anything about the
17 facts of this particular case either through personal knowledge,
18 conversation with people, the news media, or social media? Let the
19 record reflect no hands. Just out of interest, did any member of the jury
20 know another member of the jury who's here in the room today before
21 we all got together today? Every now and then, we'll have even relatives
22 on the same panel, so it's always sort of good to know. All right. Let the
23 record reflect no hands.

24 All right. Let me talk to you a little bit about the schedule in
25 this case. Today, we're going to be going until about 5:00. We'll take a

1 break at around 12:30 to 1 for a one-hour lunch. We're going to be going
2 to, like I said, about 5:00 today. Tomorrow we'll get started at 11. We'll
3 go through -- and Wednesday, same thing -- we'll get started at 11 and
4 go straight through until 5:00. We'll have, obviously, breaks for the
5 restroom and to stretch, but we won't have a long lunch break. So you'll
6 need to eat before you get here or bring a snack -- eat while we're having
7 trial. If you need to refrigerate something, that's not a problem, we'll
8 arrange for the refrigeration. But that will be the schedule that we go
9 through.

10 The parties have indicated to me they feel pretty comfortable
11 that they will have the case to you on Wednesday for your consideration.
12 So this won't be a very long trial in the course of trials. It's not going to
13 be an exciting construction defect trial where you could be here for nine
14 months analyzing stucco or six months pondering whether yellow grass
15 is defective with Las Vegas' water. So it's not going to be a very long
16 trial. As I indicated before, all trials -- we appreciate and understand all
17 trials are inconvenient. You've got other things going on for your lives,
18 but what you are doing here is very, very important. Let me ask -- with
19 that schedule, is there anybody who feels that participation in this trial
20 would be a hardship to you?

21 All right. Let's go to Ms. Cortes-Leon.

22 PROSPECTIVE JUROR 077: I don't know if it's a hardship, but
23 I do have little ones at home, and I'm the only one here in the state. I
24 don't have anyone to leave them with.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR 077: I got lucky today, but I don't
2 know about the rest of the week.

3 THE COURT: How old are they?

4 PROSPECTIVE JUROR 077: My little one is two.

5 THE COURT: Okay, all right. Is there someone who can
6 watch them in the afternoons?

7 PROSPECTIVE JUROR 077: No, I got lucky. I said I got lucky
8 today with my babysitter, but otherwise, I don't really have --

9 THE COURT: Okay.

10 PROSPECTIVE JUROR 077: -- anyone reliable for the rest of
11 the week.

12 THE COURT: All right, all right. What about tomorrow
13 afternoon or Wednesday afternoon? Will your babysitter be available?

14 PROSPECTIVE JUROR 077: That -- that -- that's my problem.
15 I don't have anyone else. I -- because I had the -- the assignment so long
16 ago, I was able to wiggle out today --

17 THE COURT: Uh-huh.

18 PROSPECTIVE JUROR 077: -- but my babysitter won't be
19 available for the rest of the week.

20 THE COURT: All right. All right, thank you.

21 There was another hand I saw, -- Ms. Omandac, number 20.

22 PROSPECTIVE JUROR 092: I work as a nurse practitioner
23 with oncology, so I have patients scheduled for the whole week. I'm not
24 sure if, you know, I think it would be a little disservice to my patients
25 because they are cancer patients, and I need to see them for their

1 treatments and all of that.

2 THE COURT: There's no one who can fill in for you?

3 PROSPECTIVE JUROR 092: Today I did -- some of the
4 doctors that I work with. But for tomorrow or Wednesday, we would
5 have to cancel the patients, unfortunately.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR 092: If -- or I don't know. I would
8 have to ask my work --

9 THE COURT: [Indiscernible]

10 PROSPECTIVE JUROR 092: -- how it would be possible.

11 THE COURT: All right. Well, you understand it is an
12 obligation --

13 PROSPECTIVE JUROR 092: Yes, sir.

14 THE COURT: -- and I appreciate it is inconvenient.

15 PROSPECTIVE JUROR 092: Yes, sir.

16 THE COURT: But all right. I appreciate you letting me know
17 that. Thank you.

18 Anybody else? All right. Let the record reflect no other
19 hands. Let me ask if any of you are engaged -- any of you or a close
20 family member or a close friend engaged in some way in the practice of
21 law, either as an attorney or paralegal, or a staff member?

22 Okay, let's go down to Number 1, Mr. Papay.

23 PROSPECTIVE JUROR 002: Hey, good morning. Both my
24 son and my daughter-in-law are both litigators for a large -- a large firm
25 in California.

1 THE COURT: Oh, okay. What firm?
2 PROSPECTIVE JUROR 002: Bingham McCutchen.
3 THE COURT: All right. Do they do any criminal work?
4 PROSPECTIVE JUROR 002: No. No.
5 THE COURT: Okay. Anything about your relations with them
6 and their work, that would affect your ability to be a fair juror in this
7 case?
8 PROSPECTIVE JUROR 002: No. Not at all.
9 THE COURT: Okay. Do you feel you'd be able to follow my
10 instructions on the law, and fairly and unbiasedly follow those
11 instructions to the evidence submitted?
12 PROSPECTIVE JUROR 002: Absolutely.
13 THE COURT: All right. Thank you very much.
14 Who else in that back row? Any, I think I saw Mr. Padilla's
15 hand, anybody else?
16 All right. Let's go to Mr. Padilla.
17 PROSPECTIVE JUROR 053: Previous law enforcement, and
18 then I also just graduated law school.
19 THE COURT: Oh, here at Boyd?
20 PROSPECTIVE JUROR 053: No.
21 THE COURT: Oh, where?
22 PROSPECTIVE JUROR 053: American Institute of Law in
23 Torrance, California.
24 THE COURT: Oh, okay. Congratulations. Are you going to
25 take a bar hear in Nevada?

1 PROSPECTIVE JUROR 053: I am planning on it.

2 THE COURT: All right. Good luck with that. You're going to
3 need to gear up to study on that here pretty soon.

4 PROSPECTIVE JUROR 053: Yeah.

5 THE COURT: All right. Did you have any area that you
6 focused on in your law school career?

7 PROSPECTIVE JUROR 053: Not particularly.

8 THE COURT: All right. And then you --

9 PROSPECTIVE JUROR 053: Only criminal and environmental
10 law are my interests.

11 THE COURT: Okay. You mentioned that you were law
12 enforcement; where were you law enforcement?

13 PROSPECTIVE JUROR 053: In the military.

14 THE COURT: Okay. How long were you in the military?

15 PROSPECTIVE JUROR 053: Five years.

16 THE COURT: All right. What branch, I'm sorry,

17 PROSPECTIVE JUROR 053: Air Force.

18 THE COURT: All right.

19 PROSPECTIVE JUROR 053: Here -- here in Las Vegas.

20 THE COURT: Here in Las Vegas. All right. Well, thank you
21 for your service here. And anything in terms of your law enforcement
22 work or your law school work, that you think would affect your ability to
23 be a fair juror in this case?

24 PROSPECTIVE JUROR 053: I mean, I've arrested people that
25 have done the same thing, but I don't think it would --

1 THE COURT: Well, I mean --

2 PROSPECTIVE JUROR 053: -- affect my bias.

3 THE COURT: -- you indicate that you -- I take it you've
4 arrested people for driving under the influence?

5 PROSPECTIVE JUROR 053: Correct?

6 THE COURT: I mean, obviously those are different cases,
7 and different --

8 PROSPECTIVE JUROR 053: Right.

9 THE COURT: -- circumstances.

10 PROSPECTIVE JUROR 053: Right.

11 THE COURT: The question I need to know is, do you feel
12 you'd be able to put those cases aside --

13 PROSPECTIVE JUROR 053: Yes.

14 THE COURT: -- and focus on the --

15 PROSPECTIVE JUROR 053: Yes.

16 THE COURT: -- witnesses who take an oath to testify here,
17 the exhibits introduced here, and be fair to both sides?

18 PROSPECTIVE JUROR 053: Yes.

19 THE COURT: Okay. Thank you very much.

20 All right. Anybody else in the back row? All right.

21 And next row up 11 through 20, any of you a close family
22 member or close friend, involved, engaged in some way in the practice
23 of law as an attorney, paralegal or staff member? Not seeing any hands
24 in that second row. What about the third row, anybody? All right. No
25 hands there. Anyone I missed? Let the record reflect no other hands.

1 All right. Let me just ask. This is sort of an off-the-cuff
2 question, but let me just ask, is there any of you who were really thrilled
3 and happy to get the summons to have to appear here for jury service?
4 Every now and then I find someone -- I've had people go, "this is a
5 bucket list item of mine." So I just always like to ask that.

6 Let's see, Ms. Maki?

7 PROSPECTIVE JUROR 068: I'm -- I guess I'm the odd one
8 out, but I don't know. I've always just found it really interesting. I've -- I
9 work in politics, and so being able to understand the legal system is
10 important, and I feel like it's a duty that I can -- I can do, because that's
11 really all I'm asked to do as a citizen. So I don't know, I was excited. My
12 husband thought I was weird, but --

13 THE COURT: You're not weird.

14 All right. Anybody else that I missed? Okay. Thank you. T

15 By that same token, and if you've, you know, let me just ask,
16 is there anyone who was really upset that you got the summons? And if
17 -- and if you have something in regard to scheduling, you know, you
18 mentioned, you don't feel you have to say anything more, but is there
19 anyone who really was upset that they got the summons to appear?

20 PROSPECTIVE JUROR 016: I'm not upset, but I was
21 wondering, what the hell am I going to do with my kids?

22 PROSPECTIVE JUROR 008: I was just going to say, would
23 you define upset?

24 THE COURT: Well, I'll leave -- I'll leave you to define upset,
25 then, Number 2, Ms. Esposito? Thank you.

1 PROSPECTIVE JUROR 008: For, for me --

2 COURT RECORDER: Hold on, you need a mic. Thank you.

3 PROSPECTIVE JUROR 008: For me, personally, I suffer from
4 anxiety. So yes. I mean it immediately puts me in kind of an anxious
5 way. So I do have to take into anti-anxiety medicine to come, but I'm
6 okay. I'm good.

7 THE COURT: You sound --

8 PROSPECTIVE JUROR 008: I'm enjoying it.

9 THE COURT: You seem good.

10 PROSPECTIVE JUROR 008: And I'm enjoying it. But initially,
11 and right up until last night, I was pretty much a basket case, but you
12 know, I'm just being -- I'm just being honest.

13 THE COURT: No, no. I appreciate that. No, I'm glad to know
14 that.

15 PROSPECTIVE JUROR 008: But, you know, I'm -- I'm doing
16 okay. I've got a couple of great guys here next to me, and so I'm doing
17 all right.

18 THE COURT: All right. Good deal.

19 PROSPECTIVE JUROR 008: Okay. All right. Thank you.

20 Anybody else? All right, let's go down to number 11,
21 Ms. Heldt?

22 PROSPECTIVE JUROR 058: Well, I'm kind of like her, I have
23 medical issues, and family issues that I have to totally rearrange to be
24 down here. So --

25 THE COURT: All right. So you're -- just the hassle, is what

1 you're --

2 PROSPECTIVE JUROR 058: More than that, yeah. My
3 mother has stage 4 liver cancer and I --

4 THE COURT: Oh, I'm sorry.

5 PROSPECTIVE JUROR 058: -- take care of her, plus work full
6 time, and then I'm in the process of finding out if I have cancer. So I had
7 to cancel doctor's appointments.

8 THE COURT: Oh, okay. Thank you. And I appreciate that.
9 Thank you.

10 Anybody else? All right, let the record reflect no other hands.

11 Now Mr. Padilla already mentioned this, but let me ask,
12 anybody else, either you or a close family member or friend have been --
13 -- are, or have been engaged in law enforcement work, or security work?

14 PROSPECTIVE JUROR 053: No, sir.

15 THE COURT: Okay. And, Mr. Padilla, is there something
16 more that you haven't mentioned? Okay. Why don't we -- well, who
17 else? Who in the back row? Let's go start -- I like to do it numerically.
18 So let's start with Mr. Papay, and, Steve, if you can hand the mic down to
19 him.

20 PROSPECTIVE JUROR 053: My experience is 22 years
21 serving in the Marine Corps as -- also as a commanding officer, so
22 therefore I was responsible for [indiscernible] in special court marshals.

23 THE COURT: Okay. Thank you for your service. Let me ask
24 you if your experience in the military, and serving as commander, do
25 you feel it would affect in some way your ability to be fair here to the

1 parties in this case?

2 PROSPECTIVE JUROR 053: No. No way.

3 THE COURT: Okay. All right. Did you ever have any cases
4 similar to this, involving driving under the influence?

5 PROSPECTIVE JUROR 053: Yes.

6 THE COURT: All right. Do you think you'd be able to put
7 those aside and focus on the witnesses who testified here, and the
8 exhibits that are introduced here, and be fair to both sides?

9 PROSPECTIVE JUROR 053: Yeah, absolutely. Each one's a
10 separate case.

11 THE COURT: Okay. All right. Thank you very much.

12 Who else in the back row? You, close family member, friend,
13 engaged in law enforcement work or security work? All right. We're
14 down to Number 8, Ms. Wong.

15 PROSPECTIVE JUROR 051: I'm a compliance investigator for
16 the State of Nevada.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR 051: It falls under public safety.

19 THE COURT: And what compliance do you focus on?

20 PROSPECTIVE JUROR 051: Worker's Compensation.

21 THE COURT: Oh, okay. All right. Any -- how long you been
22 doing that?

23 PROSPECTIVE JUROR 051: For about four years.

24 THE COURT: Okay. Anything about your work there with the
25 State, and as compliance investigator, you think would affect your ability

1 to fair juror in this case?

2 PROSPECTIVE JUROR 051: No, I don't believe so.

3 THE COURT: Do you feel you'd be able to follow my
4 instructions on the law fairly and unbiasedly apply those instructions to
5 the evidence submitted?

6 PROSPECTIVE JUROR 051: Yes.

7 THE COURT: All right. And then if you hand that back to
8 Mr. Padilla, something that you missed in terms of your --

9 PROSPECTIVE JUROR 053: I mean, I have my uncle, my --

10 THE COURT: Okay.

11 PROSPECTIVE JUROR 053: -- cousins, they're all police
12 officers. My son is a police officer --

13 THE COURT: So hold here. You're going too fast here.

14 PROSPECTIVE JUROR 053: Sorry.

15 THE COURT: Your son's a police officer --

16 PROSPECTIVE JUROR 053: I have two uncles that are police
17 officers. I have my son who is currently in the Marine Corps. My father
18 worked for the IRS, as a field investigator.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR 053: I have a cousin who is a field
21 officer, field agent for FBI. It's just really ingrained in my family, so --

22 THE COURT: All right. You mentioned an uncle. What does
23 he do?

24 PROSPECTIVE JUROR 053: He's a police officer in Oaklands.

25 THE COURT: Okay. All right. Well, let's, you know, in terms

**PLEADING
CONTINUES
IN NEXT
VOLUME**