

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

2 JAVAR KETCHUM,

Supreme Court Case No.: 87012

3 Appellant,

District Case No.: **Electronically Filed**
C-16-319714-1
Jan 20 2024 12:53 AM
Elizabeth A. Brown
Clerk of Supreme Court

4 vs.

5 THE STATE OF NEVADA,

6 Respondent.

7
8 (Appel From a Final Order of The Eighth Judicial District Court, Denying
9 Petition of Writ of Habeas Corpus (Post Conviction))

10 **APPELLANT’S OPENING BRIEF**

11 **Volume III**

12 **Bates Nos.:**

13 **AO000360 – AO000552**

14
15
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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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7
8 **APPELLANT'S APPENDIX**
9 **ALPHABETICAL INDEX**

10 Pursuant to NRAP 25(c)(1)(E) I certify that I served the foregoing Appellant's
11 Appendix by causing it to be served by electronic means to the registered users of
12 the Court's electronic filing system consistent with NEFCR 9 to the following:

12 Aaron Ford
13 Alexander Chen

14 Amended Petition for Writ of Habeas Corpus (Post-Conviction), (03/24/2023).
15 **Volume V - (Bates Nos.: AO000774 – 805)**

16 Appellant's Corrected Opening Brief, - 75097, (08/29/2018).
17 **Volume IV - (Bates Nos.: AO000575 – 634)**

18 Court Minutes RE Amended PWHC, (05/23/2023).
19 **Volume V - (Bates Nos.: AO000833 – 835)**

20 Court Minutes RE Confirmation of Counsel, (07/26/20218).
21 **Volume IV - (Bates Nos.: AO000571)**

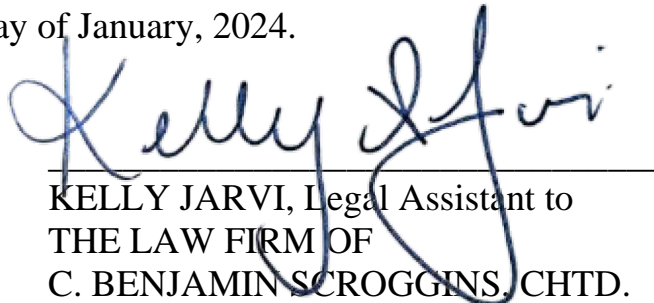
22 Court Minutes RE Defendant's Motion for Medical Treatment,
(12/12/2017) **Volume - (Bates Nos.: AO000550)**

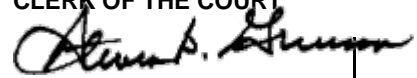
1	Court Minutes RE Defendant’s Motion to Withdraw Stipulation, (12/01/2017).
2	.....Volume III - (Bates Nos.: AO000549)
3	Criminal Order to Statistically Close Case, (02/13/2018).
4	.....Volume IV - (Bates Nos.: AO000555)
5	Findings of Fact, Conclusions of Law & Order, (03/31/2021).
6	.....Volume IV - (Bates Nos.: AO000704 – 716)
7	Findings of Fact, Conclusions of Law & Order, (06/15/2023).
8	.....Volume V - (Bates Nos.: AO000836 – 848)
9	Judgment, Affirmed, (10/11/2019) Volume IV- (Bates Nos.: AO000682)
10	Judgment of Conviction, (02/05/2018)
11	.....Volume III - (Bates Nos.: AO000551 - 552)
12	Motion for Appointment of Counsel on Appeal, (06/27/2018).
13	.....Volume IV - (Bates Nos.: AO000562 – 570)
14	Motion to Compel Production of Trial Transcript, (03/12/2018).
15	.....Volume IV - (Bates Nos.: AO000556 – 560)
16	Motion for Medical Treatment, (11/27/2017)
17	.....Volume IV - (Bates Nos.: AO000538 – 542)
18	Motion for New Trial, (06/02/2017). . . Volume III - (Bates Nos.: AO000382 – 440)
19	Motion to Vacate Stipulation, (10/30/2017)
20	.....Volume III - (Bates Nos.: AO000507 – 513)
21	Notice of Additional Letters of Support in Aide of Sentencing, (11/13/2017). Volume III - (Bates Nos.: AO000514 – 537)
	Notice of Appeal, (02/06/2018). Volume IV- (Bates Nos.: AO000553 - 554)
	Notice of Appeal – 82863, (05/06/2021).
	.....Volume IV- (Bates Nos.: AO000717 – 760)

1	Notice of Change of Case Number, (09/16/2020)	
2	. . . . . Volume IV - (Bates Nos.: AO000702 – 703)	
3	Notice of Transfer to Court of Appeals – 82863-COA, (12/06/2021).	
4	. . . . . Volume V - (Bates Nos.: AO000763)	
5	Order, Appointment of Counsel, (07/31/2018).	
6	. . . . . Volume IV - (Bates Nos.: AO000572 – 574)	
7	Order, (04/04/2018). Volume IV - (Bates Nos.: AO000561)	
8	Order of Affirmance – 75097, (09/12/2019).	
9	. . . . . Volume IV - (Bates Nos.: AO000683 – 687)	
10	Order of Affirmance – 82863-COA, (02/03/2022).	
11	. . . . . Volume V - (Bates Nos.: AO000764 – 768)	
12	Order Directing Transmission of Record & Regarding Briefing – 82863,	
13	(05/13/2021). Volume IV - (Bates Nos.: AO000761 – 762)	
14	Order for Transcript, (06/12/2017). Volume III - (Bates Nos.: AO000507)	
15	Order for Production of Inmate, (03/03/2023)	
16	. . . . . Volume V - (Bates Nos.: AO000771 – 773)	
17	Petition for Post-Conviction Writ of Habeas Corpus,	
18	(09/11/2020) Volume IV- (Bates Nos.: AO000691 – 701)	
19	Remittitur – 75097, (11/01/2019). Volume IV - (Bates Nos.: AO000688 – 690)	
20	Remittitur – 82863-COA, (03/22/2022)	
21	. . . . . Volume V - (Bates Nos.: AO000769 – 770)	
	Reply Memorandum to State of Nevada’s Opposition to Defendant’s Motion for	
	New Trial, (09/27/2017). Volume III - (Bates Nos.: AO000454 – 462)	
	Respondent’s Answering Brief – 75097, (10/29/2018)	
 Volume IV - (Bates Nos.: AO000635 – 681)	

1 Sentencing Memorandum, (10/16/2017)
..... **Volume III - (Bates Nos.: AO000471 – 506)**
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3 State's Opposition to Defendant's Motion for New Trial, 09/05/2017. . .
..... **Volume III - (Bates Nos.: AO000441 – 453)**
4 State's Opposition to Defendant's Motion to Vacate Stipulation,
(11/28/2017)..... **Volume III - (Bates Nos.: AO000543 – 548)**
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6 State's Response to Petitioner's Amended Petition for Writ of Habeas Corpus – Post
Conviction, (04/27/2023). **Volume V- (Bates Nos.: AO000806 – 832)**
7 Supplement to Defendant's Motion for New Trial,
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9 Transcript of Proceedings, Jury Trial – Day 1, Partial Transcript – Excludes Jury
Voir Dire, 05/22/2017 **Volume I - (Bates Nos.: AO000001 - 12)**
10 Transcript of Proceedings, Jury Trial – Day 2, Partial Transcript – Excludes Jury
Voir Dire & Opening Statements, 05/23/2017.....
11 **Volume I - (Bates Nos.: AO000013 – 111)**
12 Transcript of Proceedings, Jury Trial – Day 3, 05/24/2017
..... **Volume II - (Bates Nos.: AO000112 – 253)**
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14 Transcript of Proceedings, Jury Trial – Day 4, 05/25/2017.....
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15 Transcript of Proceedings, Jury Trial – Day 5, Partial Transcript – Excludes Closing
Arguments, 05/26/2017..... **Volume III - (Bates Nos.: AO000360 – 381)**
16

17 CERTIFIED this 20th day of January, 2024.

18 
19 _____
20 KELLY JARVI, Legal Assistant to
21 THE LAW FIRM OF
C. BENJAMIN SCROGGINS, CHTD.



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-16-319714-1
	.	
Plaintiff,	.	DEPT. NO. XVII
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
JAVAR ERIS KETCHUM,	.	
	.	
Defendant.	.	
.	

BEFORE THE HONORABLE KATHY HARDCASTLE
SENIOR DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

**PARTIAL TRANSCRIPT
(EXCLUDES CLOSING ARGUMENTS)**

FRIDAY, MAY 26, 2017

APPEARANCES:

FOR THE STATE:	JOHN L. GIORDANI, III., ESQ. STEVEN ROSE, ESQ. <i>Deputy District Attorneys</i>
FOR DEFENDANT KETCHUM:	NICHOLAS M. WOOLDRIDGE, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

AO000360

1 LAS VEGAS, NEVADA, FRIDAY, MAY 26, 2017, 9:40 A.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. We're back on the record
4 outside the presence of the jury panel. Counsel for both
5 sides are present, defendant is present. You may take a seat.
6 We're making a record.

7 MR. WOOLDRIDGE: Sure.

8 THE COURT: Did you get the issue regarding the
9 testimony worked out?

10 MR. GIORDANI: I believe.

11 MR. WOOLDRIDGE: In terms of probation, Your Honor?

12 THE COURT: Yes.

13 MR. WOOLDRIDGE: Your Honor, I'm looking at the
14 court minutes, and what I see is that the case is getting
15 status checked for revocation of probation hearing since 4/13.
16 I don't like the stipulation that he's just on some type of
17 informal probation. I think it negates the seriousness of
18 what's going on with him, and makes it sound like in the mind
19 of the jurors that he's just like, that this is no big deal.

20 The fact that he's on some type of informal
21 probation, it's not necessarily -- it's still probation.
22 He's --

23 THE COURT: Well, either you've worked out a
24 stipulation or you haven't. If you haven't, what is your
25 request?

1 MR. WOOLDRIDGE: My request is to let the jury know
2 he is on probation, period.

3 MR. GIORDANI: And we're okay with that. We just
4 want it accurate. On December 21st, 2015, nine months before
5 the murder, he was OR'ed with house arrest on that probation
6 case. So his release on that was not -- had nothing to do
7 with this case. On 1/13/16, again, eight months before the
8 murder, he was taken off of supervised probation and placed on
9 informal probation.

10 After the murder, a VR, Violation Report was filed
11 three days, so right when he turned himself into his attorney
12 and the police. So he is on informal probation and there is a
13 violation pending. I mean, we're fine with that.

14 THE COURT: Based upon this case.

15 MR. GIORDANI: That's accurate. Yeah, that's
16 accurate.

17 THE COURT: All right. So --

18 MR. GIORDANI: So we're not disputing what you're
19 saying.

20 THE COURT: -- he was -- he previously testified
21 that he was on probation. That he was removed from formal
22 probation on 4/13 --

23 MR. GIORDANI: 1/13.

24 THE COURT: 1/13 of --

25 MR. GIORDANI: '16.

1 THE COURT: -- '16. That after he was charged in
2 this case, a Violation Report was filed.

3 MR. WOOLDRIDGE: Was it in this case that the
4 Violation Report was filed or was it in his other case?

5 MR. GIORDANI: No, it was in the case you're talking
6 about.

7 THE COURT: Okay. In the other case --

8 MR. WOOLDRIDGE: It was in the Henderson case.

9 MR. GIORDANI: This was the basis, this murder,
10 accessory and robbery.

11 MR. WOOLDRIDGE: I don't think so. I think he --
12 bear with me.

13 THE COURT: Well, we don't have so say what the
14 Violation Report was.

15 MR. GIORDANI: No.

16 THE COURT: He was released from formal supervised
17 probation -- all right, he was placed on informal probation,
18 not required to report to a probation officer beginning
19 January 13th of 2016.

20 MR. GIORDANI: Correct.

21 THE COURT: That three days after his arrest in this
22 case, a Violation Report was filed.

23 MR. GIORDANI: Three days after this crime occurred.

24 THE COURT: Three days after this --

25 MR. GIORDANI: Because this was --

1 THE COURT: -- incident occurred.

2 MR. GIORDANI: Yes, this incident was the 25th, and
3 the Violation Report was filed the 28th. And then since then,
4 they've status checked it out to see what happened in a
5 sentencing in this case, and there's a violation -- or a
6 revocation pending on whatever date Mr. Wooldridge said.

7 MR. WOOLDRIDGE: Let me see. I can pull it up.

8 MR. GIORDANI: Which I presume will happen after the
9 sentencing in this case because this is more serious stakes,
10 obviously.

11 MR. WOOLDRIDGE: Bear with me, Your Honor.

12 THE COURT: And when is the status check set?

13 MR. GIORDANI: Mr. Wooldridge will have to tell you
14 that. I don't have that date.

15 MR. WOOLDRIDGE: Judge, the issue that I have when
16 we're talking about all this informal probation stuff is that,
17 I believe that the jury's going to think that he's -- like his
18 probation is not that serious when really, what's going on is
19 the reason why he's on informal probation --

20 THE COURT: The only thing that's important is that
21 they know that he has a prior conviction. The --

22 MR. WOOLDRIDGE: Well, it's --

23 THE COURT: -- probation is not important unless you
24 think that has something to do with the plea deal, and if we
25 can't work out -- if you don't want to work out a stipulation

1 this morning, that's fine. I'll bring the jury back on
2 Wednesday and you can recall the witness and ask your
3 questions.

4 MR. WOOLDRIDGE: The issue, Judge --

5 THE COURT: So what do you want?

6 MR. WOOLDRIDGE: That's what I want to do.

7 THE COURT: Which?

8 MR. WOOLDRIDGE: Recall the witness.

9 THE COURT: Okay.

10 MR. GIORDANI: Well, and there is no witness,
11 because he doesn't have a probation officer. So what do you
12 want in the stipulation. We can discuss it.

13 MR. WOOLDRIDGE: I want it to be known that he's on
14 probation. If we're going to get into all the stuff that he's
15 on, informal probation, I don't --

16 THE COURT: The stipulation is, is that he was
17 incorrect, he is on probation.

18 MR. GIORDANI: Fine.

19 MR. WOOLDRIDGE: Okay.

20 THE COURT: All right.

21 MR. WOOLDRIDGE: Thank you.

22 THE COURT: So the stipulation will be that Antoine
23 -- was it --

24 MR. ROSE: Antoine Bernard.

25 THE COURT: -- Bernard testified that he was not on

1 probation from his prior case. Both sides stipulate that he
2 was incorrect, and that he is on probation.

3 MR. GIORDANI: As of -- it preexist this case.

4 THE COURT: From that prior case?

5 MR. GIORDANI: Yes.

6 THE COURT: Yes.

7 MR. GIORDANI: Yeah, fine.

8 MR. WOOLDRIDGE: That's correct.

9 MR. GIORDANI: Fine with us.

10 THE COURT: All right.

11 MR. WOOLDRIDGE: I don't know if it's incorrect. I
12 don't know if I like that kind of language, though. It makes
13 it sound like he's making an innocent mistake.

14 MR. ROSE: Well, he very well might have.

15 THE COURT: You're stipulating that he was
16 incorrect.

17 MR. WOOLDRIDGE: Was he incorrect or was he lying?

18 THE COURT: That's for you to argue to the jury on
19 closings.

20 MR. WOOLDRIDGE: All right.

21 THE COURT: I'm not going to say he was lying.

22 MR. WOOLDRIDGE: Well, why do we have to say
23 anything about incorrect? Just he's on probation.

24 THE COURT: All right.

25 MR. WOOLDRIDGE: That's what I want.

1 THE COURT: He testified that he was not on
2 probation from a prior case. Both State and defense stipulate
3 that Antoine Bernard was on probation from the prior case.

4 MR. GIORDANI: Sure. Sure.

5 MR. WOOLDRIDGE: That's fine. Thank you.

6 THE COURT: How's that work?

7 MR. WOOLDRIDGE: That's good.

8 THE COURT: All right. Now, sir instructions.
9 We've got the jury instructions as proposed. Any other jury
10 instructions requested by either side?

11 MR. GIORDANI: Not on behalf of the State.

12 MR. WOOLDRIDGE: Yes, Your Honor.

13 THE COURT: All right.

14 MR. WOOLDRIDGE: It's my page 40. I think that the
15 State called their last witness, their rebuttal witness. I
16 think it really played into the jury's sympathy. I think we
17 need a separate instruction specifically on sympathy, and that
18 would be my number 40.

19 MR. GIORDANI: And our position is, is it -- the
20 common sense instruction, the stock instruction, says a
21 verdict may never be influenced by sympathy, prejudice or
22 public opinion. Your decision should be the product of
23 sincere judgment and sound discretion in accordance with these
24 rules of law and that covers it.

25 THE COURT: Yeah, I think that covers it, and your

1 request for the additional instruction would be cumulative.
2 So therefore, I will not give it. All right. Any other --

3 MR. WOOLDRIDGE: That's fine, Judge.

4 THE COURT: Any objections to the ones that are to
5 be given?

6 MR. WOOLDRIDGE: No.

7 MR. GIORDANI: Nope.

8 THE COURT: All right. And you've received the
9 verdict form?

10 MR. GIORDANI: Yes.

11 MR. WOOLDRIDGE: Yes.

12 THE COURT: Any objection to the verdict form?

13 MR. GIORDANI: No.

14 MR. WOOLDRIDGE: No.

15 THE COURT: All right. Then let's bring the -- take
16 a couple minutes. We'll bring the jury in. I will read the
17 stipulation to them, and then I will do closing -- I'll do the
18 jury instructions, and then we'll go right into closing
19 arguments. All right?

20 MR. GIORDANI: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. WOOLDRIDGE: Your Honor, will we take a break
23 before closing or will we just go right into it?

24 THE COURT: No, we're going to take a break right
25 now --

1 MR. WOOLDRIDGE: Yep.

2 THE COURT: -- and yes, we'll go right from jury
3 instructions right into closing.

4 MR. WOOLDRIDGE: Okay.

5 (Court recessed at 9:50 a.m. until 9:57 a.m.)

6 THE MARSHAL: All rise for the jurors.

7 (In the presence of the jury)

8 THE MARSHAL: Court come to order. Department 17
9 is now in session. The Honorable Senior Judge Cathy
10 Hardcastle, presiding.

11 THE COURT: All right. Thank you. You may have a
12 seat. We're missing one juror.

13 MR. ROSE: Your Honor, we excused one juror
14 yesterday.

15 THE COURT: Oh, that's right. That was the
16 alternate that's moved over. Okay. I'm sorry. I saw the
17 empty seat and got confused for a second. All right. So all
18 members of panel are present, counsel for both sides are
19 present.

20 Ladies and gentlemen, the parties have reached a
21 stipulation regarding a fact. The parties have stipulated
22 that witness Antoine Barron (sic) testified that he was not
23 on probation from a prior case. Both the State and the
24 defense stipulate that Antoine Barron was on probation from a
25 prior case.

1 MR. GIORDANI: It's Antoine Bernard.

2 MR. WOOLDRIDGE: Your Honor, it's Antoine Bernard,
3 just for clarification.

4 THE COURT: Oh, Bernard.

5 MR. GIORDANI: Yes.

6 THE COURT: I said Barron.

7 MR. GIORDANI: Yes.

8 THE COURT: Bernard. Antoine Bernard. All right.
9 Anything else?

10 MR. GIORDANI: No, Your Honor.

11 THE COURT: Both sides have rested?

12 MR. WOOLDRIDGE: Yes.

13 MR. GIORDANI: Yes.

14 THE COURT: All right. Ladies and gentlemen, we've
15 reached that point in the case where both sides have rested.
16 You've heard all the evidence that's going to be presented to
17 you. It is now my time to read you the instructions on the
18 law.

19 As I read the instructions, pay attention, but
20 don't be overly concerned if there's some that seem to be a
21 little confusing because you'll have copies of this to take
22 with you. We'll make you six copies. If you want more, just
23 let us know. If each of you wants your own separate copy,
24 we'll be happy to make additional copies. So just let us
25 know about that.

1 (Court reads Jury instructions to the Jury)

2 THE COURT: State.

3 MR. ROSE: Thank you, Your Honor.

4 (State's closing argument; not transcribed)

5 THE COURT: Counsel.

6 MR. WOOLDRIDGE: Can we approach real quick, Your
7 Honor?

8 (Off-record bench conference)

9 THE COURT: Ladies and gentlemen, it's my policy, I
10 like to give the attorneys the right to start their argument
11 and finish their argument without interruption. So we're
12 going to take an early lunch, and I'll bring you back here at
13 12:30. And at 12:30, we'll hear the defense closing argument
14 and then State will give their final closing argument and
15 then the case will go to the jury.

16 So before I release you for your lunch, just remind
17 you again, not to discuss the case among yourselves or with
18 anyone else. Don't form or express any opinion. Don't do
19 any research, do any Internet search, don't text, don't tweet
20 about the case. We'll you back here at 12:30.

21 THE MARSHAL: Rise for the jurors.

22 (Outside the presence of the jury)

23 THE COURT: All right. We're outside the presence
24 of the jury. Anything else we need to make a record on?

25 MR. WOOLDRIDGE: No, Your Honor.

1 MR. GIORDANI: Not from the State.

2 THE COURT: All right. Thank you. I'll see you at
3 12:30.

4 (Court recessed at 11:11 a.m. until 12:36 p.m.)

5 (In the presence of the jury)

6 THE MARSHAL: Court will come to order. Department
7 17 is back in session.

8 THE COURT: All right. We're back on the record.
9 Have a seat. All members of the jury panel are present.
10 Counsel for both sides are present. Defendant is present.
11 Just to make a quick record, over the lunch hour I was
12 approached by one of the jurors downstairs. I was asked a
13 question, and I didn't mean to be rude or anything, but again,
14 the rules are we can't talk to the jury. And yes, my portrait
15 is in the building. It's up on one of the upper floors, but
16 thank you. All right.

17 MR. WOOLDRIDGE: Bear with me, Your Honor.

18 (Defendant's Closing Argument; not transcribed).

19 (State's Rebuttal Closing Argument; not transcribed)

20 THE COURT: All right. The Clerk will swear in the
21 bailiff or the marshal to take charge of the jury.

22 (Marshal is sworn)

23 THE MARSHAL: Jurors?

24 THE COURT: All right. And we will swear in the
25 clerk to take charge of the alternates.

1 (Clerk is sworn)

2 THE COURT: All right. On the alternates, I'm going
3 to go ahead and let you go this afternoon. Before you leave,
4 we're going to get your phone numbers. If something happens
5 where we need for you to come back and fill in on the jury, we
6 will give you a call. And once the case is over, and I
7 release the jury, we will call you and let you know so that
8 you can come in and pick up your checks.

9 THE MARSHAL: All right, jurors, follow me.

10 THE COURT: If the alternates want to go ahead and
11 file out with the jury, we'll come out and get your phone
12 numbers in just a minute and send you home. Go ahead and
13 follow them out.

14 (Outside the presence of the jury.)

15 THE COURT: Hang on just a sec.

16 (Pause in the proceedings)

17 THE COURT: All right. We're outside the presence
18 of the jury. Anything else that we need to cover?

19 MR. GIORDANI: Not on behalf of State.

20 MR. WOOLDRIDGE: Not -- nothing, Your Honor.

21 THE COURT: All right, thank you. Make sure that we
22 have your phone numbers, and so we can get ahold of you. And
23 counsel approach for a minute.

24 (Off-record bench conference.)

25 THE COURT RECORDER: Are we off the record now,

1 Judge?

2 THE COURT: Yeah.

3 THE COURT RECORDER: Okay.

4 (Court recessed at 1:43 p.m. until 3:26 p.m.)

5 (Outside the presence of the jury.)

6 (Pause in the proceedings)

7 THE MARSHAL: Court will come to order. Department
8 17 is back in session.

9 THE COURT: Okay. We've been informed that have a
10 verdict so we'll go ahead and bring the jury in. I thought he
11 was ready to bring in the jury.

12 (Pause in the proceedings)

13 THE MARSHAL: Rise for the jurors.

14 (In the presence of the jury.)

15 THE MARSHAL: Panel's present, Your Honor.

16 THE COURT: All right, thank you. We'll be back on
17 the record. We're back in the presence of the jury. You may
18 be seated. All members of the jury are present. The two
19 alternates are not present. Counsel for both sides are
20 present. Defendant is present. Will the foreperson of the
21 jury please stand. Has the jury reached a verdict?

22 JUROR NO. 1: Yes.

23 THE COURT: And would you please hand the verdict
24 forms to the Marshal. All right. The Clerk will read the
25 verdict.

1 THE CLERK: District Court, Clark County, Nevada.
2 State of Nevada, plaintiff, versus Javar Eris Ketchum,
3 defendant. Case No. C-3-16-319714. Department 17, Verdict.

4 We the jury in the above-titled case find the
5 defendant, Javar Eris Ketchum, as follows:

6 Count 1, murder with the use of a deadly weapon;
7 Guilty of first degree murder with use of a deadly weapon.

8 Count 2, robbery with use of a deadly weapon;
9 Guilty of robbery with use of a deadly weapon.

10 Signed by the foreperson, Caroline Benton. This
11 26th day of May, 2016 (sic).

12 THE COURT: All right. Would either side like to
13 have the jury polled?

14 MR. GIORDANI: No, Your Honor.

15 MR. WOOLDRIDGE: Yes.

16 THE COURT: All right. Clerk will poll the jury.

17 THE CLERK: Juror No. 1, is this your verdict as
18 read?

19 JUROR NO. 1: Yes.

20 THE CLERK: Juror No. 2, is this your verdict as
21 read?

22 JUROR NO. 2: Yes, ma'am.

23 THE CLERK: Juror No. 3, is this your verdict as
24 read?

25 JUROR NO. 3: Yes.

1 THE CLERK: Juror No. 4, is this your verdict as
2 read?

3 JUROR NO. 4: Yes.

4 THE CLERK: Juror No. 5, is this your verdict as
5 read?

6 JUROR NO. 5: Yes.

7 THE CLERK: Juror No. 6, is this your verdict as
8 read?

9 JUROR NO. 6: Yes.

10 THE CLERK: Juror No. 7, is this your verdict as
11 read?

12 JUROR NO. 7: Yes.

13 THE CLERK: Juror No. 8, is this your verdict as
14 read?

15 JUROR NO. 8: Yes.

16 THE CLERK: Juror No. 9, is this your verdict as
17 read?

18 JUROR NO. 9: Yes.

19 THE CLERK: Juror No. 10, is this your verdict as
20 read?

21 JUROR NO. 10: Yes.

22 THE CLERK: Juror No. 11, is this your verdict as
23 read?

24 JUROR NO. 11: Yes.

25 THE CLERK: Juror No. 12, is this your verdict as

1 read?

2 JUROR NO. 12: Yes.

3 THE COURT: All right, thank you. The jury has been
4 polled. Counsel approach.

5 (Off-record bench conference)

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, we have just a few housekeeping matters to handle. Now
8 that we have your verdicts, there will be a necessity of a
9 penalty phase that will -- I'm going to discuss the schedule
10 of that and how long it's going to take with counsel and then
11 I'll bring you back in, give you the time to return and then
12 we'll recess for the day. So if you'll go ahead and step back
13 to the jury room for a few minutes, give us a chance to work
14 out the housekeeping matters.

15 THE MARSHAL: Go ahead and rise for the jurors.

16 (Outside the presence of the jury)

17 THE COURT: Okay, counsel. When you're ready, just
18 let me know and I'll --

19 MR. WOOLDRIDGE: Thank you, Your Honor.

20 THE COURT: -- come back.

21 MR. GIORDANI: Yes, Judge.

22 (Court recessed at 3:37 p.m. until 4:07 p.m.)

23 (Outside the presence of the jury)

24 THE MARSHAL: Come to order. Department 17's back
25 in session.

1 THE COURT: All right. Back on record. Back in the
2 presence of counsel. Counsel of both sides are present.
3 Defendant's present. The jury panel is not present. Have we
4 worked anything out regarding the penalty phase?

5 MR. WOOLDRIDGE: We have, Your Honor.

6 THE COURT: All right. And what is it?

7 MR. WOOLDRIDGE: The parties have stipulated to a
8 sentence of 20 to life on the murder charge.

9 MR. GIORDANI: Correct. And the parties will retain
10 the right to argue for the enhancements and the other robbery
11 charge, any lawful sentence.

12 THE COURT: All right. And so we'll just set
13 sentencing and an in-custody sentencing date and get our
14 pre-sentence investigation report?

15 MR. GIORDANI: Yes, Your Honor. Did you receive the
16 signed copies and I believe --

17 THE COURT: I do have the written stipulation and
18 order waiving the separate penalty phase.

19 MR. GIORDANI: I just want to verify on the record
20 that Mr. Ketchum signed those and agrees.

21 THE COURT: Mr. Ketchum, you're agreeing to this?

22 THE DEFENDANT: Yes.

23 THE COURT: And is this your signature here in the
24 stipulation?

25 THE DEFENDANT: Yes.

1 THE COURT: And you signed this freely and
2 voluntarily?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: After consultation with your attorney?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. I will accept the stipulations.
7 I will sign the order now waiving the separate penalty
8 hearing. And we'll give you a date.

9 THE CLERK: July 18th, 8:30 a.m.

10 THE COURT: And then let's bring the jury in so I
11 can thank and excuse the jury.

12 MR. WOOLDRIDGE: Your Honor, you'll let us ask
13 questions of the jurors later if they --

14 THE COURT: I always encourage them to talk to you.

15 MR. WOOLDRIDGE: Okay.

16 (Pause in the proceedings)

17 THE MARSHAL: Go ahead and rise for the jurors.

18 (In the presence of the jury)

19 THE COURT: All right.

20 THE MARSHAL: Panel's present, Your Honor.

21 THE COURT: Back on the record. Back in the
22 presence of the jury. You may be seated. All right. Ladies
23 and gentlemen of the jury, the State and the defense has
24 reached an agreement regarding the sentence on the -- your
25 verdict of the first degree murder charge. So there will be

1 no necessity to have a separate hearing phase. So I'm going
2 to go ahead and dismiss you as jurors in this case.

3 I want to thank you for your time, your attention,
4 your service here. You're very, very much a part of what
5 makes our system here in the United States, our criminal
6 justice system, one of best in the world. So I also know it
7 can be tough serving as a juror. You're required to take a
8 lot of time out of your day, out of your life to come in here.

9 It can be very tough sometimes listening to evidence
10 that's presented. It's tough sometimes to judge the case and
11 judge what the facts of the case are. But I think that -- I
12 hope that you've learned something from your service here.
13 That you enjoyed your participation in our system. And again,
14 I want to thank you for your time and your attention.

15 What this means now since I have now dismissed you
16 as jurors in this case. One, we've notified Jury Services so
17 hopefully your checks will be ready before you leave the
18 building and you can pick them up downstairs. It also means
19 that you may now discuss this case among yourselves or with
20 anyone else. This includes your friends and family. In fact,
21 I encourage you to be willing to talk about the case and about
22 your service on -- as a juror in this case.

23 But you are not required to talk about the case. I
24 encourage to talk to the attorneys. Quite often they can
25 learn a lot about how to conduct jury trials in the future,

1 how they can make themselves better professionals by being
2 able to talk to the jurors. They really do learn a lot. So I
3 encourage you, if you're willing, to talk to the attorneys in
4 this case. However, you're not required to talk to anyone.

5 If someone should persist in trying to talk to you
6 after you've let them know that you don't want to be -- you
7 don't want to discuss this case, please let me know so I can
8 do something about it. With that, again, thank you for your
9 service, and you may go -- be released to go back to the Jury
10 Service Commissioner to pick up your checks.

11 THE MARSHAL: All rise for the jurors.

12 THE COURT: And I want to thank counsel.

13 MR. WOOLDRIDGE: Thank you, Your Honor.

14 MR. ROSE: Thank you, Your Honor.

15 MR. GIORDANI: Thank you very much, Your Honor.

16 THE COURT: We're in recess.

17 (Court adjourned at 4:17 P.M.)

18 * * * * *

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

22

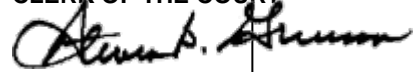
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JULIE LORD, INDEPENDENT TRANSCRIBER



NICHOLAS M. WOOLDRIDGE
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Las Vegas, NV 89101
Telephone: (702) 330-4645
nicholas@wooldridgelawlv.com
Attorney for Javar Eris Ketchum

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAVAR ERIS KETCHUM,

Defendant.

Case No.: C-16-319714-1

Dept. XVII

MOTION FOR NEW TRIAL

COMES NOW the Petitioner, JAVAR ERIS KETCHUM (hereinafter, “Mr. Ketchum”), by and through his undersigned counsel, Nicholas M. Wooldridge, of the law firm of Wooldridge Law Ltd., and pursuant to and pursuant to N.R.S. § 176.515(4) requests that this Court grant him a new trial.

This Motion is made pursuant to NRS § 176.515(4), and is based upon all the papers and pleadings on file herein, and the following Memorandum of Points and Authorities.

1 DATED this 2nd of June, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

3
4 /s/ Nicholas M. Wooldridge

5 Nicholas M. Wooldridge, Esq.
6 Wooldridge Law Ltd.
7 400 South 7th Street, 4th Floor
8 Las Vegas, NV 89101
9 nicholas@wooldridgelawlv.com
(702) 330-4645 Tel.
(702) 359-8494 Fax.

10 **NOTICE OF MOTION**

11 TO: STATE OF NEVADA, Plaintiff; and

12
13 TO: DISTRICT ATTORNEY, its attorneys:

14 **PLEASE TAKE NOTICE** that the undersigned will bring the foregoing Motion for
15 New Trial for hearing in the above-entitled Court on (day) 13th of (month) June,
16 2017 in Department XVII at (time) 8:30 a m.

17 Dated this 2nd day June, 2017.

18 JAVAR ERIS KETCHUM,
19 by his attorney,

20
21 /s/ Nicholas M. Wooldridge

22 Nicholas M. Wooldridge, Esq.
23 Wooldridge Law Ltd.
24 400 South 7th Street, 4th Floor
25 Las Vegas, NV 89101
26 nicholas@wooldridgelawlv.com
27 (702) 330-4645 Tel.
28 (702) 359-8494 Fax.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

The charges alleged in the Indictment arise from the September 25, 2016 shooting of Ezekiel F. Davis outside the Top Knotch Apparel on the 4200 block of South Decatur Boulevard. The State of Nevada charged Mr. Ketchum in a five (5) count Indictment together with co-defendants Antoine Bernard, Roderick Vincent, and Marlo Chiles as follows: (1) one count of murder with a deadly weapon; (2) one count of robbery with use of a deadly weapon; and (3) three counts of accessory to murder. Mr. Ketchum was only charged in the first two counts of the Indictment. Jury trial began on May 23, 2017 and the jury returned a verdict of guilty on both counts on May 26, 2017.

This motion pursuant to N.R.S. § 176.515 is the result of the Court's evidentiary rulings regarding the admissibility of Ezekiel Davis' prior bad acts and the ability of Mr. Ketchum to present his theory of the case, namely, self-defense.¹

This Court precluded the defendant from offering evidence of Ezekiel Davis' prior robbery convictions and robbery related offenses. These offences involved a similar factual scenarios and *modus operandi* where Ezekiel Davis accosted his robbery victims outside in parking lots and eventually robbed or attempted to rob them; this was similar to the facts as alleged by Mr. Ketchum when he took the stand. Specifically, Mr. Ketchum testified that he was aware Mr. Davis was known as a "Jack Boy" and had gone to prison for robbery. This was true and supported by Mr. Davis' record conviction for robbery and related offenses, as well as victims of Mr. Davis who were ready and willing to testify concerning the robberies. Copies of

¹ This motion is filed to meet the seven (7) day deadline in N.R.S. 176.515 and to preserve Mr. Ketchum's rights. Mr. Ketchum intends to supplement this motion upon receipt of the trial transcript.

1 the conviction records evidencing Mr. Davis' previous criminal convictions are attached hereto
2 as **Exhibits A through C**.

3 Also the nature of Mr. Davis' prior robbery conviction occurred under similar
4 circumstances to what Mr. Ketchum testified and supported his theory of self-defense.
5 Specifically, Mr. Ketchum testified that Mr. Davis attempted to rob him at gunpoint. In two of
6 Mr. Davis' prior bad acts, Mr. Davis had attempted to rob victims at gunpoint in a parking lot.
7

8 Finally, during the State's rebuttal, the State called Mr. Davis' fiancée to the stand. She
9 testified that she knew Mr. Davis intimately and had his children. During direct examination, the
10 State asked the fiancée the following question: in the past three (3) years have you known
11 Ezekiel Davis to carry a gun? She responded "no." During cross examination, defense counsel
12 asked whether she knew that Mr. Davis had, in fact, previously been convicted of ex-felon
13 possession of a firearm in 2010. The State objected and the District Court admonished defense
14 counsel and referred to its prior rulings precluding the defense from asking about Mr. Davis'
15 criminal history. The District Court's asymmetrical interpretation of the rules of evidence
16 deprived Mr. Ketchum of a fair trial because once the State opened the door, it could not limit
17 Mr. Davis' fiancée's testimony.
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20 **II. ARGUMENT**

21 As detailed below, Mr. Ketchum should be granted a new trial because the District
22 Court's evidentiary rulings deprived him of a fair trial. Specifically, Mr. Ketchum should have
23 been permitted to present prior bad acts and related evidence of the victim for any of four
24 reasons. First, the evidence was relevant and admissible to support Mr. Ketchum's theory that
25 the victim was the initial aggressor. Second, the evidence relating to Mr. Davis relevant and
26 admissible to show a common plan or scheme by Mr. Davis, namely, corroborating Mr. Davis'
27
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1 violent past, including, his robbery of previous victims in a similar manner by taking them
2 outside, pointing a gun, and robbing them. Third, the evidence relating to Mr. Davis was
3 relevant and admissible to corroborate the fact that he took Mr. Ketchum outside to rob him, it
4 went to show motive on why Mr. Davis was taking him outside. Finally, in precluding defense
5 counsel from questioning Mr. Davis' fiancée about Mr. Davis' previous conviction for ex-felon
6 in possession of a firearm, the District Court's asymmetrical interpretation of the rules of
7 evidence deprived Mr. Ketchum of a fair trial because once the State opened the door, it could
8 not limit Mr. Davis' fiancée's testimony.
9

10 **The Prior Bad Acts Evidence Was Admissible**

11 1. **Self-Defense and Where Victim is Likely Aggressor**

12 In a homicide or assault and battery case, evidence of the victim's character, including
13 evidence of specific prior acts of violence by the victim, is admissible when the defendant is
14 aware of those prior bad acts. *See* N.R.S. 48.045(1)(b). N.R.S. 48.045(1)(b) provides in relevant
15 part:
16

17 1. Evidence of a person's character or a trait of his character is not
18 admissible for the purpose of proving that he acted in conformity
19 therewith on a particular occasion, except: ... (b) Evidence of the character
20 or a trait of character of the victim of the crime offered by an accused ...
21 and similar evidence offered by the prosecution to rebut such evidence[.]

22 As Mr. Ketchum testified at trial, he was aware in a general sense that Mr. Davis has committed
23 prior robberies and gone to prison as a result. *See Petty v. State*, 116 Nev. 321, 326 (2000) (citing
24 *Burgeon v. State*, 102 Nev. 43, 46, 714 P.2d 576, 578 (1986)). Thus, testimony regarding the
25 character of the victim was admissible under NRS 48.045(1)(b) regardless of whether Mr.
26 Ketchum was aware of the details and dates of Mr. Davis' prior bad acts.
27
28

1 In *Petty*, the Nevada Supreme Court also held that it was reversible error for the district
2 court to exclude evidence of the victim's criminal conviction where the defendant had general
3 knowledge of the offense:

4 the accused may present evidence of specific acts to show the accused's
5 state of mind at the time of the commission of the crime only if the
6 accused had knowledge of the specific prior acts to show the accused's
7 state of mind at the time of the commission of the crime only if the
8 accused had knowledge of the specific act. The record reveals that Petty
9 was aware that Watts had committed robberies. Although Petty's
10 testimony does not explicitly mention the 1990 robbery, we hold that the
evidence is admissible for purposes of showing the reasonableness of the
appellant's state of mind according to NRS 48.055(2) and our reasoning in
Burgeon.

11 *See Petty*, 116 Nev. at 326 (internal citations omitted).

12 The Declaration of Arrest and Judgment of Conviction for Mr. Davis' attempted robbery
13 conviction document his violent and aggressive character:

14 The victim, Tracy Smith, told Officer Wall the following: at about 2045
15 hours, he walked out of the Port of Subs located at 1306 West Craig road
16 toward his vehicle, a black Hummer H3, which was parked in front of the
17 Port of Subs. Smith noticed a black male walking east bound on the
18 sidewalk toward him. Smith opened his driver's door and heard footsteps
19 approaching quickly from behind. Smith got inside the car, shut and
20 locked the door just as the black male grabbed his exterior driver side door
21 handle. The black male grabbed the handle with his right hand and began
22 banging on the driver's side window with his left first. The black male
23 yelled "give me all your fucking money!" The black male appeared to be
24 standing on the driver's side foot rail and continued banging and yelling at
25 Smith. The black male saw Smith reach his keys toward the ignition and
26 yelled "if you start this car, I'll fucking kill you!" Smith could not see the
27 suspect's right hand and feared for his own safety.

28 Here, the evidence strongly supported Mr. Ketchum's allegation that Mr. Davis was the
initial aggressor. Consequently, the District Court's evidentiary rulings precluding Mr. Ketchum
from introducing the relevant portions of Mr. Davis' prior robbery and theft convictions,
deprived him of a fair trial.

2. Prior Bad Acts Evidence Showed Common Plan, Scheme or Motive

In addition to supporting Mr. Ketchum's theory of the case, the evidence should have been admitted to prove the victim's [Mr. Davis], the initial aggressor's motive and common plan or scheme. Specifically, Mr. Davis *modus operandi* was to violently target unsuspecting victims in parking lots and proceed to rob them. On at least two occasions, Mr. Davis has used a gun to carry out his robberies. For instance, the offense synopsis section of his PSI for his conspiracy to commit robbery and robbery conviction states as follows:

At 9:30 P.M. on August 5, victims Houston MacGyver, Shane Velez and Luke Jaykins were in the Craig's Discount Mall parking lot and were approached by suspect 1 who asked them for a cigarette. One of the victim's gave suspect 1 a cigarette and the suspect stated he would give him a dollar. The suspect 1 reached into his waistband area and produced a small silver handgun and pointed it at the victims and demanded money. Initially the victim's refused until suspect 2 walked up behind them and produced a black semi-automatic hand gun and racked the slide. Mr. MacGyver was afraid of being shot and gave suspects \$700.00 in US currency.

See Presentence Investigation Report (PSI) prepared in *State of Nevada v. Ezekiel Davis*, Case No. C258227.

This evidence tended to show that Mr. Davis had a motive to bring Mr. Ketchum outside. Since the State's theory of the case was that Mr. Ketchum robbed Mr. Davis, the prior bad acts evidence would have discounted or called into doubt the State's theory of the case. Specifically, it showed that luring and/or distracting his victims outside was Mr. Davis' "m.o." and, therefore, would have supported Mr. Ketchum's theory of self-defense at trial.

3. A New Trial Is Warranted Because the District Court's Preclusion of Questioning of the State's Rebuttal Witness Deprived Mr. Ketchum of a Fair Trial

During the State's rebuttal, the State called Mr. Davis' fiancée to the stand. She testified that she knew Mr. Davis intimately and she had Mr. Davis' children. During direct examination, the State asked the fiancée the following question: in the past three (3) years have you known Ezekiel Davis to carry a gun? She responded "no." During cross examination, defense counsel attempted to rebut the fiancée's character evidence and asked whether she knew that Mr. Davis had, in fact, previously been convicted of ex-felon possession of a firearm in 2010. The State objected and the District Court admonished defense counsel and referred to its prior rulings precluding the defense from asking about Mr. Davis' criminal history.

The District Court attempt to limit the defense's ability to cross-examine Ms. Davis' fiancée was in error. Specifically, once the State opened the door to evidence of Mr. Davis' character or a trait of his character, the defense should have been entitled to offer similar evidence. For instance, in a counter-factual scenario, in *Daniel v. State*, 119 Nev. 498 (2003), the Nevada Supreme Court held that the "Statute which prohibits the admission of evidence of other crimes, wrongs, or acts to prove a person's character was not applicable because defendant placed his character in issue on direct examination, and instead, statute providing that, once a criminal defendant presents evidence of his character or a trait of his character, the prosecution may offer similar evidence in rebuttal governed whether prosecutor's cross-examination of defendant regarding his prior arrests was proper." *Id.* If the State is permitted to present character evidence where the defendant has presented evidence of his character or a trait of his character, the reverse should be true too. "After all, in the law, what is sauce for the goose is normally sauce for the gander." *Heffernan v. City of Paterson*, 136 S. Ct. 1412, 1418 (2016).

1 Here, once the State opened the door, Mr. Ketchum should have been entitled to present
2 evidence or elicit testimony regarding Mr. Davis' character, namely, Mr. Davis previous
3 conviction of ex-felon in possession of a firearm. *See also Jezdik v. State*, 121 Nev. 129 (2005)
4 (where defendant placed his character at issue through testimony that he had never been
5 "accused of anything prior to these current charges" the rules of evidence do not prohibit a party
6 from introducing extrinsic evidence specifically rebutting the adversary's proffered evidence of
7 good character).

8
9
10 **III. CONCLUSION**

11 **WHEREFORE**, for all the foregoing reasons, Mr. Ketchum's motion for a new trial
12 should be granted.

13 DATED this 2nd of June, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.
Wooldridge Law Ltd.
400 South 7th Street, 4th Floor
Las Vegas, NV 89101
nicholas@wooldridgelawlv.com
(702) 330-4645 Tel.
(702) 359-8494 Fax.

CERTIFICATE OF SERVICE

I confirm that on this 2nd day of June, 2017, a copy of the foregoing Motion for New Trial and Memorandum of Points and Authorities was served on the below District Attorney's Office by having the same e-filed and courtesy copied to pdmotions@clarkcountyda.com, which in turn provides electronic service to:

Marc DiGiacamo, Esq.
Chief Deputy District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.

EXHIBIT A

JOCP

ORIGINAL

FILED

JAN 19 2010

Alma L. Johnson
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

EXHIBIT A

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAVIS, EZEKIEL
Aka Davis, Ezekiel F
#2677543

Defendant.

CASE NO. C258227

DEPT. NO. IV

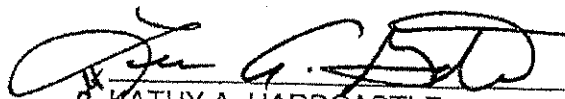
JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480, and COUNT 2 – ROBBERY (Category B Felony) in violation of NRS 200.380; thereafter, on the 5th day of January, 2010, the Defendant was present in court for sentencing with his counsel Leslie Pena, Deputy Public Defender, and good cause appearing,

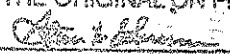
THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant is sentenced to the

1 Nevada Department of Corrections (NDC) as follows: as to COUNT 1 -to a MAXIMUM
2 of SIXTY (60) MONTHS with a MINIMUM parole eligibility of THIRTEEN (13) MONTHS;
3 and as to COUNT 2 - to a MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS
4 with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS CONCURRENT with
5 C243460 and C248776; with Zero (0) DAYS credit for time served.
6

7
8 DATED this 13 day of January, 2010.
9

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11 
12 KATHY A. HARDCASTLE
13 DISTRICT JUDGE
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21 CERTIFIED COPY
22 DOCUMENT ATTACHED IS A
23 TRUE AND CORRECT COPY
24 OF THE ORIGINAL ON FILE
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CLERK OF THE COURT

FEB 28 2017

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
(N.R.S. 171.106) **FILED**
(N.R.S. 53 amended 07/13/93)

09F17710X
274694



Aug 27 8 58 AM '93

090805-3569

STATE OF NEVADA)

Ezekiel Davis ID# 2677543

COUNTY OF CLARK)

) ss:

BY _____
DEPUTY

Jeffrey P. Guyer, being first duly sworn, deposes and says:

That he is a police officer with the Las Vegas Metropolitan Police Department, being so employed for a period of 8 years, assigned to investigate the crime(s) of Robbery With Deadly Weapon, Conspiracy Robbery committed on or about 08-05-09, which investigation has developed EZEKIEL DAVIS as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME TO WIT:

LVMPD Personnel:

Detective	JP Guyer P#7430	Case Agent
Detective	L. Turner P#6015	Interviewed Victim
Officer	J. Larosa P#13448	Completed Crime Report
Officer	D. Garis P#5968	Located Suspect Vehicle
CSA	T. Kruse P#9975	Process Suspect Vehicle

Suspect Vehicle:

1997 Ford Thunderbird 2dr, NV 767-WBL, VIN 1FALP6240VH115370

Joshua Griffin
1124 Echo Beach Av.
North Las Vegas, NV 89086

Details:

At approximately 2130 hours on 08-05-09 Houston MacGyver, Shane Velez and Luke Jaykins were in the parking lot of Craig's Discount Mall located at 4821 W. Craig. They were approached by a Black male (Suspect #1) who asked them for a cigarette. One of the victims supplied the cigarette and the Black male stated he would give him a dollar. The Black male reached into his waistband area and produced a small silver semi-automatic handgun. He pointed it at the victims and demanded money. Initially the victims refused but an additional Black male suspect (Suspect #2) walked up behind the trio, produced a large black semi auto handgun and racked the slide. Houston MacGyver, who was afraid of being shot, handed Suspect #1 \$700 in US currency.

After obtaining the victim's money, both suspects ran through the parking lot where Suspect #2 got into a newer, silver, SUV/Sedan mixed vehicle (possibly a Dodge). Suspect #1 got into an older blue two door sedan. The victims called 911 while they pursued the suspect vehicles. The silver car turned off on a side street but the victims were able to continue pursuing the blue car. Both Houston MacGyver and

PRIM
IMAGED
LJ

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
Page 2

EVENT: 090805-3569

Shane Velez observed the blue two door vehicle had Nevada plate 767WBL. Velez even stored the suspect vehicle's licence plate into his phone to ensure the information would not be lost.

During the victim's pursuit of the suspect vehicle, the blue car ultimately turned around and turned onto the same side street as the silver car (Rancho Rea in North Las Vegas). While eastbound on Rancho Rea the victims heard two gun shots and terminated their pursuit of the suspects.

LVMPD Officer J. Larosa P# 13448 responded to the scene and documented the incident under LVMPD event # 090805-3569. MacGyver, Velez and Jaykins completed voluntary statements on scene. The victims described suspect #1 as a Black male wearing a white tank top, white doo-rag and tan shorts armed with a small silver handgun. Suspect #2 was described as a Black male wearing a white t-shirt and blue jeans armed with a large black handgun.

Investigation:

A Nevada registration check on NV 767-WBL returned to a 1997 Ford 2dr sedan with VIN 1FALP6240VH115370. The vehicle registration was consistent with the suspect vehicle description given by all three victims. The 1997 Ford bearing NV 767-WBL was currently registered to Joshua Griffin ID# 2586170. The vehicle was entered into the Wanted Vehicle System as an Armed and Dangerous vehicle used in a Robbery with Deadly Weapon.

Detective J. Guyer, L. Turner and D. Miller responded to the scene to interview the three victims. Detectives showed the victims a photo line up which consisted of Griffin's photo. None of the victims identified Griffin as a suspect involved in the robbery.

On 08-06-09 Officer Garris P#5985 conducted a vehicle stop on a 1997 blue 2dr sedan with NV license plate 767-WBL in the area of the Meadows Mall. Officer Garris noted the suspect vehicle matched the exact description of the vehicle driven by Suspect #1 while fleeing the scene of the robbery. Officer Garris' traffic stop was conducted less than 24 hours after the robbery and approximately 5 miles from the robbery location. Officer Garris identified the driver of the vehicle as Ezekiel Davis ID# 2677543. The passenger was identified as Robby Warren ID# 2698782. Davis was arrested for No Driver's License. Warren was released at the scene. The vehicle was sealed and towed to the Quality Towing Seizure pending a Search Warrant.

On 08-07-09 Detective Guyer authored a Search Warrant for the 1997 blue Ford Thunderbird 2dr with NV license plate 767-WBL. The search warrant was signed by Judge Timothy Williams and subsequently served at 1730 hours on 08-07-09. During the execution of the Search Warrant Detective Guyer located a pawn ticket in the name of Ezekiel Davis. Further investigation showed Ezekiel Davis matched the description of one of armed robbers.

RIM
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LWS

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
Page 3

EVENT: 090805-3569

On 08-12-09 Ezekiel Davis called LVMPD and advised he was the legal owner of the the 1997 blue Ford Thunderbird 2dr with NV license plate 767-WBL. Davis requested the police hold be removed so he could pick up his vehicle. Detective Guyer constructed a photo line up using Davis' most current booking photo. On 08-12-09 Detective Turner conducted a photo line up with victim Houston MacGyver. Upon looking at the photo line-up MacGyver immediately picked Davis out as the suspect who initially approached with a gun and demanded money. MacGyver was 100% certain of his identification. After the photo line-up was conducted Detectives were unable to contact Davis for an interview.

Summary:

All three robbery victims described the suspect's vehicle as blue, 1997 Ford 2dr with NV license plate 767-WBL. The robbery suspect was described as a Black male 5'10", 180. Less that 24 hours after the robbery Officer D. Garris P# 5968 conducted a traffic stop on a blue, 1997 Ford 2dr with NV license plate 767-WBL. The traffic stop conducted less that 5 miles from the original robbery location. Officer Garris identified the driver as Ezekiel Davis ID# 2677543. Davis matched the suspect description given by the three victims.

On 08-12-09 Detective Guyer complied a photo line up using Ezekiel Davis's recent photo. Detective Turner met with MacGyver Gale and showed the photo line. Gale immediately picked Davis out as the suspect who initially pointed a gun and him while demanding money. Davis was 100% certain of his identification.

Wherefore, declarant prays that a Warrant of Arrest be issued for suspect EZEKIEL DAVIS on a charge(s) of Robbery With Deadly Weapon, Conspiracy Robbery.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on this 20th day of August, 2009.

DECLARANT: [Signature]

WITNESS: [Signature]

DATE: 08/20/09

RM
MAGED
LJ

AO000397

CASE NO. C258227

DEPT. NO. 11

ORIGINAL

FILED

DEC - 7 2009

Don J. P.
CLERK OF COURT

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

EZEKIEL DAVIS,

Defendant.

Case No. 09F17710X

REPORTER'S TRANSCRIPT
OF
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE ERIC A. GOODMAN
JUSTICE OF THE PEACE

Monday, September 21, 2009, 9:00 a.m.

APPEARANCES:

For the State:

JOSHUA TOMSHECK, ESQ.
Deputy District Attorney

For the Defendant:

LESLEY PENA, ESQ.
MICHAEL FELICIANO, ESQ.
Deputies Public Defender

Reported by: RENEE SILVAGGIO, C.C.R. NO. 122

CASE NO. C258227

LEPT. NO. 11

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

Case No. 09F17710X

-vs-

EZEKIEL DAVIS,

Defendant.

REPORTER'S TRANSCRIPT
 OF
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE ERIC A. GOODMAN
 JUSTICE OF THE PEACE

Monday, September 21, 2009, 9:00 a.m.

APPEARANCES:

For the State:

JOSHUA TOMSHECK, ESQ.,
 Deputy District Attorney

For the Defendant:

LESLEY PENA, ESQ.,
 MICHAEL FELICIANO, ESQ.,
 Deputies Public Defender

Reported by: REBER SILVAGGIO, C.C.R. NO. 122

MR. TOMSHECK: Judge, that is all correct.

One thing I wanted to add to the record, the robbery
 count that the defendant pleads to in District Court will comprise
 all three of the stated victims, which are currently in the
 Criminal Complaint.

And for the record, that's Shane Velez, Luke Jaylins and
 there is actually a typographical error as to the victim in
 Count II. It reads Gale MacGyver. The victim's actually --
 actually the first name is MaGyver, last name is Gale. The names
 have been transposed.

THE COURT: Okay.

MR. FELICIANO: That's correct.

(Solito voce at this time.)

THE COURT: Sir, do you understand that negotiation this
 morning, because it sounds like you didn't?

Do you have some questions about that?

THE DEFENDANT: Yeah, I have some questions about it.
 I'm not all the way understanding it.

THE COURT: You are not understanding the naming of the
 three victims under one count?

THE DEFENDANT: Yeah. That's pretty much saying at
 first --

THE COURT: Well, let's -- what -- you said you talked to

Las Vegas, Clark County, Nevada
 Monday, September 21, 2009, 9:00 a.m.

PROCEEDINGS

THE COURT: Ezekiel Davis, 09F17710X.

This is the time and date set for the Preliminary
 Hearing.

I understand this may be negotiated.

MR. FELICIANO: Yeah. Your Honor, today this case is
 resolved.

THE COURT: Today, Mr. Davis will unconditionally waive
 his Preliminary Hearing.

In District Court he will plead guilty to one count of:
 Conspiracy to commit robbery and one count of: Robbery, no use of
 a deadly weapon.

The State will have no opposition to those counts running
 concurrent.

And the State will have no opposition to those -- this
 case running concurrent with two other cases, which Mr. Davis was
 just revoked on, and those case numbers are C248776X and C243460X.

Also at the time of sentencing the State will make no
 recommendation as to the amount of time to be imposed in this
 case.

you Public Defender. Let's have you talk to your Public Defender,
 okay, let's have you talk to your Public Defender and see if you
 can get this straightened out. Okay?

(Solito voce at this time.)

MS. PENA: I think we have solved that, Judge.

THE COURT: Sir, do you understand the negotiation?

THE DEFENDANT: Yes.

THE COURT: Okay. Have you had a chance to talk to your
 attorney about the negotiation?

THE DEFENDANT: Yes.

THE COURT: Is it a negotiation you wish to accept?

THE DEFENDANT: Yes.

THE COURT: Is that a yes?

THE DEFENDANT: Yes.

THE COURT: Okay. Is anybody forcing you to take this
 negotiation?

THE DEFENDANT: No.

THE COURT: Is anybody threatening you or members of your
 family to take this negotiation?

THE DEFENDANT: Yes.

THE COURT: Okay. And you do want to accept it; is that
 correct?

THE DEFENDANT: Yes.

1 THE COURT: Okay. I just have some concerns because you
2 are hesitating. I just want to make sure are doing this freely
3 and voluntarily.

4 THE DEFENDANT: I'm -- there is no -- is there any way we
5 could hold this off the prelim?

6 Can we hold the Preliminary Hearing off a week?

7 THE COURT: They're ready to go. So the State has their
8 witnesses here.

9 It's the time set for the preliminary hearing. It's
10 going to be put on today.

11 THE DEFENDANT: Well --

12 THE COURT: Are you telling me you don't want to accept
13 the offer or are you telling me you do want to accept the offer?

14 Like, I have to make sure, as a judge, that you are doing
15 this freely and voluntarily.

16 I can't bind you up unless you are doing this freely.

17 THE DEFENDANT: I can't have any more time to figure this
18 out? That's what I'm saying. I can't have no more time?

19 MR. FELICIANO: I think the issue, Judge, as -- speaking
20 with Mr. Tomscheck --

21 THE DEFENDANT: I'm not trying to prolong anything. I
22 would just like a little bit more time, please.

23 MR. FELICIANO: Well, Mr. Tomscheck has his witnesses
24 here, and I believe he wants to proceed if it's not resolved.

25 And if we do proceed, it's my understanding Mr. Tomscheck

1 will resend any offers in this case.

2 THE COURT: You are an adult. You understand the
3 position you are in.

4 If they put the prelim on, the deal goes away.

5 I'm willi- -- I'm not willing to give you additional time.

6 They're here. They're ready to go.

7 So what I will do is I will put the prelim on. You are
8 going to lose the offer. That's the only thing I can do.

9 I mean, I can't extend this. I can't give you additional
10 time to think about it. Either you accept the deal today or we
11 put the prelim on today.

12 THE DEFENDANT: All right. I'll accept the deal.

13 THE COURT: All right. Sir, you have the right to a
14 Preliminary Hearing.

15 You have the right to confront and cross-examine the
16 witnesses against you; the right to take the stand and present
17 evidence on your own behalf.

18 By unconditionally waiving your Preliminary Hearing today
19 you are giving up these rights.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: When you get to District Court you may enter
23 your plea pursuant to the offer.

24 If you should change your mind you will go directly to

25 trial District Court. You will not come back to Justice Court for

1 a Preliminary Hearing.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: It appearing to me from the Complaint on file
5 herein the following crimes have been committed: Count I,
6 conspiracy to commit robbery; Count II, robbery with use of a
7 deadly weapon; Counts III and IV, attempt robbery with use of a
8 deadly weapon.

9 And the defendant having unconditionally waived his right
10 to a Preliminary Hearing, I hereby --

11 THE DEFENDANT: Hold on. They -- they added something
12 right there.

13 THE COURT: No, no, no. You get bound up on all the
14 charges. You are only pleading to a certain count. However, when
15 you get bound up to the District Court you get bound up on all the
16 counts.

17 Do you understand that?

18 MR. FELICIANO: The counts will be dismissed after you
19 are sentenced in the other case.

20 You are going to plead to the two and then the other ones
21 are going to stay there until you are sentenced and they will be
22 dismissed, so --

23 THE DEFENDANT: Plead to the two and the other ones will
24 be dropped?

25 MR. FELICIANO: Yes.

1 THE COURT: You are going to get a copy of the Guilty
2 Plea Agreement when you sign it. You actually enter your plea in
3 the District Court. You don't understand it down here.

4 Do you understand that?

5 THE DEFENDANT: Right.

6 THE COURT: So today you are not entering a plea on the
7 record. You are going to do that in District Court.

8 So today I'm going to bind you up on all the charges that
9 you have in the District Court.

10 Once you are in the District Court you are going to sign
11 a Guilty Plea Agreement and it's going to go on the record at that
12 point. Okay?

13 So today I have to bind you up on all the counts.

14 Do you understand that?

15 MR. FELICIANO: And then when we got to District Court
16 everything will be in writing as to what you are pleading to and
17 the whole negotiation. Everything I just stated will be in
18 writing at that point.

19 THE DEFENDANT: Yes.

20 THE COURT: All right. I will state that again.

21 Count I, conspiracy to commit robbery; Count II, robbery
22 with use of a deadly weapon; Counts III and IV, attempt robbery
23 with use of a deadly weapon.

24 And the defendant, having unconditionally waived his
25 right to a Preliminary Hearing, I hereby order said defendant to

1 to said answer to said charges in the Eighth Judicial District
2 Court, State of Nevada, County of Clark, on the following date and
3 time --

4 THE CLERK: September 29th, 10:30, lower level
5 arraignment, District Court Track V.

6 MR. FELICIADO: Thank you, Judge.

7
8
9 Proceedings concluded.)
10
11
12

13 ATTEST: Full, true and accurate transcript of proceedings.
14
15
16
17
18
19
20
21
22
23
24
25

Rene Schlegel
RENE SCHLEGEL
Clerk of District Court

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,

vs.

DAVIS, EZEKIEL,
Defendant(s)

FILED

SEP 23 2009

John T. Williams
CLERK OF COURT

) District Court Case No.: *C259227*

) Justice Court Case No.: 09F17710X

9/29/09
1030

IV

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 September 21, 2009

[Signature]

Justice of the Peace, Las Vegas Township

RECEIVED

SEP 23 2009

CLERK OF THE COURT

EXHIBIT B

1 AJOC

FILED

SEP 30 2009

John L. Blum
CLERK OF COURT

2
3 ORIGINAL

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 EXHIBIT B

7 Part 1

8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO. C243460

10 -vs-

DEPT. NO. XX

11 EZEKIEL F. DAVIS
12 #2677543

13 Defendant.

14
15 ORDER FOR REVOCATION OF PROBATION AND
16 AMENDED JUDGMENT OF CONVICTION
17


18
19 The Defendant previously appeared before the Court with counsel and entered a
20 plea of guilty to the crime of ATTEMPT LARCENY FROM THE PERSON (Category D
21 Felony/Gross Misdemeanor) in violation of NRS 193.330, 205.270; thereafter, on the
22 16th day of June 2008, the Defendant was present in Court for sentencing with his
23 counsel, wherein the Court adjudged the Defendant guilty under the felony statute of
24 said offense, suspended the execution of the sentence imposed and granted probation
25 to the Defendant.
26

27 THEREAFTER, a parole and probation officer provided the Court with a written
28 statement setting forth that the Defendant has, in the judgment of the parole and


1 probation officer, violated the conditions of probation; and on the 16th day of September,
2 2009, the Defendant appeared in court with his counsel, MICHAEL WILFONG, Deputy
3 Public Defender, and pursuant to a probation violation hearing/proceeding, and good
4 cause appearing to amend the Judgment of Conviction; now therefore,
5

6 IT IS HEREBY ORDERED that the probation previously granted to the Defendant
7 is revoked; and IT IS FURTHER ORDERED that the original sentence is MODIFIED to
8 a MAXIMUM of THIRTY (30) MONTHS with a MINIMUM Parole Eligibility in TWELVE
9 (12) MONTHS in the Nevada Department of Corrections (NDC); with SEVENTY-EIGHT
10 (78) DAYS credit for time served.
11

12
13 DATED this 28 day of September, 2009
14

15 
16 DAVID T. WALL
17 DISTRICT JUDGE
18
19
20

21 CERTIFIED COPY
22 DOCUMENT ATTACHED IS A
23 TRUE AND CORRECT COPY
24 OF THE ORIGINAL ON FILE
25
26
27
28


CLERK OF THE COURT

FEB 28 2017

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST

ID#: NEW-

EVENT: 080315-3896

TRUE NAME:	DATE OF ARREST:	TIME OF ARREST:
DAVIS, EZEKIEL F.	03-15-08	2330

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

Possession of Narcotics Paraphernalia

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATION SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 2.6 years.

That I learned the following facts and circumstances which lead me to believe that DAVIS, EZEKIEL F. committed (or was committing) the offense of Larceny from a Person (Victim over 60) and PCS-Marijuana with intent to sell at the location of 3900 S. LV Blvd LV, NV 89109.

That the offense occurred at approximately 2300 hours on the 15 day of March, 2008.

On 03-15-08, at 2304 hrs, I Officer R. Rundell, P#8719, marked unit, 1M12, was dispatched to the Luxor Hotel and Casino, located at 3900 S. Las Vegas Blvd for a Larceny from a person call. Details stated that in the parking garage on the westside of the Luxor, an unknown BMA had taken a wallet from the PR and ran away. While enroute details were updated that Security had found the suspect and had taken him into custody.

Upon my arrival, I made contact with Security Officer David Wheeler, of the Luxor. Wheeler had the BMA suspect in-custody on the lower level of the west parking garage. The BMA was identified through a NV-ID card as Ezekiel Davis, DOB 04-28-89. I then took custody of Davis and escorted him to the front of my patrol vehicle. While escorting Davis, he stated, "Lets get this over. Just book me." I then asked Davis if I could search him. Davis stated, "Yeah, you can." While searching Davis I located in his left front pant pocket a clear sandwich baggy containing an unknown green leafy substance. This substance is known to me through my training and experience as marijuana. In Davis left front key hole pant pocket, I located 16 clear orange baggies, that were placed inside of a slightly larger clear baggy. These type of baggies are commonly used for the sells of illegal narcotics. Inside of Davis wallet, which was located in his right rear pocket, I located a clear orange baggy containing a green leafy substance that appeared to be marijuana. The baggy inside of his wallet is identical to the 16 that I had located in his other pocket. In Davis right front pocket I located \$408.00. Three \$100.00 bills, three \$20.00 bills, one \$10.00 bill, five \$5.00 bills, and thirteen \$1.00 bills. All of these bills appeared as if they had been shoved in his pocket and were crumpled up. The bills were in no numerical order. Some of the bills were almost falling out of Davis pocket. It should also be noted that there was no money in Davis wallet.

I read Davis his Miranda rights, from an LVMPD Miranda card at 2320 hrs. Post Miranda I asked Davis, "What's going on tonight?" Without stating anything about the Larceny call, Davis replied, "I had found a wallet on the ground. And the lady wasn't anywhere near it. I just picked it up and she started yelling." Later after Davis was told of his charges, he went on to state he new nothing about any old lady. He also stated he new nothing about what was going on.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST CONTINUATION
Page 2

ID#: NEW-

EVENT: 080315-3896

Shortly after questioning Davis, Security brought the PR to my location. The PR was identified as Banjank Balzer, DOB 12-12-46. Balzer is 62 yoa. Balzer stated that she was leaving work at the Luxor and waiting for her husband to pick her up. Balzer was waiting on the walk way to the westside parking garage on the second level. While rummaging through her purse for her phone, she had pulled out her wallet. Balzer was holding on to her wallet when Davis, who is unknown to her, approached her, grabbed her wallet and ran. Balzer then began screaming for help and running after Davis. Unknown citizens gave chase. While Davis was running he discarded the wallet, which was found by Balzer. Balzer stated that after finding the wallet she noticed the cash from the wallet was missing. Balzer stated that she had three \$100.00 bills, three \$20.00 bills, and some 10's, 5's and 1's. Balzer stated she believed the total amount to be around \$400.00.

I then spoke with Security Officer Wheeler. Wheeler stated he responded to the west parking garage. There he was advised by a citizen that Davis was hiding underneath a car on the lower level of the garage. Shortly thereafter Wheeler located Davis hiding underneath a Blue Kia, NV plate 983UZR, parked in Row 2-C. Wheeler advised Davis to come from under the vehicle. Wheeler then placed him in handcuffs. I arrived shortly after.

Security was able to get video of the incident. Security stated the video shows Davis taking the wallet from Balzer and then running away. It also shows him with two other BMA's, but not able to tell if they were involved. Security burned a copy of the incident and released it to me. Later when I asked Davis who the other two BMA's were, he stated he had no idea what I was talking about. Davis did seem concerned about the other two. Davis asked, "So the other two going to be booked too?". I asked Davis if he did not know the two, then why was he so concerned about what happens to them. Davis did not reply.

Due to the fact that Davis did admit to being there during the commission of the crime, Balzer being over 60, the fact that he had the same amount of money that was stolen and bill count, and that the video shows Davis taking the wallet and running, he was placed under arrest for Larceny from a Person (Victim over 60). Davis was also charged with PCS-Marijuana due to all of the narcotic related items I located on his person. The combination of all of those items together are common in the sell of narcotics. I then transported Davis to CCDC where he was booked accordingly.

At CCDC the Green leafy substance was tested ODV positive for a total of 4.1 grams of Marijuana. The cash was released to Balzer. The Marijuana and Video were impounded at SCAC.

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Declarant


R. RUNDELL P#8719

ARREST REPORT

08F05705X/6

☐ City☒ County☒ Adult☐ Juvenile

Sector/Beat M4

ID/EVENT# 2677543	ARRESTEE'S NAME DAVIS, EZEKIEL F. (Last, First, Middle)		S.S.# 530-45-3710	
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code) 4912 CINNAMON SPIKE NLV, NV 89031				
CHARGES: LARCENY FROM PERSON, VICTIM OVER 60 NRS: 205.270 PCS MARIJUANA WITH INTENT TO SELL NRS: 453.337				
OCURRED:	DATE 031508	DAY OF WEEK SAT	TIME 2330	LOCATION OF ARREST (Number, Street, City, State, Zip Code) 3900 S LAS VEGAS BLVD LAS VEGAS, NV 89109
RACE B	SEX M	D.O.B. 042889	HT 601	WT 190
HAIR BRO		EYES BRO		PLACE OF BIRTH LAS VEGAS, NV

CIRCUMSTANCES OF ARREST

OFFICER INVOLVED:

R. Rundell, P#8719, call sign 1M12

VICTIM:

Balzer, Banjank

DOB: 12/12/46

Contact phone: (702) 369-5355

CONTACT:

Wheeler, David

DOB: 01/21/54

Ph: 457-5131

PROPERTY IMPOUNDED and
RECOVERED:

Pkg 1, Item 1, Owner 1
 Quantity of 1: \$408 dollars in cash
 (3)- three one hundred dollar bills
 (3)- three twenty dollar bills
 (1)- one ten dollar bill
 (5)- five, five dollar bills
 (13)- thirteen one dollar bills

The cash was recovered from Davis and
 released to Balzer

Pkg 2, Item 2, Owner 2
 Quantity 1: one clear baggy containing 16
 clear orange baggies

Pkg 2, Item 3, Owner 2
 (1) one clear orange baggy containing
 0.9 grams of ODV positive marijuana

CONFIDENTIAL

ARRESTING OFFICER(S)	P#	APPROVED BY	CONNECTING RPTS. (Type or Event Number)
RUNDELL	8719	Approved 03/16/08 2300 Hours Lt. D. Cavalieri P#3876	080315-3896, TCR, DOA, RFP, Witness List, ICR A pg and B pg, Property report, marijuana checklist, 2 Voluntary Statements

CONTINUATION REPORT

ID/Event Number: 2677543

Page 2 of

PROPERTY IMPOUNDED:

Pkg 2, Item 4, Owner 1

(1) one clear sandwich baggy containing
3.9 grams of ODV positive marijuana

Pkg 3, Item 5

(1) one DVD video of incident

All property except for cash was
impounded at SCAC

DETAILS:

On 03/15/08 at 2304 hours, I, Officer R. Rundell, P#8719, marked unit 1M12, was dispatched to the Luxor Hotel and Casino located at 3900 S. Las Vegas Blvd., for a larceny from a person call. Details stated that in the parking garage on the west side of the Luxor, an unknown BMA had taken a wallet from the P/R and ran away. While en route, details were updated that security had found the suspect and had taken him into custody.

Upon my arrival, I made contact with the Security Officer David Wheeler of the Luxor. Wheeler had the BMA suspect in custody on the lower level of the west parking garage. The BMA was identified through a Nevada ID card as Ezekial Davis, DOB 04/28/89. I then took custody of Davis and escorted him to the front of my patrol vehicle. While escorting Davis, he stated, "Let's get this over, just book me". I then asked Davis if I could search him. Davis stated, "yeah, you can". While searching Davis, I located in his left front pant pocket, a clear sandwich baggy containing unknown green leafy substance. This substance is known to me through my training and experience as marijuana.

In Davis' left front keyhole pant pocket, I located 16 clear orange baggies that were placed inside of a slightly larger clear baggy. These type of baggies are commonly used for the sales of illegal narcotics. Inside of Davis' wallet which was located in his right rear pocket, I located a clear orange baggy containing a green leafy substance that appeared to be marijuana. The baggy inside of his wallet was identical to the 16 that I located in his other pocket. In Davis' right front pocket, I located \$408.00, three hundred bills, three twenty dollar bills, one ten dollar bill, five five dollar bills and thirteen one dollar bills. All of these bills appeared as if they had been shoved in his pocket and were crumpled up. The bills were in no numerical order; some of the bills were almost falling out of Davis' pocket. It should also be noted that there was no money in Davis' wallet.

I read Davis his Miranda rights from a LVMPD Miranda card at 2320 hours. Post Miranda, I asked Davis, "What's going on tonight?". Without stating anything about the larceny call, Davis replied, "I had found a wallet on the ground and the lady wasn't anywhere near it, I just picked it up and she started yelling". Later after, Davis was told of his charges. He went onto state he knew nothing about any old lady. He also stated he knew nothing about what was going on. Shortly after questioning Davis, security brought the P/R to my location. The P/R was identified as Banjank Balzer, DOB 12/12/46. Balzer is 62 years of age.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/Event Number: 2677543

Page 3 of

Balzer stated that she was leaving work at the Luxor and waiting for her husband to pick her up. Balzer was waiting on the walkway to the west side of the parking garage on the second level. While rummaging through her purse for her phone, she had pulled out her wallet. Balzer was holding her wallet in her hand when Davis, who is unknown to her, approached her, grabbed her wallet and then ran. Balzer then began screaming for help and running after Davis. Unknown citizens then gave chase. While Davis was running, he discarded the wallet which was found by Balzer. Balzer stated that after finding the wallet, she noticed the cash from the wallet was missing. Balzer stated that she had three one hundred dollar bills, three twenty dollar bills and some tens, fives and ones. Balzer stated she believed the total amount to be around \$400.00.

I then spoke with Security Officer Wheeler. Wheeler stated he responded to the west parking garage after receiving the call from his dispatch of the larceny. Upon his arrival, he was advised by a citizen that Davis was hiding underneath a car on the lower level of the garage. Shortly thereafter, Wheeler located Davis hiding underneath a blue Kia, Nevada plate 983UZR, which was parked in row 2C. Wheeler advised Davis to come from under the vehicle. Wheeler then placed him in handcuffs; I arrived shortly after.

Security was able to get video of the incident. Security stated the video shows Davis taking the wallet from Balzer and then running away. It also shows him with two other BMA's, but not able to tell if they were involved. Security burned a copy of the incident and released it to me on DVD. Later when I asked Davis who the other two BMA's were, he stated he had no idea what I was talking about. Davis then seemed to be concerned about the other two, asking, "so, are the other two going to be booked to?". I asked Davis if he did not know the other two, then why was he so concerned about what happens to them. Davis did not reply.

Due to the fact that Davis did admit to being there during the commission of the crime, Balzer being over 60 years of age, the fact he had the same amount of money that was stolen and bill count and that the video shows Davis taking the wallet and running, he was placed under arrest for Larceny From a Person, Victim over 60. Davis was also charged with PCS marijuana, due to all of the narcotic related items I located on his person. The combination of those items together are commonly used for the sales of narcotics. I then transported Davis to CCDC where he was booked.

While at CCDC, the green leafy substance was tested by me and showed positive for a total of 4.1 grams of marijuana. The cash that I recovered from Davis' right front pocket was released to Balzer at the scene. The marijuana and video were impounded at SCAC. Both Balzer and Wheeler completed voluntary statements.

RR/sj7000 Records

Job #97381

Date and time of dictation: 03/16/08 @ 0817 hrs

Date and time transcribed: 03/16/08 @ 2227 hrs

cc: R. Rundell / SCAC

AO000410

1 16

1 CASE NO.: C243460

2 DEPT NO.: 6

FILED

MAY 29 1 56 PM '08

3
4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
5 COUNTY OF CLARK, STATE OF NEVADA
6
7

CLERK OF THE COURT

-ooo-

ORIGINAL

8 THE STATE OF NEVADA,)
9 Plaintiff,)
10 vs.)
11 EZEKIEL F. DAVIS,)
12 Defendant.)
13

CASE NO. 08F05705X

14 REPORTER'S TRANSCRIPT
15 OF
16 UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

17 BEFORE THE HONORABLE NANCY OESTERLE
18 JUSTICE OF THE PEACE

19 Thursday, April 17, 2008
20 10:15 a.m.

21 APPEARANCES:

22 For the State: ALEXANDER CHEN, ESQ.
23 Deputy District Attorney

24 For the Defendant: MICHAEL WILFONG, ESQ.
25 Deputy Public Defender

Reported by: KRISTINE A. FLUKER, CCR NO. 403

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MAY 29 2008
CLERK OF THE COURT

1 LAS VEGAS, CLARK COUNTY, NV., THURS., APRIL 17, 2008
10:15 A.M.

2 -oOo-
P R O C E E D I N G S

3
4 THE COURT: Ezekiel Davis. That's
5 E-z-e-k-i-e-l, Davis, 08F05705X.

6 MR. WILFONG: Yes. And there's also going to
7 be -- there's actually three. My apologies. Lisa Hurt
8 and Franklin McDaniel.

9 THE COURT: Okay. Franklin McDaniel. Where
10 is Franklin? That's 08F06684X.

11 And the last one is Lisa Hurt, H-u-r-t.
12 That's 08F06712X. Where is Lisa?

13 Okay. Let's start first with Franklin. What
14 are we doing on Franklin's case?

15 MR. WILFONG: Yes, Your Honor. Today
16 Mr. Franklin is going to be unconditionally waiving his
17 right to a preliminary hearing. In District Court he
18 will be pleading guilty to one count of attempted grand
19 larceny. The parties have stipulated to a gross
20 misdemeanor and have stipulated to six months flat time
21 concurrent with any other cases.

22 MR. CHEN: That's correct, Your Honor.

23 THE COURT: Okay. What are we doing on
24 Ezekiel Davis?

25 MR. WILFONG: Yes, Your Honor, today

1 Mr. Davis will be unconditionally waiving his right to
2 a preliminary hearing. In District Court he's going to
3 plead guilty to one count of attempted larceny from the
4 person, a wobbler. The parties have agreed to
5 stipulate to felony treatment. The Government will not
6 oppose probation. If he is successful, he will be
7 allowed to withdraw his plea and plead guilty to the
8 gross misdemeanor with credit for time served.

9 MR. CHEN: That is correct, Your Honor. And
10 also the State retains the right to argue for terms and
11 conditions of probation.

12 MR. WILFONG: Yes, Your Honor.

13 THE COURT: Okay. And what are we doing on
14 Lisa Hurt's case?

15 MR. WILFONG: Yes, today Ms. Hurt will be
16 unconditionally waiving her right to a preliminary
17 hearing. In District Court she will be pleading guilty
18 to one count of possession of a controlled substance.
19 If she has no prior felonies, the State will not oppose
20 3363 treatment.

21 MR. CHEN: That's correct, Judge.

22 THE COURT: Okay. Franklin, did you hear the
23 negotiations?

24 DEFENDANT MCDANIEL: Yes, ma'am.

25 THE COURT: And is that what you'd like to

1 do?

2 DEFENDANT MCDANIEL: Yes, ma'am.

3 THE COURT: Ezekiel, can you pronounce your
4 name. Do you have a nickname?

5 DEFENDANT DAVIS: Ezekiel.

6 THE COURT: Is that your nickname?

7 DEFENDANT DAVIS: Zeek.

8 THE COURT: Great. We're going by that.

9 Zeek, did you hear the negotiations?

10 DEFENDANT DAVIS: Yes, ma'am.

11 THE COURT: And is that what you'd like to
12 do?

13 DEFENDANT DAVIS: Yes, ma'am.

14 THE COURT: Lisa, did you hear the
15 negotiations?

16 DEFENDANT HURT: Yes.

17 THE COURT: And is that what you'd like to
18 do?

19 DEFENDANT HURT: Yes.

20 THE COURT: Do all three of you understand
21 that by entering into these negotiations you are
22 waiving, by that I mean you're giving up, your right to
23 have a preliminary hearing scheduled for today, which
24 means you're giving up your right to cross-examine the
25 witnesses the State can call against you and challenge

1 their evidence, you're also giving up your right to
2 subpoena witnesses to testify for you, and you're
3 giving up your right to testify on your own behalf for
4 the purpose of your preliminary hearing only?

5 Franklin, is that right?

6 DEFENDANT MCDANIEL: Yes.

7 THE COURT: What about you, Zeek?

8 DEFENDANT DAVIS: Yes, ma'am.

9 THE COURT: What about you, Lisa?

10 DEFENDANT HURT: Yes.

11 THE COURT: Do each of you understand it's an
12 unconditional waiver, which means it's a permanent
13 waiver of your right to have that preliminary hearing?

14 So if you go to District Court and you change
15 your mind and decide you don't wish to go forward with
16 your plea bargain, you'd then go directly to jury trial
17 on the original charges. You would not come back to
18 Justice Court to appear before me for the purpose of
19 having your preliminary hearing on this case.

20 Do you understand that, Franklin?

21 DEFENDANT MCDANIEL: Yes, ma'am.

22 THE COURT: What about you, Zeek?

23 DEFENDANT DAVIS: Yes, ma'am.

24 THE COURT: What about you, Lisa?

25 DEFENDANT HURT: Yes.

1 THE COURT: And knowing all of that, you
2 still want the plea bargain, Franklin?

3 DEFENDANT MCDANIEL: Yes, ma'am.

4 THE COURT: What about you, Zeek?

5 DEFENDANT DAVIS: Yes, ma'am.

6 THE COURT: What about you, Lisa?

7 DEFENDANT HURT: Yes.

8 THE COURT: It appears to me from the
9 Complaint on file herein that crimes have been
10 committed. As to Franklin: one count of burglary.

11 As to Zeek: one count of larceny from the
12 person; one count of possession of a controlled
13 substance with intent to sell.

14 As to Lisa: one count of trafficking a
15 controlled substance.

16 Each defendant has unconditionally waived
17 their right to a preliminary hearing. I hereby order
18 the said defendants be held to answer to said charges
19 in the Eighth Judicial District Court, State of Nevada,
20 in and for the County of Clark.

21 Your next court date, Franklin, is --

22 THE CLERK: April 23rd, 9:00 a.m., District
23 Court 1, initial appearance, lower level.

24 THE COURT: And it's the same exact date for
25 Zeek.

1 And then, Lisa, your date is different. Your
2 date is --

3 THE CLERK: April 30th, 9:00 a.m., District
4 Court 24, initial appearance, lower level.

5 THE COURT: Wait for all your paperwork.

6 MR. WILFONG: Your Honor, one last matter as
7 to Mr. Davis. He is on house arrest right now. I
8 believe he needs the paperwork to get that lifted.

9 THE COURT: Was that part of the negotiation
10 or is that a request now?

11 MR. WILFONG: That is our request at this
12 time, Your Honor.

13 THE COURT: I don't have reports from house
14 arrest as to how he's doing or if he's been making his
15 payments or anything. And I show --

16 MR. WILFONG: Well, he's here, Your Honor.

17 THE COURT: I see that.

18 DEFENDANT DAVIS: I have receipts.

19 THE COURT: I'm sorry, what? I can't hear
20 you.

21 DEFENDANT DAVIS: I have receipts for my
22 payments for house arrest. I have my receipts.

23 THE COURT: I gave him an in-custody bindover
24 date. Without a report and since Intake recommended
25 against a release, I did not follow that. I gave him

1 'house arrest. I'm inclined to leave him on there until
2 he shows up on the next court date and enters his plea,
3 and then the State probably won't oppose it then
4 anyway.

5 Is that right, Mr. Chen?

6 MR. CHEN: That's correct, Judge.

7 THE COURT: Okay. He has in-custody date for
8 the 23rd, next Wednesday.

9 MR. WILFONG: Okay. Thank you, Your Honor.

10

11 -oOo-

12

13 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
14 PROCEEDINGS.

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18 KRISTINE A. FLUKER, CCR NO. 403

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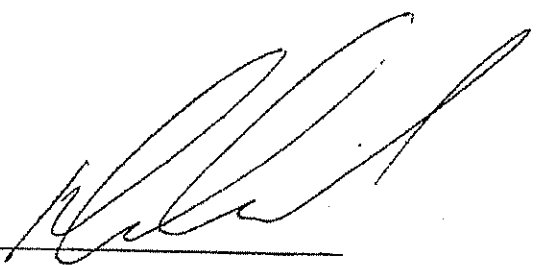
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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding bindover filed in District Court Case
No. C243460 does not contain the Social Security Number
of any person.

Dated this 20th day of May, 2008.



KRISTINE A. FLUKER, CCR. NO. 403

JOCP

FILED

MAY 07 2010

Agnes L. Johnson
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

EXHIBIT B
Part 2

THE STATE OF NEVADA,

Plaintiff,

-vs-

EZEKIEL F. DAVIS
#2677543

Defendant.

CASE NO. C262058

DEPT. NO. XII

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of POSSESSION OF FIREARM BY EX-FELON (Category B Felony) in violation of NRS 202.360; thereafter, on the 27TH day of April, 2010, the Defendant was present in court for sentencing with his counsel R. ROGER HILLMAN, Deputy Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee and a \$150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant is sentenced as follows: TO A MAXIMUM of THIRTY-SIX (36) MONTHS with a MINIMUM parole

1 eligibility of TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC),
2 to run CONCURRENT with case C243460; with ZERO (0) DAYS credit for time
3 served.
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6 DATED this 10 day of May, 2010.

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9 MICHELLE LEAVITT
10 DISTRICT JUDGE
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OF THE ORIGINAL ON FILE

[Signature]
CLERK OF THE COURT

FEB 28 2017

09PCH 1278

Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 1 of 2

Declaration of Arrest

DR# 09-16672

FH# 09

Arrestee's Name: Davis, Ezekiel F

Date of Arrest: 08/13/2009

Time of Arrest: 1411

Charge	Degree	NR5/HMC
Poss Stolen Property/Firearm-F	Felony	205.275.2C
Convicted Person-possess Firearm-F	Felony	202.360

THE UNDERSIGNED MAKE THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I, Clinton Campbell am a peace officer with the Henderson PD, Clark County, Nevada, being so employed since 06/18/2007. That I learned the following facts and circumstances which led me to believe that the above named subject committed (or was committing) the above offense/offenses at the location of 6200 South Eastern Avenue Las Vegas Nevada 89044, and that the offense occurred at approximately 1411 hours on 08/13/2009.

Details of Probable Cause

On 08/13/09 at about 1300 hours I, Officer C. Campbell (#1543), was dispatched to the Big Lots located at the corner of Eastern Avenue and Windmill, in Las Vegas, to assist Lieutenant M. Cassell (#632) and Acting Sergeant Z. Simpson (#689) in reference to a suspicious vehicle.

Lt. Cassell advised that at about 1300 hours he saw two black males in the parking lot that matched the description of a suspect of a drive-by shooting that occurred in Henderson (see DR# 09-16660 for further details). Lt. Cassell advised that both subjects were next to a white sedan that matched the vehicle description used in the drive-by shooting. He advised that they went to another vehicle (a black Saturn sedan bearing NV 817VSS) and were doing something under the hood of the Saturn. He said that both subjects then left in the Saturn going north on Eastern.

Sgt. Simpson arrived to assist Lt. Cassell as they observed the vehicle stop in the Davis Cemetery located at 6200 South Eastern Avenue, in Las Vegas. contact was made with both subjects, Ezekiel Davis (DOB 04/28/89) and Sean Rose (DOB 01/04/89) who identified themselves by means of thier NV identification.

Lt. Cassell and Sgt. Simpson advised that both Ezekiel and Sean advised that they did not know about any drive-by shooting, but Ezekiel admitted that he had a gun hidden in the Saturn and that it was his and that his finger prints would be found on the gun. Ezekiel also stated that Sean had nothing to do with the gun. Sean advised that the gun was hidden near the battery under the hood of the Saturn. Sean also stated that he was the registered owner of the Saturn and gave consent to Officers to search the vehicle.

A routine records check of Ezekiel revealed that he was a convicted felon and on probation for Attempted Theft.

Upon my arrival at the Saturn I located the handgun, a black Semi-Automatic Smith & Wesson MP.45 with serial # MPY8157, wedged between the battery and the air filter under the hood of the vehicle. Digital photos were taken of the vehicle and the location of the handgun and later downloaded into digital evidence.

A routine records check of the Handgun revealed that it was stolen, as confirmed by dispatch. I entered the gun's information in this report to have it removed from the NCIC system as stolen.

It should be noted that there was no round in the chamber of the handgun and there was a magazine inside the gun that had 5 .45 caliber rounds inside of it. The handgun, the magazine, and the rounds were later impounded as evidence at the West Substation.

Clinton Campbell

Declarant's Name

AO000422

Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 2 of 2

Declaration of Arrest Continuation Page

DR# 09-16672

FH# 09

Arrestee's Name: Davis, Ezekiel F

Details of Probable Cause (Continued)

Due to the fact that Ezekiel admitted the stolen handgun was his, he was placed under arrest for Possession of Stolen Firearm (NRS 205.275-2C), and Convicted Person-Possess Firearm (NRS 202.360).

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Clinton Campbell

Declarant's Name

AO000423

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TRAN

CASE NO. C262058

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IN THE JUSTICE'S COURT OF HENDERSON TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

EZEKIEL F. DAVIS,

Defendant.

CASE NO. 09FH1597X

REPORTER'S TRANSCRIPT

OF

UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE STEPHEN L. GEORGE
JUSTICE OF THE PEACE

WEDNESDAY, FEBRUARY 10, 2010

APPEARANCES:

For the State:

AGNES BOTELHO, ESQ.
Deputy District Attorney

For the Defendant:

BITA KHAMSI, ESQ.
Deputy Public Defender

Reported by: Lisa Brenske, CCR #186

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CLERK OF THE COURT

1 HENDERSON, NEVADA, FEBRUARY 10, 2010, 9:30 a.m.

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3 * * * * *

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5 THE COURT: Ezekiel Davis, case number
6 09FH1597X.

7 MS. KHAMSI: This matter is negotiated,
8 Your Honor. Mr. Davis is going to be unconditionally
9 waiving his right to a preliminary hearing. He is
10 going to be pleading guilty to the charge of possession
11 of firearm by ex-felon. State is recommending 12 to 36
12 months and will not oppose concurrent time with the
13 time he is serving concurrently.

14 MS. BOTELHO: We also ask he forfeit the
15 weapon.

16 THE COURT: I'm sorry?

17 MS. KHAMSI: He is going to be forfeiting
18 the weapon as part of the negotiations.

19 THE COURT: Oh, okay.

20 Is that your understanding of the
21 negotiations here this morning, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that by
24 accepting those negotiations you will be
25 unconditionally waiving or giving up that right to a

1 preliminary hearing?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: That means you'll be giving up
4 the right to confront and cross-examine any witnesses,
5 the right to present any evidence in your own behalf,
6 the right to testify or not testify, it would be your
7 choice. Do you understand those rights?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand should you
10 change your mind about these negotiations this matter
11 would simply be set for a trial, it would not be sent
12 back here for a preliminary hearing due to the fact
13 you're unconditionally waiving or giving up your right
14 to a preliminary hearing this morning.

15 Knowing all that do you still wish to
16 unconditionally waive your right to a preliminary
17 hearing this morning?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Therefore it appearing to me
20 from the complaint on file herein that a crime has been
21 committed, to wit: Ex-felon in possession of a
22 firearm, and the defendant named herein, Ezekiel Davis,
23 having unconditionally waived his right to a
24 preliminary hearing. I hereby order said defendant be
25 held to appear to said charges in the Eighth Judicial

1 District Court, State of Nevada, County of Clark.

2 Mr. Davis, you're scheduled to appear in
3 District Court for your initial arraignment on --

4 THE CLERK: February 25th, 10:30 a.m.,
5 lower level, this case is tracked to Department 12.

6

7 (The proceedings concluded.)

8

9

* * * * *

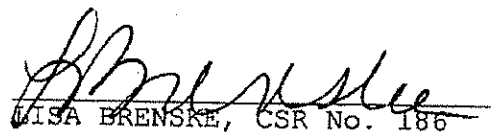
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11 ATTEST: Full, true and accurate
12 transcript of proceedings.

13

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LISA BRENSKE, CSR No. 186

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EXHIBIT C

1 AJOC

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SEP 30 2009

Oliver & Blum
CLERK OF COURT

2 ORIGINAL

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

EXHIBIT C

7
8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO. C248776

10 -vs-

DEPT. NO. V

11 EZEKIEL DAVIS
12 aka Ezekiel F. Davis
13 #2677543

14 Defendant.

15
16 ORDER FOR REVOCATION OF PROBATION AND
17 AMENDED JUDGMENT OF CONVICTION
18


19 The Defendant previously appeared before the Court with counsel and entered a
20 plea of guilty to the crime of ATTEMPT TO COMMIT THEFT (Category D Felony/Gross
21 Misdemeanor) in violation of NRS 193.330, 205.0832, 205.0835; thereafter, on the 20th
22 day of November 2008, the Defendant was present in Court for sentencing with his
23 counsel, thereupon using the presentence report from C243460; wherein the Court
24 adjudged the Defendant guilty under the felony statute of said offense, suspended the
25 execution of the sentence imposed and granted probation to the Defendant.
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1 THEREAFTER, a parole and probation officer provided the Court with a written
2 statement setting forth that the Defendant has, in the judgment of the parole and
3 probation officer, violated the conditions of probation; and on the 17th day of September,
4 2009, the Defendant appeared in court with his counsel, JOSIE T. BAYUDAN, Deputy
5 Public Defender, and pursuant to a probation violation hearing/proceeding, and good
6 cause appearing to amend the Judgment of Conviction; now therefore,
7

8 IT IS HEREBY ORDERED that the probation previously granted to the Defendant
9 is revoked; and IT IS FURTHER ORDERED that the original sentence is MODIFIED to
10 a MAXIMUM of THIRTY (30) MONTHS with a MINIMUM Parole Eligibility in
11 TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC), to run
12 CONCURRENT with case C243460; with NINETY-THREE (93) DAYS credit for time
13 served.
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17 DATED this 24 day of September, 2009

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21 JACKIE GLASS
22 DISTRICT JUDGE
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CLERK OF THE COURT

FEB 28 2017

ORIGINAL

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1 JOC

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 200 Lewis Avenue
6 Las Vegas, Nevada 89155-2212
7 (702) 671-2500
8 Attorney for Plaintiff

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E. J. Smith
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 EZEKIEL DAVIS, aka
12 Ezekiel F. Davis,
13 #2677543

14 Defendant.

Case No: C248776

Dept No: III

15 JUDGMENT OF CONVICTION
16 (PLEA OF GUILTY)

17 The Defendant previously appeared before the Court with counsel and entered a plea
18 of guilty to the crime(s) of ATTEMPT TO COMMIT THEFT (Category D Felony/Gross
19 Misdemeanor), in violation of NRS 193.330, 205.0832, 205.0835; thereafter, on the 20th day
20 of November, 2008, the Defendant was present in court for sentencing with his counsel,
21 MISTI ASHTON, Deputy Public Defender, and good cause appearing,

22 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) ATTEMPT
23 TO COMMIT THEFT (Category D Felony) and, COURT ORDERED: in addition to the
24 \$25.00 Administrative Assessment Fee and a \$150.00 DNA Analysis fee including testing to
25 determine genetic markers, Defendant SENTENCED to a MAXIMUM of THIRTY-SIX
26 (36) MONTHS and a MINIMUM of TWELVE (12) MONTHS in the Nevada Department of
27 Corrections (NDC); sentence SUSPENDED; placed on PROBATION for an indeterminate
28 period not to exceed THREE (3) YEARS with the following CONDITIONS:

1. Abide by any curfew imposed by the Division of Parole and Probation

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- 1 2. Enter and complete the Drug Court program
- 2 3. Enter and complete any counseling programs deemed necessary.
- 3 4. Maintain full-time employment or full-time student status
- 4 5. Complete ten (10) hours of community service work per month
- 5 6. Submit to random urinalysis

6 DATED this 21st day of December, 2008.

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8 AWH
DISTRICT JUDGE CS

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John S. Johnson
CLERK OF THE COURT

FEB 28 2017

jr

AFFIDAVIT

08-6853

1 State of NEVADA }

2 County of Clark }

ss:

3 A. Antoniewicz, being first duly sworn, deposes and says:

4 That he is a Police Detective with the North Las Vegas Police Department, City of North
5 Las Vegas, County of Clark, State of Nevada, being so employed for a period of 6 years,
6 assigned to investigate the crime(s) of **Attempt Robbery**, committed on or about April 15, 2008,
7 which investigation has developed **Ezekiel Davis** as the perpetrator(s) thereof.

8 That Affiant developed the following facts in the course of the investigation of said crime,
9 to wit: On March 15, 2008, at about 2100 hours, Officer Wall (p#1951), responded to 3512 Chaps
10 Ranch in reference to a report of an attempt robbery. The victim, Tracy Smith, told Officer Wall the
11 following: at about 2045 hours, he walked out of the Port of Subs located at 1306 West Craig road
12 toward his vehicle, a black Hummer H3, which was parked in front of the Port of Subs. Smith noticed
13 a black male walking east bound on the sidewalk toward him. Smith opened his driver's door and
14 heard footsteps approaching quickly from behind. Smith got inside the car, shut and locked the door
15 just as the black male grabbed his exterior driver side door handle. The black male grabbed the
16 handle with his right hand and began banging on the driver's side window with his left fist. The black
17 male yelled "give me all your fucking money!" The black male appeared to be standing on the driver's
18 side foot rail and continued banging and yelling at Smith. The black male saw Smith reach his keys
19 toward the ignition and yelled "if you start this car, I'll fucking kill you!" Smith could not see the
20 suspect's right hand and feared for his own safety. Smith started the car's engine, quickly backed out
21 of the parking space and sped west bound through the shopping center. Smith saw the suspect run
22 toward a dark-colored small sports car and then lost sight of him. Smith described the black male as
23 being about 17 or 18 years of age with braided hair hanging down to his chin. The black male wore
24 a black, white, and purple baseball cap and jacket with dark colored pants. Smith told Officer Wall
25 that he would be able to identify the black male if he saw him again.

26 Affiant went to the Port of Subs and checked the area for video surveillance. There was no video
27 surveillance available at the Port of Subs. However, Affiant went to the Lucky's grocery store, 1324
28

1 West Craig road, which is at the west end of the Port of Subs shopping center. Affiant spoke with
2 Lucky's Organized Retail Crime Specialist Thomas Andersson. He showed Affiant video surveillance
3 that covered the time of the crime. On the video, Affiant noticed the following: a black male entered
4 the store on March 15, 2008, at about 2035 hours. The male was wearing a black, white and purple,
5 baseball cap and jacket and he appeared to have braided hair. The black male was preceded in
6 entering the store (about five seconds) by another black male who was wearing blue jeans and a
7 white shirt. Both black males walked toward the restroom area where the black male with the white
8 shirt entered the bathroom and the black male with the baseball cap waited nearby. When the black
9 male exited the bathroom, both black males exited the store together (about 2045 hours). Upon
10 exiting the store, the black male with the baseball cap walked east bound (out of the camera's view)
11 toward the area of the Port of Subs and the black male with the white shirt walked south toward the
12 parking lot and eventually got into a black four door vehicle. Minutes later, at about 2047 hours, the
13 black male with the baseball cap ran back into the camera's view and got into the same black vehicle.
14 The vehicle then went east bound through the parking lot and exited the camera's view.
15 On the video surveillance, Affiant noticed that the black, white and purple colored jacket worn by the
16 suspect had a picture of "Marvin the Martian" (cartoon character) on the back. Andersson made
17 Affiant a copy of the surveillance video which included still photos and Affiant later booked it into
18 evidence at the North Las Vegas Police Department.
19 Due to the unique design on the black male's jacket, Affiant printed still photos from the video
20 surveillance and visited the local high schools in the northern part of North Las Vegas. No one was
21 able to positively identify any of the black males on the pictures. However, on April 4, 2008, Detective
22 Freeman (p#1570) was contacted by Cheyenne High School (3200 West Alexander) personnel, as
23 Affiant was unavailable, and advised that a student matching the description of the suspect was at
24 school and wearing a "Marvin the Martian" jacket. Detective Freeman went to the school and made
25 contact with the student, Darvell Washington. Detective Freeman did not speak to Washington about
26 the incident as he only photographed him for identification purposes. The pictures showed that
27 Washington had braided hair and the jacket matched the jacket on the video surveillance.
28 On April 17, 2008, Affiant met with Smith (victim) and showed him a photo lineup that Affiant

1 obtained from Clark County Juvenile Hall. The photo lineup contained Washington in the lower left
2 hand corner. Smith looked at the lineup and eventually picked the person pictured in the middle of
3 the right hand side.

4 On May 22, 2008, Affiant went to Cheyenne High School to speak with Washington. Before
5 requesting Washington's presence, Affiant showed the still photos to Clark County School District
6 Police Officer Grimes. Affiant asked him if he believed the person in the photo was Washington.
7 Officer Grimes said it was not Washington, but he recognized the black male in the white shirt. Officer
8 Grimes did not remember the black male's name, but later advised Affiant it was Joseph Preston,
9 who previously attended the school. Officer Grimes provided Affiant with Preston's personal
10 information that showed his birth date was 04/17/1988 and his residence address was 5438 Forsythia
11 Court in North Las Vegas. A records check through the Nevada Department of Motor Vehicles
12 database revealed a driver license in the name of Joseph Preston (#1402292801). The license
13 showed Preston with the same birth date and address as that provided by Officer Grimes. The picture
14 on the driver license closely resembled that of the black male wearing the white shirt on the video
15 surveillance.

16 On May 29, 2008, Affiant went to 5438 Forsythia Court. As Affiant approached the residence, Affiant
17 noticed a black four door Mercury Marquis (NV/672use) parked on the driveway. A records check on
18 the plate showed it was registered to Joseph Preston with a birth date of 04/17/1988. Affiant
19 eventually made contact with and spoke to Preston in the presence of Detective Owens (p#1173).
20 Detective Owens recorded this conversation with a digital audio recorder. Affiant later had the
21 conversation copied to a compact disc and Affiant booked the disc into evidence at the North Las
22 Vegas Police Department. Preston told Affiant the following: he was at the Lucky's store with his
23 friend Ezekiel Davis, who was drunk. When they exited the store, Davis told him to go to his
24 (Preston's) vehicle. Davis then approached the Hummer (Smith's vehicle) and jumped on it. However,
25 the vehicle drove away. Davis then got back into Preston's vehicle and started to say "off the wall"
26 stuff. Preston and Davis then left the area. Preston said Davis did not have a gun and did not get any
27 money from the incident. Preston said Davis got arrested later that same day because he robbed
28 someone at the Luxor casino. Preston said Davis was about 18 years of age and his birthday was

1 April 28. Preston said he knew Davis from school, but did not know where he lived.
2 Affiant went to Cheyenne High School and received the latest information they had on an Ezekiel
3 Davis. The information provided showed an Ezekiel F. Davis with a birth date of 04/28/1989.
4 A records check on Davis using the date of birth showed he had an identification card through
5 Nevada Department of Motor Vehicles (#1402503578). Further records showed Davis was arrested
6 on March 15, 2008, for larceny from person (victim over 65) and possession of controlled substance
7 with intent to sell through Las Vegas Metropolitan Police Department's jurisdiction.
8 A photo lineup was created using Davis' identification card picture and five other pictures of persons
9 with similar facial and hair features. Davis was in the number two position. Affiant showed this photo
10 lineup to Smith (victim) and he immediately pointed to Davis and said this was definitely the person
11 that attempted to rob him. Affiant had Smith complete and sign the photo lineup and Affiant later
12 booked it into evidence at the North Las Vegas Police Department. On July 23, 2008, at about 0930
13 hours, Detective Lettieri (p#1522) and Affiant went to Davis' last known address, 4912 Cinnamon
14 Spice Court in North Las Vegas. Affiant attempted to make contact with Davis with negative results.

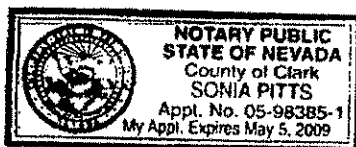
15 WHEREFORE, Affiant prays that a Warrant of Arrest be issued for **Ezekiel Davis** on the
16 charge of **Attempt Robbery**.

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A. Antoniewicz, Affiant

22 SIGNED and SWORN to before me by
23 A. Antoniewicz this 24 day of July, 2008.

24
25
26 Notary Public In and For Said County and State



DEPARTMENT 2
CASE NO. C248776

FILED ORIGINAL

IN THE JUSTICE'S COURT OF NORTH LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

Nov 18 3 40 PM '08

-000-

E. J. [Signature]
CLERK OF THE COURT

THE STATE OF NEVADA,
Plaintiff,
vs.
EZEKIEL DAVIS,
Defendant.

Case No. 08FN1680X

REPORTER'S TRANSCRIPT OF
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE RICHARD GLASSON,
JUSTICE OF THE PEACE PRO TEM

WEDNESDAY, OCTOBER 15, 2008
9:30 A.M.

APPEARANCES:

For the State: Amy Ferreira, Esq.
Deputy District Attorney

For the Defendant: Travis Raymond, Esq.
Deputy Public Defender

Reported by: Norma Jean Silverman, RPR, RMR
NV. C.C.R. No. 572

NORMA JEAN SILVERMAN CCR 572 (702) 451-5607
RECEIVED
NOV 18 2008
CLERK OF THE COURT

NORTH LAS VEGAS, CLARK COUNTY, NEVADA
WEDNESDAY, OCTOBER 15, 2008, 9:30 A.M.

* * * * *
P R O C E E D I N G S

THE COURT: State of Nevada versus
Ezekiel Davis, Case No. 08FN1680X.

Mr. Davis is present in custody.

MR. RAYMOND: He is, judge.

Travis Raymond on his behalf.

This matter has been resolved.

Today Mr. Davis will unconditionally
waive his right to a preliminary hearing.

In district court he will be pleading
guilty to one count of attempt theft. That is a
wobbler.

The State will retain the right to argue
at rendition of sentence.

THE COURT: Okay. Ms. Ferreira, that's
your understanding of the negotiations as well?

MS. FERREIRA: Yes, your Honor, that's
correct.

THE COURT: Thank you.

Mr. Davis, did you understand the
negotiations that have been stated on the record

1 MR. RAYMOND: No.

2 THE COURT: Sounds like it's either a
3 felony or a gross.

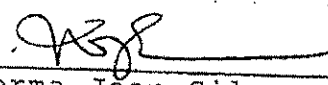
4 MR. RAYMOND: It's the judge's decision
5 like we talked about.

6 THE DEFENDANT: Okay.

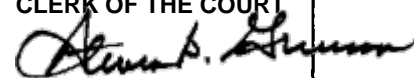
7 THE COURT: Thank you, sir. Go ahead
8 and have a seat.

9
10 * * * * *

11
12 ATTEST: Full, true, and accurate transcript of
13 proceedings.

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20 
21 Norma Jean Silverman, RPR, RMR
22 NV. C.C.R. No. 572
23
24
25

NORMA JEAN SILVERMAN CCR 572 (702) 451-5007



1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JOHN GIORDANI
6 Chief Deputy District Attorney
7 Nevada Bar #012381
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

CASE NO: C-16-319714-1

14 -vs-

DEPT NO: XVII

15 JAVAR ERIS KETCHUM,
16 aka James Ketchum,
17 #6009695

ORDER FOR TRANSCRIPT

18 Defendant.

19 Upon the ex-parte application of the State of Nevada, represented by STEVEN B.
20 WOLFSON, Clark County District Attorney, by and through, JOHN GIORDANI, Chief
21 Deputy District Attorney, and good cause appearing therefor,

22 IT IS HEREBY ORDERED that the transcripts of the Trial heard on 5/22/2017,
23 5/23/2017, 5/24/2017, 5/25/2017 and 5/26/2017 days be prepared by CYNTHIA
24 GEORGILAS, Court Recorder for the above-entitled Court.

25 DATED this 8 day of June, 2017.

26 
DISTRICT JUDGE 

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

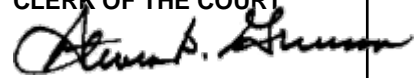
BY 

JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #012381

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DOCUMENT3

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OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STEVEN J. ROSE
Deputy District Attorney
Nevada Bar #13575
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-

JAVAR ERIS KETCHUM,
#6009695

Defendant.

CASE NO: C-16-319714-1

DEPT NO: XVII

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL

DATE OF HEARING: SEPTEMBER 7, 2017
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN J. ROSE, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion For New Trial.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On November 30, 2016, the State charged Javar Ketchum (Defendant) by way of
4 Indictment with one count each of Murder with a Deadly Weapon, and Robbery with a Deadly
5 Weapon. On March 8, 2017, Defendant filed a Motion in Limine, seeking to admit character
6 evidence of the victim, Ezekiel Davis. In that Motion, Defendant declined to articulate what
7 character evidence he sought to admit, or the basis upon which he premised the motion. On
8 May 9, 2017, the State filed a Motion in Limine, addressing prior specific acts of violence by
9 the murder victim. In that motion, the State requested that Defendant not be allowed to present
10 evidence of the murder victim's prior convictions, at least without some proof that Defendant
11 was aware of those events. At that time, there had been no evidence to suggest that Defendant
12 had met his victim before the night and morning when he murdered Ezekiel. The State
13 concluded its motion by, "respectfully request[ing] this Court order that Defendant be
14 precluded from discussing or introducing any specific acts of the victim's, *absent proof of*
15 *personal knowledge at the time of the killing.*" (emphasis added).

16 On May 18, 2017, the State filed a Supplement to its Motion in Limine. In that
17 supplement, the State again argued that Defendant should not be allowed to introduce the prior
18 crimes of the murder victim, given that there had been no showing that Defendant knew the
19 victim. As the State mentioned in its supplement,

20 Defendant has made no showing he was aware of any specific
21 act of violence. Indeed, Defendant has made no showing that
22 he was familiar with the victim. Rather, the evidence shows
23 that Defendant and the victim arrive at different times, in
24 different cars, and with different people. Defendant has not
25 demonstrated that he was aware of any specific acts of violence
26 committed by the victim. Thus, although character evidence
27 may be admissible, "[e]vidence of specific instances of
28 conduct is generally not admissible because "it possesses the
greatest capacity to arouse prejudice, to confuse, to surprise,
and to consume time.'" Id. at 514, 78 P.3d at 901.

//

1 Supplement to State's Motion in Limine Reference Prior Acts of the Victim, filed May 18,
2 2017, at 4–5. In that supplement, the State also responded to an argument by Defendant at a
3 prior hearing, regarding the use of the specific acts of the victim to show a common scheme
4 or plan. Id. at 5–6. At the hearing on the motions, held on May 19, 2017, Defendant indicated
5 that he wanted to bring in testimony in the form of opinions about the victim. The Court
6 allowed Defendant to bring in such opinion testimony, but precluded the witnesses from
7 expanding on those opinions to introduce the specific underlying facts. At no time did
8 Defendant indicate that he knew of the prior acts.

9 On May 22, 2017, Defendant's jury trial began. During Defendant's opening statement,
10 he indicated that the murder victim had a reputation for sticking people up at gun-point. The
11 State objected to this statement, given the Court's prior rulings. During argument on the point,
12 the Court ruled that the reputation or opinion testimony could be admissible as a reputation or
13 opinion for violence, but not for the underlying facts. Defendant indicated that although he did
14 not want to forecast his defense, the time may come when given his testimony, the prior acts
15 may be admissible. On the third day of the trial, Antoine Bernard testified. Bernard testified
16 that Defendant asked who the victim was. Reporter's Transcript, May 24, 2017, at 9, 10. At
17 the end of the third day of trial, the Court held a colloquy regarding the testimony of the
18 defendant's anticipated witnesses. During that colloquy, the State requested that if Defendant
19 intended to testify of knowledge of specific prior acts of his victim, that a Petrocelli hearing
20 be held. Id. at 139.

21 Defendant testified on the fourth day of trial, May 25, 2017. Defendant testified that his
22 first interaction with the man he would later kill was when he bumped into Ezekiel Davis near
23 the dancing pole. Reporter's Transcript, May 25, 2017, at 23. Defendant asked who Davis was.
24 Id. at 23–24. Defendant swore that the next time he encountered Davis was shortly before they
25 all left the building, when Davis embraced him and apologized for bumping into him earlier.
26 Id. at 24. Defendant claimed that Davis lured him off to the side of the parking lot, grabbed
27 Defendant by the belt, and put a gun against his waist. Id. at 25. Defendant testified that he
28 was afraid, and that he

1 [J]ust closed my eyes, and I just was like, you no he, dear God
2 help me. I was like, God, you know, I called on him, and you
3 know, I just got a warm feeling and the spirit just came over
4 me like a voice of my grandmother's, it's like, you know, stand
5 up for yourself. And so I just came out of my pocket and I shot.
6 And when I shot, I hit him. And he rolled on the ground -- I
7 mean, he hit the ground. He was shaking, you know, kicking at
8 the pants and then when I seen him hit the ground, I -- I gained
9 my composure back, and you know, I got very, very angry.

10 Id. at 27. Defendant was specifically asked, and testified that he had not recognized Davis
11 earlier, because in the sole prior interaction, Davis' hat was too low down over his head. Id.

12 Defendant then testified that a woman, Barry, he met previously at Larry's Gentlemen's
13 Club, showed him a picture on her phone, of Davis. Id. at 28. This was the first testimony, and
14 indeed the first indication of any kind, that Defendant had ever seen Davis prior to the events
15 leading to Defendant murdering him. This "Barry" then said that Davis was known for
16 robbing, and that he had been in jail in the past. Id. Defendant did *not* claim that he knew Davis
17 to have gone to jail for any robberies. Id. Defendant reiterated that he recognized Davis for the
18 first time when face to face with him in front of the building, because Defendant's eyes were
19 bad, and he had only ever been inside the club with Davis, where he could not see Davis' face.
20 Id. at 29. On cross-examination, Defendant reiterated that the first time he ever encountered
21 Davis was in the night-club, but he could not see Davis' face. Id. at 61–61.

22 When the Court returned from the lunch-recess, Defendant made a record regarding the
23 prior acts of the victim. Id. at 73. At that time, Defendant argued that the prior acts should be
24 admitted pursuant to NRS 48.045 (2), as evidence of common plan or scheme or intent. Id.
25 Defendant did not argue or request to admit the prior judgments of conviction, based upon the
26 stunning revelation that "Barry" had known of and revealed Davis' past to Defendant three
27 months prior. Id. Defendant called two witnesses, who gave their opinions that Davis was a
28 violent person. Id. at 75–76, 77–78.

Following the last of Defendant's witnesses, and him resting his case, the State called
a single rebuttal witness. Id. at 81–82. Bianca Hicks testified that she was living with Davis,
and the two shared a pair of children. Id. at 82. Hicks testified that in the three years she knew

1 him, she had not seen Davis with a gun. Id. at 90. Hicks did not testify about any time periods
2 prior to the three years she knew him. Id. On cross-examination, Defendant began to ask, based
3 on the fact that Hicks testified she had not seen Davis with a gun in three years, whether she
4 knew about one of his prior convictions. Id. at 93. Despite repeated objections, mid-questions,
5 Defendant did not allow the Court a chance to rule on the objection, and asked whether Hicks
6 was aware that Davis was convicted of possession of a firearm by an ex-felon. Id. at 93–94.
7 The State objected to the reference which not only implied one prior felony but two, and the
8 Court struck the question from the record. Id. at 94, 98.

9 At the end of the fifth day of trial, Defendant was found guilty by the jury. Following
10 the verdict, Defendant entered into a stipulation and order, waiving the penalty phase, and
11 agreeing to a sentence of life in prison with parole eligibility after twenty years, with the
12 sentences for the deadly weapon enhancement and the count of robbery with use of a deadly
13 weapon to be argued by both parties.

14 Seven days after the verdict, Defendant filed the instant Motion for New Trial pursuant
15 to NRS 176.515 (4). Defendant’s Motion is based solely upon his disagreement with the
16 Court’s rulings on admissibility of evidence. The State hereby responds, and respectfully
17 requests this Court order the Motion be DENIED.

18 ARGUMENT

19 Defendant’s motion is an improper attempt to relitigate the Court’s evidentiary rulings,
20 and is without merit. As such, it must be denied. In the pre-trial litigation, and in the State’s
21 requests during trial, the State made clear that if Defendant was going to testify that he had
22 knowledge of Davis’ past, the State wished to conduct an evidentiary hearing pursuant to
23 Petrocelli v. State, 101 Nev. 46, 51–52, 692 P.2d 503, 507–08 (1985). After Defendant
24 testified, he never then sought to introduce the prior Judgments of Conviction, never requested
25 the Petrocelli hearing, and never sought the Court’s permission to re-raise the issue. Instead,
26 Defendant entered the evidence regarding witness’s opinions of Davis, and then blurted out
27 another prior bad act. Accordingly, Defendant deprived the Court of the ability to rule on the
28 admissibility of the evidence, now that there was finally some showing, however incredible,

1 that Defendant was aware of Davis' past. Similarly, as raised pre-trial, Davis' prior history
2 was inadmissible as a prior scheme or plan, because it was not part of one overarching plan
3 spanning both the prior events and the events surrounding his death. Finally, Hicks' testimony
4 that in the three years she was with Davis, the entire time she knew him, she never saw him
5 with a gun did not open the door for Defendant to blurt out his prior conviction.

6 **A. Defendant's Arguments Are Not Properly Raised In a Motion for New Trial**

7 Defendant's arguments are based solely upon his disagreements with the Court's
8 evidentiary rulings. These arguments are not properly raised in such a motion, but are to be
9 raised on appeal. The Court's ability to grant a motion for a new trial stems from NRS 176.515.
10 That statute reads, in pertinent part,

11 176.515. Court may grant new trial or motion to vacate
12 judgment in certain circumstances.

13 1. The court may grant a new trial to a defendant if required as
14 a matter of law or on the ground of newly discovered evidence.

15 2. If trial was by the court without a jury, the court may vacate
16 the judgment if entered, take additional testimony and direct
17 the entry of a new judgment.

18 3. Except as otherwise provided in NRS 176.09187, a motion
19 for a new trial based on the ground of newly discovered
20 evidence may be made only within 2 years after the verdict or
finding of guilt.

21 4. A motion for a new trial based on any other grounds must
22 be made within 7 days after the verdict or finding of guilt or
23 within such further time as the court may fix during the 7-day
period.

24 NRS 176.515. As the arguments show, and Defendant acknowledges in his Motion, he is not
25 seeking a new trial based on "newly discovered evidence." NRS 176.515 (1), (3). Thus, the
26 motion is based upon "any other grounds." Id. at §§ 4.

27 The Nevada Supreme Court has defined what is meant by "any other grounds." The
28 Court held "that such 'other grounds' exist when the district judge disagrees with the jury's
verdict after an independent evaluation of the evidence." Washington v. State, 98 Nev. 601,
603, 655 P.2d 531, 532 (1982). The Nevada Supreme Court reaffirmed this definition in Evans
v. State, 112 Nev. 1172, 926 P.2d 265 (1996) overruled on other grounds by Nika v. State, 124

1 Nev. 1272, 198 P.3d 839 (2008) (overruling Evans on the basis of the wording of the
2 premeditation murder instructions); see State v. Purcell, 110 Nev. 1389, 887 P.2d 276 (1994).

3 Here, Defendant does not argue that the Court should make an independent evaluation
4 of the evidence and come to a conclusion contrary to the jury verdict. Moreover, given the
5 overwhelming evidence, such a request would be meritless. Defendant's arguments are based
6 entirely on evidentiary rulings. Such arguments do not constitute "other grounds" as defined
7 by the Nevada Supreme Court. Evans, 112 Nev. 1172, 926 P.2d 265. Accordingly this Motion
8 should be denied.

9 **B. Defendant Waived These Arguments When he Failed to Request to Admit the**
10 **Judgments of Conviction Following his Testimony**

11 The State's position prior to, and during trial did not change. The State's position, in
12 accordance with the law, was that absent some proof that Defendant knew about the prior
13 events, they were inadmissible to support his claim of self-defense. Burgeon v. State, 102 Nev.
14 43, 46, 714 P.2d 576, 578 (1986) ("In the present case, appellant concedes that the specific
15 acts of violence of the victim were not previously known to him. Since appellant did not have
16 knowledge of the acts, evidence of the victim's specific acts of violence were therefore not
17 admissible to establish the reasonableness of appellant's fear or his state of mind.").

18 NRS 48.045(1) states, in relevant part:

19 1. Evidence of a person's character or a trait of his character is not admissible for
20 the purpose of proving that he acted in conformity therewith on a particular
occasion, except:

21 (b) Evidence of the character or a trait of character of the victim of the crime
22 offered by an accused, subject to the procedural requirements of NRS 48.069
where applicable, and similar evidence offered by the prosecution to rebut such
evidence. . .

23 However, NRS 48.055 limits the method in which character evidence may be proved:

24 1. In all cases in which evidence of character or a trait of
25 character of a person is admissible, proof may be made by
26 testimony as to reputation or in the form of an opinion. On
27 cross-examination, inquiry may be made into specific
instances of conduct.

1 In Daniel v. State, 119 Nev. 498, 78 P.3d 890 (2003), the Nevada Supreme Court held that the
2 victim's propensity for violence is not an essential element of a claim of self-defense, and,
3 therefore, NRS 48.055(1) applies. The Court did recognize a narrow exception to the rule:

4 However, this court has held that evidence of specific acts
5 showing that the victim was a violent person is admissible if a
6 defendant seeks to establish self-defense *and was aware of*
7 *those acts*. This evidence is relevant to the defendant's state of
8 mind, i.e., whether the defendant's belief in the need to use
9 force in self-defense was reasonable.

10 Id at 902 (internal footnotes omitted) (emphasis in original). As such, a specific act to which
11 Defendant was aware would be admissible within reason:

12 We also agree that the admission of evidence of a victim's
13 specific acts, regardless of its source, is within the sound and
14 reasonable discretion of the trial court and is limited to the
15 purpose of establishing what the defendant believed about the
16 character of the victim. The trial court "should exercise care
17 that the evidence of specific violent acts of the victim not be
18 allowed to extend to the point that it is being offered to prove
19 that the victim acted in conformity with his violent tendencies."

20 Id. (internal footnotes omitted). Thus, only acts of which the Defendant is aware would be
21 admissible in trial. See id.

22 In the pre-trial litigation, the State specifically requested that Davis' priors be excluded,
23 *absent proof that Defendant was aware of them.* See Motion in Limine Reference Prior Acts
24 of the Victim, filed May 9, 2017. Again at trial, the State was not of the position that the priors
25 were *per se* excluded, but instead requested an opportunity to examine their admissibility, *if*
26 *Defendant claimed knowledge thereof.* Reporter's Transcript, May 24, 2017, at 139. At trial,
27 Defendant did testify, however incredibly, about hearing that a person whose picture he saw
28 briefly on a phone, had committed robberies. Reporter's Transcript, May 25, 2017, at 28.
However, following this testimony, Defendant never requested to address the Court regarding
Davis' priors, in light of the brand-new claim of knowledge. Instead, when Defendant
requested a renewed ruling on Davis' priors, he did so by arguing under NRS 48.045, and the

1 common scheme or plan exception. Id. at 73. The State would have responded differently, and
2 requested the Petrocelli hearing, as the State did prior to trial, had Defendant attempted to
3 admit Davis' prior robbery convictions due to his knowledge thereof. Defendant precluded
4 that from occurring, however, and cannot now change the basis of his claim for admissibility.

5 **C. Davis' Priors Were Inadmissible Under a Common Scheme or Plan Exception**

6 NRS 48.045 precludes the use of propensity evidence, subject to certain limited
7 exceptions. One such exception is to prove common scheme or plan. The common scheme or
8 plan requires that the plan or scheme exist both at the time of the other bad acts sought to be
9 introduced, and the acts for which the defendant is on trial. Because Defendant could not show
10 such a plan, he could not show entitlement to use the common scheme or plan exception under
11 NRS 48.045.

12 As stated above, NRS 48.045 prohibits the use of propensity evidence in the vast
13 majority of instances. Relevant to this argument, the law states,

14 Evidence of other crimes, wrongs or acts is not admissible to
15 prove the character of a person in order to show that the person
16 acted in conformity therewith. It may, however, be admissible
17 for other purposes, such as proof of motive, opportunity, intent,
18 preparation, plan, knowledge, identity, or absence of mistake
19 or accident

20 NRS 48.045(2). In order to make otherwise inadmissible evidence admissible as proof of a
21 common scheme or plan, certain things are required. First and foremost, there must be a plan—
22 not just any plan, but a plan which was conceived *before* the first of the acts to be introduced,
23 and which encompasses all of the acts to be introduced. Rosky v. State, 121 Nev. 184, 196,
24 111 P.3d 690, 698 (2005). There, the Nevada Supreme Court was explicit in its requirement
25 for the common scheme or plan, holding

26 The common scheme or plan exception of NRS 48.045(2) is
27 applicable when both the prior act evidence and the crime
28 charged constitute an “integral part of an overarching plan
explicitly conceived and executed by the defendant.” “The test
is not whether the other offense has certain elements in
common with the crime charged, but whether it tends to

1 establish a *preconceived plan* which resulted in the
2 commission of that crime.”

3 Id. (emphasis in original) quoting Richmond v. State, 118 Nev. 924, 933, 59 P.3d 1249, 1255
4 (2002) and Nester v. State, 75 Nev. 41, 47, 334 P.2d 524, 527 (1959). The Nevada Supreme
5 Court reaffirmed this requirement in Ledbetter v. State, 122 Nev. 252, 260–61, 129 P.3d 671,
6 677–78 (2006).

7 In Rosky, the Nevada Supreme Court held that two acts, eight years apart, were not part
8 of one common scheme or plan, when it appeared that each act was a crime of opportunity.
9 Rosky, 121 Nev. at 196, 111 P.3d at 698. Because the crimes could not have been planned in
10 advance, and simply occurred when the defendant got close enough to the victims, the Court
11 ruled that they could not belong to one overarching plan. Id. Similarly, in Richmond, the
12 Nevada Supreme Court held that where a defendant “appeared simply to drift from one
13 location to another, taking advantage of whichever potential victims came his way,” he could
14 not use the common scheme or plan exception. 118 Nev. at 934, 59 P.3d at 1259 Rather, the
15 defendant’s “crimes were not part of a single overarching plan, but independent crimes, which
16 [he] did not plan until each victim was within reach.” Id.

17 All of the evidence in this case proved that Defendant’s murder of Davis was a crime
18 conceived of, and executed all within a few hours on September 25, 2016. Defendant could
19 not, and did not show that robberies which occurred seven or eight years earlier were also part
20 of a singular overarching scheme, which somehow encompassed both those acts and a
21 confrontation with Defendant.

22 Defendant in his Motion does nothing but point to the “similarities” between the events,
23 equating two instances years prior where Davis used a firearm to rob people in isolated parking
24 lots away from anyone else to an alleged brazen robbery in broad daylight with dozens of
25 people milling around. However, “[t]he test is not whether the other offense has certain
26 elements in common with the crime charged, but whether it tends to establish a preconceived
27 plan which resulted in the commission of that crime.” Rosky, 121 Nev. at 196, 111 P.3d at
28 698. Without proving a common plan or scheme which lasted nearly a decade, Davis’ priors
were inadmissible under this exception.

**D. Hicks's Testimony Did Not Open the Door to Inadmissible Acts that Defendant
Later Referenced**

In his final claim, once again an argument properly raised on appeal, and not in this type of motion, Defendant claims that the State somehow opened the door to questioning Davis' fiancée, Hicks, about his prior convictions. Motion at 8. This claim bears no more merit than it does propriety in a motion for new trial based on other grounds.

The first flaw in Defendant's argument is that Hicks did not testify to any character traits of Davis. Instead, Hicks testified that she met Davis three years prior to his death at Defendant's hands. Reporter's Transcript, May 25, 2017, at 82. She then testified to a simple fact—that in the three years he knew him, she did not see him with a gun. Id. at 83. Such a statement is not evidence of an individual's character. Davis' prior felony for possession a firearm as a prohibited person resulted in a Judgment of Conviction filed in 2010. This is far more remote than the three year time that Hicks new Davis. This scenario is entirely distinct from that presented in Jezdik v. State, 121 Nev. 129, 110 P.3d 1058 (2005). In Jezdik, the defendant claimed "he had never been 'accused of anything prior to these current charges.'" 121 Nev. at 136, 110 P.3d at 1063. Such a statement is a blanket statement with no temporal component, and is an attempt to establish a good character. Id. Here, however, all that was testified to was that for the last three years, Hicks had not seen Davis with a gun. Such testimony is not an attempt to establish character, and thus cannot allow for rebuttal in the form of contradictory evidence. It is also worth noting, that Defendant cannot demonstrate that Hicks was incorrect. There was no showing that Davis was found with a gun in the prior three years, and the only person to claim to see Davis with a gun on the last morning of his life, was Defendant. Finally, the State would note that although the jury was instructed to disregard it, and is presumed to follow the instructions, they did hear from Defendant, over the State's objection, that Davis had this precise prior conviction. Accordingly, no relief can be afforded.

///

///

E. Any Error Was Harmless Given the Overwhelming Evidence Contradicting Defendant's Theory

Even if the Court erred in its rulings, and those rulings were addressable in this motion, that error was harmless. At trial, Defendant's theory was that Davis attempted to rob him, because Davis did not know that Defendant had a gun, and that Defendant was simply faster on the trigger. Defendant further testified that he did not recognize Davis until Davis pulled a gun and they were face to face, because the only prior interaction was in the darkened club. Both the theory, and Defendant's claims were thoroughly disproven through the evidence.

The evidence showed that throughout the night, Defendant and Davis had multiple interactions in the paved area behind the business. One at least one of those occasions, Davis and the Defendant engaged in an apparent rap-battle. During this encounter, Davis and Defendant were face to face for several minutes, in a well-lit area. Indeed on one occasion during this rap-battle, Davis removed his hat, and continued in the conversation face to face with Defendant. This alone is sufficient to disprove Defendant's claim that he had not recognized Davis while inside the club, and thus the jury properly discounted his claim of self-defense. Defendant simply cannot square the evidence—that Davis and Defendant engaged in this rap-battle, face to face, and the two were seen walking through the club arm-in-arm mere minutes before Defendant murdered and robbed Davis—with his claim that he had not recognized Davis until mere moments before he shot Davis. Similarly, Defendant's premise that Davis tried to rob him because he did not know Defendant had a gun, was belied by the evidence. As highlighted for the jury, the same video showing the rap-battle between Defendant and Davis reveals another critical moment. The moment where Defendant and Davis pose for a picture together, and with Davis standing next to him, Defendant pulls out a gun and extends it toward the camera—directly in Davis' line of sight.

Given the overwhelming evidence to contradict Defendant's claims, any error was harmless.

///

///

1 **CONCLUSION**

2 Based upon the foregoing, the State respectfully requests this Court order the Motion
3 for New Trial be DENIED.

4 DATED this 5th day of September, 2017.

5 Respectfully submitted,

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

9 BY /s/ Steven J. Rose
10 STEVEN J. ROSE
11 Deputy District Attorney
12 Nevada Bar #13575

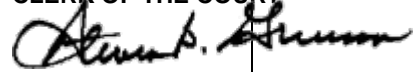
13
14 **CERTIFICATE OF ELECTRONIC FILING**

15 I hereby certify that service of State's Opposition to Defendant's Motion for New Trial,
16 was made this 5th day of September, 2017, by Electronic Filing to:

17 NICHOLAS WOOLDRIDGE, ESQ.
18 nicholas@wooldridgelawlv.com

19
20 BY: /s/ Stephanie Johnson
21 Employee of the District Attorney's Office

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28 16F16375A/SR/saj/MVU



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Attorney for Javar Eris Ketchum

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAVAR ERIS KETCHUM,

Defendant.

Case No.: C-16-319714-1

Dept. XVII

REPLY MEMORANDUM TO STATE OF NEVADA'S OPPOSITION TO
DEFENDANT'S MOTION FOR NEW TRIAL

COMES NOW the Defendant, JAVAR ERIS KETCHUM (hereinafter, "Mr. Ketchum"), by and through his undersigned counsel, Nicholas M. Wooldridge, of the law firm of Wooldridge Law Ltd., and hereby files this Reply Memorandum of Points and Authorities to the State of Nevada's Opposition to Defendant's Motion for New Trial.

This Reply is based upon all the papers and pleadings on file herein, and the following Memorandum of Points and Authorities.

ARGUMENT

State v. Walker, 109 Nev. 683, 685–86, 857 P.2d 1, 2 (1993). Here, had the district court permitted Mr. Ketchum to introduce the evidence at issue, namely, the victim’s prior

convictions, the victim's modus operandi in robbing similarly situated individuals, and/or permitted Mr. Ketchum to cross examine the victim's fiancée, there is a high probability that a rational jury would have returned a different verdict.

This was a close case requiring the jury to make a judgment call on whose theory of the case was more believable and this Court's evidentiary rulings unfairly skewed the outcome in favor of the State. Further, the evidence presented by the Defendant at trial and in his submissions to the Court clearly presents a "conflict of evidence" scenario, which clearly falls within the scope of N.R.S 176.515(4). Accordingly, Mr. Ketchum's motion for new trial should be granted.

B. Defendant Did Not Waive Any Arguments; Defendant Filed Timely Motions Seeking to Admit the Judgments of Conviction And Repeated His Requests for Admission of the Contested Evidence and Testimony.

The State's main argument in its Opposition at pages 9-10 is that Mr. Ketchum waived his arguments in his motion for new trial when he precluded the State from requesting a Petrocelli hearing. See Opposition at 7-9. This argument is not support by the record and lacks merit. On or about March 8, 2017, Mr. Ketchum filed a Motion to Admit Character Evidence. The Defendant's request was renewed through the course of trial. See Transcript of Proceedings, Day 2 at p. 7. And repeatedly required the district court to discuss with counsel on the record whether the contested evidence would be admissible. See Tr. Vol. II at 6-7; Tr. Vol. III at 137-138, 140-141; Tr. Vol. IV at 7. There was no need for Mr. Ketchum to repeat his request when he had already filed a motion seeking the same and raised the identical arguments during the course of trial. *Id.*

Therefore, Mr. Ketchum did not waive these arguments and did not preclude the State from requesting a Petrocelli hearing.

1. Self-Defense and Where Victim is Likely Aggressor

The State's Opposition does not dispute let alone respond to Mr. Ketchum's arguments that Mr. Ezekiel Davis' prior bad acts are admissible per N.R.S. 48.045(1)(b). N.R.S. 48.045(1)(b) provides in relevant part:

1. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except: ... (b) Evidence of the character or a trait of character of the victim of the crime offered by an accused ... and similar evidence offered by the prosecution to rebut such evidence[.]

Here, the State was arguing that the victim was shot and killed by Mr. Ketchum. This Court's evidentiary ruling prohibiting Mr. Ketchum from introducing evidence of Mr. Davis' character and prior bad acts precluded Mr. Ketchum from introducing evidence to rebut the State's theory of the case. As Mr. Ketchum testified at trial, he was aware, in a general sense, that Mr. Davis has committed prior robberies and gone to prison as a result. *See Petty v. State*, 116 Nev. 321, 326 (2000) (citing *Burgeon v. State*, 102 Nev. 43, 46, 714 P.2d 576, 578 (1986)). Thus, testimony regarding the character of the victim was admissible under NRS 48.045(1)(b) regardless of whether Mr. Ketchum was aware of the minute details and dates of Mr. Davis' prior bad acts. *See Petty*, 116 Nev. at 326 (internal citations omitted).

Here, the evidence strongly supported Mr. Ketchum's allegation that Mr. Davis was the initial aggressor. Consequently, the District Court's evidentiary rulings precluding Mr. Ketchum from introducing the relevant portions of Mr. Davis' prior robbery and theft convictions, deprived him of a fair trial.

2. Prior Bad Acts Evidence Showed Common Plan, Scheme or Motive

The State argues that without showing a “common scheme or plan” between the victim’s prior bad acts and Mr. Ketchum’s theory of the case, i.e. that Mr. Davis was the initial aggressor, Mr. Ketchum was not permitted to introduce prior bad acts evidence. See Opposition at 9. The State relies on *Rosky v. State*, 121 Nev. 184, 196, 111 P.3d 690, 698 (2005); however, *Rosky* discussed “common plan or scheme,” it did not discuss or elaborate on admission of evidence to prove motive. Here, Mr. Ketchum argued that the evidence should have been admitted to prove the victim’s [Mr. Davis] motive; Mr. Davis *modus operandi* was to violently target unsuspecting victims in parking lots and proceed to rob them. On at least two previous occasions, Mr. Davis has used a gun to carry out his robberies. For instance, the offense synopsis section of his PSI for his conspiracy to commit robbery and robbery conviction states as follows:

At 9:30 P.M. on August 5, victims Houston MacGyver, Shane Velez and Luke Jaykins were in the Craig’s Discount Mall parking lot and were approached by suspect 1 who asked them for a cigarette. One of the victim’s gave suspect 1 a cigarette and the suspect stated he would give him a dollar. The suspect 1 reached into his waistband area and produced a small silver handgun and pointed it at the victims and demanded money. Initially the victim’s refused until suspect 2 walked up behind them and produced a black semi-automatic hand gun and racked the slide. Mr. MacGyver was afraid of being shot and gave suspects \$700.00 in US currency.

See Presentence Investigation Report (PSI) prepared in *State of Nevada v. Ezekiel Davis*, Case No. C258227.

This evidence tended to show that Mr. Davis had a motive to bring Mr. Ketchum outside. Since the State’s theory of the case was that Mr. Ketchum robbed Mr. Davis, the prior bad acts evidence would have discounted or called into doubt the State’s theory of the case. Specifically, it showed that luring and/or distracting his victims outside was Mr. Davis’ “m.o.” and, therefore,

1 would have supported Mr. Ketchum's theory of self-defense at trial. In a close case such as this,
2 where there was a conflict of evidence, requiring the jury to make a judgment call on whose
3 theory of the case was more believable, this evidence would have strongly favored Mr.
4 Ketchum's theory of the case and should have been admitted.

5
6 **C. Ezekiel Davis' Fiancee (Hicks) Testimony Opened the Door to Inadmissible Acts**
7 **that Defendant Later Referenced And A New Trial Is Warranted Because the**
8 **District Court's Preclusion of Questioning of the State's Rebuttal Witness Deprived**
9 **Mr. Ketchum of a Fair Trial**

10 The State argues that it did not open the door to prior bad act evidence when it elicited
11 testimony from Ms. Hicks as to whether she saw the victim with a gun over the previous three
12 years. This argument is misleading. The purpose of the question by the State was to elicit
13 testimony from Ms. Hicks to convince the jury that Mr. Davis was not a violent or aggressive
14 man. Otherwise, there would have been no other purpose for the State to ask the question it did.

15
16 This Court's attempt to limit the defense's ability to cross-examine Ms. Davis' fiancée
17 was in error. Specifically, once the State opened the door to evidence of Mr. Davis' character or
18 a trait of his character, the defense should have been entitled to offer similar evidence. The
19 State's Opposition fails to discuss the counter-factual scenario discussed in his motion for new
20 trial. For example, in *Daniel v. State*, 119 Nev. 498 (2003), the Nevada Supreme Court held that
21 the "Statute which prohibits the admission of evidence of other crimes, wrongs, or acts to prove a
22 person's character was not applicable because defendant placed his character in issue on direct
23 examination, and instead, statute providing that, once a criminal defendant presents evidence of
24 his character or a trait of his character, the prosecution may offer similar evidence in rebuttal
25 governed whether prosecutor's cross-examination of defendant regarding his prior arrests was
26 proper." *Id.* If the State is permitted to present character evidence where the defendant has
27
28

presented evidence of his character or a trait of his character, the reverse should be true too. “After all, in the law, what is sauce for the goose is normally sauce for the gander.” *Heffernan v. City of Paterson*, 136 S. Ct. 1412, 1418 (2016). Here, Mr. Ketchum should have been permitted to present evidence regarding Mr. Davis’ character and it was error for this Court to limit the defense’s ability to cross-examine Ms. Davis’ fiancée.

Finally, the State attempts to distinguish *Jezdik v. State*, 121 Nev. 129, 110 P.3d 1058 (2005) based on the temporal scope of his question to Ms. Hicks. However, the State’s argument boils down to semantics. Here, the State opened the door and Mr. Ketchum should have been entitled to present evidence or elicit testimony regarding Mr. Davis’ character, namely, Mr. Davis previous conviction of ex-felon in possession of a firearm. *See also Jezdik v. State*, 121 Nev. 129 (2005) (where defendant placed his character at issue through testimony that he had never been “accused of anything prior to these current charges” the rules of evidence do not prohibit a party from introducing extrinsic evidence specifically rebutting the adversary’s proffered evidence of good character).

D. The Cumulative Effect of the Errors Was Not Harmless

The State argues that the evidence was “overwhelming” and that any errors were harmless. However, this argument is entirely speculative. This was a close case. The jury had to make a judgment call between conflicting theories of the case and conflicting evidence. The excluded evidence strongly favored Mr. Ketchum’s theory of the case and should have been admitted. A defendant’s right to present a complete defense “a primary interest secured by [which] is the right of cross-examination,” is well established. *Davis v. Alaska*, 415 U.S. 308, 315 (1974) (quoting *Douglas v. Alabama*, 380 U.S. 415, 418 (1965)); *see also Delaware v. Van*

1 *Arsdall*, 475 U.S. 673, 679 (1986). Here, this right was unfairly limited and went to the heart of
2 the case: whether Mr. Ketchum acted in self-defense.

3 Mr. Ketchum was prejudiced by this Court's evidentiary rulings. The evidentiary rulings
4 undercut and limited Mr. Ketchum's ability to present evidence and contest the State's theory of
5 the case and, therefore, the cumulative effect of the errors rendered the trial fundamentally unfair
6 and skewed heavily in favor of the prosecution.
7

8 **II. CONCLUSION**

9
10 **WHEREFORE**, for all the foregoing reasons, Mr. Ketchum's motion for a new trial
11 should be granted.

12 DATED this 27th day of September, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

13
14
15 /s/ Nicholas M. Wooldridge

16 _____
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CERTIFICATE OF SERVICE

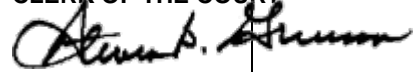
I confirm that on this 27th day of September, 2017, a copy of the foregoing Reply Memorandum of Points and Authorities was served on the below District Attorney's Office by having the same e-filed and courtesy copied to pdmotions@clarkcountyda.com, which in turn provides electronic service to:

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John Giordani, Esq.
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/s/ Nicholas M. Wooldridge

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAVAR ERIS KETCHUM,

Defendant.

Case No.: C-16-319714-1

Dept. XVII

SUPPLEMENT TO DEFENDANT'S MOTION FOR NEW TRIAL

COMES NOW the Defendant, JAVAR ERIS KETCHUM (hereinafter, "Mr. Ketchum"), by and through his undersigned counsel, Nicholas M. Wooldridge, of the law firm of Wooldridge Law Ltd., and submits this supplemental Memorandum of Points and Authorities to his previously filed Motion for New Trial.

DATED this 28th day of September, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.
Wooldridge Law Ltd.

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NOTICE OF MOTION

TO: STATE OF NEVADA, Plaintiff; and

TO: DISTRICT ATTORNEY, its attorneys:

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Supplement to Motion for New Trial for hearing in the above-entitled Court on (day) 10 of (month) Oct., 2017 in Department XVII at (time) 8:30 a m.

Dated this 28th day of September, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

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MEMORANDUM OF POINTS AND AUTHORITIES

**STATE'S LATE DISCLOSURE OF INCUHPATORY EVIDENCE NOT SHOWN
DURING THE SWAN VIDEO VIEWING RENDERED THE TRIAL
FUNDAMENTALLY UNFAIR AND VIOLATED DEFENDANT'S DUE PROCESS
RIGHTS**

I. BRIEF PROCEDURAL BACKGROUND AND STATEMENT OF FACTS

The charges alleged in the Indictment arise from the September 25, 2016 shooting of Ezekiel F. Davis outside the Top Knotch Apparel on the 4200 block of South Decatur Boulevard. The State of Nevada charged Mr. Ketchum in a five (5) count Indictment together with co-defendants Antoine Bernard, Roderick Vincent, and Marlo Chiles as follows: (1) one count of murder with a deadly weapon; (2) one count of robbery with use of a deadly weapon; and (3) three counts of accessory to murder. Mr. Ketchum was only charged in the first two counts of the Indictment. Jury trial began on May 23, 2017 and the jury returned a verdict of guilty on both counts on May 26, 2017.

On June 2, 2017, Mr. Ketchum filed a motion for a new trial. Mr. Ketchum now supplements his motion for new trial with the following additional facts and arguments.

II. DISCUSSION

A. Applicable Standard

Although criminal defendants have no general right to discovery, “[n]evertheless, under certain circumstances the late disclosure even of inculpatory evidence could render a trial so fundamentally unfair as to violate due process.” *Lindsey v. Smith*, 820 F.2d 1137, 1151 (11th Cir. 1987). In fact, the example posited by the Eleventh Circuit is directly on point, as the court noted “a trial could be rendered fundamentally unfair if a defendant justifiably relies on a prosecutor's assurances that certain inculpatory evidence does not exist and, as a consequence, is unable to effectively counter that evidence upon its subsequent introduction at trial.” *Id.* It is also

1 well established that district courts have a duty to “protect the defendant's right to a fair trial [.]”
2 *Rudin v. State*, 120 Nev. 121, 140, 86 P.3d 572, 584 (2004); *see also United States v. Evanston*,
3 651 F.3d 1080, 1091 (9th Cir. 2011) (stating that the district court is to manage the trial so as to
4 avoid “a significant risk of undermining the defendant's due process rights to a fair trial”); *Valdez*
5 *v. State*, 124 Nev. 1172, 1183 n.5, 196 P.3d 465, 473 n.5 (2008) (“[T]he district court had a *sua*
6 *sponte* duty to protect the defendant's right to a fair trial.”).

7
8 **B. The State’s Failure to Disclose the Inculpatory Evidence (The Segments of**
9 **the Video) during the evidence viewing and not Until Its Closing Argument**
10 **Rendered the Trial Fundamentally Unfair and Violated Mr. Ketchum’s**
11 **Right to Due Process**

12 As the Court may recall the defense filed a Writ of Habeas Corpus on the issue of the of
13 the actual SWAN video played to the Grand Jury being different from the copy played to the to
14 the Grand Jury. In fact, because of the difference between the copy and the actual SWAN video,
15 Detective Bunn testified to facts that were not visible on the copy of the video played to the
16 Grand Jury.

17 To illustrate, during the Grand Jury proceedings, the State presented the testimony of
18 Detective Christopher Bunn and a copy of the video recovered from the SWAN device to the
19 grand jury. The relevant portions of Detective Bunn’s testimony during the Grand Jury is
20 summarized below:
21

22 Q. And when you were able to access this Swann device, were you able to
23 find something relevant to your investigation?

24 A. Extensive amount of video that showed basically almost the entire
25 event.

26 *See* GJT at 19.

27 Q. And that particular Swann device, how much information is contained
28 on there?

1 A. I think it's like several gigs, like 45 gigs of some sort of information,
2 you know, contained within it. It's quite a bit.

3 Q. More than one day's worth of four different camera angles?

4 A. Yes.

5 Q. And when you're using the actual Swann device, can you do
6 something with it that we're not going to be able to do here in this
7 room with the video?

8 A. Yeah. The control system within that device allows you to zoom in on
9 the video itself. So you can actually pan all the way in and you can
10 actually zoom images up to like four times greater than what we'll be able
11 to see.

12 GJT at 21.

13 As a result of the differences in the videos, the copy and the actual SWAN, defense
14 counsel requested to view the actual SWAN Video during the discovery phase of the case. On
15 or about February 16, 2017, defense counsel viewed the original SWAN Video surveillance in
16 possession of law enforcement. The original surveillance was in evidence at the evidence vault
17 and could only be accessed with law enforcement. At the time and date set for the review,
18 Detective Bunn along with Chief Deputy District Attorney Marc DiGiacomo presented the video
19 to counsel in the Grand Jury room. Counsel had no control of the video while it was played,
20 and law enforcement controlled the surveillance.

21 During trial, and when the SWAN surveillance was placed into evidence, portions of the
22 video that were played for the jury appeared to be the same portions counsel reviewed with law
23 enforcement and the State in the Grand Jury Room. However, crucially, in the State's closing
24 argument, the State presented two alleged segments of the SWAN undersigned counsel did not
25 previously view when the actual SWAN video was shown to him. This included video
26 surveillance of the defendant purportedly having a lengthy rap battle outside the Top Notch with
27
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1 “victim”, and another video of defendant showing off his firearm in the presence of the “victim.”
2 These two segments that were not previously shown to defense counsel when he saw the actual
3 SWAN video with the State, substantially undercut the defense theory.

4 The State’s failure to disclose this inculpatory evidence during the viewing of the actual
5 SWAN evidence viewing, had a serious detrimental effect on Mr. Ketchum’s intended defense
6 similar to what happens when a party is confronted with surprise detrimental evidence. *See*
7 *Bubak v. State*, No. 69096, Court of Appeals of Nevada, Slip Copy 2017 WL570931 at *5 (Feb.
8 8, 2017) (citing *Land Baron Inv., Inc. v. Bonnie Springs Family Ltd. P’ship*, 131 Nev.____, ____
9 n.14, 356 P.3d 511, 522 n.14 (2015) (emphasis added) (stating that “[t]rial by ambush
10 traditionally occurs where a party withholds discoverable information and then later presents this
11 information at trial, effectively ambushing the opposing party through gaining an advantage by
12 the surprise attack[.]” and observing that although the appellants were “already aware of” the
13 arguments and evidence respondents raised, “[t]he trial judge ...took steps necessary to mitigate
14 any damage”). Here, the defense’s strategy was undermined by the State’s use of the
15 undisclosed evidence (the portions played during closing).

16
17
18
19 This was a difficult case for the jury, one that required them to consider Mr. Ketchum’s
20 theory of self-defense. The never before seen and never previously shown video clips presented
21 to the jury substantially undercut the defense theory.

22 Consequently, Mr. Ketchum suffered clear prejudice: the introduction of the evidence
23 served to directly undermine counsel's opening statement, trial strategy, and credibility.
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III. CONCLUSION

WHEREFORE, for all the foregoing reasons, Mr. Ketchum's motion for a new trial should be granted.

DATED this 28th day of September, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

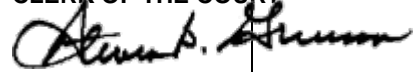
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAVAR ERIS KETCHUM,

Defendant.

Case No.: C-16-319714-1

Dept. XVII

SENTENCING MEMORANDUM

COMES NOW, JAVAR ERIS KETCHUM ("Mr. Ketchum"), by and through his undersigned counsel, NICHOLAS M. WOOLDRIDGE ESQ., and hereby submits this Memorandum of Points and Authorities for the sentencing hearing scheduled for October 17, 2017 at 8:30 a.m.

This Memorandum is based on the attached Points and Authorities, all pleadings and papers on file herein and any oral argument, which this Court may permit at sentencing.

1
2 **MEMORANDUM OF POINTS & AUTHORITIES**

3 **I. INTRODUCTION**

4 The charges against Mr. Javar Eris Ketchum (hereinafter, "Mr. Ketchum"), alleged in the
5 Indictment arise from the September 25, 2016 shooting of Ezekiel F. Davis outside the Top
6 Knotch Apparel on the 4200 block of South Decatur Boulevard. The State of Nevada charged
7 Mr. Ketchum in a five (5) count Indictment together with co-defendants Antoine Bernard,
8 Roderick Vincent, and Marlo Chiles as follows: (1) one count of murder with a deadly weapon;
9 (2) one count of robbery with use of a deadly weapon; and (3) three counts of accessory to
10 murder. Mr. Ketchum was only charged in the first two counts of the Indictment.
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12
13 Jury trial began on May 23, 2017 and the jury returned a verdict of guilty on May 26,
14 2017 on (1) one count of murder with a deadly weapon; and (2) one count of robbery with use of
15 a deadly weapon. On June 2, 2017, Mr. Ketchum filed a motion for a new trial. This motion
16 has been fully briefed and is pending.
17

18 As discussed below, the stipulated sentence of twenty (20) years to life on count one, the
19 consecutive minimum for use of a deadly weapon under N.R.S. 193.165, a concurrent sentence
20 on the minimum for robbery with use of a deadly weapon, and a concurrent sentence on the
21 deadly weapon enhancement for the robbery for an overall sentence of 21 years to life is
22 sufficient and fulfills all of the goals of sentencing in this case. Sentencing is presently
23 scheduled for October 17, 2017 at 8:30 a.m.
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2 **II. DISCUSSION**

3 As observed by one notable district judge:

4 ...[S]urely, if ever a man is to receive credit for the good he has done, and
5 his immediate misconduct assessed in the context of his overall life
6 hitherto, it should be at the moment of his sentencing, when his very
7 future hangs in the balance. This elementary principle of weighing the
8 good with the bad, which is basic to all the great religions, moral
9 philosophies, and systems of justice, was plainly part of what Congress
10 had in mind when it directed courts to consider, as a necessary sentencing
11 factor, "the history and characteristics of the defendant."

12 *United States v. Adelson*, 441 F. Supp. 2d 506, 513 (S.D.N.Y. 2006) (Rakoff, J.).

13 Further, as eloquently stated by the recently retired Circuit Judge Posner:

14 we should have a realistic conception of the composition of the prison and
15 jail population before deciding that they are a scum entitled to nothing
16 better than what a vengeful populace and a resource-starved penal system
17 choose to give them. We must not exaggerate the distance between "us,"
18 the lawful ones, the respectable ones, and the prison and jail population;
19 for such exaggeration will make it too easy for us to deny that population
20 the rudiments of humane consideration

21 *See Johnson v. Phelan*, 69 F.3d 144, 152 (7th Cir. 1995) (Posner, C.J., dissenting).

22 On May 26, 2017, the parties stipulated to a twenty (20) years to life sentencing range on
23 Count One, Murder with a Deadly Weapon. As discussed below, the stipulated sentence of
24 twenty (20) years to life on count one, the consecutive minimum for use of a deadly weapon
25 under N.R.S. 193.165, a concurrent sentence on the minimum for robbery with use of a deadly
26 weapon, and a concurrent sentence on the deadly weapon enhancement for the robbery for an
27 overall sentence of 21 years to life is sufficient and fulfills all of the goals of sentencing in this
28 case.

1 Having been convicted after a jury trial, Javar stands before this Court for sentencing for
2 his role in the events September 25, 2016. As shown through the letters of support from
3 members of his community and colleagues, Javar's crime while serious does not represent Javar
4 the person. When sentencing Javar, this Court must take into account not only the nature and
5 circumstances of the offense but also Javar's character and history. The numerous letters
6 submitted on Javar's behalf show that the underlying conduct was entirely situation, aberrational
7 and due to significant errors in judgment made in the heat of the moment. This is not to excuse
8 Javar's alleged conduct, but only provided to put the offense in context. As this Court witnessed
9 during the trial, this was not a pre-planned crime, the victim was not an ordinary victim, and the
10 victim had a lengthy history of involvement in the criminal justice system, and, importantly, the
11 facts surrounding the event, i.e. whether Javar acted in self-defense were vigorously contested.
12 Regardless of the ultimate number of months or years this Court imposes at sentencing, Javar
13 faces a significant and lengthy sentence. However, at the end of day, Javar is deeply remorseful
14 and determined to rebuild his life and move forward if given an opportunity in the future.
15 Therefore, the proposed sentence is sufficient and will fulfill all of the goals of sentencing in this
16 case.
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20 The Supreme Court of Nevada has consistently afforded district courts a wide degree of
21 discretion in their sentencing decisions. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376,
22 1379 (1987). The factor's most relevant to Mr. Ketchum's case can be summarized into three
23 general categories: (a) history and characteristics of the defendant; (b) the nature and
24 circumstances of the offense; and (c) the need for just punishment, deterrence of criminal
25 conduct and uniformity. Each are discussed in turn below.
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1 **A. Personal History and Characteristics and Circumstances and Nature of the**
2 **Alleged Offense**

3 Mr. Ketchum's personal history and characteristics, coupled with the unique
4 circumstances in this case and nature of the alleged offense serve as mitigating factors in this
5 case.

6 1. Mr. Ketchum's Personal History and Characteristics

7 Mr. Ketchum is 32 years old (DOB: 08/12/1985). He was born in Sacramento, California
8 on August 12, 1985. He grew up in a broken home; his father went to prison for approximately
9 three years when he was only six years old. His father was having an affair with the babysitter
10 who was underage. The sex was consensual, but the young girl was underage. During this time
11 it was difficult for Javar to adjust. Javar started to decline at this time academically as well as
12 with extracurricular activities such as sports. Javar's father was released from prison when Javar
13 was ten (10) years old; however, Javar's father had to register as a sex offender and still does to
14 this day.
15
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17 During the time Javar's father was in prison it was difficult for the family. Before Javar
18 even hit puberty, he had adult responsibilities thrust upon him and he was forced to grow up very
19 quickly. Javar's family had to move in with another family and eventually with his grandparents
20 to regroup. Javar's mother had to take some time off of work as she was very depressed and she
21 took approximately three years off. Javar's mother did the best she could, but she was also
22 dealing with her own issues at the time. Specifically, during the time Javar's father was in prison
23 the mother was dealing with her own depression and sadness and was not able to give Javar the
24 attention he needed. As a result, Javar lacked structure and discipline in his life from any
25 parental figure. During this period, Javar only had help from his uncles and grandparents; he
26 visited his father less than a handful of time during the 7 years his father was incarcerated.
27
28

1 When Javar was approximately twelve years old his mother went back to work and
2 started working for the State of California as an executive assistant and she has worked the same
3 job for the past twenty (22) years. Eventually, when Javar was approximately thirteen (13)
4 years old, his parents split after Javar's father was again caught being unfaithful.

5 Javar went to Prairie Elementary in Sacramento, California. After elementary school,
6 Javar's attended Joseph Kurr Middle School. While Javar graduated from Middle School, he
7 struggled academically and stayed in special education courses throughout the remainder of his
8 education. Nevertheless, Javar did participate in other school programs, including school
9 assemblies and plays. He played Pop Warner Football from third grade until sixth grade. After
10 junior high, Javar attended a private high school, the Natomis Performing Arts School.
11 However, Javar only attended Natomis until the end of his sophomore year. It was a private
12 school and the family could not afford to pay. Javar then began attending a regular public high
13 school beginning in eleventh grade. Javar never completed the eleventh grade and dropped out.
14

15 Javar got his first job when he was eighteen years old at Target, Inc. in 2003 and then
16 landed a job at Apple. In 2011, Javar's family moved to Las Vegas, Nevada. Javar's sister
17 opened up a hair salon and the family all helped in running the business. However, in 2013
18 Javar was involved in a horrible life-changing car accident. Javar seriously hurt his back, could
19 not move and could not work and had to move back in with his parents. Javar's mother helped
20 nurse him back to health and he was able to return to his job at the salon in 2015. Javar's
21 mother moved back to Sacramento, California in 2014 when her mother (Javar's grandmother)
22 was diagnosed with Alzheimers.
23

24 As detailed in the numerous letters submitted on Javar's behalf, summarized below, Javar
25 does not have a significant previous criminal record and while the instant offense is serious he is
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1 not a "menace" to society who is beyond redemption. While no excuse for his actions, this was a
2 unique situation and, more importantly, there is no evidence that Javar is beyond redemption or
3 incapable of being rehabilitated.

4 For instance, Sherry Acey, Javar's mother, recounts Javar's good deeds, his dedication to
5 his family, and his role who helped keep a close-knit family together as follows:
6

7 My son Javar Ketchum has been the glue for me and my family since a
8 very young man. Even though as a young man he experience some family
9 hardship when I divorced his father Bradford Ketchum who was imprison
10 throughout his early childhood and teenage years.

11 Javar excel in sports at a very young age. I continuously kept him in sports
12 from the age 5 until 15 years of age. He is a very responsible, loving, hard
13 working young adult. He displays these characteristics young as being the
14 young male in the family. I was a single mother he assisted me with the
15 care of his grandfather, James Townsend who lived with us since Javar
16 was five until he passed in 2007. He experience the care of family and
17 friends at a young age as he seen his mother constantly sacrifice for family
18 and friends. He took on that kind and caring spirits.

19 He worked as a youth for Target and Apple Computers in Sacramento ,
20 California. He assists his friend Ricky Patterson with a youth outreach
21 ministry for young barbers. A program Javar and Ricky Patterson started
22 to help recruit high-risk males in the Sacramento area.

23 I recently had to relocate back to Sacramento suddenly in 2014 as my
24 mother Evelyn Hall had Alzheimer Disease. My son had been in a horrible
25 accident prior and was not physical able to assist, but he did anyway he
26 loaded the truck and drove me back to Sacramento even though it was in
27 pain himself. He is always willing to assist family in friends in need. He
28 continues to come down and assist me with his grandmother Evelyn Hall
until her passing in March 2016.

Our entire family is dedicated to support Javar and the means necessary to
get him through this situation. I truly believe prison is not an alternative
for his as he is a valuable man to society and to his family and friends. He
is the "rock" in our family. He has always been a decent, hard working,
GOD fearing man as a child and as an adult. In closing I would like to add
he has always seen me work for over 25 years with the State of California.
I know he knows the value of hard work as he seen that first hand in his
mother's house.

1 Thank you in advance for your time and consideration.

2 A copy of Sherry Acer's letter is attached hereto as **Exhibit A**.

3
4 Next, Lisa Dixon recalls the loving and good-natured manners of her eldest nephew,
5 Javar, as follows:

6 I am writing this letter on behalf of my eldest nephew, Javar Ketchum,
7 who we affectionately refer to as "Jay."

8 As the eldest nephew and cousin, Jay has always been a loving, adored
9 member of our family. Jay is very loving, friendly, and naturally
10 charismatic. Once someone meets Jay, he easily becomes a "favorite."
11 Our extended family and friends would always inquire about him as he
12 was growing up. As a youngster, Jay was very athletic and excelled in
13 sports such as soccer and football. Jay was a valuable team player, and a
14 standout pop Warner football player.

15 Javar and his family moved to Las Vegas in 2011. However, Jay kept in
16 touch with us by coming to visit and calling often. Jay would always call
17 on birthdays, holidays and other special occasions or just to say "hello."
18 Jay would always ask about his grandmother and cousins. He'd ask how
19 his younger cousins were doing in school and life. At family gatherings,
20 we could always count on Jay to make us laugh and smile.

21 Subsequent to his move to Las Vegas, Jay's grandmother (my mother)
22 became ill, and was eventually diagnosed with a form of Dementia known
23 as Alzheimer's disease. This was very sudden and unexpected and
24 rendered a tremendous blow to our family. It was devastating to all of us
25 to see our Matriarch's illness progress. However, as her eldest grandson,
26 Jay would visit her frequently, and continued to do so even as her illness
27 progressed. Jay was very patient and kind to his grandmother, especially
28 during her illness, and would smother her with hugs and kisses when he
greeted her. My mother never forgot who Jay was, and it was evident that
they had a very special bond and adored each other.

My mother passed away on March 14, 2016; and of course, Jay came
home for the funeral and was a huge support to us and his younger
cousins. Sadly, I remember that during the funeral service, Jay became
overwhelmed with emotion, and could not bear to stay inside for the rest
of the service.

I've worked for the State of California all of Jay's life; most of which has
been as an analyst around law enforcement entities. I know that law

1 abiding citizens are vital if we are to have a thriving society. I believe
2 wholeheartedly that Jay can be a positive, valuable, contributing member
3 of our society if given the opportunity of release or probation. Me and
4 other family members and friends are resourceful and can support Jays
return by providing resources for him to gain employment and/or further
his education.

5 Our entire family loves and supports Jay 100 percent! At just Thirty-one
6 years old, we believe he has endless potential. I personally commit to do
7 whatever it takes to help him achieve his goals and be successful.

8 A copy of Lisa Dixon's letter is attached hereto as **Exhibit B**.

9 Similarly, Tanya Kendricks recalls the affectionate and caring personality of her cousin
10 Javar as follows:

11 I am Javar Ketchum's cousin (Jay's grandmother and my mother are
12 sisters). I have known Jay since his birth. He is known to be a very
13 affectionate caring person, especially with family and friends. He has a
14 strong relationship with his family members, and he is respected and
15 revered by all of us. Jay has always been very generous and eager to help
16 others; therefore, it is a great shock to hear of the situation he is now
facing because it is so much out of character for the Jay that we know and
love.

17 When Javar and his family moved to Las Vegas my family and I would
18 make a special effort to visit often to spend time with him since he was
19 always very approachable and displayed a mature stable attitude with his
20 behavior as a young adult. I also observed how Jay kept in touch with his
21 grandmother in Sacramento always looking to comfort and support both
his grandmother and his mother as much as possible as her medical
condition began to become more and more critical.

22 As a productive member of the community, working for the State of
23 California as an Accountant for the last 28 years, I recognize that we all
24 need to put for effort and work together to become valued members of
25 society supporting one another. I humbly ask for leniency in this case as I
truly believe that with the support of his family and friends; given a
chance Javar can be a great asset to society.

26
27 A copy of Tanya Kendricks' letter is attached hereto as **Exhibit C**.

1 Javar's childhood friend of over twenty-five (25) years Ricky Patterson details Javar's
2 kindness and character as follows:

3 This letter is in reference to Javar (Jay) Ketchum. My name is
4 Ricky W. Patterson. I am Javar's childhood friend for over 26 years. I am
5 owner of Lil Rick's Barber Shop, located in Sacramento, California. I have
6 known Javar Ketchum for mostly all of my life. We have been best friends
7 since 1990. I meet him in school. I have seen many aspects for Javar's
8 personality. I have always known him to be extremely kind, dependable
9 and well regarded among his peers. He is a "people person." As a child we
10 played Pop Warner Football together he was always a team player and
11 willing to go the extra mile. He won several trophies for sportsmanship
12 and Athlete of The Year. He was very talented in sports.

13 He has assisted me in the opening of my barber shop. When I purchased
14 the building it was old and needed remodeling. Javar assisted me in every
15 aspect of the remodeling. He continues to help with a program we started
16 here in Sacramento to assist high risk males to obtain a trade through the
17 Sacramento Barbering Apprenticeship Program. He comes from Las
18 Vegas yearly to help me promote this program something me and him
19 started about 15 years ago. I am offering Javar Ketchum any support
20 necessary to assist him in this difficult situation. There is no limit of what
21 I would do as his best friend because he has always displayed this type of
22 commitment to me for over 25 years.

23 I have also experience him caring for his grandfather James Townsend
24 who lived with his family since he was five until his passing in 2007. He
25 also assisted with the care of his grandmother Evelyn Hall who lived with
26 his mother until her passing in March 2017.

27 On all of these situations he display how family oriented he is. He always
28 says "family first." Sending my best friend Javar Ketchum to prison
would be a loss to the community as he gives freely of him time to assist
with the youths in the community. He has continually assisted me with the
recruitment of young males to stay out of trouble which is definitely an
asset needed in our community. If I can be of any assistance, please
contact me directly at (916) 598-3113. Thank you for taking the time to
read my letter.

29 A copy of Ricky Patterson's letter is attached hereto as **Exhibit D**.

30 Javar's pastor, Sam Darling, minister of the Great Gospel of Jesus Christ in Compton,
31 California recounts his support for his family, compassion and respect for others:

1 My name is Sam Darling, and I am a minister of the great gospel of Jesus Christ,
2 at the above-mentioned church in the city of Compton, CA. I am currently
3 preaching, teaching, counseling, mentoring, and generally serving on the staff
4 of/alongside of our Sr. Pastor, Rev. Kenneth Tillman. I have served this
5 particular church in this capacity for the past eighteen (18) years.

6 I have had the pleasure and the privilege of knowing Javar (we refer to him as
7 Jay) for the entirety of his life, and knowing his extended family for the better
8 part of my life. I met Jay's great uncle (Mr. Rodney Glenn) at age ten (10) when
9 we were classmates in the fourth (4th) grade. We have been life-long friends
10 since then, his mother was my Godmother at the time of her passing (1995), and
11 he and I yet remain as close as brothers. I am affectionately known by everyone
12 in the family as Uncle Sammy, so for all intents and purposes, I am family. In my
13 capacity, as "family minister", I have eulogized and committed for burial, (in
14 order) Jay's Grandfather (James Townsend), his grandfather's brother (Melton
15 Townsend), as well as, and most recently (May 2016), his grandmother (Evelyn
16 Hall). I apologize for the length of my introduction, but I labor this point only to
17 provide context for my love, respect, and familiarity with Jay and his entire
18 family.....

19 One of my earliest character recollections of Jay was when he came up to me at
20 family function, at @ age 12 or 13, and asked me if I could help him get a job.
21 He shared with me that someone at his school had said to him that "a man was
22 supposed to work," and he felt that because he was the "man of the house," (In a
23 house where the positive presence of his father was seldom seen or felt), he
24 wanted to work so that his mom wouldn't have to worry.

25 I recall him calling me from Sacramento, here in L.A., as an underclassman in
26 high school, explaining to me how he had been suspended for fighting, in the
27 process of protecting a female student whom he didn't know personally, but who
28 was being beaten/abused by her boyfriend, a boyfriend whom Jay felt left him no
choice but to protect himself, when he selflessly intervened. He wanted to know
how he could wind up getting in trouble, for doing the right thing. It was my first
of several "hard conversations" with him, centered around the concept of
"responsible choices" He had trouble "wrapping his brain around" the reality that
sometimes in life, even "the right thing" can have unintended, unpleasant, and
even serious consequences.

29 I remember at his grandfather's (James Townsend) funeral, him wanting to be the
30 one to ease and even endure the pain of grief that his mother (Sheryl Townsend-
31 Acey) and his aunt (Lisa Townsend-Dixon) were experiencing so profoundly. He
32 was convinced that his sister (Shalonda), not only expected him, but also needed
33 him to carry her through. Asking me for counsel, as to how he could be that
34 "rock" that his family, appeared to him, to need at that time.

35 He expressed the same general dynamic upon the passing of his grandfather's
36 brother (Melton Townsend, and I apologize that I don't know what that makes
37 him to Jay), and he seemed to be affected by not just his own personal loss, but
38 even more profoundly by the direct affect it had on his cousins, and their grief
and pain, was clearly of primary import to him, over and above his own personal
feelings.

1 More recently, I recall the funeral of his grandmother (Evelyn Hall), where he
2 experienced his own personal grief much more deeply and acutely. I spent four
3 days in Sacramento to officiate the funeral and to assist and minister to the
4 family, and each day, he specifically asked me, "How can I help my family, Rev.
5 What do you want me to do?". He rarely left his mother's side, and he seemed to
6 me to be attempting to suppress his own pain, in an effort to more effectively be
7 able to take on the pain of his "weaker" family members who needed him. He
8 seemed to think that his sister (Shalonda) not only expected him to carry her
9 through the loss of her grandmother, he was convinced that she needed him
10 enable her to cope with the loss. In all three of these "death scenarios", he
11 expressed respect for the value of life, a maturity of compassion beyond his
12 years, and a selflessness that is admirable in any context.

13 As I explained earlier, I can't speak to any definitive elements of this cases...I
14 can't postulate as to his guilt or innocence, and not knowing that, I obviously
15 can't express any knowledge of remorse for the commission of a crime that he
16 may not have even committed! I can, however, be sure of a couple of things.

17 I am certain that Jay, beginning at an early age, has consistently expressed a level
18 of compassion for others that is all too uncommon, in my experience. I am sure
19 that Jay, certainly in my presence over the years, has shown a profound respect
20 and appreciation for life. I am certain that Jay, no matter what the circumstances
21 were, laments the fact that a human being experienced loss of life, and he is
22 deeply affected because once again, he is much too intimately associated with yet
23 another one.

24 It is of a certainty that there are some people, who have been almost irreversibly
25 corrupted by sin, circumstances, negative and destructive environments, various
26 expressions of mental illness, etc. In these cases, the products and vessels of such
27 levels of depravity should, and even must, be removed from civilized society. It
28 is necessary for the good of said society, as well as, all things considered, for the
ultimate good of those who have consistently expressed little to no control of
their baser impulses and morals.

My experiences inform me to believe that Jay does not fall into this dismal,
almost hopeless category. I believe that this young man has the skillset, and more
importantly the heartset, to be able to make some positive contributions to
society. I say this because I know Jay's family to be a community of love, and
grace; a supportive network that embraces and teaches moral and ethical
aspirations...they are a part of the whole that is community, designed and
expected to make the broader community better than it was, when they found it.

Jay is at a crossroads in his life, and there is much that can/is being learned
during what is a trying time, not only for him, but for his family, and all affected
families, as well. He is actually in a centralized position, where he is a
generational link between the "younger" members, and the "senior" members. He
can really, finally be the galvanizing element of his family, that he has always
aspired to be. He can do that by going forward with a sense of positive and
productive purpose...with "life" at the center, rather than "death" being the core,
unifying event. I presume, and even trust, that you, Judge Vallani, in your most

1 important and honorable position, have evolved over the years, and become more
2 and more, a good judge of character, as you have continually exercised your gift
3 as a good judge of the law.

4 I implore you, your Honor, that in every eventuality that proceeds from/thru this
5 case; that whenever/wherever providence allows for your discretionary wisdom
6 to have sway; that as you traverse the scale between justice and mercy...my
7 prayer is that you might consider investing faith and promise, in a life that may
8 very well still hold an abundance of, faith and promise.

9 A copy of Minister Sam Darling's letter is attached hereto as **Exhibit E**.

10 Finally, O'Nedra James, Javar's fiancée, details Javar's role and support in her life as
11 follows:

12 I'm writing this letter in regards to Javar Ketchum. Javar is my fiancé , We
13 have been in a long loving relationship for going on two years. Javar is the
14 most loving, caring, kind, and attentive person I've ever had the pleasure
15 to meet. I was a single mother raising three children, when I met Javar not
16 only did he accept all that came along with me he stepped up to help me
17 take care of my children, as well as my elderly mother. That includes
18 taking them to school, football, track, wrestling, and band practice,
19 Doctor's appointments (my mother as well as the children), homework,
20 also assisting with cooking and cleaning. I feel privileged and blessed to
21 have met a man of his stature it is hard teaching teenage boys how to
22 become men. Javar spends a lot of time with the children and they look up
23 to him, he has taught them the importance of education, self-respect, as
24 well as working hard to set goals and achieve them. Also taking them out
25 to feed the homeless and giving back to the community teaching them
26 humility.

27 I have been a make-up artist/ stylist for well over 20 years my career can
28 be very demanding Javar also works with me at times to help with my
clientele whether that's appt. setting or setting up for photo shoots for
weddings, paperwork etc. We have a stable residence together that I have
resided in going on three years. Javar and I have a dream of opening a
beauty supply and salon, and Javar has been helping me jump start a new
venture in writing children's books teaching self love and acceptance.
Javar has been a true blessing and has made such a great impact in our
lives. He is such an amazing human being. We look forward to getting
married and having more children. Javar does not have any biological
children as of yet, but knowing how great of a stepfather he is I look
forward to him being a father and a husband. I know that Javar is an asset
to the community and upon him being released back into society will have
a positive impact on his life as well as others. Javar and I are looking

forward to being active members in church and Javar has always wanted to coach a football team in a league my son is a current award winning Jr. Olympic track and football athlete that Javar has helped with his training with his coaches and found a love for. I would like to thank you in advance for taking the time to read this letter and getting to know a little about our family.

A copy of O’Nedra James’ letter is attached hereto as **Exhibit F**.

B. The Need for Just Punishment and Deterrence

1. Just Punishment and Collateral Consequences

While Javar does have a limited previous criminal record, he does not have a lengthy criminal record. Yet, now, he faces the prospect of a very lengthy prison sentence. Crucially, however, whatever period of imprisonment this Court imposes, the punishment will continue well after he completes his sentence. His actions may have resulted in the unfortunate loss of life for the victim; however, Javar will also be subject to permanent consequences as a result of his criminal convictions and will spend a significant period of imprisonment away from his family, many of whom are aged and will no longer be present to support him upon his future release. Consequently, the proposed disposition is more than sufficient to fulfill the need for just punishment in this case.¹

The conviction, the lengthy sentences and the life long consequences to both Javar and his family are punishment enough. Academic research has shown that for many families, after conviction and sentencing, “life as they knew it had been shattered and smashed to pieces.” *See* RACHEL CONDRY, FAMILIES SHAMED: THE CONSEQUENCES OF CRIME FOR RELATIVES OF SERIOUS

¹ The parties stipulated to a sentence of between 20 years to life on Count One, Murder with a deadly weapon. The parties have not stipulated to any particular sentence on the remaining counts. On the deadly weapon enhancement, N.R.S. 193.165 provides a 1-year minimum and a maximum of 20 years. *See* N.R.S. 193.165. For robbery with a deadly weapon, the penalties provide for a minimum of 2 years and a maximum of 15 years. Accordingly, if this Court follows Javar’s proposed sentence, he would still be sentenced to an overall term of imprisonment of 21 years to life.

1 OFFENDERS (2011). As noted by Condry in her study, one mother described the feeling as “grief,
2 a form of grieving, but you haven’t got the respectability of them [the offender] being dead.”
3 This lack of respectability was a key feature for many family members of offenders: relatives
4 felt their grieving was not legitimized because they were seen as somehow implicated in the
5 criminal offence and not free of blame. Similarly, the grief experienced by many family
6 members represented a loss comparable to death. Family members also wrestled privately with
7 self-blame, wondering if their past actions may have contributed in some way, in any way, to
8 what had happened. As noted by one parent who participated in an academic study of family
9 members of offenders:
10

11 You wonder where you’ve gone wrong. You think, ‘Why did it happen? Is
12 it something I’ve done?’

13 (Beryl, mother of a son convicted of murder)²
14

15 Recent research on family members of offenders shows that all too often, once an offender has
16 been locked away, since the community can no longer punish the offender, the family members
17 of the offender are thus treated as contaminated and left to bear the brunt of the community’s
18 punishment. The community reaction may be characterized by a collective disapprobation,
19 expressions of anger or avoidance, disgust, rage, and sometimes, depending on the severity of the
20 offence, retributive lust or violent hostility due to association with the offence. As observed in
21 Condry’s study, the consequences of being blamed and stigmatized could be very severe:
22

23 Friendships were lost; a mother was spat at in the street; another had eggs
24 thrown at her windows and abuse from neighbors; and another received
25
26

27 ² Condry, R., ‘Secondary Victims and Secondary Victimization,’ in Shoham, S., *et al.* (eds), International Handbook
28 of Victimology (CRC Press, Florida, 2010).

1 abusive phone calls. One wife had all the windows of her house broken,
2 and another was taunted in the street: 'You murderer's wife.'³

3 A common theme in the accounts of family members of the legal offender in Condry's
4 study is the feelings of helplessness:

5 ...it's when one member of a family has committed a serious offence I
6 think neighbors, the media, friends, often find it difficult to cope with this
7 and therefore the family are treated as though they've done something
8 wrong as well.

9 *****

10 Because you're a wife of a murderer or rapist of whatever you're classed
11 in the same category as them. If you're a son or a daughter of a murderer
they will paint you the same.

12 *****

13 We come up against the prejudice and stupidity of other people, and you
14 do get tarred with the same brush.

15 RACHEL CONDRY, FAMILIES SHAMED: THE CONSEQUENCES OF CRIME FOR RELATIVES OF SERIOUS
16 OFFENDERS (2011). These experiences demonstrate that Javar's punishment will extend well
17 beyond his term of imprisonment to his family. The process of punishment of family members
18 and relatives of the offender continue in a cumulative manner during the period of the offender's
19 incarceration and, in certain aspects, are even more pronounced due to the financial costs of
20 imprisonment. Thus, the proposed sentence will surely provide just punishment for Javar's
21 alleged conduct.
22
23
24
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27 ³ *Id.*
28

2. Deterrence

Turning to deterrence, deterrence has two components: specific deterrence and general deterrence. The need for either specific or general deterrence in this case is limited. First, as discussed below, sentencing based on general deterrence is counterproductive. Second, the numerous letters submitted on Javar's behalf demonstrate that if given a second chance, he can move forward and one day in the future rebuild his life. While the instant offense is serious, it is an isolated episode of aberrant conduct that arose during a highly charged encounter with a dangerous individual and the need for specific deterrence in this case is limited.

a. General Deterrence

Contrary to popular belief, criminal punishments and a permanent criminal record can actually increase future offending among the punished. It would be hard to imagine a scenario where a more severe sentence could potentially increase deterrence—Javar already faces a sentence in excess of twenty (20) years. His close-knit family has been shattered and he will have to adjust to seeing his family grow, age and die while he sits in prison behind a glass or metal partition. It defies credulity that any extra level of punishment in the form of time spent in jail would somehow increase general deterrence other than being an unnecessary expense for taxpayers. Additionally, sentences based on general deterrence lead to counterintuitive results because, according to labeling theorists, criminal behavior often shows an increase after sanctioning because formal sanctions significantly reduce legitimate life pathways. Sanctioned criminals may engage in a process of value identification with their label, and thus adopt norms and behavior patterns typical to that label, i.e. "once a criminal always a criminal." Imprisonment may serve as a powerful conduit to the adoption of criminal identity, as it is the most severe sanction that one can receive from the state (except for death) and in fact, bestows a

1 more stigmatized label than lesser sanctions (e.g. probation). Numerous academic studies have
2 shown that increased punishment is not correlated with a decrease in general re-offending rates.
3 According to “the best available evidence, . . . prisons do not reduce recidivism more than
4 noncustodial sanctions.” Francis T. Cullen *et al.*, *Prisons Do Not Reduce Recidivism: The High*
5 *Cost of Ignoring Science*, 91 Prison J. 48S, 50S-51S (2011).

6
7 b. Specific Deterrence

8 Javar is 32 years old and already faces a lengthy sentence. Further, even though the jury
9 may have rejected Javar’s theory of self-defense at trial, all of the available evidence to date
10 reinforces the aberrant nature of his conduct. While Javar’s actions may have fallen short of
11 self-defense, his motivation on September 25, 2016 was certainly not to kill a man for a belt and
12 watch. This was not a premeditated crime and nothing in Javar past indicates that he will engage
13 in similar behavior again in the future.

14
15 At the end of day, Javar is not a career criminal and it is conduct that is unlikely to ever
16 be repeated for two reasons. First, the circumstances leading to the instant offense are highly
17 unusual and involved a volatile encounter with the victim, a known and convicted thug who had
18 a history of violent robberies. Second, even if this Court follows Javar’s request for a sentence
19 on the low end of the sentencing range of 21 years to life, this is an exceptionally long sentence
20 and every academic study to explore recidivism rates have found that the risk of re-offending
21 decreases with age.⁴
22
23
24
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26

27 ⁴ Avinash Singh Bhati, Alex R. Piquero, *Estimating the Impact of Incarceration on Subsequent Offending*
28 *Trajectories: Deterrent, Criminogenic, or Null Effect*, 98 J. Crim. L. & Criminology 207 (2007-2008).

1 **C. Requested Sentence**

2 In light of the foregoing, we respectfully submit that the proposed sentence—the
3 stipulated sentence of twenty (20) years to life on count one, the consecutive minimum for use of
4 a deadly weapon under N.R.S. 193.165, a concurrent sentence on the minimum for robbery with
5 use of a deadly weapon, and a concurrent sentence on the deadly weapon enhancement for the
6 robbery for an overall sentence of 21 years to life is sufficient and fulfills all of the goals of
7 sentencing in this case.
8

9 **III. CONCLUSION**

10 **WHEREFORE**, for all the foregoing reasons, this Court should impose an overall term
11 of imprisonment of 21 years to life.
12

13 DATED this 16th day of October, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

16 _____
17 Nicholas M. Wooldridge, Esq.
18 Wooldridge Law Ltd.
19 400 South 7th St., 4th Floor
20 Las Vegas, NV 89101
21 nicholas@wooldridgelawlv.com
22 (702) 330-4645Tel.
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CERTIFICATE OF SERVICE

I confirm that on this 16th day of October, 2017, a copy of the foregoing Sentencing Memorandum was served on the below District Attorney's Office by having the same e-filed and courtesy copied to pdmotions@clarkcountyda.com, which in turn provides electronic service to:

Steven J. Rose, Esq.
Chief Deputy District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge

EXHIBITS A THROUGH F

**CDSS**WILL LIGHTBOURNE
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov

EDMUND G. BROWN JR.
GOVERNOR

December 27, 2016

EXHIBIT A

Sheryl Acey
2604 Encinal Avenue
Sacramento, CA 95822
(702) 980-2401

The Honorable Michael Villani
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

Re: Javar Ketchum

Dear Honorable Judge Michael Villain:

I am writing you in regards to my son Javar Ketchum. I understand this is of a very serious nature. I speak with my son on a daily basis.

My son Javar Ketchum has been the glue for me and my family since a very young man. Even though as a young man he experience some family hard ship when I divorced his father Bradford Ketchum who was imprison throughout his early childhood and teenage years.

Javar excel in sports at a very young age. I continuously kept him in sports from the age 5 until 15 years of age. He is a very responsible, loving, hardworking young adult. He displays these characteristics young as being the young male in the family. I was a single mother he assisted me with the care of his grandfather, James Townsend who lived with us since Javar was five until he passed in 2007. He experience the care of family and friends at a young age as he seen his mother constantly sacrifice for family and friends. He took on that kind and caring spirits.

He worked as a youth for Target and Apple Computers in Sacramento, California. He assists his friend Ricky Patterson with a youth outreach ministry for young barbers. A program Javar and Ricky Patterson started to help recruit high risk males in the Sacramento area.

I recently had to relocated back to Sacramento suddenly in 2014 as my mother Evelyn Hall had Alzheimer Disease. My son had been in a horrible accident prior and was not physical able to assist, but he did anyway he loaded the truck and drove me back to

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Sacramento even though it was in pain himself. He is always willing to assist family in friends in need. He continues to come down and assist me with his grandmother Evelyn Hall until her passing in March 2016.

Our entire family is deciated to support Javar and the means necessary to get him through this situation.

I truly believe prison is not an alternative for his as he is a valuable man to society and to his family and friends. He is the "rock" in our family. He has always been a decent, hardworking, GOD fearing man as a child and as an adult.

In closing I would like to add he has always seen me work for over 25 years with the State of California. I know he knows the value of hard work as he seen that first hand in his mother's house.

Thank you in advance for your time and consideration.

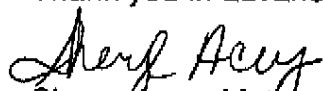

Sherry Acey, Mother

EXHIBIT A

Lisa Dixon
9078 Chantal Way
Sacramento, CA 95829
(916) 212-7287
Lisadixon128@gmail.com

December 24, 2016

The Honorable Michael Vallani
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

EXHIBIT B

Re: Javar Ketchum

Dear Judge Vallani:

I am writing this letter on behalf of my eldest nephew, Javar Ketchum, who we affectionately refer to as "Jay."

As the eldest nephew and cousin, Jay has always been a loving, adored member of our family. Jay is very loving, friendly, and naturally charismatic. Once someone meets Jay, he easily becomes a "favorite." Our extended family and friends would always inquire about him as he was growing up. As a youngster, Jay was very athletic and excelled in sports such as soccer and football. Jay was a valuable team player, and a standout pop Warner football player.

Javar and his family moved to Las Vegas in 2011. However, Jay kept in touch with us by coming to visit and calling often. Jay would always call on birthdays, holidays and other special occasions or just to say "hello." Jay would always ask about his grandmother and cousins. He'd ask how his younger cousins were doing in school and life. At family gatherings, we could always count on Jay to make us laugh and smile.

Subsequent to his move to Las Vegas, Jay's grandmother (my mother) became ill, and was eventually diagnosed with a form of Dementia known as Alzheimer's disease. This was very sudden and unexpected and rendered a tremendous blow to our family. It was devastating to all of us to see our Matriarch's illness progress. However, as her eldest grandson, Jay would visit her frequently, and continued to do so even as her illness progressed. Jay was very patient and kind to his grandmother, especially during her illness, and would smother her with hugs and kisses when he greeted her. My mother never forgot who Jay was, and it was evident that they had a very special bond and adored each other.

My mother passed away on March 14, 2016; and of course, Jay came home for the funeral and was a huge support to us and his younger cousins. Sadly, I remember that during the funeral service, Jay became overwhelmed with emotion, and could not bear to stay inside for the rest of the service.

I've worked for the State of California all of Jay's life; most of which has been as an analyst around law enforcement entities. I know that law abiding citizens are vital if we are to have a

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Lisa Dixon
9078 Chantal Way
Sacramento, CA 95829
(916) 212-7287
Lisadixon128@gmail.com

thriving society. I believe wholeheartedly that Jay can be a positive, valuable, contributing member of our society if given the opportunity of release or probation. Me and other family members and friends are resourceful and can support Jays return by providing resources for him to gain employment and/or further his education.

Our entire family loves and supports Jay 100 percent! At just Thirty-one years old, we believe he has endless potential. I personally commit to do whatever it takes to help him achieve his goals and be successful.

Respectfully Yours,

Lisa Dixon

EXHIBIT B

Tanya Kendricks
6705 27th Street
Sacramento, California 95822
916-247-2907
ttracy0271@gmail.com

December 27, 2016

The Honorable Michael Vallani
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

EXHIBIT C

Re: Javar Ketchum

Dear Judge Vallani:

I am Javar Ketchum's cousin (Jay's grandmother and my mother are sisters). I have known Jay since his birth. He is known to be a very affectionate caring person, especially with family and friends. He has a strong relationship with his family members, and he is respected and revered by all of us. Jay has always been very generous and eager to help others; therefore, it is a great shock to hear of the situation he is now facing because it is so much out of character for the Jay that we know and love.

When Javar and his family moved to Las Vegas my family and I would make a special effort to visit often to spend time with him since he was always very approachable and displayed a mature stable attitude with his behavior as a young adult. I also observed how Jay kept in touch with his grandmother in Sacramento always looking to comfort and support both his grandmother and his mother as much as possible as her medical condition began to become more and more critical.

As a productive member of the community, working for the State of California as an Accountant for the last 28 years, I recognize that we all need to put for effort and work together to become valued members of society supporting one another. I humbly ask for leniency in this case as I truly believe that with the support of his family and friends; given a chance Javar can be a great asset to society.

Respectfully Yours,

Tanya Kendricks

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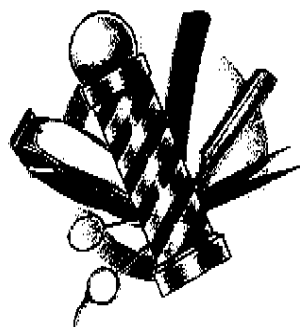


EXHIBIT D

Lil Ricks Barber Shop
2648 33rd Street
Sacramento, CA 95817
(916) 598-3113

Judge Michael Vallani
Regional Justice Center
200 Lewis Avenue
Sacramento, CA 95817

Re: Javar Ketchum

Dear Honorable Judge Michael Vallani:

This letter is in reference to Javar (Jay) Ketchum. My name is Ricky W. Patterson. I am Javar's childhood friend for over 26 years. I am owner of Lil Rick's Barber Shop, located in Sacramento, California. I have known Javar Ketchum for mostly all of my life. We have been best friends since 1990. I meet him in school.

I have seen many aspects for Javar's personality. I have always known him to be extremely kind, dependable and well regarded among his peers. He is a "people person." AS a child we played Pop Warner Football together he was always a team player and willing to go the extra mile. He won several trophies for sportsmanship and Athlete of The Year. He had very talented in sports.

He has assisted me in the opening of my barber shop. When I purchased the building it was old and needed remodeling. Javar assisted me in every aspect of the remodeling. He continues to help with a program we started here in Sacramento to assist high risk males to obtain a trade through the Sacramento Barbering Apprenticeship Program. He comes from Las Vegas yearly to help me promote this program something me and him started about 15 years ago.

I am offering Javar Ketchum any support necessary to assist him in this difficult situation. There is no limit of what I would do as his best friend because he has wlays displayed this type of commitment to me for over 25 years.

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I have also experience him caring for his grandfather James Townsend who lived with his family since he was five until his passing in 2007. He also assisted with the care of his grandmother Evelyn Hall who lived with his mother until her passing in March 2017.

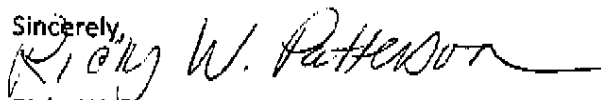
On all of these situations he display how family oriented he is. He always says "family first".

Sending my best friend Javar Ketchum to prison would be a loss to the community as he gives freely of him time to assist with the youths in the community. He has continually assisted me with the recruitment of young males to stay out of trouble which is definitely an asset needed in our community.

If I can be of any assistance, Please contact me directly at (916) 598-3113.

Thank you for taking the time to read my letter.

Sincerely,



Ricky W. Patter, Owner

Lil Rick's Barber Shop

2648 33rd Street

Sacramento, CA 95817

EXHIBIT D

Greater Union Baptist Church

714 N. Tamarind Street

Compton, CA 90220

(310) 639-5430

Rev. Sammy p. darling, ii

EXHIBIT E

Dec. 26, 2016

RE: Javar Ketchum

Your Honor,

My name is Sam Darling, and I am a minister of the great gospel of Jesus Christ, at the above-mentioned church in the city of Compton, CA. I am currently preaching, teaching, counseling, mentoring, and generally serving on the staff of/alongside of our Sr. Pastor, Rev. Kenneth Tillman. I have served this particular church in this capacity for the past eighteen (18) years.

I have had the pleasure and the privilege of knowing Javar (we refer to him as Jay) for the entirety of his life, and knowing his extended family for the better part of my life. I met Jay's great uncle (Mr. Rodney Glenn) at age ten (10) when we were classmates in the fourth (4th) grade. We have been life-long friends since then, his mother was my Godmother at the time of her passing (1995), and he and I yet remain as close as brothers. I am affectionately known by everyone in the family as Uncle Sammy, so for all intents and purposes, I am family. In my capacity, as "family minister", I have eulogized and committed for burial, (in order) Jay's Grandfather (James Townsend), his grandfather's brother (Melton Townsend), as well as, and most recently (May 2016), his grandmother (Evelyn Hall).

I apologize for the length of my introduction, but I labor this point only to provide context for my love, respect, and familiarity with Jay and his entire family.

My heart is heavy, as I consider the seriousness of the circumstances that Jay has allowed himself to become involved. I have not had opportunity to speak with him, nor am I even remotely aware of the extent of his participation in this unfortunate episode, by any other means. I cannot therefore speak intelligently on the crime(s), nor would I be inclined to participate in some misguided attempt to somehow help to exculpate, or even minimize his liability.

I can, however, honestly say that the actions that are consistent with the charges (as I understand them) associated with this case, are decidedly inconsistent, with the observable character that I've experienced with this young man.

One of my earliest character recollections of Jay was when he came up to me at family function, at @ age 12 or 13, and asked me if I could help him get a job. He shared with me that someone at his school had said to him that "a man was supposed to work," and he felt that because he was the "man of the house," (In a house where the positive presence of his father was seldom seen or felt), he wanted to work so that his mom wouldn't have to worry.

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EXHIBIT E

I recall him calling me from Sacramento, here in L.A., as an underclassman in high school, explaining to me how he had been suspended for fighting, in the process of protecting a female student whom he didn't know personally, but who was being beaten/abused by her boyfriend, a boyfriend whom Jay felt left him no choice but to protect himself, when he selflessly intervened. He wanted to know how he could wind up getting in trouble, for doing the right thing. It was my first of several "hard conversations" with him, centered around the concept of "responsible choices" He had trouble "wrapping his brain around" the reality that sometimes in life, even "the right thing" can have unintended, unpleasant, and even serious consequences.

I remember at his grandfather's (James Townsend) funeral, him wanting to be the one to ease and even endure the pain of grief that his mother (Sheryl Townsend-Acey) and his aunt (Lisa Townsend-Dixon) were experiencing so profoundly. He was convinced that his sister (Shalonda), not only **expected** him, but also **needed** him to carry her through. Asking me for counsel, as to how he could be that "rock" that his family, appeared to him, to need at that time.

He expressed the same general dynamic upon the passing of his grandfather's brother (Melton Townsend, and I apologize that I don't know what that makes him to Jay), and he seemed to be affected by not just his own personal loss, but even more profoundly by the direct affect it had on his cousins, and their grief and pain, was clearly of primary import to him, over and above his own personal feelings.

More recently, I recall the funeral of his grandmother (Evelyn Hall), where he experienced his own personal grief much more deeply and acutely. I spent four days in Sacramento to officiate the funeral and to assist and minister to the family, and each day, he specifically asked me, "How can I help my family, Rev. What do you want me to do?". He rarely left his mother's side, and he seemed to me to be attempting to suppress his own pain, in an effort to more effectively be able to take on the pain of his "weaker" family members who needed him. He seemed to think that his sister (Shalonda) not only **expected** him to carry her through the loss of her grandmother, he was convinced that she **needed** him enable her to cope with the loss.

In all three of these "death scenarios", he expressed respect for the value of life, a maturity of compassion beyond his years, and a selflessness that is admirable in any context.

As I explained earlier, I can't speak to any definitive elements of this cases...I can't postulate as to his guilt or innocence, and not knowing that, I obviously can't express any knowledge of remorse for the commission of a crime that he may not have even committed! I can, however, be sure of a couple of things.

I am certain that Jay, beginning at an early age, has consistently expressed a level of compassion for others that is all too uncommon, in my experience. I am sure that Jay, certainly in my presence over the years, has shown a profound respect and appreciation for life. I am certain that Jay, no matter what the circumstances were, laments the fact that a human being experienced loss of life, and he is deeply affected because once again, he is much too intimately associated with yet another one.

It is of a certainty that there are some people, who have been almost irreversibly corrupted by sin, circumstances, negative and destructive environments, various expressions of mental illness, etc. In these cases, the products and vessels of such levels of depravity should, and even must, be removed from civilized society. It is necessary for the good of said society, as well as, all things considered, for the ultimate good of those who have consistently expressed little to no control of their baser impulses and morals.

My experiences inform me to believe that Jay does not fall into this dismal, almost hopeless category. I believe that this young man has the skillset, and more importantly the heartset, to be able to make some positive contributions to society. I say this because I know Jay's family to be a community of love, and grace; a

supportive network that embraces and teaches moral and ethical aspirations...they are a part of the whole that is community, designed and expected to make the broader community better than it was, when they found it.

Jay is at a crossroads in his life, and there is much that can/is being learned during what is a trying time, not only for him, but for his family, and all affected families, as well. He is actually in a centralized position, where he is a generational link between the “younger” members, and the “senior” members. He can really, finally be the galvanizing element of his family, that he has always aspired to be. He can do that by going forward with a sense of positive and productive purpose...with “life” at the center, rather than “death” being the core, unifying event.

I presume, and even trust, that you, Judge Vallani, in your most important and honorable position, have evolved over the years, and become more and more, a good judge of character, as you have continually exercised your gift as a good judge of the law.

I implore you, your Honor, that in every eventuality that proceeds from/thru this case; that whenever/wherever providence allows for your discretionary wisdom to have sway; that as you traverse the scale between justice and mercy...my prayer is that you might consider investing faith and promise, in a life that may very well still hold an abundance of, faith and promise.

Respectfully Submitted,

EXHIBIT E

Rev. Sammy P. Darling, II

Greater Union Baptist Church

(323) 512-1978 (Personal Cell)

O'Nedra James
1241 Nevada Sky St. 89128
Las Vegas NV 89128
(424) 283-0659
Onjmake.upartist@gmail.com

December 26,2016

The Honorable Michael Vallani
Regional Justice Center
200 Lewis ave
Las Vegas NV 89101

Re: Javar Kecthum

Dear Judge Vallani,

I'm writing this letter in regards to Javar Ketchum. Javar is my fiancé , We have been in a long loving relationship for going on two years. Javar is the most loving, caring, kind, and attentive person I've ever had the pleasure to meet . I was a single mother raising three children, when I met Javar not only did he accept all that came along with me he stepped up to help me take care of my children ,as well as my elderly mother. That includes taking them to school, football ,track, wrestling, and band practice ,Doctor's appointments (my mother as well as the children) , homework, also assisting with cooking and cleaning . I feel privileged and blessed to have met a man of his stature it is hard teaching teenage boys how to become men .Javar spends a lot of time with the children and they look up to him, he has taught them the importance of education ,self respect, as well as working hard to set goals and achieve them .Also taking them out to feed the homeless and giving back to the community teaching them humility .

I have been a make-up artist/ stylist for well over 20 years my career can be very demanding Javar also works with me at times to help with my clientele whether that's appt. setting or setting up for photo shoots for weddings, paperwork etc. We have a stable residence together that I have resided in going on three years. Javar and I have a dream of opening a beauty supply and salon ,and Javar has been helping me jump start a new venture in writing childrens books teaching self love and acceptance . Javar has been a true blessing and has made such a great impact in our lives ,he is such an amazing human being . We look forward to getting married and having more children .Javar does not have any biological children as of yet ,but knowing how great of a stepfather he is I look forward to him being a father and a husband. I know that Javar is a asset to the community and upon him being released back into society will have a positive impact on his life as well as others. Javar and I are looking forward to being active members in church ,and Javar has always wanted to coach a football team in a league my son is a current award winning Jr. Olympic track and football athlete that Javar has helped with his training with his coaches and found a love for .I would like to thank you in advance for taking the time to read this letter and getting to know a little about our family.

Kindest Regards,
O'Nedra James

AO000502

O'Nedra James
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CL Lewis Salon & Boutique

"the industry-leading Beauty Salon in Las Vegas, NV"

4418 West Charleston Blvd, Las Vegas, NV 89102

October 10, 2017

Honorable Micheal Villani
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 8910

RE: Javar Ketchum

Dear Honorable Judge Micheal Villani:

My name is Shalonda Buffington. I am the defendant's sister. I currently work as a Cosmetologist and Microblade Permanent Make Up Specialist at CL Lewis Hair Salon in Las Vegas. I have been in this career for over 12 years.

I am shaken by how difficult this letter is for me to write. I was told that you may need it to better understand my little brother Javar Ketchum. I wish there was an ideal place to begin. But where does one start when a loved one's life is laid across someone else's table? What keeps me believing in him and loving him is the fact that he is a good person that came from a good home. I know it seems so contradictory, looking at what actually took place. However, it's the truth and it keeps me alive. I wish more than anything that you, the man who decides his fate could know him like I do. So the character of the Javar Eris Ketchum that I know is where I will begin. Growing up with him was great, we are very close. We have a loving mother and step father. We come from such a loving family. He was thankful to have me as his big sister and visa versa I adored my little brother "Jay Jay" (that's what I call him).

Javar was a very compassionate person. Like my mother, he's loving, sweet and charming. The norm for him was to put others first. He absolutely loved his family and friends and treated them better than most. He was a people pleaser. He found ways to learn what those around him wanted and made every effort to be there for them as needed. I believe that is how he dealt with his hurt and abandonment issues. His father got into trouble when we were young and had to serve time in prison. My mom tried to work it out with him when he

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came home three years later but "Brad" Javar's father wasn't the same. Unfortunately, once they divorced Brad also divorced and abandoned his son.

Javar was genuinely concerned about kids the same issues and unusually devoted to those that meant something extra special to him. When asked about his interests and opinions, he was able to rationally explain his ideas about them in ways far beyond those which someone his age would be capable of. He was very likeable and had a great sense of humor. He loved to make people laugh and did it well. My mother and I used to say that he would be a wonderful father and husband one day because of his sensitivity and his devotion to what he loved. Javar had a lot of potential and to see that die absolutely crushes me. Javar is a loving man, because even though he didn't have his father he was loved. Loved by his mother, myself, his family and his friends. Javar is also charismatic, he's kind, he's smart, he's creative, he has a fun loving personality, he has a great sense of humor, he's confident, and committed, he has a positive attitude, he is very respectable, he has the ability to communicate, he has gratitude and he believes in his **Creator**.

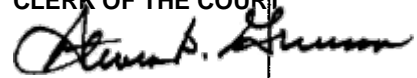
That is who I remember Javar to be and let me tell you about who he is today. The potential I mentioned before is still there, buried inside. He is hurting more than any of us can imagine and yet is adapting to an extremely unpleasant situation better than most ever could. He is polite and considerate to those that have contact with him. He is realistic about his situation, yet remains hopeful that he will find something positive in it. He does have plans for the future and has discussed with me his ideas of becoming a productive member of society, even from behind bars. All of his hopes and dreams have to do with getting married, starting a family, getting an education and using it to help people without one.

I believe what he needs is the hope that he has a chance of achieving these goals. My first visit with him after this happened was full of remorse and consisted of only crying. It took weeks for him to make eye contact with me. When he finally did, it was, 'I am so sorry. I didn't mean it'. I believe he is aware of the pain that he has caused. He is just as shocked as the rest of us that he was capable of such horror. I share this because I think it emphasizes the kind of person Javar was and still is. I love my brother more than I ever thought possible. It is a difficult concept for an outsider to understand, but it comes from what is inside us. He will need support and love but most of all right now, he needs hope.

Thank you for your time in reading this. I wanted to speak from my heart and hope you will forgive my brother. I realize you have a huge amount of things to consider in this case, I hope you can find some mercy and grant a lessor sentence. Thanks again for your time and consideration.

Sincerely,

Shalonda Buffington
charlestoncharles1@gmail.com
(702) 330-2585



NICHOLAS M. WOOLDRIDGE
Nevada State Bar No. 8732
WOOLDRIDGE LAW, LTD.
400 South 7th Street, 4th Floor
Las Vegas, NV 89101
Telephone: (702) 330-4645
nicholas@wooldridgelawlv.com
Attorney for Javar Eris Ketchum

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAVAR ERIS KETCHUM,

Defendant.

Case No.: C-16-319714-1

Dept. XVII

**MOTION TO VACATE
STIPULATION**

COMES NOW, JAVAR ERIS KETCHUM ("Mr. Ketchum"), by and through his undersigned counsel, NICHOLAS M. WOOLDRIDGE ESQ., and hereby moves this Court for an Order vacating the Stipulation and Order dated May 26, 2017 waiving a separate penalty hearing.

This Motion is based on the attached Points and Authorities, all pleadings and papers on file herein and any oral argument, which this Court may permit at sentencing.

1
2 **MEMORANDUM OF POINTS & AUTHORITIES**
3 **ARGUMENT**

4 The charges against Mr. Javar Eris Ketchum (hereinafter, "the Defendant" or "Mr.
5 Ketchum"), alleged in the Indictment arise from the September 25, 2016 shooting of Ezekiel F.
6 Davis outside the Top Knotch Apparel on the 4200 block of South Decatur Boulevard. The State
7 of Nevada charged Mr. Ketchum in a five (5) count Indictment together with co-defendants
8 Antoine Bernard, Roderick Vincent, and Marlo Chiles as follows: (1) one count of murder with a
9 deadly weapon; (2) one count of robbery with use of a deadly weapon; and (3) three counts of
10 accessory to murder. Mr. Ketchum was only charged in the first two counts of the Indictment.

11
12 Jury trial began on May 23, 2017 and the jury returned a verdict of guilty on May 26,
13 2017 on (1) one count of murder with a deadly weapon; and (2) one count of robbery with use of
14 a deadly weapon. On May 26, 2017, Mr. Ketchum and the State entered into a Stipulated
15 Waiver of a Penalty Hearing pursuant to N.R.S. 175.552. The stipulation provided for a sentence
16 of 20 years to life, with eligibility for parole after 20 years. Sentencing is presently scheduled
17 for December 1, 2017 at 8:30 a.m.

18
19 **II. ARGUMENT**

20
21 N.R.S. 175.552(2) provides in relevant part as follows:

22 2. In a case in which the death penalty is not sought or in which a court
23 has made a finding that the defendant is intellectually disabled and has
24 stricken the notice of intent to seek the death penalty pursuant to NRS
25 174.098, the parties may by stipulation waive the separate penalty hearing
26 required in subsection 1. When stipulating to such a waiver, the parties
27 may also include an agreement to have the sentence, if any, imposed by
28 the trial judge. Any stipulation pursuant to this subsection must be in
writing and signed by the defendant, the defendant's attorney, if any, and
the prosecuting attorney.

1 Generally, a defendant is entitled to enter into agreements that waive or otherwise affect his or
2 her fundamental rights. *Krauss v. State*, 116 Nev. 307, 998 P.2d 163 (2000) (citing *Campbell v.*
3 *Wood*, 18 F.3d 662, 673 (9th Cir.1994)). However, the defendant must knowingly and
4 voluntarily make any such waiver, including a waiver involving a stipulated sentencing range.
5 When a defendant has knowingly and voluntarily waived his right to challenge a sentence within
6 a stipulated range, he may not subsequently challenge a sentence imposed within that range. *E.g.*,
7 *Garcia-Santos v. United States*, 273 F.3d 506, 508 (2d Cir.2001); *United States v. Gomez-Perez*,
8 215 F.3d 315, 318 (2d Cir.2000) (collecting cases).

10 Here, Mr. Ketchum entered into the Stipulation when he was in a state of shock. As
11 detailed in Mr. Ketchum's affidavit attached hereto as **Exhibit A**, he was not in a right frame of
12 mind after the jury delivered its verdict. The stipulation was entered into right after the jury
13 verdict, which left Mr. Ketchum understandably shaken. Mr. Ketchum asserts that at the time of
14 the waiver he was not of the sound mind to enter into the stipulated waiver and consequently
15 requests that the stipulation be vacated and this Court schedule a penalty hearing before the jury
16 as provided for in N.R.S. 175.552(1).

19 **III. CONCLUSION**

20 **WHEREFORE**, for all the foregoing reasons, this Court should grant the instant motion.

21 DATED this 30th day of October, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.
Wooldridge Law Ltd.
400 South 7th St., 4th Floor
Las Vegas, NV 89101
nicholas@wooldridgelawlv.com
(702) 330-4645 Tel.
(702) 359-8494 Fax.

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CERTIFICATE OF SERVICE

I confirm that on this 30th day of October, 2017, a copy of the foregoing motion was served on the below District Attorney's Office by having the same e-filed and courtesy copied to pdmotions@clarkcountyda.com, which in turn provides electronic service to:

Steven J. Rose, Esq.
Chief Deputy District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge

EXHIBIT A

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1
2 **EIGHTH JUDICIAL DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4
5 THE STATE OF NEVADA,

6 *Plaintiff,*

7 vs.

8 JAVAR ERIS KETCHUM,

9 *Defendant.*

Case No.: C-16-319714-1

Dept. XVII

10
11 **AFFIDAVIT OF JAVAR ERIS KETCHUM**

12
13 I, Javar Eris Ketchum, hereby depose and say the following:

14 1. I am over the age of eighteen and believe in the obligations of an oath.

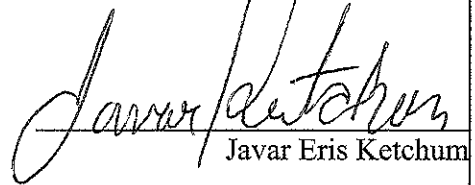
15 2. I am familiar with the facts stated herein and can testify to the same if called as a
16 witness.

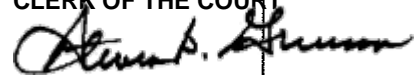
17
18 3. I request that the stipulation I entered into in open court shortly after the jury
19 verdict on May 26, 2017 be vacated and I permitted sentencing by the jury.

20 4. After the jury verdict I was not in a right frame of mind to make a rational
21 decision. I was in a state of shock. I just wanted everything to be over. I entered into the
22 stipulation under duress and my decision to enter into the stipulation was not an informed
23 decision

24
25 5. Because my decision to enter into the stipulation was not knowing and voluntary
26 and was made under duress while I was not in the right frame of mind, I request that the
27 stipulation be vacated and I be permitted sentencing by the jury on Count One.
28

Signed under the pains and penalties of perjury on this 30 day of October, 2017.


Javar Eris Ketchum



NICHOLAS M. WOOLDRIDGE
Nevada State Bar No. 8732
WOOLDRIDGE LAW, LTD.
400 South 7th Street, 4th Floor
Las Vegas, NV 89101
Telephone: (702) 330-4645
nicholas@wooldridgelawlv.com
Attorney for Javar Eris Ketchum

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAVAR ERIS KETCHUM,

Defendant.

Case No.: C-16-319714-1

Dept. XVII

**NOTICE OF ADDITIONAL
LETTERS OF SUPPORT IN AIDE OF
SENTENCING**

COMES NOW, JAVAR ERIS KETCHUM ("Mr. Ketchum"), by and through his undersigned counsel, NICHOLAS M. WOOLDRIDGE ESQ., and hereby provides notice of additional letters of support in aide of sentencing. Sentencing is presently scheduled for December 1, 2017.

DATED this 10th day of November, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.
Wooldridge Law Ltd.
400 South 7th St., 4th Floor
Las Vegas, NV 89101
nicholas@wooldridgelawlv.com
(702) 330-4645 Tel.
(702) 359-8494 Fax.

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CERTIFICATE OF SERVICE

I confirm that on this 10th day of November, 2017, a copy of the foregoing was served on the below District Attorney's Office by having the same e-filed and courtesy copied to pdmotions@clarkcountyda.com, which in turn provides electronic service to:

Steven B. Wolfson, Esq.
Chief Deputy District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge

**EXHIBITS
(ADDITIONAL LETTERS)**

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Ephraim Williams, Pastor

3996 14th Ave, Sacramento, CA 95814 (916) 737-7075

stpaulsac.org

At St. Paul Missionary Baptist Church, our vision is to become a church according to the Great Commission that disciples its members, and ensures that an opportunity is provided for every member to become active in ministry and mature spiritually.

October 20, 2017

Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

Re: Javar Ketchum

Dear Judge Vallani:

I am writing you on behalf of Javar Ketchum. My name is Ephraim Williams. I am Senior Pastor of St. Paul Baptist Church in Sacramento, California. I have known Javar Ketchum all of his life. His family has attended my church for over 25 years. Javar Ketchum and his entire family have been active members of St. Paul Baptist Church. I meet this young man as a youth and I have been pleased to witness his spiritual growth over time.

I have known Javar Ketchum as a youth to attend bible summer school, youth ministry programs and participate in leadership programs. I am familiar with a program Javar and childhood friend Ricky Patterson started to assist young males to start there own business in our community.

I know Javar's character to be of good mores, discipline and faith in God. I can say I was in disbelief when I became aware of his current situation. This is totally out of character for Javar. I have spoken with his parents on several occasions before they relocated back to Las Vegas to assist their son during this difficult time. I continue to offer them spiritual support. I have spoken with Javar on the phone. He has expressed to me his regrets for his actions and wants to go forward with his life. I will continue to support Javar.

I know this type of crime in Nevada has severe consequences. I am praying in this case you have mercy on such a young man and give him a second chance at life.

I would also like to express my condolences to the victim and his family. I will continue to keep them in my prayer.

If you have any questions or concerns please contact me at (916) 737-7075.

I appreciate your time in this matter.

Sincerely,

Ephraim Williams
Senior Pastor
St. Paul Baptist Church

AO000517

Quality

TECHNICAL TRAINING CENTER

3139 Westwood Drive
Las Vegas, NV 89109
(702) 597-0862

October 25, 2017

Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

RE: Javar Ketchum

Dear Judge Vallani:

I am writing you on behalf of Javar Ketchum. My name is Jake Brent. I am a teacher at Quality Technical Training Center in Las Vegas, Nevada. I have been a teacher for over 20 years. Javar Ketchum was a student in my class. He attended training for HVAC and Refrigerator Certification.

Javar Ketchum was a good student. He excelled in testing and passed all of the courses necessary for EPA Certification. Javar was a conscientious, punctual and hard working student. He attended the class in September 2012 until May 2013. He was always willing to tutor and assist others in the class. After graduation we all had a potluck celebration he assisted me with the food and the planning of the party he volunteered for this and the party was a great success.

This incident is total out of character for the student I knew for 9 months on a daily basis. I became very close to Javar he a nice person. I know Javar to be kind and generous to others. I can not even explain my feelings of regret. I feel for the victim and his family. When Javar's mother shared with me this horrible situation.

I believe Javar Ketchum can be a great asset to society. I am willing to support him in any way necessary. Our program will assist him in employment, if given a chance back into society.

I hope you will look at my letter and understand Javar Ketchum is the kind of person whom people rally. That has something to say. I know you must apply the law, but I ask that you for leniency in your decision and give Javar Ketchum a chance.

I can be reached at (702) 597-0862.

Thank you for your time and consideration in this case.

Sincerely,

Jake Brent, Instructor
Quality Technical Training

AO000518

QUALITY TECHNICAL TRAINING CENTER

DIPLOMA

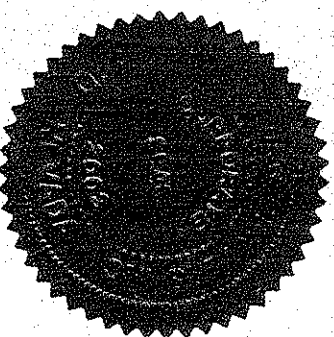
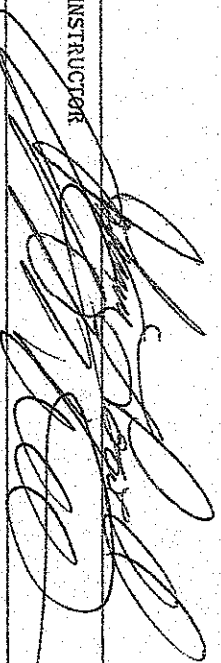
THIS CERTIFIES THAT

JAVARIS KETCHUM

HAS SUCCESSFULLY COMPLETED ALL THE REQUIREMENTS
TO RECEIVE THIS DIPLOMA IN HEATING AND AIR CONDITIONING
TECHNOLOGY ON THIS TWENTY THIRD DAY OF MAY, 2013.

SENIOR INSTRUCTOR

SCHOOL DIRECTOR



CL Lewis Salon & Boutique

"the industry-leading Beauty Salon in Las Vegas, NV"
4418 West Charleston Blvd, Las Vegas, NV 89102

October 10, 2017

Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 8910

RE: Javar Ketchum

Dear Honorable Judge Micheal Villani:

My name is Shalonda Buffington. I am the defendant's sister. I currently work as a Cosmetologist and Microblade Permanent Make Up Specialist at CL Lewis Hair Salon in Las Vegas. I have been in this career for over 12 years.

I am shaken by how difficult this letter is for me to write. I was told that you may need it to better understand my little brother Javar Ketchum. I wish there was an ideal place to begin. But where does one start when a loved one's life is laid across someone else's table? What keeps me believing in him and loving him is the fact that he is a good person that came from a good home. I know it seems so contradictory, looking at what actually took place. However, it's the truth and it keeps me alive. I wish more than anything that you, the man who decides his fate could know him like I do. So the character of the Javar Eris Ketchum that I know is where I will begin. Growing up with him was great, we are very close. We have a loving mother and step father. We come from such a loving family. He was thankful to have me as his big sister and visa versa I adored my little brother "Jay Jay" (that's what I call him).

Javar was a very compassionate person. Like my mother, he's loving, sweet and charming. The norm for him was to put others first. He absolutely loved his family and friends and treated them better than most. He was a people pleaser. He found ways to learn what those around him wanted and made every effort to be there for them as needed. I believe that is how he dealt with his hurt and abandonment issues. His father got into trouble when we were young and had to serve time in prison. My mom tried to work it out with him when he came home three years later but "Brad" Javar's father wasn't the same. Unfortunately, once they divorced Brad also divorced and abandoned his son.

Javar was genuinely concerned about kids the same issues and unusually devoted to those that meant something extra special to him. When asked about his interests and opinions, he was able to rationally explain his ideas about them in ways far beyond those which someone his age would be capable of. He was very likeable and had a great sense of humor. He loved to make people laugh and did it well. My mother and I used to say that he would be a wonderful father and husband one day because of his sensitivity and his devotion to what he loved. Javar had a lot of potential and to see that die absolutely crushes me. Javar is a loving man, because even though he didn't have his father he was loved. Loved by his mother, myself, his family and his friends. Javar is also charismatic, he's kind, he's smart, he's creative, he has a fun loving personality, he has a great sense of humor, he's confident, and committed, he has a positive attitude, he is very respectable, he has the ability to communicate, he has gratitude and he believes in his Creator.

That is who I remember Javar to be and let me tell you about who he is today. The potential I mentioned before is still there, buried inside. He is hurting more than any of us can imagine and yet is adapting to an extremely unpleasant situation better than most ever could. He is polite and considerate to those that have contact with him. He is realistic about his situation, yet remains hopeful that he will find something positive in it. He does have plans for the future and has discussed with me his ideas of becoming a productive member of society, even from behind bars. All of his hopes and dreams have to do with getting married, starting a family, getting an education and using it to help people without one.

I believe what he needs is the hope that he has a chance of achieving these goals. My first visit with him after this happened was full of remorse and consisted of only crying. It took weeks for him to make eye contact with me. When he finally did, it was, "I am so sorry. I didn't mean it". I believe he is aware of the pain that he has caused.

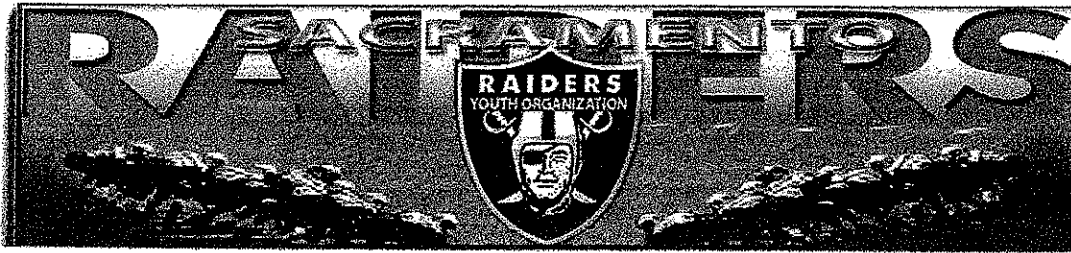
AO000520

He is just as shocked as the rest of us that he was capable of such horror. I share this because I think it emphasizes the kind of person Javar was and still is. I love my brother more than I ever thought possible. It is a difficult concept for an outsider to understand, but it comes from what is inside us. He will need support and love but most of all right now, he needs hope.

Thank you for your time in reading this. I wanted to speak from my heart and hope you will forgive my brother. I realize you have a huge amount of things to consider in this case, I hope you can find some mercy and grant a lessor sentence. Thanks again for your time and consideration.

Sincerely,

Shalonda Buffington
charlestoncharles1@gmail.com
(702) 330-2585



www.sacraiders.com

Kevin Johnson
Sacramento Raiders Youth Football Association
PO Box 232557
Sacramento, CA 95822
(916) 804-9196

October 25, 2017

Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

RE: Javar Ketchum

Dear Judge Vallani,

I am writing you on behalf of defendant Javar Ketchum. My name is Kevin Johnson. I am a retired coach for the Sacramento Raiders Youth Football Association. I am currently on the Board of Directors for the organization.

I coached Javar Ketchum for several years. He started at the age of 9 and continued to play until the age of 14. I recall Javar because he was awarded several scholarships from our organization to encourage him to play. He was a very talented player. We seldom gave full scholarships to the youth but because he seemed to have a natural gift for sports we made an exception. He took us to several championship games. He played several positions. For offense he played the wide receiver, tackle guard and quarterback. For defense he played outside linebacker and tackle. He received awards at the Award Ceremony Banquet- Sportsmanship Award, Player of The Year to name a few,

He displayed the desire to overcome his opponents, the confidence that he could do anything and the love of the game. He also had shown speed and physical strength during practices.

Javar was a role model for other players with his positive attitude and always showing respect to the coaches and the team.

We won a championship game out of town the other team was sore because they lost. Our team wanted to fight with the opposite team because they started calling names, Javar told the guys no and let's get on the bus they are just mad because we won. Javar assisted me in getting our team safely to our bus.

The Javar (Jay) I knew is not a violent person. I am familiar with what happened as his father shared with me the circumstances regarding his son. My heart felt saddened for so many lives have been affected by this tragic situation.

AO000522

I am asking you Judge Vallani for a lesser sentence for Javar Ketchum. I think he made a mistake, this is not the character of the young man I coached for over 5 years.

I am a Christian man. I will continue to pray for the victims family.

Thank you for your time.

Sincerely

Kevin Johnson

A handwritten signature in black ink that reads "Kevin Johnson". The signature is written in a cursive style with a long, sweeping horizontal line extending from the end of the name.

June 20, 2017

Honorable Micheal Villani
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

Re: Javar Ketchum

Dear Honorable Judge Michael Villani,

As a professional, who has worked in the criminal justice system for almost two decades, this is my first letter drafted on behalf of a convicted subject. In light of that, I write this letter out of conviction, requesting the Honorable Judge Michael Villani take into consideration (prior to sentencing) the few points below concerning Javar Ketchum, otherwise affectionally known as Jay.

I have known Jay and his family since 1988, when he was around one (1) year old. Jay's sister and my eldest daughter, Nikki, an Intelligence Specialist in the military, were best friends since kindergarten. Jay's mother, Sherry and I became best friends and our families have remained friends and in contact over the past 29 years. As a result, of our friendship, I knew Jay's grandparents, Evelyn and James as well as his Aunt Lisa, Keisha and Uncle Terry.

Jay comes from a close-knit family with a warm loving mother, a grandmother who adored him, and relatives who looked out for him. Jay was kind of, everyone's baby, however early on his father was convicted of a crime and was no longer available. Jay became "the little man of the family", which is too large of a burden for any child to carry. Jay's love for his mother and sister has always been unconditional and he would carry the responsibility of being the man of the house into adulthood. This is not a role his mother created for him, but a responsibility he assumed on his own.

Jay has always been a loving, caring gentle person and considerate towards my family and I. This includes my boys who are currently 15. When my boys were much younger, Jay would talk to them and buy them ice cream. They thought he was very funny, however he was essentially just being Jay: fun loving and connecting with people. Although Jay did not have to take the time to converse with them, he routinely invested his time in others. He loved people.

When I learned about the situation Jay was facing, I was shocked. The actions did not fit with the Jay I knew as he was growing up. As I pondered the situation, I recalled how extremely close Jay was with his grandmother Evelyn, who passed away approximately 9 months prior to the tragic death of the victim. At his grandmother's funeral, Jay appeared to be a young man with a lot on his shoulders. I believe his grandmother's death had a huge impact on this young man and in a single night, one single wrong and regrettable decision has placed Jay in your court

AO000524

today. I ask the court to have leniency as you sentence this young man and to consider rehabilitation in order for Jay to re-enter society, as a productive citizen post incarceration.

In closing, I would like to extend my sympathies to the victim's family, realizing words cannot adequately express the pain Jay's actions has caused the grieving family. And knowing Jay, he is going through his own personal, internal torment, concerning his actions and the impact to another family. I hope the Honorable Judge Michael Villani issues sentencing, with consideration of rehabilitation and re-entry back into society.

Sincerely,

A handwritten signature in black ink, appearing to read "Dolores Haste". The signature is fluid and cursive, with the first name "Dolores" written in a larger, more prominent script than the last name "Haste".

Dolores Haste
(916) 203-9313
dhaste2013@gmail.com

October 20, 2017

Character Reference for Javar Ketchum

Dear Honorable Court.

The aim of this letter is to present the good character of Javar Ketchum. I have known Javar for the past 14 years he is the brother of a dear friend of mine. I can confirm that he's a compassionate, hard-working, and funny loving person. I have watched him accomplish many goals like returning to school and relocating to Nevada where he really flourished as a young adult and came into his own.

He was held in the highest regarded amongst his classmates, as a person of high integrity and dedication. In addition we have spent a great deal of time together out on several occasions, and he has always conducted himself with common sense and compassion while looking out for others.

I am aware that he was found guilty of this crime. However, I wish to express that the young man I know would never hurt a fly, and this unfortunate situation has put him and his family in a strange place. He has expressed to his family and me, many times that he is extremely apologetic for choosing lifestyle that has landed him in his current situation.

I hope this letter will give you an idea of his good character and help him get a second chance to in regards to this unusual occurrence. I pray that before you render your decision you take the time out to reflect on the things I have mentioned and give him leniency and another chance at life.

Thank you for taking the time to read this letter.

Sincerely,



Germaine A. Carter LVN

Lisa Dixon
9078 Chantal Way
Sacramento, CA 95829
(916) 212-7287
Lisadixon128@gmail.com

December 24, 2016

The Honorable Michael Vallani
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

Re: Javar Ketchum

Dear Judge Vallani:

I am writing this letter on behalf of my eldest nephew, Javar Ketchum, who we affectionately refer to as "Jay."

As the eldest nephew and cousin, Jay has always been a loving, adored member of our family. Jay is very loving, friendly, and naturally charismatic. Once someone meets Jay, he easily becomes a "favorite." Our extended family and friends would always inquire about him as he was growing up. As a youngster, Jay was very athletic and excelled in sports such as soccer and football. Jay was a valuable team player, and a standout pop Warner football player.

Javar and his family moved to Las Vegas in 2011. However, Jay kept in touch with us by coming to visit and calling often. Jay would always call on birthdays, holidays and other special occasions or just to say "hello." Jay would always ask about his grandmother and cousins. He'd ask how his younger cousins were doing in school and life. At family gatherings, we could always count on Jay to make us laugh and smile.

Subsequent to his move to Las Vegas, Jay's grandmother (my mother) became ill, and was eventually diagnosed with a form of Dementia known as Alzheimer's disease. This was very sudden and unexpected and rendered a tremendous blow to our family. It was devastating to all of us to see our Matriarch's illness progress. However, as her eldest grandson, Jay would visit her frequently, and continued to do so even as her illness progressed. Jay was very patient and kind to his grandmother, especially during her illness, and would smother her with hugs and kisses when he greeted her. My mother never forgot who Jay was, and it was evident that they had a very special bond and adored each other.

My mother passed away on March 14, 2016; and of course, Jay came home for the funeral and was a huge support to us and his younger cousins. Sadly, I remember that during the funeral service, Jay became overwhelmed with emotion, and could not bear to stay inside for the rest of the service.

I've worked for the State of California all of Jay's life, most of which has been as an analyst around law enforcement entities. I know that law abiding citizens are vital if we are to have a

AO000527

Lisa Dixon
9078 Chantal Way
Sacramento, CA 95829
(916) 212-7287
Lisadixon128@gmail.com

thriving society. I believe wholeheartedly that Jay can be a positive, valuable, contributing member of our society if given the opportunity of release or probation. Me and other family members and friends are resourceful and can support Jays return by providing resources for him to gain employment and/or further his education.

Our entire family loves and supports Jay 100 percent! At just Thirty-one years old, we believe he has endless potential. I personally commit to do whatever it takes to help him achieve his goals and be successful.

Respectfully Yours,

Lisa Dixon

AO000528

Tanya Kendricks
6705 27th Street
Sacramento, California 95822
916-247-2907
ttracy0271@gmail.com

December 27, 2016

The Honorable Michael Vallani
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

Re: Javar Ketchum

Dear Judge Vallani:

I am Javar Ketchum's cousin (Jay's grandmother and my mother are sisters). I have known Jay since his birth. He is known to be a very affectionate caring person, especially with family and friends. He has a strong relationship with his family members, and he is respected and revered by all of us. Jay has always been very generous and eager to help others; therefore, it is a great shock to hear of the situation he is now facing because it is so much out of character for the Jay that we know and love.

When Javar and his family moved to Las Vegas my family and I would make a special effort to visit often to spend time with him since he was always very approachable and displayed a mature stable attitude with his behavior as a young adult. I also observed how Jay kept in touch with his grandmother in Sacramento always looking to comfort and support both his grandmother and his mother as much as possible as her medical condition began to become more and more critical.

As a productive member of the community, working for the State of California as an Accountant for the last 28 years, I recognize that we all need to put for effort and work together to become valued members of society supporting one another. I humbly ask for leniency in this case as I truly believe that with the support of his family and friends; given a chance Javar can be a great asset to society.

Respectfully Yours,

Tanya Kendricks

AO000529

Donald J. Acey
2604 Encinal Avenue
Sacramento, CA 95823
(702) 708-8115
Aceydon@gmail.com

June 20, 2017

The Honorable Michael Vallani
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

Re: Javar Ketchum

Dear Judge Vallani:

I am writing you this letter on behalf of my son Javar (Jay) Ketchum. My name is Donald J. Acey. I am a retired Class A Truck Driver. I was a professional truck driver for over 25 years. Although Javar is not my biological son, I am his father. I have raised him the majority of his life. I have known him since the age of 8. I have been married to his mother, Sherry Acey for over 20 years.

I first met Javar (Jay) at a family gathering. The gathering took place at his mother's home. Upon my leaving he threw rocks at my truck. From the beginning he was very protective of his mother. It took me several years to gain his trust and respect. We became best friends. That relationship still holds true to this day. I have been with my son throughout this entire ordeal. I speak with him on the telephone, I have come to visit him several times, and I recently attended his trial everyday. I will continue to demonstrate the unconditional love of a father.

This unfortunate situation is out of character for my son. He is a hard working, loving, and respectable young man. He has been a valuable asset to society. He has assisted in numerous sports event coaching children. He continues to promote youth events with his childhood friend Ricky Patterson to encourage young males to stay in school and to start their own business.

Words cannot express my sorrow for the victim and his family. I pray for them constantly.

I humbly ask for leniency in this case. I truly believe that with the continued support of family and friends; given a chance my son can be a great asset to society.

Sincerely,

Donald J. Acey

AO000530



CDSS

WILL LIGHTBOURNE
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

December 27, 2016

Sheryl Acey
2604 Encinal Avenue
Sacramento, CA 95822
(702) 980-2401

The Honorable Michael Villani
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

Re: Javar Ketchum

Dear Honorable Judge Michael Villain:

I am writing you in regards to my son Javar Ketchum. I understand this is of a very serious nature. I speak with my son on a daily basis.

My son Javar Ketchum has been the glue for me and my family since a very young man. Even though as a young man he experience some family hard ship when I divorced his father Bradford Ketchum who was imprison throughout his early childhood and teenage years.

Javar excel in sports at a very young age. I continuously kept him in sports from the age 5 until 15 years of age. He is a very responsible, loving, hardworking young adult. He displays these characteristics young as being the young male in the family. I was a single mother he assisted me with the care of his grandfather, James Townsend who lived with us since Javar was five until he passed in 2007. He experience the care of family and friends at a young age as he seen his mother constantly sacrifice for family and friends. He took on that kind and caring spirits.

He worked as a youth for Target and Apple Computers in Sacramento, California. He assists his friend Ricky Patterson with a youth outreach ministry for young barbers. A program Javar and Ricky Patterson started to help recruit high risk males in the Sacramento area.

I recently had to relocated back to Sacramento suddenly in 2014 as my mother Evelyn Hall had Alzheimer Disease. My son had been in a horrible accident prior and was not physical able to assist, but he did anyway he loaded the truck and drove me back to

AO000531

Sacramento even though it was in pain himself. He is always willing to assist family in friends in need. He continues to come down and assist me with his grandmother Evelyn Hall until her passing in March 2016.

Our entire family is deciated to support Javar and the means necessary to get him through this situation.

I truly believe prison is not an alternative for his as he is a valuable man to society and to his family and friends. He is the "rock" in our family. He has always been a decent, hardworking, GOD fearing man as a child and as an adult.

In closing I would like to add he has always seen me work for over 25 years with the State of California. I know he knows the value of hard work as he seen that first hand in his mother's house.

Thank you in advance for your time and consideration.


Sherry Acey, Mother

Greater Union Baptist Church

714 N. Tamarind Street

Compton, CA 90220

(310) 639-5430

Rev. Sammy p. darling, ii

Dec. 26, 2016

RE: Javar Ketchum

Your Honor,

My name is Sam Darling, and I am a minister of the great gospel of Jesus Christ, at the above-mentioned church in the city of Compton, CA. I am currently preaching, teaching, counseling, mentoring, and generally serving on the staff of/alongside of our Sr. Pastor, Rev. Kenneth Tillman. I have served this particular church in this capacity for the past eighteen (18) years.

I have had the pleasure and the privilege of knowing Javar (we refer to him as Jay) for the entirety of his life, and knowing his extended family for the better part of my life. I met Jay's great uncle (Mr. Rodney Glenn) at age ten (10) when we were classmates in the fourth (4th) grade. We have been life-long friends since then, his mother was my Godmother at the time of her passing (1995), and he and I yet remain as close as brothers. I am affectionately known by everyone in the family as Uncle Sammy, so for all intents and purposes, I am family. In my capacity, as "family minister", I have eulogized and committed for burial, (in order) Jay's Grandfather (James Townsend), his grandfather's brother (Melton Townsend), as well as, and most recently (May 2016), his grandmother (Evelyn Hall).

I apologize for the length of my introduction, but I labor this point only to provide context for my love, respect, and familiarity with Jay and his entire family.

My heart is heavy, as I consider the seriousness of the circumstances that Jay has allowed himself to become involved. I have not had opportunity to speak with him, nor am I even remotely aware of the extent of his participation in this unfortunate episode, by any other means. I cannot therefore speak intelligently on the crime(s), nor would I be inclined to participate in some misguided attempt to somehow help to exculpate, or even minimize his liability.

I can, however, honestly say that the actions that are consistent with the charges (as I understand them) associated with this case, are decidedly inconsistent, with the observable character that I've experienced with this young man.

One of my earliest character recollections of Jay was when he came up to me at family function, at @ age 12 or 13, and asked me if I could help him get a job. He shared with me that someone at his school had said to him that "a man was supposed to work," and he felt that because he was the "man of the house," (In a house where the positive presence of his father was seldom seen or felt), he wanted to work so that his mom wouldn't have to worry.

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I recall him calling me from Sacramento, here in L.A., as an underclassman in high school, explaining to me how he had been suspended for fighting, in the process of protecting a female student whom he didn't know personally, but who was being beaten/abused by her boyfriend, a boyfriend whom Jay felt left him no choice but to protect himself, when he selflessly intervened. He wanted to know how he could wind up getting in trouble, for doing the right thing. It was my first of several "hard conversations" with him, centered around the concept of "responsible choices" He had trouble "wrapping his brain around" the reality that sometimes in life, even "the right thing" can have unintended, unpleasant, and even serious consequences.

I remember at his grandfather's (James Townsend) funeral, him wanting to be the one to ease and even endure the pain of grief that his mother (Sheryl Townsend-Acey) and his aunt (Lisa Townsend-Dixon) were experiencing so profoundly. He was convinced that his sister (Shalonda), not only **expected** him, but also **needed** him to carry her through. Asking me for counsel, as to how he could be that "rock" that his family, appeared to him, to need at that time.

He expressed the same general dynamic upon the passing of his grandfather's brother (Melton Townsend, and I apologize that I don't know what that makes him to Jay), and he seemed to be affected by not just his own personal loss, but even more profoundly by the direct affect it had on his cousins, and their grief and pain, was clearly of primary import to him, over and above his own personal feelings.

More recently, I recall the funeral of his grandmother (Evelyn Hall), where he experienced his own personal grief much more deeply and acutely. I spent four days in Sacramento to officiate the funeral and to assist and minister to the family, and each day, he specifically asked me, "How can I help my family, Rev. What do you want me to do?". He rarely left his mother's side, and he seemed to me to be attempting to suppress his own pain, in an effort to more effectively be able to take on the pain of his "weaker" family members who needed him. He seemed to think that his sister (Shalonda) not only **expected** him to carry her through the loss of her grandmother, he was convinced that she **needed** him enable her to cope with the loss.

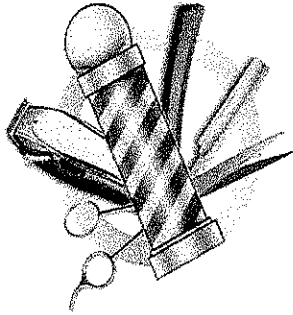
In all three of these "death scenarios", he expressed respect for the value of life, a maturity of compassion beyond his years, and a selflessness that is admirable in any context.

As I explained earlier, I can't speak to any definitive elements of this cases...I can't postulate as to his guilt or innocence, and not knowing that, I obviously can't express any knowledge of remorse for the commission of a crime that he may not have even committed! I can, however, be sure of a couple of things.

I am certain that Jay, beginning at an early age, has consistently expressed a level of compassion for others that is all too uncommon, in my experience. I am sure that Jay, certainly in my presence over the years, has shown a profound respect and appreciation for life. I am certain that Jay, no matter what the circumstances were, laments the fact that a human being experienced loss of life, and he is deeply affected because once again, he is much too intimately associated with yet another one.

It is of a certainty that there are some people, who have been almost irreversibly corrupted by sin, circumstances, negative and destructive environments, various expressions of mental illness, etc. In these cases, the products and vessels of such levels of depravity should, and even must, be removed from civilized society. It is necessary for the good of said society, as well as, all things considered, for the ultimate good of those who have consistently expressed little to no control of their baser impulses and morals.

My experiences inform me to believe that Jay does not fall into this dismal, almost hopeless category. I believe that this young man has the skillset, and more importantly the heartset, to be able to make some positive contributions to society. I say this because I know Jay's family to be a community of love, and grace; a



Lil Ricks Barber Shop
2648 33rd Street
Sacramento, CA 95817
(916) 598-3113

Judge Michael Vallani
Regional Justice Center
200 Lewis Avenue
Sacramento, CA 95817

Re: Javar Ketchum

Dear Honorable Judge Michael Vallani:

This letter is in reference to Javar (Jay) Ketchum. My name is Ricky W. Patterson. I am Javar's childhood friend for over 26 years. I am owner of Lil Rick's Barber Shop, located in Sacramento, California. I have known Javar Ketchum for mostly all of my life. We have been best friends since 1990. I meet him in school.

I have seen many aspects for Javar's personality. I have always known him to be extremely kind, dependable and well regarded among his peers. He is a "people person." AS a child we played Pop Warner Football together he was always a team player and willing to go the extra mile. He won several trophies for sportsmanship and Athlete of The Year. He had very talented in sports.

He has assisted me in the opening of my barber shop. When I purchased the building it was old and needed remodeling. Javar assisted me in every aspect of the remodeling. He continues to help with a program we started here in Sacramento to assist high risk males to obtain a trade through the Sacramento Barbering Apprenticeship Program. He comes from Las Vegas yearly to help me promote this program something me and him started about 15 years ago.

I am offering Javar Ketchum any support necessary to assist him in this difficult situation. There is no limit of what I would do as his best friend because he has wlays displayed this type of commitment to me for over 25 years.

AO000535

O'Nedra James
1241 Nevada Sky St. 89128
Las Vegas, NV 89128
(424) 283-0659
Onjmake:upartist@gmail.com

December 26,2016

The Honorable Michael Vallani
Regional Justice Center
200 Lewis ave
Las Vegas NV 89101

Re: Javar Kecthum

Dear Judge Vallani,

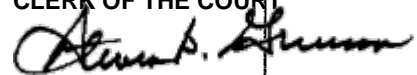
I'm writing this letter in regards to Javar Ketchum. Javar is my fiancé , We have been in a long loving relationship for going on two years. Javar is the most loving, caring, kind, and attentive person I've ever had the pleasure to meet . I was a single mother raising three children, when I met Javar not only did he accept all that came along with me he stepped up to help me take care of my children ,as well as my elderly mother. That includes taking them to school, football ,track, wrestling, and band practice ,Doctor's appointments (my mother as well as the children) , homework, also assisting with cooking and cleaning . I feel privileged and blessed to have met a man of his stature it is hard teaching teenage boys how to become men .Javar spends a lot of time with the children and they look up to him, he has taught them the importance of education ,self respect, as well as working hard to set goals and achieve them .Also taking them out to feed the homeless and giving back to the community teaching them humility .

I have been a make-up artist/ stylist for well over 20 years my career can be very demanding Javar also works with me at times to help with my clientele whether that's appt. setting or setting up for photo shoots for weddings, paperwork etc. We have a stable residence together that I have resided in going on three years. Javar and I have a dream of opening a beauty supply and salon ,and Javar has been helping me jump start a new venture in writing childrens books teaching self love and acceptance . Javar has been a true blessing and has made such a great impact in our lives ,he is such an amazing human being . We look forward to getting married and having more children .Javar does not have any biological children as of yet ,but knowing how great of a stepfather he is I look forward to him being a father and a husband. I know that Javar is a asset to the community and upon him being released back into society will have a positive impact on his life as well as others. Javar and I are looking forward to being active members in church ,and Javar has always wanted to coach a football team in a league my son is a current award winning Jr. Olympic track and football athlete that Javar has helped with his training with his coaches and found a love for .I would like to thank you in advance for taking the time to read this letter and getting to know a little about our family.

Kindest Regards,
O'Nedra James

AO000536

O'Nedra James
1241 Nevada Sky St. 89128
Las Vegas NV 89128
(424) 283-0659
Onjmake.upartist@gmail.com



NICHOLAS M. WOOLDRIDGE
Nevada State Bar No. 8732
WOOLDRIDGE LAW, LTD.
400 South 7th Street, 4th Floor
Las Vegas, NV 89101
Telephone: (702) 330-4645
nicholas@wooldridgelawlv.com
Attorney for Javar Eris Ketchum

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAVAR ERIS KETCHUM,

Defendant.

Case No.: C-16-319714-1

Dept. XVII

**MOTION FOR MEDICAL
TREATMENT**

COMES NOW the Petitioner, JAVAR ERIS KETCHUM (hereinafter, "Mr. Ketchum"),
by and through his undersigned counsel, Nicholas M. Wooldridge, of the law firm of Wooldridge
Law Ltd., and submits the following Points and Authorities in Support of his instant motion.

DATED this 21st day of November, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.
Wooldridge Law Ltd.
400 South 7th Street, 4th Floor
Las Vegas, NV 89101
nicholas@wooldridgelawlv.com
(702) 330-4645 Tel.
(702) 359-8494 Fax.

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3 **NOTICE OF MOTION**

4 TO: STATE OF NEVADA, Plaintiff; and

5 TO: DISTRICT ATTORNEY, its attorneys:

6
7 **PLEASE TAKE NOTICE** that the undersigned will bring the foregoing Motion for
8 Medical Treatment in the above-entitled Court on (day) 7 of (month) Dec.
9 2017 in Department XVII at (time) 8:30 a m.

10 DATED this 21st day of November, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

11
12
13 /s/ Nicholas M. Wooldridge

14
15 Nicholas M. Wooldridge, Esq.
Wooldridge Law Ltd.
400 South 7th Street, 4th Floor
Las Vegas, NV 89101
16 nicholas@wooldridgelawlv.com
17 (702) 330-4645 Tel.
18 (702) 359-8494 Fax.
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MEMORANDUM OF POINTS AND AUTHORITIES

Mr. Ketchum is presently detained pending sentencing at the Clark County Detention Center ("CCDC"). Mr. Ketchum has been detained at the CCDC since approximately October 2016. Mr. Ketchum has been diagnosed with a condition called Keratoconus. Keratoconus is a condition where the cornea thins out and bulges like a cone.¹ The changes in the shape of the cornea brings light rays out of focus, resulting in blurred and distorted vision, making daily tasks difficult. The condition can also lead to permanent blindness.

Through this motion Mr. Ketchum requests an Order directing the CCDC to arrange for Mr. Ketchum to have surgery prior to his being removed from CCDC. In light of the grave nature of the condition, the failure to provide treatment to Mr. Ketchum would be a hazard. Mr. Ketchum is being held in detention at the CCDC. The State is constitutionally required to provide adequate medical care to protect the welfare of inmates within its custody. *See Estelle v. Gamble*, 429 U.S. 97 (1976). The requested medical treatment is not optional, but mandatory to protect Mr. Ketchum's welfare. Further, Mr. Ketchum is disabled and lacks sufficient funds to cover the cost and/or expense of the surgery on his own.

In light of the foregoing, Mr. Ketchum respectfully requests that this Court grant the instant motion and order the CCDC to take all necessary steps and/or measures to ensure that Mr. Ketchum is able to receive surgery and related treatment for his keratoconus prior to being sentenced and transported to prison.

¹ American Academy of Ophthalmology (2017).

CONCLUSION

WHEREFORE, for all the foregoing reasons, Mr. Ketchum's motion for medical treatment should be granted.

DATED this 21st day of November, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.
Wooldridge Law Ltd.
400 South 7th Street, 4th Floor
Las Vegas, NV 89101
nicholas@wooldridgelawlv.com
(702) 330-4645 Tel.
(702) 359-8494 Fax.

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2
3 **CERTIFICATE OF SERVICE**

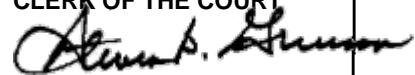
4 I confirm that on this 21st day of November, 2017, a copy of the foregoing Motion for
5 Medical Treatment and Memorandum of Points and Authorities was served on the below District
6 Attorney's Office by having the same e-filed and courtesy copied to
7 pdmotions@clarkcountyda.com, which in turn provides electronic service to:
8

9 Marc DiGiacamo, Esq.
10 Chief Deputy District Attorney
11 200 Lewis Ave.
12 Las Vegas, NV 89155-2212

13 /s/ Nicholas M. Wooldridge

14
15

Nicholas M. Wooldridge, Esq.
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OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STEVEN J. ROSE
Deputy District Attorney
Nevada Bar #13575
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-

JAVAR ERIS KETCHUM,
#6009695

Defendant.

CASE NO: C-319714-1

DEPT NO: XVII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO VACATE STIPULATION

DATE OF HEARING: DECEMBER 1, 2017
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN J. ROSE, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Vacate Stipulation.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On May 26, 2017, Javar Ketchum (Defendant) was found guilty by a jury of First
4 Degree Murder with Use of a Deadly Weapon, and Robbery with Use of a Deadly Weapon.
5 Shortly after the jury returned its verdict, the Court granted the parties time to discuss the
6 possibility of a stipulated sentence on the murder charge, or conducting the penalty hearing.
7 The State offered the parties could waive the penalty hearing, and stipulate to a term of life in
8 prison, with the possibility of parole after twenty years. The parties would retain the right to
9 argue all other sentences. Defendant was given ample time to discuss the options with his
10 attorney, and his family was also present. The State and the family of the victim—Ezekiel
11 Davis—left the courtroom to provide additional privacy.

12 Eventually, Defendant alerted the State that he wished to accept that stipulation. The
13 stipulation was typed, delivered to the courtroom, and signed by all parties. Defendant was
14 canvassed by the Court, the stipulation entered, and the jury released. Since that date,
15 Defendant has moved for a new trial, the sentencing has been pushed back repeatedly, and was
16 eventually set for October 17, 2017. At that time, after the State made its argument, Defense
17 counsel asked to approach, and informed the Court that Defendant wanted to withdraw from
18 his stipulated sentence. The Court set a briefing schedule and reset the sentencing for
19 December 1, 2017. On October 30, 2017, Defendant filed the instant Motion to Vacate
20 Stipulation (the Motion). The State hereby responds and respectfully requests this Court order
21 the Motion be DENIED.

22 ARGUMENT

23 NRS 175.552 governs the rendition of sentence in the event of a conviction for First
24 Degree Murder. That statute provides that the jury is to determine the verdict, unless the parties
25 both stipulate to a particular sentence, or in the alternative, to having the Court determine it.
26 NRS 175.552(2). NRS 175.556 states that if the jury, in a non-capital case, cannot unanimously
27 determine the sentence, then the Court will determine the sentence.
28

1 Although a stipulation as to sentence after a jury finds a defendant guilty of First Degree
2 Murder is somewhat different than a guilty plea, the concepts are nonetheless related. Looking
3 at the law for withdrawal of a Guilty Plea reveals the following: A plea of guilty is
4 presumptively valid, particularly where it is entered into on the advice of counsel. *Jezierski v.*
5 *State*, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). The defendant has the burden of proving
6 that the plea was not entered knowingly or voluntarily. *Bryant v. State*, 102 Nev. 268, 272,
7 721 P.2d 364, 368 (1986); *Wynn v. State*, 96 Nev. 673, 615 P.2d 946 (1980); *Housewright v.*
8 *Powell*, 101 Nev. 147, 710 P.2d 73 (1985). In determining whether a guilty plea is knowingly
9 and voluntarily entered, the court will review the totality of the circumstances surrounding the
10 defendant's plea. *Bryant*, 102 Nev. at 271, 721 P.2d at 367. The proper standard set forth in
11 *Bryant* requires the trial court to personally address a defendant at the time he enters his plea
12 in order to determine whether he understands the nature of the charges to which he is pleading.
13 *Id.*; *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). The guidelines for
14 voluntariness of guilty pleas "do not require the articulation of talismanic phrases." *Heffley v.*
15 *Warden*, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973). It requires only "that the record
16 affirmatively disclose that a defendant who pleaded guilty entered his plea understandingly
17 and voluntarily." *Brady v. United States*, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970);
18 *United States v. Sherman*, 474 F.2d 303 (9th Cir. 1973).

19 Entry of a guilty plea is a solemn act, not lightly accepted. *United States v.*
20 *Ensminger*, 567 F.3d 587, 592-93 (9th Cir. 2009). Although a defendant may, prior to
21 sentencing withdraw his plea for a substantial reason which is "fair and just," *Stevenson v.*
22 *State*, 131 Nev. ___, ___, 354 P.3d 1277, 1279 (2015), "[o]nce the plea is accepted,
23 permitting withdrawal is, as it ought to be, the exception, not an automatic right."
24 *Ensminger*, 567 F.3d at 593. When determining whether a defendant has shown such a
25 substantial reason that it is fair and just to allow the privilege of withdrawing the guilty plea,
26 the District Court looks at the totality of the circumstances, including but not limited to
27 whether the plea was entered knowingly and voluntarily. *Stevenson*, 131 Nev. at ___, 354
28 P.3d at 1279-80.

1 When a defendant has made a tactical decision to enter into a guilty plea, a change of
2 mind or a determination that choosing to enter the plea was a bad choice is not sufficient to
3 allow withdrawal of the plea. *Id.* at ___, 354 P.3d at 1281–82. The purpose of focusing on
4 what is fair and just is “to allow a hastily entered plea made with unsure heart and confused
5 mind to be undone, not to allow a defendant to make a tactical decision to enter a plea, wait
6 several weeks, and then obtain a withdrawal if he believes that he made a bad choice in
7 pleading guilty.” *United States v. Alexander*, 948 F.2d 1002, 1004 (6th Cir. 1991) (internal
8 quotation marks omitted). The passage of weeks or months before moving to withdraw a
9 plea militates against a finding that the plea was entered hastily, rather than as a result of a
10 calculated tactical decision. *Stevenson*, 131 Nev. at ___, 354 P.3d at 1281–82 *citing United*
11 *States v. Barker*, 514 F.2d 208, 222 (D.C. Cir. 1975) (“A swift change of heart is itself strong
12 indication that the plea was entered in haste and confusion . . .”).

13 A defendant may not use the agreement as a placeholder until she determines a more
14 favorable course of action. *Ensminger*, 567 F.3d at 593. Even a good-faith change of heart is
15 not a fair and just reason. *Id.* (“Our prior decisions make clear that a change of heart—even a
16 good faith change of heart—is not a fair and just reason that entitles Ensminger to withdraw
17 his plea, even where the government incurs no prejudice.”). Similarly, the Court must not
18 “allow the solemn entry of a guilty plea to ‘become a mere gesture, a temporary and
19 meaningless formality reversible at the defendant's whim.” *Stevenson*, 131 Nev. at ___, 354
20 P.3d at 1282 *quoting Barker*, 514 F.2d at 221.

21 Here, Defendant is attempting to turn his stipulation into a mere placeholder, revocable
22 at his whim. At the time of trial, the jury was still present, and readily able to return a verdict
23 on the first degree murder charge. The jurors had all been canvassed upon their ability to do
24 so in voir dire, and had heard all of the evidence. After the verdict, the State extended a
25 stipulated sentence, and then provided Defendant with time, and privacy in which to discuss
26 the offer with his attorney. Defendant’s family was also present and able to give their input.
27 Neither the State nor the Court rushed Defendant into his decision. Rather, after taking the
28 advice of others, and considering is options, Defendant knowingly and voluntarily entered into

1 his stipulated sentence. Although he claims that he was not in the right frame of mind to enter
2 the stipulation, he identifies nothing that puts him in any different a scenario than any other
3 person convicted of First Degree Murder. Moreover, Defendant did not indicate a desire to
4 withdraw from his stipulation shortly after entering it; *see Barker*, 514 F.2d at 222 (“ A swift
5 change of heart is itself strong indication that the plea was entered in haste and confusion. . .
6 .”). Instead, Defendant waited until the day of sentencing to express this desire. Defendant is
7 doing nothing more than second-guessing his choice, and attempting to now take what he
8 believes to be the more strategic route. This is not a valid basis for withdrawal of the
9 stipulation. *Ensminger*, 567 F.3d at 593. Defendant must not be allowed to simply enter into
10 such agreements and withdraw therefrom at whim. *Stevenson*, 131 Nev. at ___, 354 P.3d at
11 1282. If this Court chooses to allow Defendant to withdraw from the plea, then the jury is
12 obviously not in a position to determine sentence, and the State would request this Court do
13 so. NRS 175.556.

14
15 **CONCLUSION**


16 Based upon the foregoing, the State respectfully requests this Court order Defendant’s
17 Motion be DENIED.

18 DATED this _____ day of November, 2017.

19 Respectfully submitted,

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

23 BY



24 STEVEN J. ROSE
25 Deputy District Attorney
26 Nevada Bar #13575
27
28

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Opposition to Defendant's Motion for to Vacate Stipulation, was made this 28th day of November, 2017, by Electronic Filing to:

NICHOLAS WOOLDRIDGE, ESQ.
nicholas@wooldridgelawlv.com

BY


STEVEN J. ROSE
Deputy District Attorney
Nevada Bar #13575

SJR/a/dvu

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor	COURT MINUTES	December 01, 2017
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C-16-319714-1	State of Nevada	
	vs	
	Javar Ketchum	

December 01, 2017	9:00 AM	All Pending Motions
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HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Louisa Garcia

RECORDER: Cynthia Georgilas

PARTIES

PRESENT:	Ketchum, Javar Eris	Defendant
	Rose, Steven	Attorney
	State of Nevada	Plaintiff
	Wooldridge, Nicholas	Attorney

JOURNAL ENTRIES

- DEFT'S MOTION TO WITHDRAW STIPULATED SENTENCE...SENTENCING

Counsel submitted on the pleadings. Upon Court's inquiry, Mr. Wooldridge stated Defendant was not making any claims against him. Court reviewed the Stipulation signed by the parties on May 26. According to pleadings, the charges were filed eight months prior to trial, and Defendant was present when the jury was qualified to render the sentencing decision. The Defendant's family was present and he was given time to confer with counsel regarding the stipulation. Court advised there was no psychological report submitted addressing Defendant's state of mind at the time of him entering into the Stipulation. Court finds, under the totality of the circumstances, the Stipulation was freely, knowingly and voluntarily entered into. Court noted this was not a plea to withdraw it was a stipulation to the penalty portion of this case. COURT ORDERED, Motion DENIED; matter SET for sentencing.

CUSTODY

1/9/18 8:30 AM SENTENCING

Felony/Gross Misdemeanor

COURT MINUTES

December 12, 2017

C-16-319714-1 State of Nevada
 vs
 Javar Ketchum

December 12, 2017 08:30 AM Defendant's Motion for Medical Treatment

HEARD BY: Villani, Michael COURTROOM: RJC Courtroom 11A

COURT CLERK: Black, Olivia

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

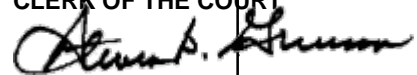
Javar Eris Ketchum	Defendant
Martina B. Geinzer	Attorney for Plaintiff
Nicholas Wooldridge	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Upon Court's inquiry, Mr. Wooldridge advised Defendant had a degenerative eye disease and believed that Defendant was going blind in one eye. Mr. Wooldridge further advised that glasses were not enough and requested Defendant to see a specialist and have his eye surgery before he went blind. Mr. Wooldridge believed it was a safety issue and he needed to get the treatment. Ms. Geinzer noted at a previous hearing counsel requested Defendant go the eye doctor for glasses because it was necessary for his defense and the Court issued an Order for transport. Ms. Geinzer further noted Defendant was seen and prescribed glasses thereafter Defendant was involved in an altercation with the Officers and the glasses were lost. Ms. Geinzer noted Defendant had not had his glasses which could be part of the problem. Ms. Geinzer advised the Clark County Detention Center was in the process of setting up an appointment for Defendant to see a specialist. Upon Court's inquiry, Ms. Geinzer was uncertain if the appointment will be set before his sentencing. Court stated Defendant needed the evaluation and instructed Ms. Geinzer to set the appointment up. Court inquired as to any reports stating Defendant would go blind. Mr. Wooldridge stated he had a letter from Defendant's eye doctor regarding the condition Keratoconus which indicated Defendant should see a specialist. Court instructed Mr. Wooldridge to provided a copy of the report to counsel and the Court. Ms. Geinzer provided a letter from the doctor to the Court for review. Following representations by counsel, COURT ORDERED, Decision DEFERRED; Status Check SET for Defendant's eye evaluation.

CUSTODY (COC)

01/09/18 8:30 AM STATUS CHECK: EYE EVALUATION



JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAVAR ERIS KETCHUM aka
James Ketchum
#6009695

Defendant.

CASE NO. C-16-319714-1

DEPT. NO. XVII

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165, and COUNT 2 – ROBBERY WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.380, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165, and COUNT 2 – ROBBERY WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.380, 193.165; thereafter,

AO000551

1 on the 1st day of February, 2018, the Defendant was present in court for sentencing with counsel
2 NICHOLAS WOOLDRIDGE, ESQ., and good cause appearing,

3 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition
4 to the \$25.00 Administrative Assessment Fee, \$4,750.00 Restitution to Victim of Crimes Fund
5 payable jointly and severally with Co-Defendants and \$150.00 DNA Analysis Fee including
6 testing to determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant is
7 SENTENCED to the Nevada Department of Corrections (NDC) as follows: **COUNT 1 – LIFE**
8 with the eligibility for parole after serving a MINIMUM of TWENTY (20) YEARS plus a
9 CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM
10 parole eligibility of NINETY-SIX (96) MONTHS for the Use of a Deadly Weapon; and
11 **COUNT 2 - a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM**
12 Parole Eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE term of ONE
13 HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-
14 EIGHT (48) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 1;
15 with FOUR HUNDRED SEVENTY-FIVE (475) DAYS credit for time served
16
17
18

19 DATED this 5 day of February, 2018.

20
21 
22 MICHAEL VILLANI 05
23 DISTRICT COURT JUDGE
24
25
26
27
28