

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON ROBERTSON,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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CASE NO: 87811

APPELLANT'S APPENDIX

Volume 7

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ALPHABETICAL INDEX TO APPELLANT'S APPENDIX

<u>Vol</u>	<u>Pleading</u>	<u>Page</u>
1	Amended Superseding Indictment	109
8	Appellant's Opening Brief	1795
8	Appellant's Reply Brief	1862
1	Court Minutes – February 13, 2018	15
1	Court Minutes – December 19, 2018	70
7	Court Minutes – March 12, 2020	1574
7	Court Minutes – December 22, 2020	1623
7	Court Minutes – June 2, 2022	1637
7	Court Minutes – July 7, 2022	1640
8	Court Minutes – September 14, 2023	1886
7	Guilty Plea Agreement	1577
8	Exhibits in Support of Evidentiary Hearing	1890
1	Indictment	1
7	Judgment of Conviction	1600
7	Memorandum of Points and Authorities	1617
7	Motion for Appointment of Counsel	1632
7	Notice of Appeal	1604
8	Notice of Appeal	1793
8	Notice of Appeal	1976
8	Notice of Entry of Findings of Fact, Conclusions of Law and Order	1768
8	Notice of Hearing	1884
8	Order Affirming in Part, Reversing in Part and Remanding	1876
7	Order Appointing Counsel	1638
8	Order for Audiovisual Appearance of Inmate	1887
8	Order Regarding Evidentiary Hearing	1968
7	Petition for Writ of Habeas Corpus (Post-Conviction)	1606
7	Petition for Writ of Habeas Corpus (Post-Conviction)	1624
1	Recorder's Transcript – January 9, 2018	7
1	Recorder's Transcript – April 5, 2018	16
1	Recorder's Transcript – May 3, 2018	29
1	Recorder's Transcript – June 6, 2018	46
1	Recorder's Transcript – June 14, 2018	52
1	Recorder's Transcript – September 5, 2018	62
1	Recorder's Transcript – December 5, 2018	67
1	Recorder's Transcript – January 2, 2019	72
1	Recorder's Transcript – April 17, 2019	78

1	Recorder's Transcript – May 15, 2019	82
1	Recorder's Transcript – August 21, 2019	87
1	Recorder's Transcript – November 5, 2019	91
1	Recorder's Transcript – December 18, 2019	100
1	Recorder's Transcript – January 15, 2020	103
1	Recorder's Transcript – February 11, 2020, Trial Day 1	113
2	Recorder's Transcript – February 12, 2020, Trial Day 2	288
3	Recorder's Transcript – February 13, 2020, Trial Day 3	611
4	Recorder's Transcript – February 14, 2020, Trial Day 4	875
5	Recorder's Transcript – February 18, 2020, Trial Day 5	1140
6	Recorder's Transcript – February 19, 2020, Trial Day 6	1344
7	Recorder's Transcript – February 20, 2020, Trial Day 7	1559
7	Recorder's Transcript – February 24, 2020, Trial Day 8	1563
7	Recorder's Transcript – June 11, 2020	1586
8	Recorder's Transcript – November 17, 2022	1763
8	Recorder's Transcript – November 3, 2023, Evidentiary Hearing	1934
8	Respondent's Answering Brief	1826
8	Response to Petition for Writ of Habeas Corpus	1741
7	Second Amended Superseding Indictment	1575
1	Superseding Indictment	23
7	Supplemental Petition for Writ of Habeas Corpus (with Exhibits)	1641
7	Verdict	1572

1 So how can you differentiate between the gun that
2 Mr. Robertson had versus the gun that fired the bullet that
3 killed this person? The only thing that we have is we can't
4 determine that it came from that gun. Once again, remember,
5 it's your recollection. If you recall that this expert said
6 something completely different from what I'm telling you right
7 now, then that governs. But what I recall that expert
8 testifying to is that gun cannot be conclusively determined to
9 be the gun that fired that bullet that killed that person in
10 this case. Not beyond a reasonable doubt.

11 Now, DNA. It would make sense, right? If it's Mr.
12 Robertson's gun, his DNA would be on it. But there's another
13 set of DNA that's on that gun. Do we know who it is? No. We
14 have an interesting thing though, because Mr. Robertson's DNA
15 is found on the actual gun, but what DNA is found on the clip
16 inside the gun? It's not Mr. Robertson's DNA. It's some
17 other person, some other profile that's on the inside of the
18 magazine.

19 Why is that important to you? Because if you're
20 going to fire a gun -- say you just pick up the gun and hold
21 it. Does that mean you want to fire the gun? No. But if you
22 really want to fire the gun, what are you going to do? You're
23 going to load the gun. You're going to take the clip out,
24 you're going to put bullets in that gun, and you're going to
25 shove that clip back in that gun. That's what typically

1 happens if you're intending on using that gun, but it's not
2 Mr. Robertson's profile that's located on that magazine in
3 that gun.

4 Now, State says, well, this is a well-constructed
5 but poorly executed plan. I would have no problem with that
6 statement but for the fact that they're including Mr.
7 Robertson in the idea that somehow he came up with the plan.
8 We had one text that says, "Hey, let's go hit a house
9 tonight." Do we have any proof beyond a reasonable doubt that
10 that actually happened? What we have is, and what we're going
11 to get to is, we don't; nothing beyond a reasonable doubt that
12 tells you as you sit here right now that Mr. Robertson
13 actually went out and did exactly that, or did something that
14 led to the death of this individual.

15 Let me show you this. The convenience store robbery
16 (sic), right? The timing of it. You'll have an opportunity
17 to take back that video and look at it, and you'll refer to
18 your notes as to when you believe that that video was taken in
19 terms of what time. But look at the individuals as they come
20 in, and look at the person that they are saying is Mr.
21 Robertson in this case. Do they look like people that are
22 going to go out and commit a crime? Does it feel that way
23 when you look through this video; determine that, hey, these
24 guys are shifty?

25 We've had some discussion about the Clerk who says,

1 you know what, I felt uncomfortable when four individuals I
2 didn't know walk into the store. The Clerk was white. Those
3 individuals were black. They walk into the store, and he
4 says, oh, I don't recognize them, so I felt uncomfortable.
5 Really?

6 So what the State does is when they cross-examined
7 Mr. Solomon today on the stand, they asked him, did you feel
8 uncomfortable? And the answer was he didn't feel
9 uncomfortable, but these people had approached him, and he
10 felt apprehensive for a second; why are you approaching me?
11 And the reason why he was uncomfortable is because now they're
12 asking him to go and buy cigarettes for them. Does that sound
13 like they're -- Mr. Robertson's somehow planning this
14 get-together to go and commit a crime?

15 In addition to that, what we don't have in this case
16 that would have been important is the distance between the
17 store, and the residence, and the crime scene. That's not
18 established in this case. What we have is a map, and that map
19 is State's Exhibit number 6. In that map, you're going to see
20 where the store is, and you're going to see where the shooting
21 takes place, and then you're going to see where my client
22 lives, and then you're going to figure out the time.

23 And what you're going to look at when you realize
24 how much time potentially is there, there's too much time to
25 sit here and say beyond a reasonable doubt that that guy

1 committed a murder. Because here's the thing; you know what
2 would make better sense? They're in a convenience store,
3 Solomon goes in and buys them cigarettes, they come out with
4 the cigarettes, they're smoking the cigarettes, and they
5 leave. Then they go and commit the murder ten minutes later,
6 right next to the convenience store, the next neighborhood
7 over, something along those lines.

8 You have at least 30 minutes between the time that
9 they're in the convenience store to the time of the murder in
10 this case where there's too many things that could have
11 happened, including the fact that my client had been home.
12 You know why? Because he doesn't live in North Las Vegas; he
13 just lives down the street. So what evidence do you have that
14 would show you beyond a reasonable doubt that my client was
15 present during the shooting of this person? Too much time.

16 Now, that instruction that I pointed out to you,
17 which is Instruction number 11, the first part of it talks
18 about how, okay, well, "A conviction shall not be had on the
19 testimony of an accomplice unless the accomplice is
20 corroborated by other evidence which in and of itself, and
21 without the aid of the testimony of the accomplice, tends to
22 connect the defendant in the commission of the offense,"
23 right? "Tends to connect."

24 But I want you to turn with me to the middle of that
25 instruction, and this is Instruction number 11. This is the

1 middle paragraph, and this is what it says: "You are
2 instructed that DeShawn Robinson is an accomplice. However,
3 it is not necessary that the corroborating evidence be
4 sufficient in itself to establish every element of the offense
5 charged or that it corroborate every fact to which the
6 accomplice testifies." Here's the key: "Evidence to
7 corroborate accomplice testimony does not suffice if it merely
8 casts grave suspicion on a defendant."

9 You're sitting here right now, thinking in your
10 minds, there's just too much. Take that guy out of the
11 equation that testified, there's just too much other evidence.
12 But is it really too much evidence beyond a reasonable doubt,
13 or are we just talking about a feeling of grave suspicion?
14 Gosh, there's just too many little bits and pieces that
15 connects that guy to a murder. The gun. Well, we can't tell
16 if the gun is really firing in this case. Oh, well, because
17 of the location. Well, there's all kinds of reasons why he's
18 in the area.

19 But when you look at that instruction, it says very
20 clearly you have to consider the fact that, if it just shows
21 that you're gravely suspicious, that's not enough to say that
22 that guy did it beyond a reasonable doubt.

23 Continue on. Line 13. "Further, where the
24 connecting evidence shows no more than an opportunity to
25 commit a crime, simply proves suspicion, or it equally

1 supports a reasonable explanation pointing to innocent conduct
2 on part of the defendant, the evidence is deemed to be
3 insufficient." So think about it. You're feeling one way,
4 and you're saying to yourself, no, there's just too many
5 little bits and pieces that help me feel good about the idea
6 that I'm going to solve this murder, but can you say that it's
7 beyond a reasonable doubt or if it's just grave suspicion?

8 Now, in addition to that, you have to ask yourself,
9 can you say as you sit here right now that you have an abiding
10 conviction of the truth of the charge? Meaning that, can you
11 feel 100 percent that that guy was present, and that guy
12 pulled out a gun and shot this man in cold blood? Can you
13 feel that abiding conviction of the truth of the charge, or is
14 it, once again, grave suspicion?

15 Now, the State says, well, it's -- wearing a hoodie
16 in August. You know, people wear things all the time. I
17 don't know. August, yeah, I would say that it's a pretty hot
18 time of year, but I've seen hoodies being worn by people in
19 August and it doesn't tell me that that is a crime being
20 committed or going to be committed.

21 In addition to that, calls between people without
22 you knowing what the substance of those calls are, just
23 because there's (indiscernible) doesn't mean that there's a
24 crime. How can you say that? But because of the fact that
25 we're taking these little bits and pieces, we're trying to say

1 -- State of Nevada is -- we've proven our case to you beyond a
2 reasonable doubt; you are going to connect those little bits
3 and pieces for us.

4 What evidence could have helped us? The detective
5 says today, "We don't do that after four hours." But it's
6 interesting because everything that he talked about was stuff
7 that deals specifically with contamination of evidence.
8 Meaning, if you're going to -- if your hands -- in this case,
9 if you're firing a gun, there's a presumption that maybe
10 there's what's called gunshot residue on your hands; but if
11 you come in contact with something else, then it becomes
12 contaminated because something else may have gunshot residue
13 on it; i.e., handcuffs, because police officers fire guns and
14 they may have gunshot residue on those handcuffs; or you get
15 in the back of a police car, there may be gunshot residue in
16 the back of a police car.

17 But the question that was asked wasn't about this
18 four-hour period, but it was about the idea that, hey, if you
19 got a black hoodie, and you're thinking, oh, yeah, guy with
20 black hoodie shot a gun, and then you go to a house like my
21 client's house, and you go in and there's a black hoodie, why
22 wouldn't you just at least test it to see if that black hoodie
23 had gunshot residue on it? Why not? What would preclude you
24 from giving you the evidence that you need to say beyond a
25 reasonable doubt that he committed a murder? That would have

1 helped us, right?

2 It would have helped us if we had a third-party
3 witness. Say the runner walks -- runs right past and says,
4 "You know what, I looked directly into that guy's eyes.
5 That's the guy who didn't fire." It would have been good,
6 right? Because it would have put him at the scene. I
7 wouldn't have this discussion. We wouldn't be sitting here
8 looking at me like, okay, sit down already. We wouldn't be
9 doing that, but we don't have that.

10 And you know what also would have helped us in this
11 case, is this. Don't you think that should have happened? We
12 have one ping, and that's it. We don't have anything to
13 determine at all that his cell phone was even in the area of
14 where this happened. That's it.

15 But let's take a look at DeShawn for a second. If
16 you recall, one of the first things he says to me, "I lied,"
17 right? Great witness. "I lied." Great. Right, he lied.
18 But when did he lie? Did he lie when he first got arrested?
19 Because what he told detectives when he first got arrested was
20 not what he told you on the stand here yesterday or the day
21 before, so when did he lie?

22 Did he lie when he talked to detectives? Because he
23 told you that, but could he have lied now, talking to you?
24 Did he lie when he was meeting with detectives in a proffer?
25 We don't have evidence of what happened during that proffer.

1 We don't know what he told detectives at that point.

2 But think about this. He entered in an Alford plea
3 with the Court, meaning he told the Court, look, here's my
4 guilty plea. And what I asked him specifically on the stand
5 is he didn't get up and tell the Judge what he told you;
6 somebody else did. Somebody else got up and said, here's what
7 the charges are, and here's what the evidence is that we would
8 need to prove this person's guilty of the crime. He never did
9 that. So we don't have anything that says, this is the
10 details that he's been consistent about the entire time.

11 The only details we have is the first time he got
12 arrested, which, by the way, don't you think, hey, you know
13 what, I committed a crime, I killed somebody or I helped kill
14 somebody, you'd call the police? It wasn't until he got
15 arrested that he goes and he sits down with detectives, and
16 then he lies to them. So which one do you believe? Do you
17 believe what he told you today, or yesterday, or the day
18 before on the stand? What makes that any different from what
19 he told detectives the first time around and what he didn't
20 tell the Court when he entered in his plea?

21 Where's the credibility? Where's the thing that
22 tells you, I can believe this person 100 percent? He has been
23 waiting for over a year for this benefit. The benefit in this
24 case is when he told you, "I had to get it off my chest. I
25 went and talked to -- I told the State. I just had to get

1 this off my chest." He told you he walked in without a
2 negotiation, and then he walked out with the State of Nevada
3 agreeing to drop the murder charge against him. Really? Is
4 that how that works? His benefit was he's not looking at a
5 murder charge, the most significant, serious charge that we
6 can imagine in this community.

7 And he has another benefit. Because of his age,
8 he's been kept in juvenile detention. He told you that being
9 in the adult jail is not where he wants to be. He's had
10 multiple opportunities to benefit from getting up here.

11 And let me tell you one other thing. His testimony
12 to you on the stand was very significantly different from what
13 he told detectives initially. During that time period, during
14 the time that he got arrested to the time he talked to you,
15 he's had opportunity to talk to the detectives, and to review
16 discovery in his case, to go over the facts for himself
17 because he's a defendant. He's had an opportunity to see what
18 exactly it is that the State of Nevada has charged or alleged
19 in this case.

20 And as we look at it, he doesn't care about these
21 two guys. His future depends on him talking about two guys
22 that he barely knows, according to what he says, and they're
23 not his brother. It would have been interesting if his
24 brother was sitting right over there. That would be a
25 different thing, but it's not. It's not his family, it's not

1 his blood. It's just two guys. He doesn't care about them,
2 so why not do whatever he can to get the benefit, which is to
3 get the murder charge dropped against him?

4 Now, going back again to what I had said about "not
5 mere possibility or speculation," which is Instruction number
6 5. This is what the State of Nevada wants you to rely on,
7 because we can't account for that time, and we don't have
8 anybody that says 100 percent -- we don't have evidence
9 outside of this person who's lying that this man over here was
10 present and pulled the gun out and shot this person. We don't
11 have physical evidence; we don't have anything tying him to
12 that actual shooting.

13 What the State of Nevada would like for you to do is
14 to speculate. They would like for you to basically rely on
15 the idea that, hey, we've proven it to you beyond a reasonable
16 doubt, so help us out and make that jump for us so we can say
17 it's beyond a reasonable doubt. That's all this is.

18 So as you sit here right now, you have to ask
19 yourself, have they proven to you beyond a reasonable doubt
20 that that man pulled out a gun and shot this man in cold
21 blood? Is it grave suspicion, and do you have an abiding
22 conviction of the truth? Can you say that you have an abiding
23 conviction that that man did that?

24 Now, when I had asked you in voir dire about this,
25 you know, where there's smoke, there's fire, it's important in

1 this case, because he's sitting right there. And yeah, he's
2 connected to these people. There's his fingerprints on the
3 car, and he's in the convenience store, if you believe that.
4 Yeah, of course, he's all those things; he's there, he's
5 there. But could he have been there at the time that the
6 shooting took place?

7 So when the State says, well, you know, to me,
8 that's all that smoke; well, if there's smoke, there must be
9 fire, right? But there are times when there is smoke when
10 there is no fire. How many times have we ever seen where you
11 have that happen? You're at a light, and you're looking at
12 the car in front of you, and there is this smoke coming out of
13 the car. Is that a fire, or is that a guy vaping inside of
14 his car?

15 That's the question of the day. Just because
16 there's smoke, and the State of Nevada says, oh, there's
17 smoke, he's part of it, he's responsible, he pulled out a gun
18 and shot somebody, is it really the case? If you dig deep
19 enough, just because there's smoke doesn't necessarily mean
20 that there is fire. It could be something completely
21 different. You have to have the courage to hold the State of
22 Nevada to its burden.

23 This is a case that is horrible. This is a case
24 that should never have happened in our community. We watched
25 video of this family being torn apart, seeing this person

1 laying on the ground bleeding for no reason whatsoever. If it
2 hasn't affected you emotionally, it should. We want someone
3 to pay the price for this, we want someone to be held
4 responsible, but you cannot rush to judgment and think, well,
5 if there's smoke, there's fire; he must be the guy because the
6 State of Nevada tells you that that must be the guy.

7 You have to have the courage to say, maybe we don't
8 have the right guy here because maybe the State of Nevada has
9 not proven its case beyond a reasonable doubt. And when you
10 do so in this case, what you will have to come back with is a
11 verdict of not guilty. Thank you.

12 THE COURT: Thank you. Mr. Ruggeroli?

13 MR. RUGGEROLI: Your Honor, may I approach the Clerk
14 for an exhibit?

15 THE COURT: Yes, of course.

16 (Pause in the proceedings)

17 MR. RUGGEROLI: May I, Your Honor?

18 THE COURT: Yes, yes, thank you.

19 MR. RUGGEROLI: Thank you.

20 DEFENDANT WHEELER'S CLOSING ARGUMENT

21 MR. RUGGEROLI: Ladies and gentlemen of the jury,
22 I'm going to ask that you pay attention to what I say. I do
23 have a few things to put on the overhead, but really, I
24 believe that you've paid attention to many of the details.
25 And a lot of the things that I'm going to mention have been

1 already mentioned by Mr. Sanft potentially or are already
2 covered in the instructions.

3 But I'm sure that you have paid attention, and so if
4 you remember something, keep note of it, because I would not
5 be surprised if you have more items of particular interest to
6 my client, Mr. Wheeler, than I might have been able to keep up
7 with.

8 I want to remind you that I only represent Mr.
9 Wheeler. I am not here to accuse anybody at all, and
10 everything that I'm talking to you about has to do with my
11 defense of Mr. Wheeler solely in this case.

12 In this case, at the beginning, I did say to you
13 that the State was not going to meet their burden as to Mr.
14 Wheeler beyond a reasonable doubt. And after listening to the
15 evidence and paying attention to what the State's case against
16 Mr. Wheeler was, I believe that you'll find that he is still
17 not guilty because the State has not removed that presumption
18 of innocence. They did not prove their case against him
19 beyond a reasonable doubt.

20 I said in the opening, and it remains true at
21 closing argument, in order to have confidence of guilt for you
22 to comfortably convict someone and to have belief beyond a
23 reasonable doubt, you deserve to have evidence that consists
24 of essentially three things.

25 One, a reliable -- reliable and trustworthy

1 testimony from the witness. And in this particular case, the
2 main witness against Mr. Wheeler was DeShawn Robinson. I also
3 said at the opening statement that you should not have a
4 situation that is so suspicious and convoluted. And third,
5 you deserve to have a situation where there hasn't been a rush
6 to judgment by the police, and you deserve, at minimum, an
7 adequate investigation.

8 Now, after listening to everything, I would argue to
9 you that you do not have any of those three. You have
10 unreliable and untrustworthy testimony from DeShawn Robinson.
11 You have a suspicious and convoluted situation with
12 insufficient or no corroboration specifically regarding
13 whether Mr. Wheeler was present at the scene on Dewey.

14 And this is very, very important, because I said to
15 you in the beginning -- and I'm going to bring it up because
16 the State I don't think addressed this in their closing
17 argument. I said that there were five people present at the
18 Short Line Express, but there were only four present at the
19 Dewey address. That's a situation that needs more
20 explanation, but not from the defense, because I don't have
21 any burden, and this is borne out by the jury instructions.

22 The burden is on the State, and I'm going to likely
23 repeat that a number of times, but you all were asked
24 questions during the selection process about whether or not a
25 defense -- a defense attorney, a defendant, has any burden to

1 prove anything.

2 I don't have a burden to prove who was present. The
3 State has the burden of proving that my client was present at
4 the scene, and the only evidence they have is the
5 untrustworthy and unreliable testimony of DeShawn Robinson.
6 He has a motive to lie.

7 Additionally, the State did rush to judgment. If
8 you look at what was testified to, they started their
9 investigation in the very early morning hours of August 9th,
10 2017, and then they got information which led them to the
11 Short Line Express, and they got video, and on that video was
12 someone that had open carry. That, and I'm arguing to you, is
13 what directed the path of the initial steps of the
14 investigation, and it limited what they allowed themselves to
15 consider, including alternative suspects, including other
16 witnesses.

17 And you heard from Mr. Solomon. I said that there
18 would be an independent witness. I'm going to get back to him
19 in a minute. But based on that rush to judgment about open
20 carry, "Let's follow this," it essentially put blinders on the
21 investigation. And because of that, you did not have an
22 adequate investigation to find Mr. Wheeler guilty beyond a
23 reasonable doubt.

24 You're able to consider your common sense
25 considerations about a number of things that are discussed.

1 There is a jury instruction regarding that. And if you trust
2 your common sense, at a minimum, you're going to see that Mr.
3 Robinson's testimony is highly suspect.

4 Some of the evidence in this case that I want to
5 touch on now is that we've got Mr. Robinson claiming in one
6 particular portion of his testimony -- and he had to be shown
7 his actual statement to the police. "We pulled into the
8 apartments on Tropicana and Jones and had to pick up another
9 dude. I'm like, why are you trying to pick somebody else up?
10 There's already four people in the car."

11 I asked him -- this was my last question -- if
12 you've got four in the car, you already have four, and you
13 pick up one more, how many does that make? Five. Well, I
14 would submit to you, ladies and gentlemen, that they picked
15 somebody up on Tropicana, and then there was a fifth, and they
16 had to pick up the fifth person.

17 If you believe that Mr. Wheeler was present, it
18 would make sense that he's the fifth person. The jogger, Mr.
19 Mason, testified. So we're going from Short Line, five. Mr.
20 Solomon, he did waver, but he's only trying to be honest.
21 Remember, I asked him, what was the first number that you
22 used? Five. And you also said that there were two in the
23 front seat, and three in the back seat. Those were his
24 statements.

25 He equivocated a little bit because it's been a long

1 time; he's trying to be honest. He went back and saw that
2 there was some wavering. That number five is very important
3 because that is doubt. That is doubt that that fifth person,
4 who we're suggesting would be Mr. Wheeler, was not present,
5 and was one of four at the Dewey address.

6 We have the four -- four people established by Mr.
7 Mason, because Mr. Mason was doing his best to be honest with
8 you, but he testified that there were four dark-skinned, black
9 male adults, all wearing dark clothing at Dewey. He said that
10 he looked in the vehicle and he didn't see anybody else there.
11 He was very attentive to a number of details.

12 But in State's 323 -- I'm going to go back a little
13 bit. He said that there were four dark-skinned individuals.
14 And the reason why that's important is because, in making a
15 description, I think he's just trying to be helpful. He also
16 says that they were black male adults in dark clothing. It's
17 been suggested that Mr. Wheeler is there in the white hat,
18 which is not dark, and that that is either red or maroon that
19 he's wearing, with red or maroon shoes. You can't see them so
20 much. Red or maroon shoes.

21 And if you look at him, even his posture and pose is
22 -- there's three others there, all wearing dark, and if you
23 had to pick one that did not belong, it would be the
24 individual in red with the white cap.

25 Additionally -- and this is important because you

1 did not hear this on the State's closing argument. Who's
2 Adrian Robinson? Adrian Robinson is the brother of DeShawn
3 Robinson, who's also the brother of DeMario Lofton-Robinson.
4 Similar in age, similar in features. And you didn't hear
5 almost anything about that person, which I'm going to suggest
6 to you -- and again, please note, I can't prove who the fifth
7 person was. I can't prove certain things because I'm not
8 obligated to, and as a defense attorney, I don't do Metro's
9 job.

10 They have -- had evidence though. You heard DeShawn
11 get surprised when I said, well, wait, who's Adrian? Because
12 you spoke to the police the day after the shooting. You
13 mentioned your brother Anthony; you mentioned your sister's
14 boyfriend Johnquiel Brown. The police followed up on them,
15 they got their DNA, they did the work on them, but they didn't
16 follow up and get DNA for Adrian. Adrian is a missing link
17 here and you don't have sufficient investigation to exclude
18 him.

19 I don't have a burden to prove that it was him, but
20 I'm saying that that individual there, if you had to pick one
21 that does not match, one person looks like they're going out
22 and doing things; the others are dressed very similarly in
23 dark clothing.

24 I would also submit to you that his skin pigment is
25 lighter, significantly lighter. So when you have Mr. Mason,

1 who's just a guy jogging, trying to do the best that he can to
2 ID, and he doesn't say, well, you know, there was one guy that
3 had a white hat; and he doesn't say, well, one of them was
4 wearing red; and he doesn't say, by the way, there were three
5 dark-skinned black male adults, and say that there was one of
6 the four that was light-skinned, he just includes a
7 description, these are doubts for you. These are reasonable
8 doubts, because Mr. Wheeler was not present at Dewey.

9 Additionally, it's hopefully very clear to you now,
10 especially because the State did clarify this during their
11 closing argument, that the gun that was found in Mr. Wheeler's
12 house has been completely excluded from having fired the three
13 cartridge cases that were recovered or any of the bullets at
14 the scene. So that gun is excluded.

15 So, in addition to being dressed dissimilarly, and
16 having a very conspicuous light-colored hat, and having
17 conspicuously lighter-colored skin than the others, you've got
18 an individual that also supposedly is going out with an open
19 carry, advertising to the world before the fact that he's
20 going to be a part of this sophisticated scheme to rob
21 somebody.

22 The evidence doesn't establish that. It certainly
23 doesn't establish that beyond a reasonable doubt, and I would
24 say that it's actually illogical that individual would be
25 dressed like that and go through with this in the way that the

1 State is trying to prove to you beyond a reasonable doubt.
2 Mr. Wheeler was not a part of any conspiracy to commit a
3 crime.

4 The State has shown you a text that doesn't have any
5 bearing directly from Mr. Wheeler. Supposedly, you've got a
6 text from Mr. Robertson to DeShawn, but I asked the detective
7 that had the opportunity to analyze his phone, Mr. Wheeler's
8 phone, and this is very important because you don't have texts
9 from Mr. Wheeler concerning this crime. I asked her, and it's
10 in her report, and she agreed.

11 There are texts a couple of hours before the crime
12 -- and this is regarding Mr. Wheeler and Mr. Robertson. There
13 are texts a couple of hours before the crime and several hours
14 after, but no mention of the crime. Additionally, in terms of
15 Mr. Lofton, there's nothing logically around the time of the
16 crime.

17 There is no conspiracy. DeShawn is the one that's
18 making a statement about what he thought, and there's no
19 evidence that Mr. Wheeler was a part of this conspiracy.
20 There's no evidence, reliable evidence, believable,
21 trustworthy evidence beyond a reasonable doubt that Mr.
22 Wheeler was a co-conspirator or aided and abetting (sic)
23 before this crime that happened on Dewey.

24 There's no reliable, trustworthy, credible, or
25 believable evidence beyond a reasonable doubt that Mr. Wheeler

1 was present at Dewey. The only evidence that he was at Dewey
2 comes from DeShawn Robinson, who is not trustworthy, who's not
3 credible, and has motives that are highly suspect.

4 After hearing the evidence in this case, you may
5 have more questions than answers, but it would not be a
6 stretch to say that you have more doubts than certainty.
7 There's a jury instruction that was mentioned, it's number 9.
8 And this deals with the agreement that Mr. Robinson entered,
9 and the fact that he has received a benefit, and he hasn't
10 been sentenced yet.

11 And I would like you to just refer to number 9,
12 refer to number 10, and 11 when you go back. It's already
13 been touched on, so I'm not going to post those, but I am
14 going to ask, on number 11 -- this was touched on a little bit
15 by Mr. Sanft. When you're determining whether an accomplice
16 has been corroborated -- so Mr. Robinson, whether or not he's
17 been corroborated -- assume that the testimony has been
18 removed.

19 So what testimony or what evidence is there in this
20 case that Mr. Wheeler was actually present at the scene at
21 Dewey when this shooting happened? Mr. Mason cannot
22 corroborate that. Mr. Mason said that there were four
23 dark-skinned, black male adults, all wearing dark clothing.
24 That would exclude Mr. Wheeler. It doesn't corroborate
25 DeShawn.

1 What evidence do you have that Mr. Wheeler was
2 present? Well, do you have DNA? No, Mr. Wheeler has been
3 excluded from DNA. The police found cigarettes, which the
4 expert testified that that could be a very good source that
5 would hold saliva, and then be capable of being used, but --
6 this is really important. They tested the DNA with the known
7 contributors and ruled some people out for the cigarette
8 butts. That was right at the scene. They couldn't exclude
9 Adrian because the detectives didn't get his DNA.

10 So these loose ends keep multiplying, which are
11 doubts as to who was actually present at Dewey. They didn't
12 follow up and you don't have that evidence. They have
13 cigarette butts, they have a fidget spinner, they have
14 glasses, but they don't have a source from Adrian to test to
15 exclude him. So there's no corroboration for DeShawn Robinson
16 as far as Mr. Wheeler being present at Dewey.

17 Mr. Mason, I would point out, was also not asked to
18 identify whether or not Mr. Wheeler was one of the individuals
19 when he was in court, so there's no evidence of Mr. Mason
20 identifying Mr. Wheeler. I mentioned to you that there's no
21 DNA from Mr. Wheeler. There's no fingerprint evidence from
22 the crime scene. The limited fingerprint evidence was simply
23 of the firearm. There's no footprint evidence.

24 Now, Detective Dosch I think got a little ahead of
25 himself and he started to make statements that he couldn't

1 back up, because he had to rely on other people, other
2 detectives, other sources, and he's not an expert. I asked
3 him, everybody's got -- well, not everybody, but you would
4 think the people that were there have two feet. And so I
5 wanted to know, how many would that mean total; how many
6 footprints? He didn't remember. There's no evidence.

7 I would also like you to consult with your notes and
8 see if anybody recalls, but I believe that Mr. Relato, Mr.
9 Valenzuela's cousin, I thought he may have also testified that
10 he was not wearing shoes. Now, as Mr. Sanft said, you're the
11 arbiters of what the facts are, but somebody may have been
12 paying attention, and I think that Mr. Relato indicated that
13 he was not wearing shoes. And there was no testimony about
14 whether or not the detective paid attention to whether there
15 were actually footprints as opposed to footwear prints.

16 There's also no evidence of blood spatter. We
17 didn't have an expert. Mr. Sanft mentioned a number of things
18 that would have been helpful, but the way that DeShawn's
19 highly suspicious account of this event occurred, if you were
20 to believe it, is that Mr. Valenzuela was essentially being
21 pulled apart at safe enough distance that shots could be fired
22 from DeMario, and not only did nobody else get hit, but then
23 there's no blood spatter that would have got on whoever else
24 was holding him. There's no evidence of blood spatter on any
25 of their clothing, and that's different from gunshot residue.

1 There's also no gunshot residue. We don't have any
2 photos of whether or not DeShawn or DeMario, who were arrested
3 pretty much that day or very late the next day, had any
4 injuries from a scuffle. Did that happen? Wouldn't it have
5 been helpful if the detectives would have photographed not
6 only Mr. Valenzuela's palm to see if he had any skin under his
7 fingernails and things like that, but what about DeMario and
8 DeShawn? If there was a scuffle, follow up on that and see if
9 they've got any fresh injuries.

10 I mentioned to you, there is some evidence of
11 alternative suspects, specifically regarding Adrian, but it is
12 limited because of the lack of initiative by the police.

13 This has already been touched on, but DeShawn's own
14 story -- again, he made statements which he said, I lied to
15 the detectives. I asked him, you indicate five here. How
16 does it help your story to create five if there is no five?
17 It doesn't help you avoid being a suspect in this case. It
18 doesn't really make sense. What makes sense is there was
19 five. That makes sense because you've got an independent
20 witness, Mr. Solomon, making statements that there were five
21 at the Short Line Express, and then Mr. Mason saying only four
22 at the Dewey address.

23 He hasn't -- DeShawn hasn't been sentenced yet, so
24 he still has some obligations. So I asked him, how do we know
25 that you didn't shoot? And that seemed to stir him up. But

1 then I followed up, I said, because all you're giving the jury
2 is your word; you don't have corroborating evidence. You
3 didn't videotape it; you didn't take pictures of it. You're
4 the one that admitted to being present, you're the one that
5 actually says, I was there when this atrocity occurred, and
6 you're the one that got the benefit of this bargain where you
7 didn't even have to admit guilt. And now you're showing up to
8 court, prior to sentencing, and you're telling the jury this
9 version of events. But you didn't tell the detectives you had
10 another brother, and your story is highly convoluted and
11 suspicious. And I would suggest to you that he has a motive
12 to protect that other individual.

13 These are all questions, but really, the translation
14 is -- and it goes back to Instruction number 5 about
15 reasonable doubt. These things are all reasonable doubts as
16 to whether the State proved that Mr. Wheeler is guilty beyond
17 a reasonable doubt.

18 Is DeShawn protecting a fifth person? I don't have
19 a burden to prove it, but that is a reasonable doubt. Is that
20 person Adrian Robinson, his brother, who matches the
21 description of the people that were present? I can't prove
22 it, but that is a reasonable doubt. DeShawn admitted to
23 lying; that is more reasonable doubt. He has motives. He has
24 reasons that he may mislead. These are all reasonable doubts.

25 The police could have done a better job once they

1 realized that Mr. Wheeler's gun was excluded from having been
2 used. They could have supplemented their reports. There's no
3 reason not to go out and get the DNA from Adrian to make the
4 exclusion of the cigarette butts or any other piece of
5 evidence. There's no evidence that they did anything that
6 they should have done regarding eliminating that alternative
7 suspect, not to mention others that they may have followed up
8 on.

9 So please consult with your notes when you consider
10 all these things. I would not be surprised if you had
11 additional items; things that are reasonable doubts as to Mr.
12 Wheeler's guilt.

13 Keep in mind that Detective Dosch was not present
14 during the interview of DeShawn. He is not an expert. He was
15 not the one that made the call about a number of things
16 regarding the investigation, because I asked him, well, was it
17 you or Detective Jaeger that would do and say don't test Mr.
18 Valenzuela's car? Well, that really would have been Jaeger.
19 Well, we don't have any evidence from Detective Jaeger. We
20 only have Detective Dosch, and he can't answer for Detective
21 Jaeger.

22 Should they have probably processed the car? Well,
23 he didn't think so, but it wasn't really his decision.
24 Certainly would have been helpful because, although he didn't
25 say he thought that there were any reasons why the car would

1 have been involved, I'm sure you could think of some why it
2 may have been.

3 Additionally, who set the crime scene and limited
4 it? This is Exhibit 39, and I put this up on the board with
5 one of the crime scene analysts. And you'll see, if north is
6 up, east would be where Lindell was, and the crime scene is
7 here, which, all the way out on the wing here, number 10, I
8 asked him about this fidget spinner, so it's a bit removed
9 from that crime scene.

10 But importantly, they sectioned off this part, which
11 is on the east side of this diagram. And there was limited
12 testimony about what they did to follow up, and why limit it
13 to just these parameters? Who made those decisions? Dosch
14 wasn't the only one; he was the co-lead detective.

15 Can't see DNA, so how do we know that there wasn't
16 suspect DNA on Mr. Valenzuela's vehicle? It just wasn't
17 tested. No fidget spinner, no cigarettes. Detective Dosch is
18 not a shoe expert. None of the shell casings came back. And
19 now, again, I'm really focused on evidence supposedly against
20 Mr. Wheeler. No cell phone triangulation regarding Mr.
21 Wheeler. The DNA was excluded as to Mr. Wheeler. No blood
22 spatter. I mentioned the struggle and potential fresh wounds.
23 No identification in court.

24 So what you have is a situation where there are
25 doubts. I think that it is very, very reasonable doubt to

1 suggest that there are five people present at the Short Line
2 Express, four people present at Dewey. Mr. Wheeler should be
3 excluded as one of those four individuals because of Mr.
4 Mason's testimony and because of Mr. DeShawn Robinson's
5 untrustworthy testimony. His gun was not used.

6 And so, you must hold the State to its burden, and
7 that is a high burden. The State did not meet that burden as
8 to Mr. Wheeler. And I'd like you to think about this because
9 this is really such a very important role that you're playing.
10 As a community, we can't afford to get the wrong person. We
11 can't afford to convict somebody that wasn't present, but we
12 can't afford to convict somebody that the State doesn't prove
13 beyond a reasonable doubt is guilty.

14 They haven't established a conspiracy. They haven't
15 established aiding and abetting by Mr. Wheeler. They have not
16 proven their case to you beyond a reasonable doubt.

17 So if you do what I asked you from the beginning a
18 good jury does, do what a good juror does: evaluate the
19 trustworthiness or the lack thereof of the witnesses; don't
20 rush to judgment, don't do what the police did; pay attention
21 to all the details; ask yourself, are there reasonable doubts;
22 fulfill your duty as jurors; and if you do so in this case, I
23 believe that you will find there are too many reasonable
24 doubts, and you will find Mr. Wheeler not guilty of all
25 counts. Thank you.

1 THE COURT: Thank you very much. And the State may
2 begin their rebuttal.

3 MR. PESCI: Thank you, Your Honor.

4 STATE'S REBUTTAL CLOSING ARGUMENT

5 MR. PESCI: Ladies and gentlemen, anybody need to
6 stretch; need to stand up for a second? If you do, please do.
7 We're almost there. I beg your indulgence for a little bit
8 longer.

9 So, at the very beginning of this trial, during the
10 jury selection, there were some questions asking about
11 everyone's opinions of firearms. There was even some
12 questions about open carry. You heard some questions to your
13 other jurors. People expressed -- a few people expressed an
14 uncomfortableness with the concept of open carry.

15 Now, I'm not allowed to do this, but I wish I could.
16 Just maybe pretend right now I've got a gun on my hip, and the
17 whole time I'm arguing to you, pretend I've got a gun on my
18 hip. And ask yourself, ladies and gentlemen, if I with a gun
19 on my hip were to come up, and demand, and say, "Give me
20 everything you got," or if my co-defendant said, "Give me
21 everything you got" when I've got a gun on my hip, even if I
22 don't take it out, but it's displayed, open carrying, would
23 the victim be uncomfortable, just like some of the jurors said
24 that they would be if they saw someone walking in open carry?

25 Now, mind you, open carry's legal. That's a legal

1 thing, right? But there's still an uncomfortableness
2 associated with it that some of the jurors said. And ask
3 yourself, would the victim be feeling that uncomfortableness
4 when it's more than just a gun on the hip; it's, "Give me what
5 you got," it's another person pulling out a gun? And ask
6 yourself, was a deadly weapon used?

7 The instruction specifically tells you that you can
8 use a deadly weapon even if you don't pull it out. A deadly
9 weapon was used by everybody in this case, including Davontae
10 Wheeler, who didn't shoot. We have never said he shot.
11 There's this argument that somehow we're saying that. No,
12 we're not saying that. We're saying he had a gun, it was on
13 his hip at least, and it was displayed, and it was utilized,
14 just like some of the jurors who had that fear, to be
15 intimidated -- the victim to be intimidated.

16 Now, you were told during the jury selection --
17 staying with this jury selection -- to be careful, cautious;
18 don't rush to judgment; "Where there's smoke, there's fire,"
19 you can't accept that concept. We just saw a great picture
20 about someone vaping, right? So you shouldn't rush to
21 judgment by saying, where there's smoke, there's fire, right?
22 That should be applied to these defendants; that's the way I
23 understood it, right?

24 But somehow, some way, I don't even comprehend how
25 Adrian Robinson has come into this case as the fifth person

1 who really did this. Is there any smoke, let alone fire,
2 around Adrian Robinson? You were told a few minutes ago they
3 did not get DNA from Adrian Robinson. You heard from every
4 single CSA who took a buccal swab from a defendant that they
5 had to have a search warrant from a judge to get in there and
6 start taking someone's DNA. You don't get to willy-nilly walk
7 up to someone and say, you know what, I think you might be the
8 fifth person; open your mouth, I want to take some buccal
9 swabs. You have to be connected to the case. You have to be
10 somehow tied into this.

11 You were told, quote, "You do not have sufficient
12 evidence to exclude Adrian Robinson." You have no evidence to
13 include Adrian Robinson, zero, but somehow we're supposed to
14 allow the concept of smoke and fire being applied to him so
15 that we can make a fifth person be the real killer who did
16 this, right?

17 Detective Dosch, he took the stand. He said, spoke
18 to him and he was excluded. That's the evidence. Speculation
19 by attorneys, that's not evidence. Detective Dosch said he
20 was excluded.

21 And ask yourself -- put Detective Dosch to the side.
22 There is the convenience store video. Point to me, please,
23 Adrian Robinson. We were told he was an African American
24 male. Defense counsel was trying to make that point. He's
25 the same or relatively the same age, right? Where is he?

1 There are four people in this picture. There is no fifth
2 mythical person. Adrian Robinson is nowhere to be found.
3 That's why he's excluded.

4 You were told cell phone triangulation -- I mean,
5 that there's no idea of what the distances in maps are. It's
6 Exhibit 7. Exhibit 7, you have it in evidence. The distance
7 between the murder scene and the convenience store, right
8 there. You can drive it in eight minutes at 2.8 miles. So
9 you were told there's not enough time. Well, it only takes
10 eight minutes to get from the convenience store, where we just
11 have all these guys, right, our four guys, to get to the
12 murder scene.

13 Now, what did Detective Dosch say? On August 8th at
14 approximately 11:36 P.M., Robertson called a number. The
15 phone call lasted one second in duration. The time of this
16 phone activity was at the time the four suspects were
17 congregated at the convenience store located at 7325 South
18 Jones Boulevard. Robertson's phone hit off a cell phone tower
19 located approximately 1,600 feet north of the convenience
20 store. Oh, yeah, there is something tying him. The phone
21 record's tying him. He's pinging, because remember, the phone
22 is pinging when he's using it; making a call, making a text.

23 There he is within 1,600 feet of the convenience
24 store -- Robertson, that is. That's only eight minutes to
25 drive. Remember, the call comes out 12:11 A.M. More than

1 enough time to leave the convenience store -- which is on
2 video, you can watch it -- and drive away, and get less than
3 three miles to the murder scene. Very nearby; plenty of time
4 to go do it. Cell phone triangulation puts him there.

5 Gunshot residue. You were asked -- or heard some
6 arguments about gunshot residue; how it should have been done,
7 how it wasn't done. Remember, you heard from Detective Dosch
8 that it's within four hours. That's the policy of Metro.
9 Within four hours, right? August 9th at 12:11 A.M. is when it
10 happens. The search warrant that got to that sweatshirt that
11 defense counsel intimated should have been tested was done on
12 August 15th. We're not at four hours; we're not even at four
13 days, right? We're up to days, days.

14 And ask yourself this. I mean, really, let's say
15 the gunshot residue test was done. You heard -- remember, it
16 says that you either shot or you were in proximity, right?
17 And then the detective said that there are those concerns
18 because you can have false positives, because someone who has
19 been cuffed like the defendants have been, or someone who's
20 been in a cop car like the defendants have been, could have
21 that transferred.

22 So let's just assume for the sake of our
23 conversation that the gunshot residue was done on that
24 sweatshirt and it came back positive. Do you think you might
25 have heard something about, oh, my client got cuffed, my

1 client got put in a cop car, so you really can't say that my
2 client was actually the one who shot the gun? Just imagine.

3 The felony murder rule. At the very beginning,
4 staying with the theme of questions during jury selection, I
5 asked all of you would you follow the law even if you didn't
6 necessarily agree with it, right?

7 The felony murder rule is a strict liability rule,
8 the concept being, even if I'm just the guy with a gun on my
9 hip and I don't pull the trigger, I'm a first degree murderer
10 for what the other guy with the .22 or the other guy with the
11 .45 did if I'm in fact a part of a conspiracy to commit
12 robbery, and that I'm attempting to commit robbery, and the
13 person dies. The law. This is the law. You said you'd
14 follow it. The law says even if it was unintentional or
15 accidental, if it's during a felony, the attempted robbery, it
16 is first degree murder.

17 Now, you were told that DeShawn Robinson was
18 unreliable, untrustworthy. Specifically, you were told he was
19 highly suspect, and today you were actually told that there's
20 no corroboration of DeShawn Robinson. Really? Well, let's go
21 through a walk of the evidence.

22 DeShawn Robinson's testimony is the jogger ran by,
23 was wearing a red shirt, and black shorts. How the heck did
24 he get that right? How the heck did he get that right if
25 DeShawn's unreliable, he's untrustworthy? The jogger went by

1 fast. That was his testimony, Robert Mason. He got it right
2 because he saw him. He got it right because he was there.
3 He's right.

4 This is independent corroboration. His testimony is
5 he had a red shirt and black shorts. That's the evidence.
6 It's the body-worn camera. That stuff's amazing now, right?
7 Body-worn camera, cops have it on, you get to see exactly
8 what's happening. He got that right.

9 He placed himself with Davontae Wheeler, Raekwon
10 Robertson, and his brother. He's throwing his brother under
11 the bus, and you're being told he's not trustworthy. If he's
12 really bought and paid for by the State, and he's saying what
13 we want, why is he throwing his brother under the bus? Just
14 throw these two. That's even more why you can trust him,
15 because he's telling you even the things that implicate his
16 brother.

17 That he's in the same spot near the wall by the
18 victim's house that the jogger, Robert Mason, said. That's
19 the spot that DeShawn said he was; that's the spot that Robert
20 Mason said. Robert Mason is not a person who's entered a
21 plea. Robert Mason's not a co-defendant. Robert Mason is not
22 someone you're supposed to look at more suspectly. Robert
23 Mason corroborates DeShawn; DeShawn corroborates Robert Mason.
24 Robert Mason has no axe to grind, no murder charge to get out
25 from under, and they're in lockstep.

1 He placed the car -- DeShawn, that is. He placed
2 the car in the same place the jogger, Robert Mason, said. The
3 exact same place. That is even more independent corroboration
4 why you can appreciate and understand that you can trust what
5 it is that DeShawn told you. The instruction says that you go
6 to it with an eye of suspicion, right? We talked about that
7 in jury selection. But then I said, if you look at all the
8 evidence and you're convinced, could you come back with a
9 verdict? And your answers were yes. Here's the other
10 evidence. It's what Robert Mason is telling you. It's the
11 exact spot that Robert Mason said it was.

12 Now, DeShawn pointed to everyone in the surveillance
13 footage. He picked himself out, he picked his brother out.
14 And then, ask yourself, is he right? Well, low and behold,
15 where he's pointing out his brother, that sweatshirt is in his
16 car. The very sweatshirt is in his car. That's independently
17 corroborating him. And then, the shoes, right? He points out
18 his brother, and then, low and behold, shoes fitting the
19 description of the brother, in addition to the sweatshirt, are
20 found in that car.

21 Raekwon Robertson, he points him out, and then you
22 have testimony about those shoes. Look at the shoes Raekwon
23 Robertson's wearing in the convenience store. Again, DeShawn
24 picked him out. Those shoes are found in the apartment of
25 Raekwon Robertson.

1 Davontae Wheeler, DeShawn points him out, right?
2 And then, how do you know that he's credible? Because low and
3 behold, when they do the search of Davontae Wheeler's
4 apartment, there are the shoes. There's the hat. Look how
5 distinct that is. Further independent corroboration.

6 DeShawn said he was sitting in the back seat behind
7 the passenger's side. Watch the video, ladies and gentlemen.
8 You have it, the Short Line Express video. We have all these
9 individuals outside. Check it out. There's a conversation
10 among which three just prior to going to the murder scene?
11 Look who's just kind of sitting there and eventually makes his
12 way over. Where did he say he went? To the back right door.

13 That video is not a co-defendant. That video is not
14 trying to get out from a murder charge. That video is
15 independent corroboration of what DeShawn said. There he is,
16 the very location he said he would be. The video confirms
17 that. Why you can believe DeShawn, why you can trust what he
18 says happened at Dewey, because all these situations where
19 he's telling you it happens a certain way, independent
20 evidence is corroborating what he told you.

21 DeShawn said where everyone was in the car.
22 Remember, he went through and he said Davontae was in the
23 passenger seat in the front, DeMario, his brother, was
24 driving, Raekwon was in the back on the lefthand side, and he
25 put himself, DeShawn, on the back right. That's where

1 everybody is.

2 DeShawn said DeMario, Davontae, and Raekwon all had
3 guns. This is what DeShawn told you. Was that independently
4 corroborated? Well, let's see. At Bagpipe, we've got the
5 .45. That's evidence against his brother. At West Tropicana,
6 we've got the .22, and then there's also the gun at Civic
7 Center. But I just kind of go off on a tangent right now a
8 little bit, I apologize.

9 But the gun that shot the cartridge case, per Anya
10 Lester, that gun, she testified -- Anya Lester took the stand
11 and she said that gun shot that cartridge case. Now, we could
12 have a debate about the bullet, right? But that gun,
13 unequivocally, she said, per her analysis, shot that cartridge
14 case.

15 The bullet was mangled because it penetrated the
16 belly of our poor victim and hit items, and was not able to
17 make a definitive conclusion as far as inclusion, but it
18 couldn't be excluded either. That bullet as it sits there is
19 not excluded. It's not included, but it's not excluded, and
20 it has similar riffling characteristics.

21 Remember she told you about how there's lands and
22 grooves? Those are similar. How it twists to the right?
23 Those are similar. We're not going to give a defendant an
24 advantage for shooting someone in the stomach and deforming a
25 bullet, and say that, oh, it doesn't match, when you know the

1 cartridge case undeniably matches and has been shot by that
2 gun.

3 Now, the third gun. Going back, DeShawn said that
4 there was a gun also with Davontae Wheeler. Low and behold,
5 interesting, the open-carry-holding-gun guy has decided to
6 pretty much hide his gun. Why is it stuck down in that
7 crevice and not in the holster that we heard so much about?
8 But that gun is found, right?

9 The victim had glasses and a white t-shirt. DeShawn
10 told you that. There's not a lot of time for DeShawn to see
11 and understand all these things, but he saw that, right?
12 There it is, independent evidence, the glasses of the victim.
13 The shirt of the victim, white. Further independent evidence.

14 He identifies Ray Logan's apartment. There's the
15 apartment. That gun has Ray Logan -- that's a defendant here
16 in court -- Raekwon Robertson's DNA. Is it part of a mixture?
17 Yeah, it is, but it's still his DNA.

18 And then, DeShawn explained that bullets were
19 exchanged among them. Prior to the shooting, there's an
20 exchange of bullets, right? There's two different .45s. One
21 does the shooting, the Interarms found at the Bagpipe
22 residence, but there are multiple manufacturers that are found
23 there, right? Those are those four bullets. One's a .22, the
24 other three are .45s, right? We've got the .22, we've got the
25 .45s. There are different headstamps on the .45s. There's an

1 R-P .45, NFCR, and the Winchester, right?

2 So those are at the murder scene; R-P, NFCR, .45
3 Winchester. Where have you seen those? Where have you seen
4 those calibers? R-P .45 Autos, right, from the murder scene?
5 Let's go to Civic Center, Davontae Wheeler's place, right?
6 His gun didn't shoot; never said it did. What's he got in
7 there? R-P .45s. DeShawn says they're passing them around,
8 and low and behold, a type -- a manufacturing type that
9 Davontae Wheeler has makes its way to the gun, the Interarms,
10 that expels that R-P .45 at the scene. There's R-Ps on the
11 floor, there's R-Ps in his pocket. They're all R-Ps.

12 What about at Bagpipe, right? Bagpipe, they're all
13 R-Ps. Bagpipe again is where DeMario and DeShawn are. NFCRs,
14 those are at the scene; those are inside that car. The
15 exchanging that he talked about was inside the car when that
16 was happening, right? Inside the glove box is this box of
17 ammunition that is NFCR. Remember, there's an NFCR at the
18 murder scene.

19 What about the forensic corroboration of DeShawn?
20 Again, you were told that he's not corroborated; he's
21 untrustworthy, right? There was no evidence to corroborate.
22 That's what you were just told. DNA puts DeShawn in the back
23 seat on the right side. That's where he said he was, right?
24 That's exactly where he said.

25 Fingerprints put each defendant where DeShawn said.

1 Imagine that. Each and every defendant has fingerprints in
2 the area that DeShawn said they were in all around that car.
3 DeShawn said he was on the right rear window; that's where his
4 fingerprint is. DeShawn said DeMario on the driver's side,
5 and that's where DeShawn said he was (sic). Raekwon Robertson
6 he said was on the left rear door; that's where the
7 fingerprint is. And he said Davontae was on the right front;
8 that's where the fingerprint is, as well as on the hood,
9 because there's even more places they were touching that car,
10 right? Right where he said the fingerprints would be.

11 DNA connects Raekwon Robertson to the .22 Taurus.
12 The expert, Allison Rubino, testified that's his DNA on that
13 gun. The fingerprints connect Davontae Wheeler to the Taurus
14 .45. You heard the fingerprint on the magazine is Davontae
15 Wheeler's. So you've got fingerprints and DNA attaching these
16 defendants to these guns, the guns that DeShawn said they had
17 and they used. All of that corroborates.

18 And then, you were told some -- well, at least you
19 were asked -- there were some questions asked about DNA
20 numbers and how they don't matter or they might not matter.
21 DeShawn's DNA is on the seat back and the armrest, and he's
22 individually included, and the likelihood ratio is 1.76
23 octillion, right? 2.56 octillion.

24 Now, the law requires independent corroboration, we
25 just explained all that, and one form of that is the DNA.

1 DeShawn's DNA is in that car where he said he was to the tune
2 of 27 zeros, right? And the concept was Raekwon DNA is on the
3 .22, and that he was individually included, and the ratio was
4 33.3 million. And that's less than octillion, it sure is.
5 33.3 million is still a really big number, right?

6 And then there was this back and forth about, well,
7 do the numbers matter? I mean, is there any doubt that it's
8 his? Because it's at his house, right? It's at his house.
9 But as far as the numbers mattering, you've heard, and
10 appropriately so, repeatedly by defense counsel for Mr.
11 Wheeler that his client was excluded from the DNA. That's
12 appropriate. And you remember, the expert said there's a
13 number associated with excluded. When the number is so low,
14 you're excluded. So the numbers, they matter. They matter to
15 the exclusion, and they matter to the inclusion. And Raekwon
16 is included on that gun.

17 Now, DeShawn said that Raekwon is the one who said,
18 "Give me everything you got," right? And that then, Sace --
19 that's what Raekwon -- that's what DeShawn described Davontae
20 as having that name, and his brother.

21 So, Sace, Davontae Wheeler, and his brother DeMario
22 tugged on the victim's clothes. That's the aiding and
23 abetting, working together, even though you're not the shooter
24 at that point, to try to get the attempted robbery -- to try
25 to get the property, right? Raekwon shot the victim, DeMario

1 then shot the victim. That's what he told you. So those
2 three are the ones encircling the victim and making the
3 decisions.

4 Now, I want you to watch this video again, and watch
5 the three who are together and the one who's not.

6 (Video is played)

7 MR. PESCI: Raekwon stops Davontae and DeMario.
8 There's a conversation, there's a discussion, and DeShawn is
9 sitting at the table on his phone. After the discussion, get
10 in the car, and the car leaves. And 20 minutes later -- 20,
11 25 minutes later, the victim's dead. This corroborates what
12 DeShawn said.

13 Who are the three that are doing things at the scene
14 per DeShawn? The three you just saw in that video congregate
15 together, and then, in fact, the individual who's the first
16 one to shoot per DeShawn, Raekwon, is the one making the
17 gestures and commenting. That's the dynamics of this group of
18 four. Raekwon, Davontae, and DeMario. DeShawn's just on his
19 phone to the side.

20 You know, you were told about reasonable doubt. A
21 reasonable doubt is one based on reason. That instruction
22 that you were read to has this portion as well, and it's very
23 important. "A reasonable doubt is one based on reason. Doubt
24 to be reasonable must be actual, not mere possibility or
25 speculation." There is nothing that connects Adrian to any of

1 this. That is nothing but speculation. Nothing but.

2 (Video is played)

3 This is going to play. It's going to take a little
4 while, and I apologize for that, but please keep your eyes
5 trained on the vehicle, and watch for the mythical, magical
6 fifth person who's supposedly Adrian Peterson (phonetic) who's
7 really the killer that allegedly exonerates Mr. Wheeler. Oh,
8 we got one out, right? DeShawn. Another one out of the back
9 left, Raekwon. DeMario coming out of the driver's seat. Now
10 we've got Davontae.

11 Keep watching the car. You see two empty seats in
12 the front? Do you see a human being in that car? Please
13 don't stop watching. It's a little long, but it's worth the
14 time, because the magical, mythical person has got to be in
15 the car because we've already looked at the convenience store
16 still frame where there are only four guys. Nobody in there
17 fits the description of Adrian, so that person's got to be in
18 the car.

19 Maybe with the lights that's shining on this car as
20 it's leaving, we'll get a good silhouette of the fifth person
21 inside the car. Let's see, the lights are going to come on.
22 Oh, wait. Wait a second, hold on. We just got lights flashed
23 on that car for us to find the fifth person. Oh, didn't see
24 the fifth person. Well, there's more time, maybe he'll show
25 up.

1 Now, earlier, we heard -- keep watching, please.
2 You heard from Nikolaus Spahn, who worked, that one of the
3 individuals was his regular. That was the guy who had the
4 blue t-shirt and kind of long hair. That individual just got
5 in the car that's parked, from our perspective, to the left.
6 Now, that car is going to leave. But wait, we've got the guys
7 coming back out.

8 So now since that car is no longer pinned in on the
9 left and the right by other cars, I'm sure the fifth person
10 who's been in there no doubt now feels free to exit, and get
11 out, and talk to his buddies, or maybe go use the bathroom,
12 which, by the way, you only saw three come out, right? So now
13 we've got somebody still inside.

14 And you know, if this video feels a little long, ask
15 yourself, what do you think Nikolaus Spahn was feeling like
16 when there was a person with an open carry gun on their hip in
17 the bathroom, if it felt long. And somehow, he's supposed to
18 be this bad guy because he was a little cautious, or
19 suspicious, or concerned.

20 So we've got a vehicle that pulls into the side of
21 the car. This is not Marcell Solomon's vehicle, right? He
22 comes in later. But this car that just pulled in did not pull
23 in the parking stall immediately to the side of the car. This
24 car is still unencumbered as far as people parking on the left
25 or the right that could potentially box in the fifth person

1 from getting out and going to hang out with the other people,
2 because, I mean, obviously, it's a great idea in August in Las
3 Vegas to sit in the car that's turned off.

4 MR. RUGGEROLI: Judge, there's no evidence that the
5 car was turned off.

6 MR. PESCI: There's no evidence the car was on. Do
7 you see the lights?

8 MR. RUGGEROLI: Judge, he's arguing facts not in
9 evidence.

10 THE COURT: Overruled, overruled. The jury knows
11 what the evidence was.

12 MR. PESCI: Look at this. We've got people going in
13 the car. Surely, the fifth person, when the other two people
14 come over to the car, is going to say something, is going to
15 maybe get out, maybe get a little air, whether the car is on
16 or not. Well, those two left. No fifth person yet.

17 Now they're getting back in the car, each to the
18 location that we said earlier, and you don't see anybody
19 having to move over to make room. You don't see anybody
20 getting out of the car to make space for the four that get in.
21 There is no evidence anywhere in any way putting a fifth
22 person in that car.

23 Reasonable doubt is one based on reason. It must be
24 actual, not mere possibility or speculation. On August 8th,
25 2017 at 11:40, nobody had been charged, no one had been given

1 a proffer, and no one had cut a deal. And then we have that
2 Facebook Messenger thread. DeShawn's not a co-defendant
3 that's been charged and that's cut a deal. When this happens,
4 it's long before any of that. "Ask DJ if he trying to hit a
5 house tonight. Me, you, Sace, and him. Sace already said
6 yeah."

7 Now, don't rely just on the fact that it says Sace
8 or he said yeah. Rely on everything Sace did after that
9 you've seen to let you know that, in fact, Sace already did
10 say yeah. All that we just laid out that what Davontae
11 Wheeler did shows you that at this point, 12 hours before,
12 when it's represented from Ray Logan that Sace already said
13 yeah, is borne out by the evidence that you've seen.

14 "We're going to go hit a house tonight." What on
15 God's green earth are they doing at midnight outside that
16 house that isn't related to trying to rob somebody? "Me,"
17 meaning Raekwon sending it, "You," Deshawn receiving it,
18 "Sace," Davontae Wheeler, and "Him," referring back to DJ;
19 that's DeMario. That's his own brother, right? "Hit a
20 house."

21 This individual running by in and of himself is
22 enough evidence to tie this all together, but when you couple
23 it with what DeShawn said, you have the information to get you
24 to this conclusion of their guilt. He described four African
25 males all dressed in dark hoodies, he described the car, he

1 got the exact license plate.

2 So if it's not them -- you just watched the video
3 where it drove off -- what on earth happened in the next 20 to
4 25 minutes to have four other individuals who are not these
5 four defendants, and get their guns, and shoot, and then plant
6 those guns in their houses? How is that possible? How is
7 that possible?

8 He got that license plate. That's the car involved.
9 That car leads them to these defendants. It leads it to these
10 defendants back to the Short Line Express, and then to all of
11 their locations, because it's just 20 to 30 minutes later,
12 less than three miles away, when they hit a house. And as
13 they're going to hit the house, they have this poor victim
14 there. What four other guys did this? Who were the other
15 people that took over their car, had the same description,
16 used those guns, and then planted those guns in their houses?

17 It's got to be actual, not mere speculation. That
18 gun is the gun that shot him. When they shot him in the
19 stomach and they shot him in the head, there was the intent to
20 kill. That's first degree, willful, deliberate, premeditated.
21 When they attempted to rob him and he died in the process,
22 that's felony murder. They're first degree murderers, ladies
23 and gentlemen. Tell them you know that, too.

24 THE COURT: Thank you very much.

25 At this time, the Clerk will swear the Officers of

1 the Court, who will take charge of the jury panel.

2 (JUDICIAL EXECUTIVE ASSISTANT AND MARSHAL SWORN

3 TO TAKE CHARGE OF THE JURY AND ALTERNATE)

4 THE COURT: Okay. Before I do excuse the ladies and
5 gentlemen of the jury, I'm going to excuse you to go back for
6 a few minutes. I know it is late. I'm going to ask you to
7 pick your foreperson, and then you will get further
8 instructions.

9 Mr. Randall, you have been selected -- you've been
10 selected to be our alternate juror, so I'm not going to
11 require you to stay at the courthouse tonight. I'm not going
12 to discharge you yet. I'm going to ask you to -- you're going
13 to meet with Ms. Rocha out in the vestibule. She's going to
14 get your phone number; she's going to take charge of all of
15 your -- your notebook and your instructions. I just ask that
16 you don't go more than 45 minutes from the courthouse so that
17 if we need you to come back to deliberate, we can get you back
18 here quickly and --

19 JUROR NO. 14: Tonight, too?

20 THE COURT: No, it won't be tonight.

21 JUROR NO. 14: Oh, okay.

22 THE COURT: No, it won't be tonight. It would be
23 tomorrow.

24 JUROR NO. 14: Okay.

25 THE COURT: And when the jury has reached a verdict,

1 we will call you and let you know either that you've been
2 discharged or that your service is required to come back. So,
3 Mr. Randall, you can step down and can go see Ms. Rocha.

4 Ladies and gentlemen of the jury, you can collect
5 your notebooks, your instructions, and go with Officer Hawkes.
6 Again, I'm just going to ask you to select a foreperson, and
7 then you'll be excused with direction to come back tomorrow
8 morning. Thank you.

9 THE MARSHAL: Thank you. All rise for the exiting
10 jury, please. Jurors.

11 THE CLERK: Mr. Pesci, do you have a laptop?

12 MR. PESCI: No, but I'll get one.

13 THE CLERK: Okay.

14 THE COURT: Oh, of course.

15 THE CLERK: We start court at 8:30, so if you want
16 to just pop in and you can drop it off to me whenever --

17 MR. PESCI: Will do.

18 THE CLERK: -- during court. That's fine.

19 (Jury retires to deliberate at 6:13 p.m.)

20 THE COURT: Okay. The record will reflect that the
21 hearing is taking place outside the presence of the jury
22 panel.

23 MR. RUGGEROLI: Thank you, Judge.

24 THE COURT: Mr. Ruggeroli, did you have something?

25 MR. RUGGEROLI: I do want to lodge an objection as

1 to the rebuttal. Specifically, the video that was played was
2 almost in its entirety, approximate -- it was over 20 minutes.
3 So when the State did their initial closing, that video was
4 not included. My closing argument obviously just made
5 reference; didn't show the video.

6 But by the State saving that until rebuttal, it did
7 not allow an opportunity to make any comments about the
8 unilateral statements that Mr. Pesci was making, in
9 particular, one that I had to object to, because there was
10 certainly no evidence that the car had been turned off in the
11 August heat, and there was no evidence of that whatsoever, and
12 so I did object to that. And I just wanted clarify whether or
13 not the PowerPoint is being submitted for potential appellate
14 purposes.

15 THE COURT: Right. The Clerk just asked me --

16 MR. RUGGEROLI: Thank you.

17 THE COURT: -- to make sure both sides do give the
18 Clerk a copy of your PowerPoint.

19 MR. RUGGEROLI: Yes, and I didn't use one, so.

20 THE COURT: Right. Mr. Sanft did --

21 MR. RUGGEROLI: Thank you.

22 THE COURT: -- and the State.

23 MR. SANFT: Your Honor, I'm emailing mine now to
24 your court Clerk, if that's okay with the Clerk.

25 THE COURT: Thank you. Is that -- that's okay,

1 right?

2 MR. BROOKS: Sorry, Judge. What was the objection?

3 MR. RUGGEROLI: I'm objecting that by only playing
4 the -- actually, the entirety of that clip during rebuttal, it
5 did not allow the defense an opportunity to comment on the
6 statements that were being made about the content. So when
7 they went through their witnesses, they showed very short
8 portions of the video. It has been admitted. But by saving
9 it -- not using it at all in the closing, and saving it
10 exclusively for rebuttal, and then playing it in its entirety,
11 and then making -- and editorializing over it, it denied us
12 the opportunity to respond, and so I'm objecting.

13 THE COURT: Isn't that kind of rebuttal?

14 MR. RUGGEROLI: But it's not, because --

15 THE COURT: I mean --

16 MR. RUGGEROLI: It did not allow me the opportunity
17 -- he was not rebutting my commentary about the video. My
18 commentary wasn't about whether or not somebody was in the
19 car; that was never even mentioned. So --

20 THE COURT: Well, you argued to the jury that there
21 had to be five people, right?

22 MR. RUGGEROLI: Present, but I specifically did not
23 say that the individual was in the car. I know that --

24 THE COURT: Okay.

25 MR. RUGGEROLI: -- this seems like semantics in some

1 way.

2 THE COURT: Okay.

3 MR. RUGGEROLI: But I think I have to object because
4 by saving it, playing the entirety, not with any witnesses,
5 not during closing, but only in rebuttal, it denied us the
6 opportunity to editorialize or to respond to the
7 editorializing, which becomes an exclusive representation of
8 the car is off; apparently, all the windows are up. One
9 portion of that video, you cannot see at least a fourth of the
10 back seat of that car, and so I just had no opportunity to
11 make any statements about it whatsoever because it was played
12 in the entirety.

13 MR. PESCI: So, Judge, in response, I think what I'm
14 hearing is defense counsel doesn't like the statutes of the
15 State of Nevada which dictate that rebuttal is done by the
16 State of Nevada; that we open and close it. So there is no
17 law that provides them to have a surrebuttal to the State's
18 rebuttal. We have the burden of proof.

19 That is evidence that's been admitted, not objected
20 to, and anybody could have commented during their closing
21 arguments about whatever they wanted to. And I was
22 specifically responding to the argument that there is a fifth
23 person; that Adrian Peterson, the fifth person, must be the
24 one. So it is completely in response to what the arguments
25 were made, and it's completely appropriate to play it. And by

1 the way, it was eight minutes.

2 And I was trying to also make the point about how
3 long it was that Davontae Wheeler was in the bathroom that
4 Nikolaus Spahn -- and the intimation was that he's a racist
5 because he says he thinks something bad's going on because
6 someone's in the bathroom for a long time. So I wanted the
7 jury to be able to see the length of that video, feel the
8 length of that video to put in context what was said about
9 him, and also, deliberately to respond to the allegation of a
10 fifth person.

11 MR. RUGGEROLI: Just briefly, Judge. I never
12 referred to Mr. Spahn as a racist.

13 THE COURT: Well, it wasn't you.

14 MR. RUGGEROLI: I didn't --

15 MR. SANFT: I implied --

16 MR. RUGGEROLI: Okay.

17 MR. SANFT: I implied it.

18 MR. PESCI: That was implied.

19 MR. RUGGEROLI: The other thing --

20 MR. SANFT: I definitely implied it. That was me.

21 THE COURT: Right. Mr. Ruggeroli --

22 MR. RUGGEROLI: Yeah.

23 THE COURT: It was implied by Mr. Sanft. I think
24 he's -- he's willing to own up to it.

25 MR. SANFT: That is correct. That was my intention,

1 so.

2 MR. RUGGEROLI: The only other argument, Judge, is
3 I'm not objecting to the statutes; I'm objecting to evidence,
4 and that's my job. I object to saving this for rebuttal,
5 which is not actually rebuttal, you're doing a second closing
6 argument. It's not rebutting; it's going in and saving the
7 evidence until it can't be responded to. That's all.

8 THE COURT: Okay, the objection's noted. Okay. The
9 jury's going to be instructed to come back tomorrow morning at
10 9:00 A.M.

11 MR. RUGGEROLI: Thank you, Judge.

12 THE COURT: I have a criminal calendar, so,
13 obviously, it wouldn't be until after we're done if we get a
14 verdict.

15 (Court recessed at 6:18 p.m.)

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INDEX

STATE'S CLOSING ARGUMENT BY MR. BROOKS.....	129
DEFENDANT ROBERTSON'S CLOSING ARGUMENT BY MR. SANFT.....	152
DEFENDANT WHEELER'S CLOSING ARGUMENT BY MR. RUGGEROLI.....	170
STATE'S REBUTTAL CLOSING ARGUMENT BY MR. PESCI.....	187

INDEX OF WITNESSES

<u>STATE'S WITNESSES:</u>	<u>PAGE</u>
---------------------------	-------------

DETECTIVE MITCHELL DOSCH

Direct Examination by Mr. Brooks.....	4
Cross-Examination by Mr. Sanft.....	58
Cross-Examination by Mr. Ruggeroli.....	72
Redirect Examination by Mr. Brooks.....	88
Recross-Examination by Mr. Sanft.....	91

DEFENDANT WHEELER'S WITNESS:

MARCELL SOLOMON

Direct Examination by Mr. Ruggeroli.....	96
Cross-Examination by Mr. Pesci.....	98
Cross-Examination by Mr. Sanft.....	106
Redirect Examination by Mr. Ruggeroli.....	107
Recross-Examination by Mr. Pesci.....	109

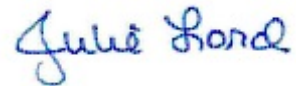
LIST OF EXHIBITS

<u>STATE'S EXHIBITS:</u>	<u>PAGE</u>
--------------------------	-------------

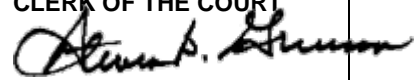
2 and 7.....	20
6 and 8.....	48
228 and 229.....	32
326.....	42

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



JULIE LORD, TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. C-17-328587-2
C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 20, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 7

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney
PARKER BROOKS
Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

LIST OF EXHIBITS

Court's Exhibit 9

Page 3

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 20, 2020, 2:07 P.M.

2 * * * * *

3 [Outside the Presence of the Jury]

4 THE COURT: Okay. The record will reflect that the hearing is taking place
5 outside the presence of the jury panel. Both defendants are present. Will the
6 attorneys state their appearances?

7 MR. PESCI: Giancarlo Pesci.

8 MR. BROOKS: Parker Brooks.

9 MR. SANFT: Michael Sanft on behalf of Mr. Robertson.

10 MR. RUGGEROLI: James Ruggeroli on behalf of Mr. Wheeler.

11 THE COURT: Okay. I did receive a communication from the jury foreperson.
12 It's been marked as Court's Exhibit Number 9.

13 **[COURT'S EXHIBIT 9 ADMITTED]**

14 THE COURT: It says, "If a person is aware of a crime being planned, but
15 does nothing and wasn't there, is he guilty of conspiracy?"

16 I've marked it and made it part of the record. I don't plan on answering
17 that question and the jury has been instructed to continue to deliberate. Any
18 objection to that?

19 MR. PESCI: Not from the State.

20 MR. SANFT: No, Your Honor.

21 MR. RUGGEROLI: No, Your Honor.

22 THE COURT: Okay. And the Clerk has the note if anyone wants to approach
23 and look at it, you're welcome to.

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MR. SANFT: Yes, Your Honor, thank you.

THE COURT: Okay? And we'll keep you posted.

PROCEEDING CONCLUDED AT 2:08 P.M.

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.



SARA RICHARDSON
Court Recorder/Transcriber



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. C-17-328587-2
C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

MONDAY, FEBRUARY 24, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 8

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney
PARKER BROOKS
Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

LIST OF EXHIBITS

Court's Exhibit 10

Page 3

1 LAS VEGAS, NEVADA, MONDAY, FEBRUARY 24, 2020, 2:05 P.M.

2 * * * * *

3 [Outside the Presence of the Jury]

4 THE COURT: Mr. Sanft, can you approach?

5 MR. SANFT: Yeah.

6 THE COURT: I showed the other attorneys. I got that from the foreperson.,
7 so I've marked it and made it part of the record. Juror Number 5 wants me to call
8 her teacher, so it's just marked as Court's Exhibit Number 10.

9 **[COURT'S EXHIBIT NUMBER 10 MARKED]**

10 THE COURT: Okay. State of Nevada versus Robertson and Wheeler,
11 they're both present with their attorneys. Will the State -- well, why don't you all
12 make your appearances.

13 MR. SANFT: Good morning -- or good afternoon, Your Honor, Michael Sanft
14 on behalf of Mr. Raekwon Robertson who's present in custody.

15 MR. RUGGEROLI: Good afternoon, Your Honor, James Ruggeroli on behalf
16 of Mr. Wheeler who's present in custody.

17 MR. PESCI: Parker Brooks and Giancarlo Pesci on behalf of the State.

18 THE COURT: Okay. We can bring them in. The jury has reached a verdict.

19 [In the presence of the jury panel]

20 THE COURT: You can have a seat when you come in. Does the State
21 stipulate to the presence of the jury panel?

22 MR. PESCI: Yes, Your Honor.

23 THE COURT: Mr. Sanft?

24 MR. SANFT: Yes, Your Honor.

25 THE COURT: Mr. Ruggeroli?

1 MR. RUGGEROLI: Yes, Your Honor.

2 THE COURT: Okay. Thank you.

3 Ms. Segura, have you been selected to be the foreperson?

4 JUROR NO. 11: Yes, ma'am.

5 THE COURT: Thank you. Has the jury reached a verdict?

6 JUROR NO. 11: Yes, ma'am.

7 THE COURT: Okay. You can hand the verdict forms to Officer Hawkes.

8 The Clerk will now read the verdict forms out loud.

9 Will the defendants and their attorney please stand for the reading of
10 the verdict. Sorry.

11 THE CLERK: District Court, Clark County, Nevada; the State of Nevada,
12 plaintiff, versus Raekwon Setrey Robertson, defendant; Case Number C328587;
13 Department Number 12; Verdict: We the jury in the above entitled case find the
14 Defendant, Raekwon Setrey Robertson, as follows:

15 Count 1, conspiracy to commit robbery, guilty of conspiracy to commit
16 robbery;

17 Count 2, attempt robbery with use of a deadly weapon, guilty of attempt
18 robbery with use of a deadly weapon;

19 Count 3, murder with use of a deadly weapon, guilty of first degree
20 murder with use of a deadly weapon; dated this 24th day of February, 2020; signed
21 by Foreperson Angela Segura.

22 District Court, Clark County, Nevada; the State of Nevada, plaintiff,
23 versus Davontae Wheeler, defendant; Case Number C328587; Department Number
24 12; Verdict: We the jury in the above entitled case find the Defendant, Davontae
25 Wheeler, as follows:

1 Count 1, conspiracy to commit robbery, guilty of conspiracy to commit
2 robbery;

3 Count 2, attempt robbery with use of a deadly weapon, not guilty;

4 Count 3, murder with use of a deadly weapon, guilty of second degree
5 murder; dated this 24th day of February, 2020; signed by Foreperson Angela
6 Segura.

7 Ladies and gentlemen of the jury, are these your verdicts as read so
8 say you one so say you all?

9 THE JURY PANEL IN UNISON: Yes.

10 THE COURT: Does either side wish to have the jury panel polled?
11 Mr. Pesci?

12 MR. PESCI: Not from the State, no, thank you, Your Honor.

13 THE COURT: Mr. Sanft?

14 MR. SANFT: No, Your Honor.

15 THE COURT: Mr. Ruggeroli?

16 MR. RUGGEROLI: Yes, Your Honor.

17 THE COURT: Okay, at this time, ladies and gentlemen, the Clerk is going to
18 ask a question. I just ask that you respond "yes" or "no."

19 THE CLERK: Juror Number 1, Vito Casucci, are these your verdicts as read?

20 JUROR NO. 1: Yes.

21 THE CLERK: Juror Number 2, Sharon Morrison, are these your verdicts as
22 read?

23 JUROR NO. 2: Yes.

24 THE CLERK: Juror Number 3, Aria Flores-Virgen, are these your verdicts as
25 read?

1 JUROR NO. 3: Yes.

2 THE CLERK: Juror Number 4, Suzanne Quinn, are these your verdicts as
3 read?

4 JUROR NO. 4: Yes.

5 THE CLERK: Juror Number 5, Camille Estrella, are these your verdicts as
6 read?

7 JUROR NO. 5: Yes.

8 THE CLERK: Juror Number 6, Danilo Rodriguez, are these your verdicts as
9 read?

10 JUROR NO. 6: Yes.

11 THE CLERK: Juror Number 7, Jonathan Salazar, are these your verdicts as
12 read?

13 JUROR NO. 7: Yes.

14 THE CLERK: Juror Number 8, Lisa Cook, are these your verdicts as read?

15 JUROR NO. 8: Yes.

16 THE CLERK: Juror Number 9, Markdelan Deperio, are these your verdicts as
17 read?

18 JUROR NO. 9: Yes.

19 THE CLERK: Juror Number 10, Roberta Bell, are these your verdicts as
20 read?

21 JUROR NO. 10: Yes.

22 THE CLERK: Juror Number 11, Angela Segura, are these your verdicts as
23 read?

24 JUROR NO. 11: Yes.

25 THE CLERK: Juror Number 12, Maria Moreno, are these your verdicts as

1 read?

2 JUROR NO. 12: Yes.

3 THE COURT: Okay. At this time the Clerk will record the verdicts in the
4 official record of the court. At this time, ladies and gentlemen, I am going to
5 discharge you from your service. You are no longer under the admonition not to
6 discuss the case with anyone. But you're under no obligation to discuss the case
7 with anyone.

8 You are going to go back to the jury deliberation room at which time
9 you'll be given further instructions but you are going to be discharged. I do allow
10 both sides, the attorneys, an opportunity to speak to the jury panel. But again, I just
11 want to make sure you understand, it's up to you whether you discuss this case with
12 anyone. I do want to thank you very much for your willingness to be here and your
13 service to this court. Thank you very much and you are discharged as jurors.

14 THE MARSHAL: Thank you. All rise for the exiting jury please.

15 Jurors, please go with Ms. Rocha.

16 [Outside the presence of the jury]

17 THE MARSHAL: Thank you, everyone, please be seated.

18 THE COURT: Okay. The record will reflect that the hearing is taking place
19 outside the presence of the panel. Does the State wish to be heard on their
20 custodial status?

21 MR. PESCI: Judge, we would ask that they be remanded without bail.

22 THE COURT: Mr. Sanft? Mr. Ruggeroni?

23 MR. SANFT: We'll submit, Your Honor.

24 MR. RUGGEROLI: Submit it.

25 THE COURT: Okay. They'll both be remanded without bail pending

1 sentencing and the matter is referred to Parole and Probation and it's set for
2 sentencing.

3 THE CLERK: April 15th, 8:30.

4 MR. RUGGEROLI: Could I have that date again please?

5 THE CLERK: April 15th, 8:30 a.m.

6 THE COURT: And I'm assuming the attorneys for both sides do want that
7 opportunity if the jury wants to speak to you? Yes?

8 MR. SANFT: Sure.

9 THE COURT: Okay. We'll let you know.

10 MR. PESCI: Yeah, we'll see.

11 MR. RUGGEROLI: Judge -- Judge, I apologize.

12 THE COURT: I'm sorry.

13 MR. RUGGEROLI: No, Mr. Wheeler is asking to request that he have some
14 form of bail.

15 THE COURT: Have some what?

16 MR. RUGGEROLI: Form of bail. I submitted it and I would just like to point
17 out the jury did come back with a lesser verdict. He's asking that you just have a
18 bail set for him pending sentencing.

19 THE COURT: Okay.

20 MR. PESCI: Judge, the State opposes it. The defendant's been convicted of
21 a non-probationable offense where he must go to prison for at least 10 years and a
22 potential life sentence. So there is a flight risk and concern from the State, and we
23 ask that it remain no bail.

24 ///

25 ///

1 THE COURT: Okay. He'll be remanded without bail pending sentencing.
2 Thank you.

3 PROCEEDING CONCLUDED AT 2:13 P.M.

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19
20 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
21 video recording of this proceeding in the above-entitled case.

22 

23 SARA RICHARDSON
24 Court Recorder/Transcriber
25

@ 2:11pm

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

FEB 24 2020

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
) Plaintiff,)
)
) -vs-)
)
) RAEKWON SETREY ROBERTSON,)
)
) Defendant.)

BY, MARY PANNULLO, DEPUTY

CASE NO: C-17-328587-2

DEPT NO: XII

VERDICT

We, the jury in the above entitled case, find the Defendant RAEKWON SETREY ROBERTSON, as follows:


COUNT 1 – CONSPIRACY TO COMMIT ROBBERY, *(please check the appropriate box, select only one)*

- ☒ Guilty of Conspiracy to Commit Robbery
- ☐ Not Guilty

COUNT 2 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON, *(please check the appropriate box, select only one)*

- ☒ Guilty of Attempt Robbery with Use of a Deadly Weapon
- ☐ Guilty of Attempt Robbery
- ☐ Not Guilty

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C-17-328587-2
VER
Verdict
4900312

AA 1572

COUNT 3 – MURDER WITH USE OF A DEADLY WEAPON, (*please check the appropriate box, select only one*)

- ☒ Guilty of First Degree Murder with Use of a Deadly Weapon
- ☐ Guilty of First Degree Murder
- ☐ Guilty of Second Degree Murder with Use of a Deadly Weapon
- ☐ Guilty of Second Degree Murder
- ☐ Not Guilty

DATED this 24 day of February, 2020


FOREPERSON

Felony/Gross Misdemeanor

COURT MINUTES

March 12, 2020

C-17-328587-2 State of Nevada
 vs
 Raekwon Robertson

March 12, 2020 08:30 AM Status Check: Remaining Counts

HEARD BY: Leavitt, Michelle COURTROOM: RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

RECORDER: Scott, Deloris

REPORTER:

PARTIES PRESENT:

Giancarlo Pesci Attorney for Plaintiff

Michael W. Sanft Attorney for Defendant

Raekwon Setrey Robertson Defendant

State of Nevada Plaintiff

JOURNAL ENTRIES

Second Amended Superseding Indictment FILED IN OPEN COURT.

NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT.
DEFT. ROBERTSON ARRAIGNED AND PLED GUILTY TO COUNT 4 - CONSPIRACY TO
COMMIT ROBBERY (F) and COUNT 5 - ROBBERY WITH USE OF A DEADLY WEAPON (F).
Court ACCEPTED plea, and, ORDERED, previously set Sentencing date STANDS.

CUSTODY

04/15/20 8:30 AM SENTENCING

ORIGINAL

1 IND

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #007135
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

MAR 12 2020

BY, 
HALY PANNULLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -VS-

CASE NO: C-17-328587-2

DEPT NO: XII

12
13 RAEKWON SETREY ROBERTSON, aka,
14 Raekwon Robertson, #8252804

15 Defendant.

SECOND AMENDED
SUPERSEDING
INDICTMENT

C-17-328587-2
SIND
Superseding Indictment
4903315



16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss.

18 The Defendant above named, RAEKWON SETREY ROBERTSON, aka, Raekwon
19 Robertson, accused by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO
20 COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147) and
21 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380,
22 193.165 - NOC 50138), committed at and within the County of Clark, State of Nevada, on or
23 about August 2, 2017, as follows:

24 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

25 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
26 about August 2, 2017 willfully, unlawfully, and feloniously conspire with an unknown co-
27 conspirator to commit a robbery, by the conspirators committing the acts as set forth in Count
28 2, said acts being incorporated by this reference as though fully set forth herein.

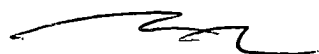
5 MY
1 COUNT 2- ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did with
3 an unknown co-conspirator, willfully, unlawfully, and feloniously take personal property, to
4 wit: a wallet, cellular telephone, and makeup case, from the person of MARIAH ROMATKO
5 and/or U.S. Currency, from the person of AGNES STEIN, or in their presence, by means of
6 force or violence, or fear of injury to, and without the consent and against the will of MARIAH
7 ROMATKO and/or AGNES STEIN, with use of a deadly weapon, to wit: a handgun, the
8 Defendant and/or an unnamed co-conspirator being criminally liable under one or more of the
9 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
10 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
11 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
12 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
13 crime, with the intent that this crime be committed.

14 DATED this ____ day of March, 2020.

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

18 BY


19 GIANCARLO PESCI
20 Chief Deputy District Attorney
21 Nevada Bar #007135
22
23
24
25
26

27 17BGJ017B/17F14369B/dd-MVU
28 LVMPD EV#1708024571; 1708090029
(TK3)

ORIGINAL

GPA

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #7135
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

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

MAR 12 2020
BY, HALY PANNULLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

C-17-328587-2
GPA
Guilty Plea Agreement
4903325



THE STATE OF NEVADA,
Plaintiff,

-vs-

CASE NO: C-17-328587-2

DEPT NO: XII

RAEKWON SETREY ROBERTSON, aka
Raekwon Robertson, #8252804

Defendant.

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: COUNT ⁴1 - CONSPIRACY TO COMMIT
ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147) and COUNT ⁵2
ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380,
193.165 - NOC 50138), as more fully alleged in the charging document attached hereto as
Exhibit "1".

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

The State retains the right to argue. Both parties stipulate to concurrent time to the
charges the Defendant was previously found guilty of, at trial, in the instant case.

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

I understand and agree that, if I fail to interview with the Department of Parole and

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

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

11 CONSEQUENCES OF THE PLEA

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

14 I understand that as a consequence of my plea of guilty, the Court must sentence me to
15 imprisonment in the Nevada Department of Corrections, as follows:

16 **COUNT 1** - for a minimum term of not less than ONE (1) year and a maximum term of not
17 more than SIX (6) years. The minimum term of imprisonment may not exceed forty percent
18 (40%) of the maximum term of imprisonment. I understand that I may also be fined up to
19 \$5,000.00.

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

23 **COUNT 2** - for a minimum term of not less than TWO (2) years and a maximum term of not
24 more than FIFTEEN (15) years, plus a consecutive term of ONE (1) year to FIFTEEN (15)
25 years for the deadly weapon enhancement. The minimum term of imprisonment may not
26 exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may
27 also be required to pay a fine.

28 I understand that I am not eligible for probation for the offense to which I am pleading

1 guilty.

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

3 I understand that, if appropriate, I will be ordered to make restitution to the victim of
4 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
5 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
6 reimburse the State of Nevada for any expenses related to my extradition, if any.

7 I understand that I must submit to blood and/or saliva tests under the Direction of the
8 Division of Parole and Probation to determine genetic markers and/or secretor status.

9 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
10 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or
11 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation
12 and may receive a higher sentencing range.

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

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

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

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

22 I understand that if the offense(s) to which I am pleading guilty was committed while I
23 was incarcerated on another charge or while I was on probation or parole that I am not eligible
24 for credit for time served toward the instant offense(s).

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

- 27 1. The removal from the United States through deportation;
- 28 2. An inability to reenter the United States;

3. The inability to gain United States citizenship or legal residency;
4. An inability to renew and/or retain any legal residency status; and/or
5. An indeterminate term of confinement, with the United States Federal Government based on my conviction and immigration status.

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

I understand that the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the District Attorney has specifically agreed otherwise, the District Attorney may also comment on this report.

WAIVER OF RIGHTS

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

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.
2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.
6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction,

1 including any challenge based upon reasonable constitutional,
2 jurisdictional or other grounds that challenge the legality of the
3 proceedings as stated in NRS 177.015(4). However, I remain free to
4 challenge my conviction through other post-conviction remedies
5 including a habeas corpus petition pursuant to NRS Chapter 34.

6 VOLUNTARINESS OF PLEA

7 I have discussed the elements of all of the original charge(s) against me with my
8 attorney and I understand the nature of the charge(s) against me.

9 I understand that the State would have to prove each element of the charge(s) against
10 me at trial.

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

13 All of the foregoing elements, consequences, rights, and waiver of rights have been
14 thoroughly explained to me by my attorney.

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

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

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

23 ///

24 ///

25 ///

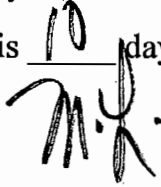
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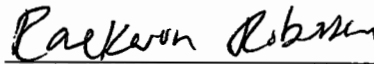
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1 My attorney has answered all my questions regarding this guilty plea agreement and its
2 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

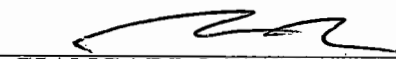
3 DATED this 10 day of March, 2020.

4 

5 

6 RAEKWON SETREY ROBERTSON, aka
7 Raekwon Robertson
8 Defendant

9 AGREED TO BY:

10 
11 GIANCARLO PESCI
12 Chief Deputy District Attorney
13 Nevada Bar #7135
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1 CERTIFICATE OF COUNSEL:

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

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

Dated: This 10 day of March, 2020.


MICHAEL SANFT, ESQ.

17F14369B/dd/MVU

1 IND
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #007135
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

CASE NO: C-17-328587-2

DEPT NO: XII

13 RAEKWON SETREY ROBERTSON, aka,
14 Raekwon Robertson, #8252804

15 Defendant.

SECOND AMENDED
SUPERSEDING
INDICTMENT

16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss.

18 The Defendant above named, RAEKWON SETREY ROBERTSON, aka, Raekwon
19 Robertson, accused by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO
20 COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147) and
21 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380,
22 193.165 - NOC 50138), committed at and within the County of Clark, State of Nevada, on or
23 about August 2, 2017, as follows:

24 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

25 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
26 about August 2, 2017 willfully, unlawfully, and feloniously conspire with an unknown co-
27 conspirator to commit a robbery, by the conspirators committing the acts as set forth in Count
28 2, said acts being incorporated by this reference as though fully set forth herein.

EXHIBIT 1

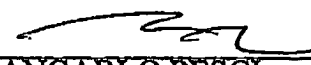
5
1 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did with
3 an unknown co-conspirator, willfully, unlawfully, and feloniously take personal property, to
4 wit: a wallet, cellular telephone, and makeup case, from the person of MARIAH ROMATKO
5 and/or U.S. Currency, from the person of AGNES STEIN, or in their presence, by means of
6 force or violence, or fear of injury to, and without the consent and against the will of MARIAH
7 ROMATKO and/or AGNES STEIN, with use of a deadly weapon, to wit: a handgun, the
8 Defendant and/or an unnamed co-conspirator being criminally liable under one or more of the
9 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
10 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
11 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
12 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
13 crime, with the intent that this crime be committed.

14 DATED this _____ day of March, 2020.

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

17
18 BY


19 GIANCARLO PESCI
Chief Deputy District Attorney
20 Nevada Bar #007135
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27 17BGJ017B/17F14369B/dd-MVU
28 LVMPD EV#1708024571; 1708090029
(TK3)



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBERTSON and
DAVONTAE AMARRI WHEELER,

Defendants.

CASE NO. C-17-328587-2
C-17-328587-3

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, JUNE 11, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
SENTENCING**

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney
PARKER BROOKS
Deputy District Attorney

For Defendant Robertson:

MICHAEL W. SANFT, ESQ.

For Defendant Wheeler:

JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 11, 2020, 12:48 P.M.

2 * * * * *

3 THE COURT: State of Nevada versus Raekwon Robertson and Davontae
4 Wheeler, case C328587.

5 THE CLERK: All of the parties are on Bluejeans, Judge.

6 THE COURT: Okay. So Mr. Robertson and Mr. Wheeler are both present
7 and in custody.

8 Mr. Robertson, is there any legal cause or reason why judgment should
9 not be pronounced against you at this time?

10 DEFENDANT ROBERTSON: No.

11 THE COURT: Mr. Robertson, any reason why we shouldn't proceed with
12 sentencing?

13 DEFENDANT ROBERTSON: No, there is not.

14 THE COURT: Okay. By virtue of the jury verdict and guilty plea agreement in
15 this matter, I hereby adjudicate you guilty of Counts 1 and 4, conspiracy to commit
16 robbery; Count 2, attempt robbery with use of a deadly weapon; Count 3, first
17 degree murder with use of a deadly weapon; and Count 5, robbery with use of a
18 deadly weapon.

19 Does the State wish to be heard on this?

20 MR. PESCI: Yes, Your Honor. I would note that I believe we have online a
21 victim speaker.

22 THE COURT: Okay.

23 MR. PESCI: Which is John Relato, and so I would ask that pursuant to
24 statute he would be able to go last.

25 THE COURT: Okay. And is the victim appearing by Bluejeans?

1 MR. PESCI: I saw -- I thought I saw his name listed, but, yes.

2 THE COURT: Okay.

3 MR. RELATO: Yes, sir. I'm in Bluejeans right now.

4 THE COURT: Okay. Thank you.

5 Go ahead, Mr. Pesci.

6 MR. PESCI: Thank you very much, Your Honor. You know the case, so I
7 won't go over the facts again with you. In looking at the Department of Parole and
8 Probation's recommendation, and here's the thing I want to underscore, the State
9 stands by its recommendation and negotiation as far as Counts 4 and 5. Those
10 counts are to run concurrent to what you give for Counts 1, 2, and 3. I think the
11 sentencing put forth by Parole and Probation as far as Counts 4 and 5 are
12 appropriate as far as that length of sentence and as far as 4 and 5 running
13 consecutive to each other. But they should, altogether, run concurrent.

14 When you look at what your decision is as far as the sentence on the
15 murder, P and P is recommending a life sentence and that's appropriate as a life
16 has been taken. As far as the deadly weapon enhancement, they're looking at a
17 36-to-240 months. And so when you take into consideration this particular
18 defendant, you know, he really does not have much of a criminal history before.
19 Obviously, that inures to his benefit in this particular situation when you're looking at
20 that deadly weapon enhancement. The problem is, however, is the other case,
21 Counts 4 and 5, I mean, it's a part of this case, but Counts 4 and 5 where he did use
22 a weapon in another case.

23 And then I think what's really, really telling and why you should deviate
24 from the Division's recommendation and go higher on the deadly weapon
25 enhancement is in fact his conviction under C347711 where, as I read it, it was an

1 attempt possession of a dangerous weapon or facsimile by incarcerated person. So
2 that's a charge he picked up in the Detention Center after his arrest on this homicide
3 prior to our sentencing. From Odyssey, it appears he was on calendar today on
4 that, so I'm not sure if he was adjudicated, that was also to run concurrent. So, but I
5 think that kind of speaks to the risks associated with him and the underlying facts as
6 far as, you know, that first shot is the shot that comes from his weapon that
7 incapacitates the victim and puts him in the position where he gets that head shot.

8 And so I think it would be appropriate to go higher on the deadly
9 weapon enhancement and otherwise, those -- those Counts 1, 2, and 3, they should
10 run consecutive and we'll submit it to your discretion.

11 And right now do you want me to just speak about Raekwon
12 Robertson's?

13 THE COURT: Sure, yeah, just Raekwon.

14 MR. PESCI: The other thing, for Mr. Robertson's benefit, I -- I don't know how
15 to answer his letters. He's written me a letter. He was looking for the P.S.I. I just
16 wanted to let him know, I cannot communicate with him because he's represented
17 by counsel. But as soon as I got the letter, I sent a copy of the P.S.I. to Mr. Sanft
18 who I believe already had it. But it's just I'm not allowed to talk to him and so that's
19 why I couldn't bring him his P.S.I., but I sent it to his counsel.

20 THE COURT: Thank you. Thank you.

21 Mr. Robertson, do you want to say anything?

22 DEFENDANT ROBERTSON: Yeah, I received my P.S.I. yesterday, I sent the
23 letter on Friday. I basically sent him the letter because I couldn't get in contact with
24 my attorney and I didn't want my sentencing day to get pushed back because I
25 didn't have my P.S.I.

1 THE COURT: Okay. Do you want --

2 MR. PESCI: Which he said, and I just -- I just didn't -- I couldn't respond or
3 communicate with him so I wanted to explain that to him here today.

4 THE COURT: Okay.

5 DEFENDANT ROBERTSON: That's fine.

6 THE COURT: Mr. Robertson, are you okay to go forward or do you need
7 additional time?

8 DEFENDANT ROBERTSON: No, I got it. I got it. I received it yesterday.

9 THE COURT: Okay. Do you want to say anything?

10 DEFENDANT ROBERTSON: No. I'm -- no.

11 THE COURT: Okay. Mr. Sanft?

12 MR. SANFT: Do you mind if I --

13 THE COURT: No, go ahead.

14 MR. SANFT: Your Honor, I think in this matter with regards to Mr. Robertson
15 the Court has -- had heard the facts in this case during the course of the trial. I've
16 spoken with Mr. Robertson and explained to him what his options are at this
17 particular point and based upon the recommendation of P and P, you know, the
18 bigger issue that we have is that he was convicted of a first degree kid -- first degree
19 murder with use of a deadly weapon, so obviously the suggestion at this particular
20 point is a life-tail or a life sentence. The question then becomes whether or not it's
21 20-to-life plus a consecutive whatever that looked like on the other end.

22 We're going to submit everything to the Court. And the reason for that
23 is this, Mr. Robertson is intent on filing an appeal, is intent on going forward with that
24 aspect of it. I believe that ultimately what we have here is a situation where
25 Mr. Robertson's in a position where the reason why he's not talking to the Court or

1 saying anything to the Court is because he wants to reserve that -- that right.

2 With that being said, the suggestion that I think -- at this particular point
3 is that we don't run the sentences consecutive to one another in terms of the
4 charges, we instead focus on I believe it's Count 3, which is the --

5 THE COURT: The murder.

6 MR. SANFT: -- the murder with use and we run all the other sentences
7 concurrent to that -- to that charge. That would be my only request at this particular
8 point.

9 THE COURT: Okay.

10 MR. SANFT: And we'll submit it.

11 THE COURT: Thank you.

12 MR. PESCI: And, Judge, if I could really fast, I apologize, he also has eight
13 additional days credit for time served based on the timing of our sentencing. So it
14 looks like the P.S.I. says 1,024 as of June 3rd, but now we're at the 11th, and so he
15 should -- I think that adds up to 1,032. Is that right, Mr. Sanft?

16 MR. SANFT: We have no objection to 1,032, Your Honor.

17 THE COURT: Okay. And do you want to call your first speaker?

18 MR. PESCI: Or do you want him at the end, Your Honor? Because we still
19 have to do Mr. Wheeler and pursuant to statute, the speaker gets to go last.

20 THE COURT: Okay. All right. I'm assuming you have no objection to that?

21 MR. SANFT: No, Your Honor.

22 THE COURT: Okay. Mr. Robertson, in accordance with the laws of the State
23 of Nevada, this Court does now sentence you as follows, in addition to the
24 administrative assessment, the D.N.A. fee, and the collection fee, you'll be required
25 to submit to genetic marker testing if you've not already done so. As to Count 1, the

1 Court's going to sentence you to 24 to 72 months in the Nevada Department of
2 Corrections. As to Count 2, the Court's going to sentence you to 48 to 120 months,
3 plus a consecutive 48 to 120 months for the deadly weapon enhancement. As to
4 Count 3, the Court's going to sentence you to life in the Nevada Department of
5 Corrections with parole eligibility beginning after a minimum of 20 years has been
6 served, and an 8-to-20 years for the deadly weapon enhancement to run
7 consecutive. As to Count 4, the Court's going to sentence you to 24 to 72 months;
8 as to Count 5, 48 to 180 months, plus a consecutive 48 to 180 months for the deadly
9 weapon enhancement.

10 They're all to run concurrent for an aggregate of 28 to life in the Nevada
11 Department of Corrections, impose restitution as to Count 5 of \$200.00 and then
12 restitution of 8,729.53 joint and several with your codefendant as to the other
13 charges. And he has 1,032 days credit for time served.

14 MR. SANFT: Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. PESCI: Thank you, Your Honor.

17 THE COURT: Mr. Wheeler.

18 DEFENDANT WHEELER: Yes. Yes, Your Honor.

19 THE COURT: You're ready to go forward?

20 DEFENDANT WHEELER: Yes, ma'am. I am.

21 THE COURT: Okay. By virtue of the jury verdict returned in this matter, I
22 hereby adjudicate you guilty of Count 1, conspiracy to commit robbery; and Count 3,
23 second degree murder; and pursuant to the verdict, Count 2 will be dismissed.

24 Does the State wish to be heard?

25 MR. PESCI: Yes, Your Honor. Your Honor, what I would ask you to do is

1 follow the Department's recommendation as far as Count 1 being 24 to 72 months. I
2 think that's appropriate. However, I would ask you to part company with the
3 Department's recommendation on Count 3, as they do not recommend a life-tail. I
4 think it would inappropriate for the codefendant to get the life-tail and this one to not.
5 I understand that he has been convicted of second degree murder, but nonetheless,
6 a life was taken and it's appropriate that there should be at least a life-tail. So -- and
7 it's also appropriate from P and P to run it consecutive. So I think Count 3 should be
8 a 10-to-life and that should run consecutive to the 24-to-72 on Count 1.

9 As far as the restitution, I'd ask for the same joint and several. And
10 then I'm sure Mr. Ruggeroli, I hope he's got it figured out, the credit for time served
11 because the P.S.I. had it factored out to an April 15th date and obviously we're a little
12 bit further along, so whatever that number is I'll defer it to Mr. Ruggeroli and ask that
13 the victim's cousin, who testified at trial, who's on Bluejeans, gets to speak last.

14 THE COURT: Okay. Mr. Wheeler, do you want to say anything?

15 DEFENDANT WHEELER: No. No, ma'am.

16 THE COURT: Okay. Thank you.

17 Mr. Ruggeroli.

18 MR. RUGGEROLI: Thank you, Your Honor. Judge, I would like to point out a
19 number of factors in mitigation for Mr. Wheeler. Judge, you know this, but he was
20 not alleged to have participated in the other counts that were referenced regarding
21 the codefendant. So his allegations were limited to this case, Judge.

22 The jury has spoke and I'm going to ask you to take a look at what they
23 actually said in their verdict. I don't want to go through a lot of the facts, but some of
24 the things are appropriate for Your Honor to consider. I would like to point out some
25 background on Mr. Wheeler's behalf, Judge. He has no significant criminal history

1 whatsoever. He has no prior felonies, no prior gross misdemeanors, and no other
2 cases, as I mentioned that he was alleged to have been involved in regarding this
3 period of time.

4 Judge, he has asserted his innocence. But we do want to point some
5 things out in terms of expressing our condolences to the victim and the victim's
6 family. Judge, the jury found kind of interesting conclusion for Mr. Wheeler's counts
7 because they did find that he was part of a conspiracy, however, they found him
8 guilty of second degree murder but not having a weapon involved and what's
9 interesting about that, Judge, is that the State had presented their case that
10 Mr. Wheeler was armed. They believed and presented it to the jury that he was also
11 present at the time of the shooting, Judge. It very much appears that the jury did not
12 agree with their version of events in a number of ways, and most importantly, they
13 have acquitted him of the deadly weapon and I do think that that is very significant.

14 Judge, again, we want to express our condolences to the family, but
15 also mention, the jury did not find that Mr. Wheeler was a direct participant with the
16 murder in this case. We are going to take those issues up on appeal. In looking at
17 some additional factors for mitigation, Judge, I would like to point out that
18 Mr. Wheeler was only 22 years old at the time of this offense. He has strong family
19 and friend support. I did provide Your Honor with some letters from friends and
20 family.

21 Additionally, I believe his mother and another family member are
22 present in court today. They've been present on almost every appearance
23 throughout his litigation in this case, Judge. He has that family support, friend
24 support, church support in place for when he is eventually released from custody
25 and I'm going to ask Your Honor to give him a sentence that allows him the

1 opportunity to have a future and to get out and to utilize those resources and to
2 continue being a part of that family and his community the way he was before these
3 allegations came about.

4 Mr. Wheeler is a father to two very young children. Judge, those letters
5 show that he is -- he was a good father and wants to be available for those children.
6 He has a disabled 75-year-old grandmother. His mother, who, again, I believe is
7 present in court, has poor health. Mr. Wheeler previously provided her with
8 caretaking and was a tremendous asset to her in her life. Additionally, Your Honor,
9 Mr. Wheeler helped out his family and the community. He helped out the church.
10 He has a history of employment prior to being arrested in this case.

11 He has also served full time as a personal care assistant for the Addus,
12 and that's A-D-D-U-S, Home Healthcare. Judge, he provided to the church and the
13 community. We have provided letters. During his time in custody, family has noted
14 that he has exhibited a clear display of change and maturity. He has plans for the
15 future including being a part of helping African-Americans stay out of trouble, stay
16 out of jail, contributing to the church and the community, taking care of his children,
17 and loving his family the best way that he knows how, Your Honor.

18 Parole and Probation is recommending 24 to 72 and then they are very
19 importantly recommending a 10-to-25-year definite term on the second degree
20 murder, Judge. Now, they are asking for that to be run consecutive. It is our
21 request that you would follow P and P's recommendation but run the counts
22 concurrent. Again, Judge, we do want to express our condolences to the family. I
23 calculated 1,034 days and I do believe that that is the correct number.

24 Finally, Judge, I do need to respectfully move to withdraw. Ms. Sandra
25 Stewart will be taking over as appellate counsel. And I believe she's already

1 submitted an order to proceed really immediately after the sentencing this afternoon.

2 THE COURT: Okay. Thank you very much.

3 The State may call their witness, their first witness.

4 MR. PESCI: Judge, I believe Mr. Relato is online. I would also just, really
5 fast, as far as the credit for time served, I think it's the same amount of time as the
6 codefendant because I think they were arrested at the same time, same day.

7 THE COURT: Okay. So 1,032?

8 MR. PESCI: That's what I believe but we'll submit it to the Court.

9 THE COURT: Okay. What's his name again?

10 THE RECORDER: Relato, John Relato.

11 THE COURT: John Relato.

12 MR. RELATO: Yes, ma'am.

13 THE COURT: Mr. Relato, are you appearing by video and audio?

14 MR. RELATO: What did -- what -- can I -- do I need to attend on video?

15 THE COURT: Well, I don't know how I'm going to swear you in.

16 MR. RELATO: Oh, I'm sorry. Okay. I'll --

17 THE COURT: Oh, there you go. Okay. All right. Will you please raise your
18 right hand so you can be sworn?

19 **JOHN RELATO,**

20 [having been called as a speaker and first duly sworn, testify as follows:]

21 THE CLERK: Can you please state and spell your first and last name for the
22 record.

23 THE SPEAKER: John Relato.

24 THE CLERK: Go ahead and spell, please.

25 THE SPEAKER: First name John, J-O-H-N, last name Relato, R-E-L-A-T-O.

1 THE CLERK: Thank you.

2 THE COURT: Go ahead, Mr. Relato.

3 THE SPEAKER: So I was told that I was -- I was to be given time to say a
4 few words --

5 THE COURT: Sure.

6 THE SPEAKER: -- regarding my cousin. My -- I'm -- the victim, Gabriel
7 Valenzuela, is my cousin, but practically he was my brother. I grew up with him. I
8 celebrated birthdays, graduations with him and my own mother has practically
9 raised him as her own. It really broke our hearts to lose him that night. I recall
10 nights when my own mom and his mom, who is standing right besides me actually,
11 would cry themselves to sleep every night due to the traumatic event of him losing
12 his life protecting my family.

13 I'm sorry, this is really hard for me.

14 THE COURT: That's okay.

15 THE SPEAKER: My own sister who is autistic would need assistance for
16 performing certain tasks and Gabriel was -- was actually, practically his -- her
17 caretaker. He'd take her to groceries, Opportunity Village events, and to her friends
18 for social gatherings.

19 On top of that, he was also a nursing student at the College of Southern
20 Nevada. I may not be there with him as a nursing student, but I thought a few words
21 from -- a few letters from his friends and cohorts describing him.

22 He is a great friend with so much to offer for his community. He is
23 funny, kind, and a warm person, a member of the student nursing -- student nurse
24 association and willing to step in when -- when needed. Gabe sets an example of
25 what life could have been when it's full of happiness, love, and positivity. And he -- I

1 guess this is my favorite one, He was an angel among us.

2 He grew up wanting to be a nurse. His mom worked so hard as a
3 caretaker to pay for his tuition and fulfill his dreams. That traumatic event that night
4 delayed her scheduled surgery to the point that it worsened her condition. It pains
5 me to attend these court events, but I'm just -- I am here to see that justice is carried
6 out for my cousin's murder. Thank you, Judge.

7 THE COURT: Thank you, very much.

8 THE SPEAKER: Thank you, Your Honor.

9 THE COURT: Anything else? Okay. In accordance with the laws of the
10 State of Nevada, this Court does now sentence you as follows, in addition to the
11 administrative assessment, the D.N.A. fee, and the collection fee, you'll be required
12 to submit to genetic marker testing. As to Count 1, the Court's going to sentence
13 you to 24 to 72 months in the Nevada Department of Corrections. As to Count 3,
14 the Court's going to sentence you to life in the Nevada Department of Corrections
15 with parole eligibility beginning after a minimum of 10 years has been served.
16 Count 3 to run consecutive to Count 1. He has 1,032 days credit for time served.
17 And restitution in the amount of \$8,729.53 will be imposed and it's joint and several
18 with your codefendant, for an aggregate term of 144 months to life.

19 Thank you.

20 MR. PESCI: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. RUGGEROLI: Judge, may I be allowed to withdraw, please?

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THE COURT: Yes. Yes, your motion to withdraw is granted. Thank you.
MR. RUGGEROLI: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 1:08 P.M.

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.



SARA RICHARDSON
Court Recorder/Transcriber

Heather S. Smith
CLERK OF THE COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RAEKWON SETREY ROBERTSON
aka Raekwon Robertson
#8252804

Defendant.

CASE NO. C-17-328587-2

DEPT. NO. XII

JUDGMENT OF CONVICTION
(JURY TRIAL / PLEA OF GUILTY)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 - CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 2 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.330 193.165; COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 - CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 2 - ATTEMPT ROBBERY WITH USE OF A DEADLY

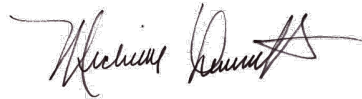
WEAPON (Category B Felony) in violation of NRS 200.380, 193.330 193.165;
COUNT 3 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON
(Category A Felony) in violation of NRS 200.010, 200.030, 193.165; Defendant PLED
GUILTY to COUNT 4 - CONSPIRACY TO COMMIT ROBBERY (Category B Felony)
in violation of NRS 200.380, 199.480; and COUNT 5 - ROBBERY WITH USE OF A
DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165;
thereafter, on the 11th day of June, 2020, the Defendant was present in court for
sentencing with counsel MICHAEL W. SANFT, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
addition to the \$25.00 Administrative Assessment Fee, \$200.00 Restitution as to
COUNT 5, \$8,729.53 Restitution to be paid Jointly and Severally with Co-Defendant,
and \$150.00 DNA Analysis Fee including testing to determine genetic markers plus
\$3.00 DNA Collection Fee, the Defendant is sentenced to the Nevada Department of
Corrections (NDC) as follows: **COUNT 1** - a MAXIMUM of SEVENTY-TWO (72)
MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS;
COUNT 2 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a
MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE
term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility
of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon; **COUNT 3** - LIFE
with a MINIMUM parole eligibility of TWENTY (20) YEARS, plus a CONSECUTIVE
term of TWENTY (20) YEARS with a MINIMUM parole eligibility of EIGHT (8) YEARS
for the Use of a Deadly Weapon; **COUNT 4** - a MAXIMUM of SEVENTY-TWO (72)
MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; and

1 **COUNT 5** - a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a
2 MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE
3 term of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of
4 FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon; ALL COUNTS to run
5 CONCURRENT; with ONE THOUSAND THIRTY-TWO (1,032) DAYS credit for time
6 served. The AGGREGATE TOTAL sentence is LIFE with a MINIMUM of TWENTY-
7 EIGHT (28) YEARS.
8

9
10 DATED this _____ day of June, 2020.

Dated this 17th day of June, 2020



C8B F6F 4C9B EDCD
Michelle Leavitt

MICHELLE LEAVITT
DISTRICT COURT JUDGE

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada

CASE NO: C-17-328587-2

vs

DEPT. NO. Department 12

Raekwon Robertson

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Judgment of Conviction was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Envelope ID: 6195325

Service Date: 6/17/2020

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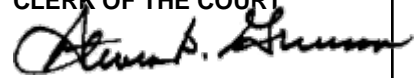
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**IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

RAEKWON SETREY ROBINSON,

Defendant.

Case No.
Dep't No.

C-17-328587-2
XII

NOTICE OF APPEAL

Notice is hereby given that Raekwon Robertson, defendant in the above-entitled action, appeals to the Supreme Court of Nevada from the Judgment of Conviction filed June 17, 2020.

DATED this 24 June, 2020.

/s/ Michael Sanft

MICHAEL W. SANFT, ESQ.
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411 E. Bonneville Ave. Ste. 330
Las Vegas, NV 89101
Tel. (702) 497-8008
Fax. (702) 297-6582
Attorney for Raekwon Robertson

CERTIFICATE OF SERVICE

I hereby certify that I am a person competent to serve papers, that I am not a party to the above-entitled action, and that on June 24, 2020, I served the foregoing document on:

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

200 Lewis Avenue
Las Vegas, NV 89155
Via e-mail: motions@clarkcountyda.com

DATED this June 24, 2020.

/s/ Michael Sanft

MICHAEL W. SANFT, ESQ.
Nevada Bar No. 8245
SANFT LAW
411 E. Bonneville Ave. Ste 330
Las Vegas, NV 89101
Tel. (702) 497-8008
Fax. (702) 297-6582
Attorney for Raekwon Robertson

FILED

OCT 29 2020

Ann. L. Blum
CLERK OF COURT

Case No. C-17-328587-2
Dept. No. XII

IN THE Eight JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF Las Vegas

PP
PA
Raelun Setty Robertson
Petitioner, # 8252804

A-20-823892-W
Dept. 12

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

THE STATE OF Nevada
Respondent.

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

- RECEIVED
OCT 22 2020
CLERK OF THE COURT
1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison, Indian Springs, Nevada 89070.
 2. Name and location of court which entered the judgment of conviction under attack: The Honorable Michelle Leavitt, Department XII, Clark County, Eighth Judicial District Court.
 3. Date of judgment of conviction: 2.24.2020
 4. Case number: C-17-328587-2
 5. (a) Length of sentence: Life With the Possibility Of Parole after 28 years.

(b) If sentence is death, state any date upon which execution is scheduled:.... N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

☒ Yes ☐ No

If "yes," list crime, case number and sentence being served at this time: COUNT One : CONSPIRACY

TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NAC 50147,

AND COUNT TWO : (Robbery With Use Of A Deadly Weapon) (6-30 years), (C-17-328587-2)

7. Nature of offense involved in conviction being challenged: 1st Degree Murder w/ use of a deadly weapon
Attempted Armed Robbery and conspiracy to commit Robbery.

8. What was your plea? (check one)

☒ Not guilty

(b) Guilty

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: I pled guilty to an separate indictment which were combined

together with my previously conviction, But was sentenced to something totally different.

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

☒ Jury

(b) Judge without a jury

11. Did you testify at the trial? Yes ☒ No

12. Did you appeal from the judgment of conviction? Yes ☒ No

13. If you did appeal, answer the following: N/A

(a) Name of court: N/A

(b) Case number or citation: N/A

(c) Result: N/A

(d) Date of result: N/A

(Attach copy of order or decision, if available.)

1 14. If you did not appeal, explain briefly why you did not: Because my attorney at law told the court
2 on Record that He would appeal my case But have not yet filed the appeal
3 papers at all, it's Been pass 30 days, so I Dont know if the Judge will allow it.

4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any
5 petitions, applications or motions with respect to this judgment in any court, state or federal? (Yes) ✓ No

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: The Honorable Michelle Leavitt, eighth Judicial District court.

8 (2) Nature of proceeding: "Motion to withdraw of counsel", "HABEAS CORPUS",
9 And an "Direct Appeal" motion.

10 (3) Grounds raised: There were no grounds made as of yet mainly Because
11 my motion I filed #16, was denied BY the clerk of court.

12
13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes (No) ✓

14 (5) Result: N/A

15 (6) Date of result: N/A

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

17 N/A

18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court: The Honorable Michelle Leavitt, eighth Judicial District court.

20 (2) Nature of proceeding: "motion to withdraw of counsel"

21 (3) Grounds raised: None, as of yet.

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes (No) ✓

23 (5) Result: N/A

24 (6) Date of result: N/A

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

26 N/A

27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list
28 them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion? NO, I HAVE NOT.

(1) First petition, application or motion? Yes NO ✓

Citation or date of decision: N/A

(2) Second petition, application or motion? Yes NO ✓

Citation or date of decision: N/A

(3) Third or subsequent petitions, applications or motions? Yes NO ✓

Citation or date of decision: N/A

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) BECAUSE MY ATTORNEY FAILED TO FILE MY APPEAL PAPERS IN THE CORRECT TIME ORDER THAT WAS LISTED TO DO SO.

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify: NO AND YES,

(a) Which of the grounds is the same: "Habeas Corpus," and "Ineffect of Counsel",
But none have been granted on filed and denied.

(b) The proceedings in which these grounds were raised: N/A

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) BECAUSE, I WAS TRIALED WITH ANOTHER PERSON, I FEEL AS IF I DID NOT RECEIVE A FAIR TRIAL. AND COULDN'T SIGN THE DEAL ON TABLE BECAUSE, IT WAS A GLOBAL DEAL, MY CO-DEFENDANT DIDN'T WANT TO TAKE.

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) I WAS GIVING AN DEAL, BUT COULD NOT TAKE THE DEAL MAINLY BECAUSE MY CO-DEFENDANT DIDN'T WANT TO TAKE THE DEAL WHICH WAS AN "GLOBAL DEAL", I FEEL AS IF I DIDN'T HAVE A FAIR TRIAL EVEN

1 With the evidence, I feel as if it wasn't enough, And the Jury wasn't a good Box.

2 19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing
3 of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in
4 response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the
5 petition. Your response may not exceed five handwritten or typewritten pages in length.) I'm filing this 3 months

6 From the date I got sentenced, Because my attorney failed to due so within the
7 30 DAY time frame.

8 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment
9 under attack? Yes ☒ No ☒

10 If yes, state what court and the case number: N/A

11 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on
12 direct appeal: "Michael Sanft", But an appeal has yet to Be filed.

13
14 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under
15 attack? Yes ☒ No ☐

16 If yes, specify where and when it is to be served, if you know: After serving my 28-Life Sentence In High
17 Desert state prison, Indian Springs, Nevada 89070.

18 23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the
19 facts supporting each ground. If necessary you may attach pages stating additional grounds and facts
20 supporting same.

1 (a) Ground ONE: "Failed to file for an direct appeal within the 30
2 DAY time frame".

3
4
5 Supporting FACTS (Tell your story briefly without citing cases or law.): At Sentencing DAY,
6 my attorney "Michael Smith" was supposed to file for an
7 Direct appeal that DAY, But only told the Judge that "we look
8 to appeal the case", when in fact the Judge "Michael Leavitt"
9 gave me and my co-defendant 30 DAYS to do so. I've
10 called, emailed, and wrote letters to my attorney about the
11 "Direct appeal papers", But have not yet gotten an Response.
12 I was giving a deal at trial, that I would have gladly took,
13 But the deal was an global deal, which meant that both
14 parties had to sign the deal, which my co-defendant did not
15 want to do. Also at trial the Jurys, were hand picked by my
16 attorney and my co-defendants attorney, I feel as if there should
17 have been at least 2 or 3 Black (African-American) Jurys in
18 the Box, on Behalf of me, and my co-defendants. It should
19 have at least been 3% of African American Jurys on the panel
20 to be fair to the Black community.

21
22
23 (ground 1, and 2, the same)

1 (b) Ground TWO: "Ineffective counsel"

5 Supporting FACTS (Tell your story briefly without citing cases or law.):

6 My attorney Michael Smet failed to file direct appeal papers, within
7 the 30 day period time frame, when He Infact stated on paper, and
8 on Record that He would fail the Direct appeal papers.

1 (c) Ground THREE: (evidence)
2
3
4

5 Supporting FACTS (Tell your story briefly without citing cases or law.): ⁽¹⁾ the evidence at trial
6 wasn't a 100% conviction, due to the fact of certain facts, like
7 the D.A. made the jury believe that my firearm was used in the murder,
8 Ballistics came at trial and testify, yes, a match was made from the
9 shell casing, but wasn't sure if the bullet came from my firearm.

10 (2) D.A. fail to investigate where the handgun came from, I was told the
11 handgun after the murder happened, which I had no knowledge of, by
12 the two main witnesses on my case / co-defendants, that took oaths
13 to testify at my trial.

14 (3) the D.A. relied mainly on one witness that has mental health issues
15 and claimed that (I) was with him and his brother the night of the
16 murder, which I was not, I feel as if I was setup by the two
17 brothers after learning they sold me the handgun used in the murder
18 after the fact.

19 (4) there were no physical evidence, photos, or witnesses besides
20 2 of my co-defendants, that placed me at the ~~murder~~ murder scene.
21 none whatsoever.
22
23
24
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27
28


(d) Ground FOUR: (Sentence Structure)

Supporting FACTS (Tell your story briefly without citing cases or law.): I Was Sentenced to Life w/ possibility of parole After serving 28 years, But on Sentencing Day I was giving extra time for things that I Had already plead guilty on. not only that, I Have to serve more sentencing after the fact of my 28 years is served when I signed Guilty plea. ~~A~~ deals on certain charges as well, I would like to for the court to see to it that I Be Resentenced Because somewhere in the Judges Books she went wrong & gave me extra time for things that I already plead guilty on but to mention have time served on.

- thank you

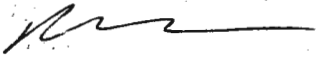
BEFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 14 day of the month of 10, 2020


*
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

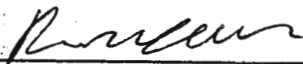

*
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-17-328587-2 Does not contain the social security number of any person.

N/A
*
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

I, , hereby certify pursuant to N.R.C.P. 5(b), that on this 14 day of the month of 10, 2020, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

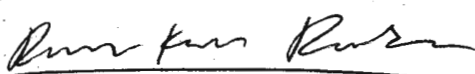
Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

*
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

* Print your name and NDOC back number and sign

Rakwon Robertson #1235056

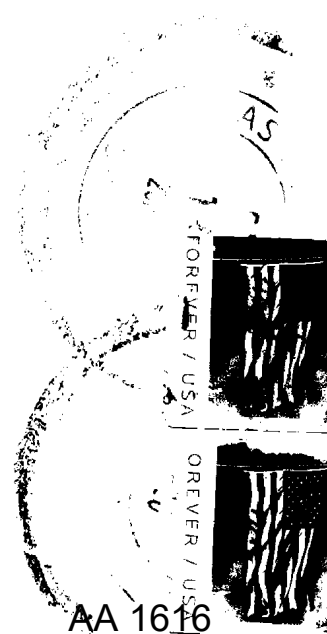


High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070

HIGH DESERT STATE PRISON
OCT 18 2020
UNIT 3 A/B

8910136300 0075

Steven D. Grierson
200 Lewis Ave, 3rd Floor
Las Vegas, Nevada 89155



AA 1616

Motion

Electronically Filed
11/05/2020

Heather Shinn
CLERK OF THE COURT

Steven D. Grierson

200 Lewis Ave, 3rd Floor

Las Vegas, Nevada 89155

DISTRICT COURT

CLARK COUNTY, Nevada

THE STATE OF NEVADA

Plaintiff(s)

A-20-823892-W

CASE NO:

C-17-328587-2

- VS -

RAEKWON ROBERTSON #8252804

Defendant

DEPT NO:

XII

comes now, RAEKWON ROBERTSON, In proper
and herein above Respectfully moves this Honorable
Court for a "HABEAS CORPUS" ON,
"Ineffective Counsel", on a ground that
Michael Sanft Attorney at Law, failed TO File my
"Notice Of Appeal" motion within the 30 DAY time
period. June 11, OF 2020 at 13:45 Hours, shown on
Court minutes that (MY) Attorney, "Michael Sanft"
stated on Record, that my Appeal would be
set in motion, But Have not yet Filed Any
motions that Has Been promised TO (I),
RAEKWON ROBERTSON #8252804.

CLERK OF THE COURT

OCT 15 2020

RECEIVED

Memorandum of Points And Authorities

1
2 I would like to Ask the clerk of the court, to
3 please consider my Request to Have my
4 motions filed so that I could at least HAVE
5 the chance for an Court Appearance TO
6 explain more Concerning the Issues at Hand.
7 (I) Raekwon Robertson # 8252804, Have not
8 spoken to Michael Sanft, not one Time since
9 sentencing day, I've tried calling, writing
10 and I've even Had family members email him,
11 But it seems as if He's Vanished. As my Attorney
12 (I) feels as if my attorney "Michael Sanft", stand
13 at least reach out, so that I could stay aware of
14 our future plans concerning my case. (I) Raekwon
15 Robertson Also Asks the Clerk of the court to
16 please file for an "Dismissal of Counsel"
17 motion Due to the short Summary Above. (I)
18 Ask that another state appointed attorney would
19 be provided for me, to Represent me throughout
20 the course of my Appeal.

21
22 please take into concentration that (I) have not
23 been incontact with my attorney, nor has He
24 been incontact with me, so He would not
25 be able to sign off on these motions.

1
2 So please, I ask that (you),
3 the clerk of the court set a court date
4 so that (I) Raekwon Robertson, And my
5 attorney "Michael Schiff" could discuss with
6 the court that I would like the following
7 motions to be filed And, Reasoning Behind
8 filing those motions.
9
10
11
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19
20

21 Date this 10 day of 13 2020.

22
23 By: Raekwon Robertson
24
25
26
27
28
29

Certificate of Service By MAIL

Pursuant to NRCP Rule 5 (b), I hereby certify
that I am the petitioner / defendant named
herein and that on this 10 DAY OF 12th
2020, I mailed a true and correct copy of this
file going "HABEAS CORPUS" to the following

Steven D. Grierson

200 Lewis Ave, 3rd Floor

Las Vegas, Nevada 89155

Giancarlo Pesci

Chief Deputy District Attorney

Michael Sanft

Nevada BAR # 7135

228 S. Fourth Street, 3rd Floor

200 Lewis Avenue

Las Vegas, Nevada 89101

Las Vegas, Nevada 89155-2212

BY: Raekwon Robinson

AFFIRMATION

Pursuant to NRS 239B.030

The Undersigned does hereby affirm that the
preceding document, "HABEAS CORPUS",
"Ineffective Counsel"

Filed In Case Number : C-17-328587-2

Document Does not contain the Social Security Number
Of any person, (✓)

OR

Document contains the Social Security Number of a person
As Required By:

A specific state or federal law, to wit
(X)

OR

For the administration of a public program

OR

For An Application for a Federal or State grant

OR

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230, and NRS 126.055)

DATE : 10.12.2020

Ramker Robertson

(Signature)

RaeKwon Robertson

(Print name)

N/A

AA 1621

(5)

(All Inmate Exp)

UNIT 3 A/B

OCT 12 2020

HIGH DESERT STATE PRISON

AA 1622

ROBERTSON ROBERTSON #1235056

High Desert State Prison

P.O. Box 650

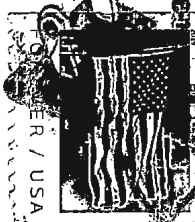
Indian Springs, Nevada 89070

LAS VEGAS NV 890

13 OCT 2020 PM 5 L



Energy Awareness



MADE IN THE U.S.A.

Steven D. Grierson

200 Lewis Ave, 3rd Floor

Las Vegas, Nevada 89155

A-20-823892-W Raekwon Robertson, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

December 22, 2020 10:15 AM Inmate filed Petition

HEARD BY: Leavitt, Michelle COURTROOM: RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Bernard B. Zadrowski Attorney for Defendant

JOURNAL ENTRIES

Michael Sanft, Esq., present on behalf of the Petitioner. Petitioner not present.

Court noted the concern of this matter and ORDERED, Petition STAYED as Mr. Sanft has filed the direct appeal.

NDC

Case No. A-20-823892-W
Dept. No. Dept. 12

FILED
MAY 26 2022

John J. Johnson
CLERK OF COURT

PP
DA
IN THE Eighth JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF Nevada (Clerk)

Reichenbach Robinson #1235056
Petitioner,

v. (State of Nevada)
Warden, State of Nevada
Respondent

**PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)**

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

CLERK OF THE COURT

MAY 23 2022

RECEIVED

AA 1624

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ely state prison (ely, Nevada), i am Being restrained of my liberty. By not receiving an fair trail.

2. Name and location of court which entered the judgment of conviction under attack: eighth Judicial District court, clark county; michelle Leavitt, Judge.

3. Date of judgment of conviction: June 17, 2020

4. Case number: C-17-328587-2

5. (a) Length of sentence: Life With the p. of parole after 28 years.

(b) If sentence is death, state any date upon which execution is scheduled: N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes x No

If "yes", list crime, case number and sentence being served at this time: Robbery with a deadly weapon, and conspiracy to commit robbery. case jointed with case # C-17-328587-2. sentence Being served on other conviction (6-15).

7. Nature of offense involved in conviction being challenged: 1st degree murder.

8. What was your plea? (check one):

(a) Not guilty X (b) Guilty (c) Nolo contendere

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details:

I pleadly Not Guilty for Open murder on Case number C-17-328587-2 But ended up Being Convicted on 1st degree murder.

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury X (b) Judge without a jury

11. Did you testify at the trial? Yes No X

12. Did you appeal from the judgment of conviction? Yes No X

→ attorney dont file in time,
And dropped from my case

13. If you did appeal, answer the following:

(a) Name of Court: N/A

(b) Case number or citation: N/A

(c) Result: N/A

(d) Date of result: NIA

(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: Because my lawyer didn't file in time after stating on record that he would, and ended up removing himself off my case, without my knowledge.

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes X No

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court: eight judicial district court

(2) Nature of proceeding: motions to and for an "direct appeal" and an "notice of appeal"

(3) Grounds raised: Jury Bot (selection) ¹ personal relationship between judge and D.A. ² the fact that I couldn't receive my own trial without co-defendant.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No X

(5) Result: NIA

(6) Date of result: NIA

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

NIA

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: eight judicial district court

(2) Nature of proceeding: "Direct appeal" & overturn the judgement of conviction.

(3) Grounds raised: Jury Bot selection, personal relationship between judge and D.A., didn't receive an fair trial.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No X

(5) Result: NIA

(6) Date of result: NIA

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: NIA

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion? NO

(1) First petition, application or motion? Yes No X

Citation or date of decision:

(2) Second petition, application or motion? Yes X No

Citation or date of decision: None as of yet.

(3) Third or subsequent petitions, applications or motions? Yes No X

Citation or date of decision: NIA

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) Because the court returned my 1st petition and from my knowledge did not file it, for whatever

Reasons.

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: the grounds raised that are the same would be the jury selection.

(b) The proceedings in which these grounds were raised: haven't gotten fair enough to be started in court only "on the record"

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) Because the grounds being raised were incorrect & shouldn't have happened without my knowledge.

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) NIA

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) Reasoning for the delay is because my attorney didn't file my direct appeal in time & I was waiting to receive this package but ended up changing locations, delaying the process.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes No X
If yes, state what court and case number: NIA

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Michael Scott, Attorney at Law.

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No X
If yes, specify where and when it is to be served, if you know: NIA

23. State concisely every ground on which you claim that you are being held unlawfully. summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

1. Jury selection: There were not 3 African Americans on the panel.
2. Judge & DA relationship: Judge and DA have an personal relationship which may had effected certain things in my trial.
3. Fair trial: I was giving a global deal that I wanted to take but couldn't be to me having an co-defendant.

(a) Ground One: Jury selection:

Supporting FACTS (Tell your story briefly without citing cases or law.):

There were only one mixed African American
in the Jury Box when there should be (3) due to
defendants being of color. Also, Jury # 11,
wasn't to be falling asleep at times Not listening to
the facts and details on my case.

(b) Ground Two: personal relationships:

~~relationships~~

Supporting FACTS (Tell your story briefly without citing cases or law.):

Sentencing Judge
Michelle Lewitt & D.A. (Pesci) who both were assigned
on my case are friends in Cincarlo Pesci's Church,
Sentencing Judge Lewitt beliefs, contains of making
Cincarlo Pesci's prayer in in law since that's her minister
who may have affected my case in a Big Way.

(c) Ground Three: fair trial:

Supporting FACTS (Tell your story briefly without citing cases or law.):

My lawyer filed
motions to receive an fair trial, Being trailed
By INSUR But all was denied.
I was willing to take an 10-11 plea deal But couldn't
but I had an co-defendant Being Trailed with me & He
Deal was an "global deal".

(d) Ground Four: N/A

Supporting FACTS (Tell your story briefly without citing cases or law.):

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 10 day of the month of May of the year 2022.

2022

Robertson, Raekwon
Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

(N/A)
Signature of Attorney (if any)

Michael Sanft
Attorney for petitioner
3245 3rd Street - 2nd floor
Las Vegas, Nevada 89101
Address

↑
attorney removed himself.

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Raekwon Robertson
Petitioner

Michael Sanft
Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, Robertson, Ruckman, hereby certify pursuant to N.R.C.P. 5(b), that on this 10 day of the month of May, of the year ²⁰²²~~2020~~ I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

(Warden) Robert
Respondent prison or jail official
Elly State Prison
PO Box 1989
Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

Giorgio Pesa
District Attorney of County of Conviction
200 Lewis Ave,
Las Vegas, Nevada 89156
Address

Ruckman Robertson
Signature of Petitioner

AFFIRMATION PURSUANT TO NRS 239B.030

I, Raeckman Robertson, NDOC# 1235056,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE

ATTACHED DOCUMENT ENTITLED petition for writ of
Habeas corpus (postconviction)

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY

PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 10 DAY OF MAY, 2022.

SIGNATURE: Raeckman Robertson

INMATE PRINTED NAME: Robertson, Raeckman

INMATE NDOC # 1235056

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301

1 Baekwon Robertson #1235056
2 PH State Prison
3 P.O. Box 1989
4 Las Vegas, Nevada 89131

FILED
MAY 26 2022
Clerk of Court

IN THE eighth DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF Nevada

Baekwon Robertson
#1235056
Petitioner,

CASE NUMBER: A-20-823892-W
Dept. 12

vs.

EX PARTE MOTION FOR
APPOINTMENT OF COUNSEL AND
REQUEST FOR EVIDENTIARY
HEARING

The State of Nevada
Warden, State of Nevada,
Respondents.

COMES NOW, Robertson #1235056 the Petitioner, in proper person, and moves this Court
for its order allowing the appointment of counsel for Petitioner and for an evidentiary hearing. This
motion is made and based in the interest of justice.

Pursuant to NRS 34.750(1):

A petition may allege that the petitioner is unable to pay the costs of the
proceedings or to employ counsel. If the court is satisfied that the
allegation of indigency is true and the petitioner is not dismissed
summarily, the court may appoint counsel to represent the petitioner. In
making its determination, the court may consider, among other things, the
severity of the consequences facing the petitioner and whether:

- (a) The issues presented are difficult;
- (b) The petitioner is unable to comprehend the proceedings, or

CLERK OF THE COURT

MAY 23 2022

RECEIVED

1 (c) Counsel is necessary to proceed with discovery.
2 Petitioner is presently incarcerated at Ely State Prison, is
3 indigent and unable to retain private counsel to represent him.
4 Petitioner is unlearned and unfamiliar with the complexities of Nevada state law, particularly
5 state post-conviction proceedings. Further, Petitioner alleges that the issues in this case are complex and
6 require an evidentiary hearing. Petitioner is unable to factually develop and adequately present the
7 claims without the assistance of counsel. Counsel is unable to adequately present the claims without an
8 evidentiary hearing.
9 Dated this 10 day of May, 2022.
10
11 Robertson Raeklon #1235056
12 *In Proper Person*
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is a person of such age and discretion as to be competent to serve papers.

That on May 10, 2022, he served a copy of the foregoing Ex Parte Motion for Appointment of Counsel and Request for Evidentiary Hearing by personally mailing said copy to:

District Attorney's Office
Address:

Giancarlo Pesci
200 Lewis Ave,
Las Vegas, Nevada 89156

Warden
Address:

ely state prison
PO Box 1989

Robertson, Raelan
Petitioner

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Appointed

of counsel And request for evidentiary Hearing (Motion)
(Title of Document)

filed in District Court Case number C-17-328587-2

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

N/A
(State specific law)

-OR-

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

Maekwan Robertson
Signature

May 10, 2022
Date

Maekwan Robertson
Print Name

Maekwan Robertson State of Nevada
Title



ELY STATE PRISON
PO BOX 1089
ELY, NEVADA 89301

Steven D. Emerson

200 Lewis Ave, 3rd floor

Return to sender requested.

AS VEGAS NV 89301 MAY 13 1989

ELYS

ELYS
MAY 13 1989
U1

A-20-823892-W Raekwon Robertson, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

June 02, 2022 08:30 AM Appointment of Counsel

HEARD BY: Leavitt, Michelle COURTROOM: RJC Courtroom 14D

COURT CLERK: Pannullo, Haly; Villatoro, Reina

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Bernard B. Zadrowski Attorney for Defendant

Steven S. Owens Attorney for Plaintiff

JOURNAL ENTRIES

Mr, Owens advised he can ACCEPT appointment and confirmed a conflict check was completed. COURT ORDERED, matter SET for Status Check regarding briefing schedule.

07/07/22 8:30 AM STATUS CHECK: BRIEFING SCHEDULE

Heaven S. Lewis

CLERK OF THE COURT

ORDR

STEVEN S. OWENS, ESQ
Nevada Bar No. 4352
1000 N. Green Valley #440-529
Henderson, Nevada 89074
Telephone: (702) 595-1171
owenscrimlaw@gmail.com
Attorney for Petitioner Raekwon Robertson

**DISTRICT COURT
CLARK COUNTY, NEVADA**

RAEKWON ROBERTSON,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

CASE NO.: A-20-823892-W
DEPT NO.: XII

ORDER APPOINTING COUNSEL

This matter having come before the Court on June 2, 2022, and the Court being fully
advised in the premises and good cause appearing,

IT IS HEREBY ORDERED that Steven S. Owens be appointed to represent Raekwon
Robertson in his Petition for Writ of Habeas Corpus proceedings in case number A-20-823892-
W.

Dated this 7th day of June, 2022

Michelle Leavitt

DISTRICT COURT JUDGE

Respectfully Submitted,

/s/ Steven S. Owens
STEVEN S. OWENS, ESQ.
Nevada Bar No. 4352

93B 6DF C4D5 884F
Michelle Leavitt
District Court Judge

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5	
6 Raekwon Robertson, Plaintiff(s)	CASE NO: A-20-823892-W
7 vs.	DEPT. NO. Department 12
8 State of Nevada, Defendant(s)	
9	

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 6/7/2022

15 Steven Owens	owenscrimlaw@gmail.com
16	
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Writ of Habeas Corpus

COURT MINUTES

July 07, 2022

A-20-823892-W Raekwon Robertson, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

July 07, 2022 08:30 AM Status Check: Briefing Schedule

HEARD BY: Leavitt, Michelle COURTROOM: RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Bernard B. Zadrowski Attorney for Defendant

Steven S. Owens Attorney for Plaintiff

JOURNAL ENTRIES

COURT ORDERED, opening brief due 08/22/22; Response due 10/05/22; Hearing on the Petition for Writ of Habeas Corpus SET.

10/13/22 8:30 AM HEARING: PETITION FOR WRIT

1 **SUPP**

2 STEVEN S. OWENS, ESQ

3 Nevada Bar No. 4352

4 1000 N. Green Valley #440-529

5 Henderson, Nevada 89074

6 Telephone: (702) 595-1171

7 owenscrimlaw@gmail.com

8 *Attorney for Petitioner Raekwon Robertson*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 RAEKWON ROBERTSON,

CASE NO.: A-20-823892-W

DEPT NO.: XII

12 Petitioner,

13 vs.

14 STATE OF NEVADA.

15 Respondent.

16 **SUPPLEMENTAL BRIEF IN SUPPORT OF**
17 **PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

18 COMES NOW, Petitioner, RAEKWON ROBERTSON, by and through his counsel of
19 record, STEVEN S. OWENS, ESQ., and hereby submits his Supplemental Brief in Support of
20 Petition for Writ of Habeas Corpus (Post-Conviction).

21 This Supplement is made and based upon the pleadings and papers on file herein, the
22 Points and Authorities attached hereto, and any oral arguments adduced at the time of hearing
23 this matter.

24 ///

25 ///

26 ///

27 ///

1 DATED this 19th day of August, 2022.

2 Respectfully submitted

3
4 /s/ Steven S. Owens, Esq.
5 STEVEN S. OWENS, ESQ.
6 Nevada Bar No. 4352
7 1000 N. Green Valley #440-529
8 Henderson, Nevada 89074
9 (702) 595-1171

10 Attorney for Petitioner
11 RAEKWON ROBERTSON

12 **STATEMENT OF THE CASE**

13 On December 14, 2017, Petitioner Raekwon Robertson was charged by way of Indictment
14 in Case C-17-328587-2 along with two other co-defendants, Demario Lofton-Robinson and
15 Davontae Wheeler, with counts of Conspiracy to Commit Robbery, Attempt Robbery with use
16 of a Deadly Weapon, and Murder with use of a Deadly Weapon for the killing of Victim Gabriel
17 Valenzuela on August 9, 2017.¹ Attorney Michael Sanft confirmed as attorney of record on
18 February 13, 2018, and represented Robertson through jury trial, sentencing and direct appeal.

19 When co-defendant Lofton-Robinson was unavailable at Lake's Crossing, Robertson
20 proceeded to a joint jury trial together with co-defendant Wheeler for eight days from February
21 11th through 24th, 2020. As a result, Robertson was found guilty and convicted of all three counts
22 including First Degree Murder with use of a Deadly Weapon. On March 12, 2020, Robertson
23

24 _____
25 ¹ Petitioner was also charged alone in the same Indictment with counts of Burglary, Conspiracy and Armed
26 Robbery for a separate and unrelated incident occurring on August 2, 2017, at the Fiesta Discount Market to which
27 he later pleaded guilty.

1 pleaded guilty to two additional counts of Conspiracy and Armed Robbery for the unrelated crime
2 at Fiesta Discount Market which were run concurrent. Robertson was sentenced on all counts on
3 June 11, 2020, and received an aggregate sentence of 28 years to Life in prison.² The judgment
4 of conviction was filed on June 17, 2020.

5
6 Robertson's counsel filed a timely direct appeal on June 24, 2020, which was docketed
7 as SC#81400. See Exhibit 3. Counsel filed an Opening Brief on November 12, 2020. See
8 Exhibit 4. The Nevada Supreme Court filed its Order of Affirmance on May 14, 2021. See
9 Exhibit 5. Remittitur issued on June 8, 2021. *Id.*

10 Meanwhile, Robertson filed premature pro se petitions for writ of habeas corpus in the
11 instant case, A-20-823892-W, on October 29th and again on November 5th, 2020, which were
12 stayed pending the outcome of the direct appeal. On May 26, 2022, Robertson filed another
13 timely petition along with a motion to appoint counsel which this Court granted on June 2, 2022.
14 A briefing schedule was set on July 7, 2022, and Robertson's counsel now files the instant
15 supplemental petition.
16

17 ///

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22
23 ² In contrast, co-defendant Wheeler was only found guilty of Conspiracy and Second Degree Murder (without a
24 deadly weapon) and received an aggregate sentence of 144 months (or 12 years) to Life in prison. See Exhibit 1.
25 After his return from Lake's Crossing, Co-defendant Lofton-Robinson pleaded guilty to Second Degree Murder
26 with use of a Deadly Weapon and Attempt Robbery and received a stipulated aggregate sentence of 18 to 45 years
27 in prison. See Exhibit 2.

At trial, the State presented the following evidence. On August 8th, 2017, and into the morning of the August 9th, 2017, Petitioner Raekwon Robertson, Demario Lofton-Robinson, Davonte Wheeler, and Deshawn Robinson attempted to carry out an armed robbery. They arrived in the neighborhood of Dewey Avenue and Lindell Avenue just before midnight where they and their car, a white Mercury Grand Marquis, were observed by a passing jogger, Robert Mason who took note of the suspicious activity. Shortly after, they saw Gabrielle Valenzuela pull into his driveway and check his mail.

The State used accomplice DeShawn Robinson to validate the facts of the events. Robinson agreed to this only after the State offered to remove the charge of Murder with use of a Deadly Weapon in exchange for his testimony against Robertson and Wheeler. Robinson testified that Petitioner Robertson carried a gun and participated in the attempted robbery and murder. The State also presented a text message Robertson sent to another accomplice on the day of the incident asking if he wanted to "hit a house," surveillance video showing Robertson in a car identified by a witness as being in the immediate vicinity of the crime scene at the time the crimes occurred, evidence of Robertson's fingerprints on that car, and a gun found at Robertson's house that had his DNA on it and contained bullets that matched casings found at the crime scene.

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ARGUMENT

An indigent defendant possesses a constitutional right to reasonably effective assistance of counsel at trial and on appeal. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984) (trial); *Evitts v. Lucey*, 469 U.S. 387, 391, 105 S. Ct. 830, 833 (1985) (appeal); *Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984), *cert. denied*, 471 U.S. 1004, 105 S. Ct. 1865 (1985). To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a convicted defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that he was prejudiced as a result of counsel's performance. *Strickland*, 466 U.S. at 687-88, 692, 104 S. Ct. at 2064-65, 2067. Prejudice is demonstrated where counsel's errors were so severe that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 694, 104 S. Ct. at 2068. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome of trial. *Id.* The defendant carries the affirmative burden of establishing prejudice. 466 U.S. at 693, 104 S. Ct. at 2067-68.

Petitioner Robertson was denied his right to effective assistance of counsel under the Sixth Amendment to the U.S. Constitution as set forth in the following claims for relief. Additionally, to the extent they are not set forth below, undersigned counsel also incorporates by this reference all of the claims raised by Robertson in his pro se post-conviction habeas petitions filed on October 29, 2020, November 5, 2020, and May 26, 2022.

I. FAILURE TO OBJECT TO OTHER BAD ACT EVIDENCE OF TEXT MESSAGE ABOUT "HITTING A HOUSE"

Before the start of testimony, the parties discussed the admissibility of evidence which the State intended to reference in its opening statement to the jury and elicit through witnesses

1 at trial. Trial Transcript, Day 2, pp. 309-318. Specifically, the day before the murder there was
2 a posting via Messenger from Raekwon Robertson’s Facebook account to DeShawn Robinson’s
3 cell phone: “Ask DJ if he trying hit a house tonight Me, you, Sace and him. Sace already said
4 yeah.” *Id.* The State argued for admissibility as res gestae because the victim was caught, in
5 essence, in the middle of the efforts to “hit his house” and the statement showed intent. *Id.*
6 Attorney Sanft objected on Robertson’s behalf, but only on grounds that the message should not
7 be referenced in opening statement out of an abundance of caution until such time as the State
8 had laid proper foundation through a proper witness. *Id.* The State responded it had a good
9 faith basis for admissibility and further argued the message was made in furtherance of the
10 conspiracy to commit robbery as charged in this case. *Id.* The judge allowed the message to be
11 referenced in the prosecutor’s opening statement. *Id.*
12

13 The State then told the jury about the message in its opening statement and presented its
14 theory of the case: “Why were they there? They went to hit a house that night, but instead,
15 something else happened. They saw an opportunity to hit Gabriel Valenzuela” Trial
16 Transcript, Day 3, pp. 24-5, 36. The State then elicited the message about robbing or hitting a
17 house through the cooperating co-defendant DeShawn Robinson and again through Det. Dosch
18 without further objection from Robertson’s counsel, Sanft. Trial Transcript, Day 4, pp. 117-
19 128; Trial Transcript, Day 6, pp. 40-1.
20

21 The use of uncharged bad act evidence to convict a defendant is heavily disfavored in
22 our criminal justice system because bad acts are often irrelevant and prejudicial and force the
23 accused to defend against vague and unsubstantiated charges. *Tavares v. State*, 117 Nev. 725,
24 730, 30 P.3d 1128, 1131 (2001); NRS 48.045. The principal concern with admitting such acts
25 is that the jury will be unduly influenced by the evidence, and thus convict the accused because
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1 it believes the accused is a bad person. *Id.* In *Armstrong v. State*, 110 Nev. 1322, 1323, 885
2 P.2d 600, 600-01 (1994) (citing *Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985)), this
3 court has stated:

4 Before admitting evidence of a prior bad act or collateral offense, the district
5 court must conduct a hearing outside the presence of the jury. During the
6 hearing, the state must present its justification for admission of the evidence, . . .
7 [and] prove by clear and convincing evidence that the defendant committed the
8 collateral offense, and the district court must weigh the probative value of the
9 proffered evidence against its prejudicial effect.

10 *Armstrong*, 110 Nev. at 1323-24, 885 P.2d at 601. The *Petrocelli* hearing must be conducted on
11 the record to allow this court a meaningful opportunity to review the district court's exercise of
12 discretion. *Id.*

13 Counsel was ineffective in failing to specifically object to the text message on grounds
14 that it constituted evidence of an uncharged crime, namely, a conspiracy to burglarize or “hit” a
15 house. But Robertson and the other defendants were not charged with burglary or home
16 invasion. See NRS 205.060, 205.067. Instead, the conspiracy as charged was to rob a person
17 outside on the street. The State even conceded in its opening statement that defendants
18 supposedly got together that night to commit one crime, a residential burglary or home
19 invasion, but when they saw the victim, they spontaneously took advantage of that new
20 opportunity and committed an entirely different type of crime, a robbery of the person.
21 Accordingly, had there been a *Petrocelli* hearing, the text message would not have been
22 admitted because it was not relevant to a conspiracy or intent to rob the victim in this case. The
23 text message was extraordinarily prejudicial in that defendants were labeled as having pre-
24 planned a residential burglary or home invasion as opposed to simply committing a crime of
25 opportunity. Because there was no *Tavares* instruction on other bad acts, the risk is too great
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1 that the jury punished Petitioner Robertson for his bad character and convicted him of the
2 charged offenses based on propensity.

3 **II. FAILURE TO SEEK SEVERANCE OF TRIAL FROM CO-DEFENDANT**
4 **WHEELER.**

5 While there were four defendants charged with this crime, they all received disparate
6 outcomes and sentences in large part because Petitioner was tried jointly with his co-defendant
7 Wheeler. Co-defendant Demario Lofton-Robinson escaped a joint trial because he was at
8 Lake's Crossing at the time. Upon his return, he accepted a plea bargain for Second Degree
9 Murder with use of a Deadly Weapon and received an aggregate sentence of 18 to 45 years in
10 prison. See Exhibit 2. His younger brother, co-defendant DeShawn Robinson entirely escaped
11 a murder charge by agreeing to testify for the State against the other defendants and eventually
12 received probation. See Exhibit 6. Even co-defendant Davontae Wheeler was only found
13 guilty of Second Degree Murder and was given an aggregate sentence of 12 years to life. See
14 Exhibit 1. In contrast, Petitioner was the only one of the four to be convicted of First Degree
15 Murder with use of a Deadly Weapon and received the most severe sentence of an aggregate 28
16 years to life.

17 If two or more defendants participated in the same unlawful act or transaction, the State
18 may charge the defendants in the same indictment or information. NRS 173.135. But "[i]f it
19 appears that a defendant . . . is prejudiced by a joinder . . . of defendants . . . for trial together,
20 the court may order an election or separate trials of counts, grant a severance of defendants or
21 provide whatever other relief justice requires." NRS 174.165(1). However, joinder is not
22 preferable if it will compromise a defendant's right to a fair trial. *Marshall v. State*, 118 Nev.
23 642, 646-47, 56 P.3d 376, 379 (2002). "The decisive factor in any severance analysis remains
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1 prejudice to the defendant.” *Id.* More specifically, severance should be granted “if there is a
2 serious risk that a joint trial would compromise a specific trial right of one of the defendants, or
3 prevent the jury from making a reliable judgment about guilt or innocence.” *Id.*, quoting *Safiro*
4 *v. United States*, 506 U.S. 534, 539 (1993).

5 Petitioner was prejudiced in his association and joint trial with co-defendant Wheeler
6 who was open-carrying a firearm at the convenience store shortly before the murder, yet was
7 not convicted of using a deadly weapon. Wheeler’s theory of defense was that he was no
8 longer present at the time of the crime and he was mistaken for another suspect, Adrian
9 Robinson, who was Petitioner’s brother. Petitioner’s defense on the other hand was that there
10 was insufficient evidence to corroborate DeShawn Robinson’s testimony. Wheeler successfully
11 used his joint trial with Petitioner to his advantage to minimize his own culpability and shift
12 blame to Petitioner. These mutually antagonistic defenses prejudiced Petitioner resulting in a
13 more severe conviction and sentence, which could have been alleviated by severing his case
14 from Wheeler. Additionally, Petitioner would have accepted the plea bargain offered by the
15 State but was prevented from doing so because Wheeler refused the offer which was contingent
16 on both accepting because they were being tried jointly. There had already been a de facto
17 severance of co-defendant Demario Lofton-Robinson, so trying Petitioner and Wheeler
18 separately would not have impaired the efficient administration of justice. Counsel was
19 ineffective in failing to seek severance from co-defendant Wheeler in the trial of this case.

20
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23 **III. FAILURE TO INVESTIGATE AND RAISE PETITIONER’S MENTAL**
24 **HEALTH ISSUES AT TRIAL AS DISPROVING SPECIFIC INTENT**

25 Petitioner’s counsel called no witnesses at trial and Petitioner himself did not testify.
26 So, the jury heard nothing at all about Petitioner’s mental health issues and how they might
27

1 have affected his behavior and intent the night of the robbery. Evidence of a mental disorder or
2 defect not raising to the level required for an insanity instruction may be considered in
3 determining whether a defendant had the requisite intent at the time of the offense. See *Fox v.*
4 *State*, 73 Nev. 241, 247, 316 P.2d 924,927 (1957); *United States v. Brown*, 326 F.3d 1143, 1146
5 (10th Cir. 2003) (Evidence of a defendant's mental condition is admissible for the purpose of
6 disproving specific intent).
7

8 Prior to trial, Petitioner had undergone a couple competency evaluations by Dr.
9 Lawrence Kapel and Dr. John Paglini. See Exhibit 7. These reports confirmed that although
10 Petitioner was competent to stand trial, he suffered from “bipolar disorder, schizophrenia, and
11 ADHD.” *Id.* Although Petitioner was receiving treatment and medication while in custody, at
12 the time of the instant offense he had been off his medications for over a year. *Id.* When off
13 his medications, he reported hearing voices, paranoia, and blackouts and had no memory of the
14 offense. *Id.* Petitioner dropped out of school in 11th grade where he had been in special
15 education for a “learning disability” and he received social security. *Id.*
16

17 Petitioner’s mother, Erika Loyd, gave a voluntary statement to police on August 15,
18 2017, and she confirmed that he has mental illnesses for which he receives social security
19 benefits. See Exhibit 8. Specifically, she explained that Petitioner has been diagnosed with
20 schizophrenia, bipolar, mild mental retardation, learning disability, and sickle cell trait. *Id.*
21 Petitioner was prescribed and took several medications to include Adderall and Abilify but she
22 had him stop taking them because it made him “like a zombie.” *Id.*
23

24 Petitioner’s counsel did not investigate nor present any of this mental health evidence at
25 trial as a defense to the specific intent crimes of Conspiracy to Commit Robbery, Attempt
26 Robbery with use of a Deadly Weapon, and First Degree Murder. *Washington v. State*, 132
27
28

1 Nev. 655, 664, 376 P.3d 802, 809 (2016) (Conspiracy is a specific intent crime); *Johnson v.*
2 *State*, 123 Nev. 139, 142, 159 P.3d 1096, 1097 (2007) (An attempt crime is a specific intent
3 crime); *Hancock v. State*, 80 Nev. 581, 583, 397 P.2d 181, 182 (1964) (First degree murder is a
4 specific intent crime). Had the jurors heard the evidence of Petitioner's various mental health
5 conditions and that he had not been taking his medications at the time, there is a reasonable
6 probability they would not have found that he possessed the mens rea necessary for the specific
7 intent crimes charged and he would have been acquitted or convicted of lesser offenses.
8

9 **IV. FAILURE TO INVESTIGATE AND RAISE PETITIONER'S MENTAL**
10 **HEALTH ISSUES AT SENTENCING IN MITIGATION**

11 At sentencing on June 11, 2020, Petitioner informed the court that he had to go to the
12 extraordinary length of personally contacting the prosecutor by letter to get a copy of his PSI
13 because he could not get in contact with his own counsel. Transcript of Sentencing, June 11,
14 2020. He only received the PSI the day before sentencing. *Id.* Arguing on his behalf, counsel
15 asked that all counts run concurrent but otherwise submitted the sentencing determination to the
16 judge because she had heard the trial testimony and was familiar with the case. *Id.* But the
17 prosecutor had asked for extra time on the deadly weapon enhancement and counsel failed to
18 respond to this argument. *Id.* Counsel erred in failing to argue for a fixed term of 50 years on
19 the murder charge as opposed to a life sentence and further erred in failing to argue for a 12-
20 month minimum sentence on the deadly weapon enhancement. *Id.* In fact, counsel failed to
21 present any mitigation evidence or argument at all. *Id.* As a result, and without being given
22 any reason to reduce the sentence, the judge imposed a life term for the murder and gave the
23 maximum possible sentence on the deadly weapon enhancement of 8 to 20 years consecutive.
24
25
26 *Id.*
27
28

1 Counsel failed to communicate with Petitioner in advance of sentencing and had no
2 discernible plan or strategy for presenting mitigating evidence or arguments to rebut the
3 prosecutor. Evidence of Petitioner's mental health issues including bipolar disorder,
4 schizophrenia, paranoia and ADHD as set forth in the argument above and in Exhibits 7 and 8
5 are compelling mitigation evidence. Yet, the sentencing transcript is devoid of any reference to
6 Petitioner's serious mental health conditions either from his own counsel or the judge in
7 pronouncing the sentence. Had the judge been made aware of this evidence and had it been
8 persuasively argued, there is a reasonable probability that she would have imposed a sentence
9 somewhat less than the maximum allowed by law.
10

11 **V. INEFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL**

12 The constitutional right to effective assistance of counsel extends to a direct appeal.
13 *Burke v. State*, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). A claim of ineffective
14 assistance of appellate counsel is reviewed under the "reasonably effective assistance" test set
15 forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). To state a claim of
16 ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's
17 performance was deficient in that it fell below an objective standard of reasonableness and
18 resulting prejudice such that the omitted issue would have a reasonable probability of success
19 on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).
20

21
22 Petitioner continued to be represented by counsel Michael Sanft on direct appeal of his
23 conviction, however counsel utterly failed to keep in touch and communicate with Petitioner
24 about the appeal. Petitioner was so unaware of the appeal that he filed a pro se habeas petition
25 in this case on October 29, 2020, which raised an appeal deprivation claim under the mistaken
26 belief that no appeal had been filed. Unbeknownst to Petitioner, the appeal had been filed and
27
28

1 was pending at that time. Even as late as May 22, 2022, Petitioner was still trying to contact
2 Attorney Sanft regarding the appeal to no avail. Exhibit 9.

3 Pursuant to the Nevada Supreme Court Performance Standards for Indigent Defense
4 (ADKT No. 411), Standard 3-5: Duty to Confer and Communicate With Client in preparing and
5 processing the appeal, counsel should:
6

7 (a) assure that the client is able to contact appellate counsel telephonically
8 during the pendency of the appeal including arrangements for the acceptance of
9 collect telephone calls. Promptly after appointment or assignment to the appeal,
10 counsel shall provide advice to the client, in writing, as to the method(s) which
11 the client can employ to discuss the appeal with counsel; (b) discuss the merits,
12 strategy, and ramifications of the proposed appeal with each client prior to the
13 perfection and completion thereof. When possible, appellate counsel should
14 meet in person with the client, and in all instances, counsel should provide a
15 written summary of the merits and strategy to be employed in the appeal along
16 with a statement of the reasons certain issues will not be raised, if any. It is the
17 obligation of the appellate counsel to provide the client with his or her best
18 professional judgment as to whether the appeal should be pursued in view of the
19 possible consequences and strategic considerations; (c) inform the client of the
20 status of the case at each step in the appellate process, explain any delays, and
21 provide general information to the client regarding the process and procedures
22 that will be taken in the matter, and the anticipated timeframe for such
23 processing; (d) provide the client with a copy of each substantive document filed
24 in the case by both the prosecution and defense; (e) respond in a timely manner
25 to all correspondence from clients, provided that the client correspondence is of
26 a reasonable number and at a reasonable interval; and (f) promptly and
27 accurately inform the client of the courses of action that may be pursued as a
28 result of any disposition of the appeal and the scope of any further representation
counsel will provide.

21 None of this communication occurred in the present case. See also, Rules of Professional
22 Conduct, Rule 1.4 on Communication. This prevented Petitioner from having any input into
23 the appeal process.

24 Additionally, although Attorney Sanft did file a direct appeal, the Opening Brief
25 consisted of just two issues raising a *Batson* challenge and arguing lack of sufficient evidence
26 for co-conspirator corroboration. Exhibit 4. Counsel did not file a Reply Brief. Exhibit 3.

1 Considering this was a direct appeal from an eight-day jury trial with a life sentence, such
2 appellate briefing was wholly deficient and inadequate.

3 Appellate counsel briefly cited the law on sufficiency of the evidence but failed to
4 articulate for the appellate court the facts and circumstances which raise a reasonable doubt
5 about Petitioner's guilt. Exhibit 4. Although a .22 caliber firearm was found in Petitioner's
6 possession which was similar to one discharged during the murder, this was a week after the
7 crime and the State had no evidence that the firearm was not acquired or had come into
8 Petitioner's possession sometime after the murder. The rifling on the .22 bullet was at best only
9 similar to the rifling characteristics of the firearm found in Petitioner's apartment. Also, that
10 particular firearm bore DNA not just from Petitioner, but from some other unidentified person
11 who could have committed the murder. That unknown DNA was found on the clip of the gun
12 itself. DNA from the clip is more probative of someone who loaded a firearm with the
13 intention to use it, as opposed to DNA on the outside of the firearm which simply indicates
14 Petitioner had touched the gun at some point. Even if Petitioner was present at the convenience
15 store before the robbery, such is not suspicious as he actually lived nearby and it does not
16 indicate that he subsequently must have travelled with the others to the nearby murder scene.
17 The only independent eyewitness, jogger Robert Mason, could not identify Petitioner as being
18 present.
19
20
21

22 Also, counsel should have raised a fair-cross section argument on appeal as this had
23 been the subject of an objection and testimony from the jury commissioner at the beginning of
24 the trial and the district court judge had denied the motion. There were only two African
25 Americans on the sixty member jury venire which constituted an under-representation of
26 African Americans and denied Robertson a fair trial by a jury composed of a representative fair
27
28

1 cross-section of the community. Trial Transcript, Day 2, p. 2-51. Co-defendant Wheeler's
2 counsel made a motion to strike the venire and Attorney Sanft on behalf of Robertson joined
3 the motion but offered no other argument or support. *Id.* pp. 4, 51. The district court judge
4 found there was an absolute disparity of 7% and a comparative disparity of 58%. *Id.* p. 15.
5 After testimony by the jury commissioner, the judge denied the motion for failing to show that
6 underrepresentation was due to systematic exclusion. *Id.*, p. 51.

7
8 In *Morgan v. State*, 416 P.3d 212, 221 (Nev. 2018), the Court set forth a three-prong test
9 that trial courts must follow in order to address the question of whether the venire is a
10 representative cross section of the community: (1) that the group alleged to be excluded is a
11 "distinctive" group in the community; (2) that the representation of this group in venires from
12 which juries are selected is not fair and reasonable in relation to the number of such persons in
13 the community; and (3) that this under representation is due to the systematic exclusion of the
14 group in the jury selection process. *Id.*, citing *Williams v. State*, 121 Nev. 934, 939, 125 P.3d
15 627, 631 (2005). In *Valentine*, the Court found that the "random selection" practice of sending
16 an equal number of jury summonses to each postal zip code without ascertaining the percentage
17 of the population in each zip code which constituted a distinctive group, could establish a prima
18 facie case of systematic exclusion of that group. *Valentine v. State*, 135 Nev. 463, 466, 454
19 P.3d 709 (2019).

20
21
22 Finally, appellate counsel also should have raised on appeal admission of the text
23 message about "hitting a house" which implicated other bad acts for which Petitioner had not
24 been charged. See Issue 1 above. Had counsel raised all the issues above, there is a reasonable
25 probability that one or more of them would have been successful on appeal resulting in a
26 different outcome.

1
2 **CONCLUSION**

3 Wherefore, Robertson respectfully requests this Court find that counsel was ineffective
4 at trial and on appeal and grant his Petition for post-conviction relief by vacating his judgment
5 of conviction.
6

7 Dated this 19th day of August, 2022.

8 Respectfully Submitted,

9
10 /s/ Steven S. Owens, Esq.
11 STEVEN S. OWENS, ESQ.
12 Nevada Bar No. 4352
13 1000 N. Green Valley #440-529
14 Henderson, Nevada 89074
15 (702) 595-1171
16 Attorney for Petitioner
17 RAEKWON ROBERTSON
18
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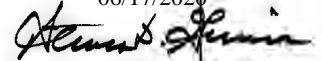
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CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
Steve Wolfson
Motions@clarkcountyda.com

/s/ Steven S. Owens, Esq.
STEVEN S. OWENS, ESQ.
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1000 N. Green Valley #440-529
Henderson, Nevada 89074
(702) 595-1171

17

Exhibit 1



CLERK OF THE COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C-17-328587-3

-vs-

DEPT. NO. XII

DAVONTAE AMARRI WHEELER
#5909081

Defendant.

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 2 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.330, 193.165; and COUNT 3 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; and COUNT 3 – SECOND DEGREE MURDER (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; thereafter, on the 11th day of

1 June, 2020, the Defendant was present in court for sentencing with counsel JAMES J.
2 RUGGEROLI, ESQ., and good cause appearing,

3 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
4 addition to the \$25.00 Administrative Assessment Fee, \$8,729.53 Restitution to be
5 paid Jointly and Severally with Co-Defendant, and \$150.00 DNA Analysis Fee
6 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the
7 Defendant is sentenced to the Nevada Department of Corrections (NDC) as follows:

8
9 **COUNT 1** - a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole
10 eligibility of TWENTY-FOUR (24) MONTHS; and **COUNT 3** - LIFE with a MINIMUM
11 parole eligibility of TEN (10) YEARS, CONSECUTIVE to COUNT 1; with ONE
12 THOUSAND THIRTY-TWO (1,032) DAYS credit for time served. Defendant found
13 NOT GUILTY as to COUNT 2. The AGGREGATE TOTAL sentence is LIFE with a
14 MINIMUM of ONE HUNDRED FORTY-FOUR (144) MONTHS.
15

16 DATED this _____ day of June, 2020.

Dated this 17th day of June 2020

B7B AFB 2F45 38EE
Michelle Leavitt

MICHELLE LEAVITT
DISTRICT COURT JUDGE

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada

CASE NO: C-17-328587-3

vs

DEPT. NO. Department 12

Davontae Wheeler

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Judgment of Conviction was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Envelope ID: 6195331

Service Date: 6/17/2020

Dept 12 Law Clerk

dept12lc@clarkcountycourts.us

JAMES RUGGEROLI

ruggeroli@icloud.com

Giancarlo Pesci

giancarlo.Pesci@clarkcountyda.com

RACHEL O'HALLORAN, DDA

rachel.ohalloran@clarkcountyda.com

Exhibit 2

Heather S. Smith
CLERK OF THE COURT

JOCP

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C-17-328587-1

DEPT. NO. XII

DEMARIO LOFTON-ROBINSON aka
Demario Loftonrobinson
#5318925

Defendant.

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: COUNT 1 – MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030.2, 193.165; and COUNT 2 – ATTEMPT ROBBERY (Category B Felony) in violation of NRS 200.380, 193.330 thereafter, on the 18th day of May, 2022, the Defendant was present in court for sentencing with counsel TODD M. LEVENTHAL, ESQ., 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 plus \$3.00 DNA Collection Fee, the Defendant is sentenced to

1 the Nevada Department of Corrections (NDC) as follows: COUNT 1 – a MAXIMUM of
2 TWENTY-FIVE (25) YEARS with a MINIMUM parole eligibility of TEN (10) YEARS plus a
3 CONSECUTIVE term of TWENTY (20) YEARS with a MINIMUM parole eligibility of
4 EIGHT (8) YEARS for the Use of a Deadly Weapon; and COUNT 2 – a MAXIMUM of TEN
5 (10) YEARS with a MINIMUM Parole Eligibility of FOUR (4) YEARS, CONCURRENT
6 with COUNT 1; with ONE THOUSAND SEVEN HUNDRED FORTY-SIX (1,746) DAYS
7 credit for time served. The AGGREGATE TOTAL sentence is FORTY-FIVE (45) YEARS
8 MAXIMUM with a MINIMUM of EIGHTEEN (18) YEARS.
9
10
11
12

13 Dated this 19th day of May, 2022

14 

15 *hvp*

16 **FDA CA2 6865 2316**
17 **Michelle Leavitt**
18 **District Court Judge**
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-17-328587-1

7 vs

DEPT. NO. Department 12

8 Demario Lofton-Robinson
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Judgment of Conviction was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/19/2022

15 Dept 12 Law Clerk

dept12lc@clarkcountycourts.us

16 District Attorney

motions@clarkcountyda.com

17 Eileen Davis

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18 Todd Leventhal Esq

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Exhibit 3

Cases

Case Search

Participant Search

Disclaimer: The information and documents available here should not be relied upon as an official record of action. Only filed documents can be viewed. Some documents received in a case may not be available for viewing. Some documents originating from a lower court, including records and appendices, may not be available for viewing. For official records, please contact the Clerk of the Supreme Court of Nevada at (775) 684-1600.

Case Information: 81400

Short Caption:	ROBERTSON (RAEKWON) VS. STATE	Court:	Supreme Court
Lower Court Case(s):	Clark Co. - Eighth Judicial District - C328587	Related Case(s):	76954, 78442, 81374, 81374-COA, 83547, 84792
Disqualifications:		Classification:	Criminal Appeal - Life - Direct
Replacement:		Case Status:	Remittitur Issued/Case Closed
To SP/Judge:		Panel Assigned:	Panel
Oral Argument:		SP Status:	
Submission Date:		Oral Argument Location:	
		How Submitted:	

+ Party Information

Docket Entries

Date	Type	Description	Pending?	Document
06/30/2020	Filing Fee	Appeal Filing Fee Waived. Criminal. (SC)		
06/30/2020	Notice of Appeal Documents	Filed Notice of Appeal. Appeal docketed in the Supreme Court this day. (Docketing statement mailed to counsel for appellatant.) (SC)		20-24126
07/01/2020	Docketing Statement	Filed Docketing Statement. (SC)		20-24394
07/01/2020	Transcript Request	Filed Request for Transcript of Proceedings (REJECTED PER 7/1/20 NOTICE). (SC)		
07/01/2020	Notice/Outgoing	Issued Notice of Deficient Transcript Request. (SC)		20-24441

07/02/2020	Transcript Request	Filed Request for Transcript of Proceedings. Transcripts requested: 2/11/20, 2/12/20, 2/13/20, 2/14/20, 2/18/20, 2/19/20, 2/20/20, 2/24/20, 6/5/20, and 6/11/20. To Court Reporter: Sarah Richardson. (SC)	20-24538
08/11/2020	Transcript	Filed Notice from Court Reporter. Sara Richardson stating that the requested transcripts were delivered. Dates of transcripts: 2/11/20, 2/12/20, 2/13/20, 2/14/20, 2/18/20, 2/19/20, 2/20/20, 2/24/20, 06/11/20. (SC).	20-29641
10/21/2020	Order/Clerk's	Filed Order Granting Extension Per Telephonic Request. Appellant's Opening Brief and Appendix due: November 12, 2020. (SC).	20-38633
11/12/2020	Appendix	Filed Appellant's Appendix to Opening Brief. Vols. 1-7. (SC)	20-41426
11/12/2020	Brief	Filed Appellant's Opening Brief. (SC)	20-41429
11/12/2020	Brief	Filed Appellant's Corrected Opening Brief. (SC)	20-41430
12/09/2020	Brief	Filed Respondent's Answering Brief. (SC)	20-44750
01/25/2021	Case Status Update	Briefing Completed/To Screening/No Reply Brief Filed. (SC)	
04/29/2021	Order/Procedural	Filed Notice of Voluntary Disclosure. I (Justice Douglas Herndon) have no bias or prejudices as to any of the parties or issues in the litigation and do not believe that my impartiality could reasonably be questioned. However, I make this disclosure so that any person who wishes to request my disqualification may do so by filing a motion pursuant to NRAP 35. Any recusal request should be made in writing within seven (7) days of the filing date of this Voluntary Disclosure.	21-12350
05/14/2021	Order/Dispositional	Filed Order of Affirmance. "ORDER the judgment of conviction AFFIRMED." SNP21-RP/LS/AS (SC)	21-13945
06/08/2021	Remittitur	Issued Remittitur. (SC)	21-16344
06/08/2021	Case Status Update	Remittitur Issued/Case Closed. (SC)	
06/18/2021	Remittitur	Filed Remittitur. Received by District Court Clerk on June 9, 2021. (SC)	21-16344

[Combined Case View](#)

Exhibit 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON ROBERTSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 81400

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Michelle Leavitt, District Judge
District Court No. C-17-328587-1

APPELLANT'S OPENING BRIEF

Michael Sanft (8245)
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Attorney for Appellant Raekwon Robertson

Electronically Filed
Nov 12 2020 05:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed pursuant to that rule. These representations are made so that the justices of this Court may evaluate any potential conflicts warranting disqualification or recusal.

1. Attorney of Record for Appellant:

a. Michael W. Sanft, Esq.

2. Publicly-held Companies Associated:

a. N/A

3. Law Firm(s) Appearing in the Court(s) Below:

a. Clark County District Attorney

b. Sanft Law, P.C.

c. Mace J. Yomplosky Esq.

d. James J. Ruggeroli Esq.

DATED this 21st day of October, 2020.

/s/ Michael Sanft

Michael Sanft, Esq. (8245)

SANFT LAW

411 East Bonnevill Avenue, Suite 330

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(702) 497-8008

Attorney for Appellant Raekwon Robertson

TABLE OF CONTENTS

Table of Authorities.....	4
Jurisdictional Statement.....	5
Routing Statement.....	5
Statement of the Issues.....	5
Statement of the Case.....	6
Statement of the Facts.....	6
Summary of the Argument.....	7
Argument on the Issues.....	8
I. The District Court erred by denying Defendant’s Batson challenge after the State utilized a peremptory challenge for a discriminatory purpose.....	8
II. The State presented an unreliable witness to corroborate evidence that on its own could not have resulted in a guilty verdict.....	10
Conclusion.....	10
Attorney’s Certificate of Compliance.....	13
Certificate of Service.....	15

TABLE OF AUTHORITIES

Case Authority

<i>Batson v. Kentucky</i> , 476 U.S. 79, 85 (1986).....	8
<i>McCarty v. State</i> , 371 P.3d 1002, 132 Nev. Adv. Op. 20 (Nev. 2016).....	9
<i>Kaczmarek v. State</i> , 120 Nev. 314, 334 (Nev. 2004).....	9
<i>In re Winship</i> , 397 U.S. 358, 364 (1970)	10
<i>Edwards v. State</i> , 90 Nev. 255, 524 P.2d 328 (1974).....	10
<i>Jackson v. Virginia</i> , 443 U.S. 307, 319 (1979)	12
<i>Wilkins v. State</i> , 96 Nev. 367, 609 P.2d 309 (1980).....	12
<i>Cunningham v. State</i> , 94 Nev. 128, 575 P.2d 936 (1978).....	12

Statutory Authority

NRS 177.015	5
NRAP 17(b)(1)	5

Other Authority

Jury Instruction 9.....	11
Jury Instruction 11.....	11

JURISDICTIONAL STATEMENT

This is an appeal from a judgment of conviction after a jury trial finding Appellant Raekwon Robertson (“Robertson”) guilty of 3 felony counts. (7 Appellant’s Appendix “AA” 001632-AA001633). The Judgment of Conviction was filed on June 17, 2020. (7 AA001668-AA001670). The Notice of Appeal was filed on June 24, 2020. (7 AA001672). This Court has jurisdiction over this appeal under NRS 177.015 which provides for the right to appeal a final judgment in a criminal case.

ROUTING STATEMENT

This appeal is presumptively assigned to the Supreme Court because it relates to convictions for Category A and B felonies. NRAP(b)(1).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The State presented an impeached witness to connect unpersuasive evidence that when heard on its own could not have resulted in a guilty verdict.

As well, the District Court decided in error to deny Defendant’s *Batson* challenge when the State excused the only remaining African-American venire-member.

STATEMENT OF THE CASE

Robertson began an eight day trial on February 11, 2020. (1 AA000142). The same day the State filed an Amended Superseding Indictment containing one count of Conspiracy to Commit Robbery, one count of Attempted Robbery with use of a Deadly Weapon, and one count of Murder with use of a Deadly Weapon. (1 AA000138).

After deliberation, the jury returned with guilty verdicts on all three counts. (7 AA001632-AA001633). On March 12, 2020 Robertson signed a Guilty Plea Agreement to one count of Conspiracy to Commit Robbery and one count of Robbery with a Deadly Weapon. (7 AA001645-AA001653). Robertson was sentenced on June 11, 2020 to 28 years to life. (7 AA001654-AA001667).

This Opening Brief now follows.

STATEMENT OF THE FACTS

The State presented the following evidence at trial. On August 8th, 2017 and into the morning of the August 9th, 2017 Raekwon Robertson, Demario Lofton-Robinson, Davonte Wheeler, and Deshawn Robinson carried out an armed robbery they planned that morning. (5 AA001011-AA001012).

They arrived in the neighborhood of Dewey Avenue and Lindell Avenue just before midnight where they and their car, a white Mercury Grand Marquis, were observed by a passing jogger, Robert Mason. (3 AA00686-AA000690). Shortly after, they saw Gabrielle Valenzuela pull into his driveway and check his mail. (5 AA001034-AA001035).

The four men quickly approached him, grabbed him, and told him to give them everything he had. (5 AA001034-AA001035). Within a couple of seconds Valenzuela lay dying in his driveway, shot in his head and torso. (5 AA001053). The four men fled the scene without taking any of Valenzuela's property. (5 AA001036).

The State used accomplice DeShawn Robinson to validate the facts of the events. (5 AA001048). Robinson agreed to this only after the State offered to remove the charge of Murder with use of a Deadly Weapon in exchange for his testimony against Robertson and Wheeler. (5 AA001048).

SUMMARY OF THE ARGUMENT

A Motion to Strike the jury venire due to the systemic exclusion of a protected group was presented by Defendant and subsequently denied. The State then used a peremptory challenge to excuse the only remaining African-American venire-member. A second *Batson* challenge, raised on the grounds Juror 468 was excused because she is African-American, was

also denied. The State then presented an accomplice to this crime, Deshawn Robinson, to corroborate unconvincing evidence that on its own would not render a guilty verdict. Robinson had previously lied to investigators about what occurred that day, only deciding to enter an Alford plea after the State offered to remove the charge of Murder with use of a Deadly Weapon. (5 AA001060-AA001072).

ARGUMENT ON THE ISSUES

I. The District Court erred by denying Defendant's Batson challenge after the State utilized a peremptory challenge for a discriminatory purpose.

When the District Court denied Defendant's *Batson* challenge, subsequent the State's peremptory strike removing Juror 468, the only remaining African American venire-member, it denied Robertson the right to a fair and impartial jury. "Exclusion of black citizens from service as jurors constitutes a primary example of the evil the Fourteenth Amendment was designed to cure." *Batson v. Kentucky*, 476 U.S. 79, 85 (1986).

Even though the District Court did not believe Defendant met the first prong of *Batson* it accepted the State's race-neutral explanation, "I'm never picking a criminal defense attorney, no matter what color, no matter what ethnicity, no matter what sex, no matter what gender, on my jury." (AA000614). In *McCarty v. State*, 371 P.3d 1002, 132 Nev. Adv. Op.

20 (Nev. 2016), the Nevada Supreme Court found the State of Nevada's race-neutral explanation pretextual when it stated, "It has nothing to do with race, but the State of Nevada's not going to leave somebody who works at a strip club on their panel."

After the State offered its race-neutral reason for its strike, the District Court denied the challenge without discussion for its reasoning. (AA000618). However, as the Nevada Supreme Court has stated, "At the third step, especially, an adequate discussion of the district court's reasoning may be critical to our ability to assess the District Court's resolution of any conflict in the evidence regarding pretext." *Kaczmarek v. State*, 120 Nev. 314, 334 (Nev. 2004).

During voir dire Juror 468 indicated she was enrolled at UNLV as a Criminal Justice major. The State then asked eight follow up questions where it learned that she wanted to become a Criminal Defense attorney. The State used this as their reason to strike the juror, however, simply stating that she aspires to become a criminal defense attorney is not indicia she could not be impartial. Juror 468 was asked three times if she would be fair and impartial and each time she answered in the affirmative. (AA000223, AA000388, AA000570).

Alternatively, Juror 462, who is not African-American, was only asked one follow up question when she stated she was enrolled at CSN to become a Medical Lab Scientist, a career field that would potentially include official investigatory roles. On the single follow up question by the State, Juror 462 indicated that she wanted to work with blood as she already had some experience with it. (AA000384). The State should have followed up in a similar manner they did with Juror 468. “Disparate questioning by prosecutors of struck veniremembers and those veniremembers of another race or ethnicity is evidence of purposeful discrimination.” *McCarty v. State*, 371 P.3d 1002, 1010 (Nev. 2016).

II. The State presented an unreliable witness to corroborate evidence that on its own could not have resulted in a guilty verdict.

When the jury returned with its guilty verdict, it did so using the testimony of a witness who admitted to lying to police and investigators about what transpired starting the morning of August 8th, 2017 into August 9th, 2017. Robinson only changed his story to investigators when the State offered to remove the charge of Murder with use of a Deadly Weapon. (5 AA001060-AA001072).

Jury Instruction number 9 states in pertinent part, “The credibility or believability of a witness should be determined by his manner upon the

stand, his relationship to the parties, his fears, motives, interests or feelings...” (7 AA001597).

Knowing that Robinson must testify to the State’s facts he had every motivation to deceive the jury during his testimony in order to protect his well being and future interest.

Jury instruction number 11 states in pertinent part:

“Evidence to corroborate accomplice testimony does not suffice if it merely casts grave suspicion on the defendant... If there is not sufficient independent evidence which tends to connect the defendant with the commission of the offense the testimony of the accomplice is not corroborated.” (7 AA001599).

Evidence to support a finding of guilt beyond a reasonable doubt without corroboration of accomplice testimony is insufficient in this instant case.

A defendant in a criminal action is entitled to due process of law as guaranteed by the Fifth and Fourth Amendments to the United States Constitution. The Constitution prevents the criminal conviction of any person except upon proof of reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970); *Edwards v. State*, 90 Nev. 255, 258-59, 525 P. 2d 328. 331 (1974). In reviewing a sufficiency of the evidence claim, a court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find the essential elements of

the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This Court reviews insufficiency of evidence claims to determine, “[w]hether the jury, acting reasonably, could have been convinced by the competent evidence of the defendant’s guilt beyond a reasonable doubt.” *Wilkins v. State*, 96 Nev. 367, 374, 609 P. 2d 309 (1980). A verdict will be upheld only if supported by “substantial evidence.” *Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 937 (1978).

CONCLUSION

Robertson submits for the reasons and argument stated herein, his judgment of conviction be reversed and this case be remanded to the District Court.

DATED this 21st of October, 2020.

/s/ Michael Sanft

Michael Sanft, Esq. (8245)

SANFT LAW

411 East Bonneville Avenue, Suite 330

Las Vegas, Nevada 89101

(702) 497-8008

Attorney for Appellant Raekwon Robertson

CERTIFICATE OF COMPLIANCE

1. I hereby certify this brief does comply with the formatting requirements of NRAP 32(a)(4).

2. I certify that this brief does comply with the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font of the Times New Roman style.

3. I certify that this brief does comply with the word limitation requirement of NRAP 32(a)(7)(A)(ii). The relevant portions of the brief are 2,300 words.

4. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanction in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 21st day of October, 2020.

Michael Sanft, Esq. (8245)
SANFT LAW
411 East Bonneville Avenue, Suite 330
Las Vegas, Nevada 89101
(702) 497-8008
Attorney for Appellant Raekwon Robertson

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 21st day of October, 2020, a copy of the foregoing Appellant's Opening Brief was served by electronic filing as follows:

District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
100 N. Carson St.
Carson City NV 89701

DATED this 21st day of October, 2020.

/s/ Michael Sanft

Michael Sanft, Esq. (8245)

SANFT LAW

411 East Bonneville Avenue, Suite 330

Las Vegas, Nevada 89101

(702) 497-8008

Attorney for Appellant Raekwon Robertson

/s/ Michael Sanft

Exhibit 5

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON SETREY ROBERTSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 81400
District Court Case No. C328587

FILED

JUN -9 2021

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

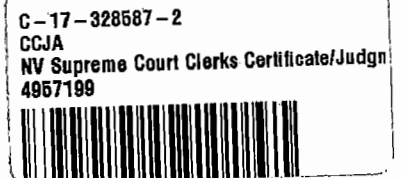
"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 28 day of April, 2021.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
June 08, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Kaitlin Meetze
Administrative Assistant



IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON SETREY ROBERTSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81400

FILED

MAY 14 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery, attempted robbery with the use of a deadly weapon, and murder with the use of a deadly weapon; and pursuant to a guilty plea, of conspiracy to commit robbery and robbery with the use of a deadly weapon.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant first argues that insufficient evidence supports the jury's verdict. When reviewing a challenge to the sufficiency of the evidence supporting a criminal conviction, this court considers "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We conclude that sufficient evidence supported the convictions. One of the three accomplices testified that appellant, who was carrying a gun, participated in the attempted robbery and murder. The State also presented a text message appellant sent to another accomplice on the day

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

of the incident asking if he wanted to "hit a house," surveillance video showing appellant in a car identified by a witness as being in the immediate vicinity of the crime scene at the time the crimes occurred, evidence of appellant's fingerprints on that car, and a gun found at appellant's house that had appellant's DNA on it and contained bullets that matched casings found at the crime scene. See NRS 193.165; NRS 193.330; NRS 199.480; NRS 200.010; NRS 200.030; NRS 200.380. Based on this evidence, we reject appellant's assertion that the accomplice's testimony was not sufficiently corroborated. See NRS 175.291(1) ("A conviction shall not be had on the testimony of an accomplice unless the accomplice is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense . . ."); *Heglemeier v. State*, 111 Nev. 1244, 1250, 903 P.2d 799, 803 (1995) (providing that corroborating evidence is that which "independently connect[s] the defendant with the offense," and may be direct or circumstantial).

Appellant next argues that the State exercised a peremptory challenge in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). When considering a *Batson* challenge, the district court must engage in a three-step inquiry. *McCarty v. State*, 132 Nev. 218, 226, 371 P.3d 1002, 1007 (2016). First, the challenge's opponent "must make out a prima facie case of discrimination." *McCarty*, 132 Nev. at 226, 371 P.3d at 1007 (quoting *Ford v. State*, 122 Nev. 398, 403, 132 P.3d 574, 577 (2006)). Second, the challenge's proponent must provide a non-discriminatory rationale for the challenge. *Id.* Third, after evaluating the proponent's neutral explanation, the district court must determine if the challenge's opponent proved purposeful discrimination. *Id.* The first step is moot where the proponent

provides its race-neutral reason before the district court determines if the opponent made a prima facie case of discrimination. See *Williams v. State*, 134 Nev. 687, 691-92, 429 P.3d 301, 306-07 (2018).


Here, the State gave its race-neutral reason, and the district court then concluded that appellant failed to make a prima facie case of discrimination and that the *Batson* challenge therefore failed at the first step. We agree with appellant that the district court erred by resolving the *Batson* challenge on the first step, as that step became moot when the State gave its race-neutral reason before the district court addressed the first step. Reversal is not warranted, however. The State offered a proper race-neutral basis for the peremptory challenge: the prospective juror was a criminal justice major and stated she intended to pursue a career as a criminal defense attorney, and the State explained that it would never pick an aspiring criminal defense attorney to sit on a jury. And we discern no disparate questioning or other evidence of purposeful discrimination, and appellant does not demonstrate any on appeal.² See *Purkett v. Elem*, 514 U.S. 765, 768 (1995) (holding that "the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike"); *McCarty*, 132 Nev. at 227-28, 371 P.3d at 1008 (recognizing that disparate treatment of potential jurors can support a finding of purposeful discrimination under *Batson*). Accordingly, we believe that the record reflects that the district court ultimately reached the right result by denying appellant's *Batson* claim. See *Cooper v. State*, 134 Nev. 860, 864, 432 P.3d 202, 206 (2018) (insinuating that this court can address "steps two


²The only prospective juror appellant points to as a comparison for disparate questioning was pursuing a degree in the medical field, not a criminal justice degree.


and three [of *Batson*] for the first time on appeal" where the record includes the State's race-neutral basis for the challenged strike); *Hawkins v. State*, 127 Nev. 575, 578-79, 256 P.3d 965, 967-68 (2011) (addressing steps two and three of *Batson* despite the district court's failure to state its reasoning on step three because the State's neutral explanation "did not reflect an inherent intent to discriminate" and the defendant failed to show purposeful discrimination); *Kaczmarek v. State*, 120 Nev. 314, 334-35, 91 P.3d 16, 30 (2004) (addressing *Batson* steps two and three even though the district court did not adequately state its reasons where the record included the State's race-neutral explanation and did not show any discriminatory motives).

Based on the foregoing, we

ORDER the judgment of conviction AFFIRMED.


Parraguirre


Stiglich


Silver

cc: Hon. Michelle Leavitt, District Judge
Mayfield, Gruber & Sanft/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON SETREY ROBERTSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 81400
District Court Case No. C328587

REMITTITUR

TO: Steven D. Grlerson, Eighth District Court Clerk

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

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

DATE: June 08, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

cc (without enclosures):

Hon. Michelle Leavitt, District Judge
Mayfield, Gruber & Sanft/Las Vegas \ Michael W. Sanft
Clark County District Attorney \ Alexander G. Chen, Chief Deputy District
Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN - 9 2021.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

JUN - 9 2021

CLERK OF THE COURT

Exhibit 6

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C-18-335287-1
DEPT. NO. XII

DESHAWN ROBINSON,
#8241769

Defendant.

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480, and COUNT 2 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.330, 193.165; thereafter, on the 9th day of June, 2022, the Defendant was present in court for sentencing with his counsel, JD EVANS, Esq., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment fee, \$150.00 DNA Analysis fee, including testing to determine genetic markers, and \$3.00 DNA Collection fee, the Defendant is sentenced on COUNT 1 - to a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS, and on COUNT 2 – to a MINIMUM of TWO (2) YEARS and a MAXIMUM of FIVE (5) YEARS plus a CONSECUTIVE term of a MINIMUM of ONE (1) YEAR and a MAXIMUM of THREE (3) YEARS for use of a deadly weapon in the Nevada Department of Corrections (NDC), COUNT 2 CONCURRENT WITH COUNT 1, for an AGGREGATE SENTENCE

of a MINIMUM PAROLE ELIGIBILITY after THREE (3) YEARS and a MAXIMUM of EIGHT (8) YEARS, SUSPENDED; placed on PROBATION for an indeterminate period not to exceed ONE (1) YEAR. SPECIAL CONDITIONS:

1. Obtain a High School Diploma or General Education Diploma (GED) during the term of probation;
2. Obtain and maintain full time employment;
3. No possession, control or consumption of alcohol and marijuana during the term of probation.

COURT ADDITIONALLY ORDERED GENERAL PROBATION CONDITIONS IMPOSED as follows:

Reporting: You are to report in person to the Division of Parole and Probation as instructed by the Division or its agent. You are required to submit a written report each month on forms supplied by the Division. This report shall be true and correct in all respects.

Residence: You shall not change your place of residence without first obtaining permission from the Division of Parole and Probation, in each instance.

Intoxicants: You shall not consume any alcoholic beverages whatsoever. Upon order of the Division of Parole and Probation or its agent, you shall submit to a medically recognized test for blood / breath alcohol content. Test results of .08 blood alcohol content or higher shall be sufficient proof of excess.

Controlled Substances: You shall not use, purchase, or possess any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional. You shall immediately notify the Division of Parole and Probation of any prescription received. You shall submit to drug testing as required by the Division or its agent.

Weapons: You shall not possess, have access to, or have under your control any type of weapon.

Search: You shall submit your person, property, place of residence, vehicle, or areas under your control, including any electronic devices such as phones and/or computers

1 / tablets, to search including electronic surveillance or monitoring of your location, at
2 any time, with or without a search warrant or warrant of arrest, for evidence of a crime
3 or violation of probation by the Division of Parole and Probation or its agent.

4 Associates: You must have prior approval by the Division of Parole and Probation to
5 associate with any person convicted of a felony, or any person on probation or parole
6 supervision or any gang members. You shall not have any contact with persons
7 confined to a correctional institution unless specific written permission has been
8 granted by the Division and the correctional institution.

9 Directives and Conduct: You shall follow the directives of the Division of Parole and
10 Probation and your conduct shall justify the opportunity granted to you by this
11 community supervision.

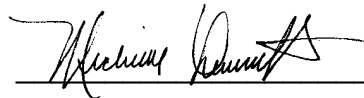
12 Laws: You shall comply with all municipal, county, state, and federal laws and
13 ordinances.

14 Out of State Travel: You shall not leave the state without first obtaining written
15 permission from the Division of Parole and Probation.

16 Employment/Program: You shall seek and maintain legal employment, or maintain a
17 program approved by the Division of Parole and Probation and not change such
18 employment or program without first obtaining permission. All terminations of
19 employment or program shall be immediately reported to the Division.

20 Financial Obligation: You shall pay fees, fines, and restitution on a schedule approved
21 by the Division of Parole and Probation. Any excess monies paid will be applied to any
22 other outstanding fees, fines, and / or restitution, even if it is discovered after your
23 discharge.

24
25 Dated this 5th day of July, 2022

26 
27 _____

28
29 \po
30
31 **2D8 F55 66CB 4FDA**
Michelle Leavitt
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-18-335287-1

7 vs

DEPT. NO. Department 12

8 Deshawn Robinson
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Judgment of Conviction was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/5/2022

15 Court Services

DSDcourtservices@lvmpd.com

16 Kristine Santi

SantiK@clarkcountycourts.us

Exhibit 7

STATE OF NEVADA -v-
RAEKWON SETREY ROBERTSON
ID NO: 8252804
☐ Interpreter Required

CLARK COUNTY
COURTS
LAS VEGAS JUSTICE COURT
FILED IN OPEN COURT

NOV 16 2017

JUSTICE COURT CASE NO: 17F14369B DEPT: JC Department 3
DISTRICT COURT CASE NO: C328040 TRACK DEPT: _____

REQUEST FOR EVALUATION(S) FOR COMPETENCY

I, Jason R. Margolis, on behalf of RAEKWON SETREY ROBERTSON do hereby request that the above named defendant be evaluated for competency based on the following:

The defendant DOES NOT:

- ☒ appear to understand the charges or allegation ☒ understand the range and nature of the penalties
☐ understand the adversarial nature of the legal process ☒ display appropriate courtroom behavior
☐ appear to disclose to defense attorney pertinent facts ☒ demonstrate ability to provide relevant testimony
☐ do you believe the defendant currently suffers from: please indicate range of punishment:
☐ TBI ☐ Dementia ☐ Alzheimer's

11-16-2017
Date

Jason R. Margolis
Signature of Person Requesting Evaluation

Jason @ maclean.com
(702) 385-9777
Contact Number & Email

ORDER FOR COMPETENCY EVALUATION(S)

☒ THIS MATTER having come before the Court at a hearing where the Defendant was
☒ PRESENT ☐ NOT PRESENT

THE COURT FINDS AND ORDERS that doubt has arisen as to the competence of the Defendant and that the proceedings are suspended until the question of competence is determined.

IT IS FURTHER ORDERED that pursuant to N.R.S.178.415 the appropriate evaluation(s) will be conducted; the defendant having been charged with a

☐ MISDEMEANOR ☒ GROSS MISDEMEANOR / FELONY competency hearing to be set at 9:00 A.M. in District Court Department 9 on the 12/8

FURTHERMORE, IT IS ORDERED the following records be made available to the Specialty Court Division of the Clark County Courts: 1) Any and all jail records to include, but not limited to, custody records, psychiatric records, medical records and incident reports. 2) Any and all criminal records, including but not limited to, criminal complaint, police records and discovery.

ADDITIONALLY, it is ordered that the Clark County Detention Center and/or NaphCare shall provide the referring attorney and/or attorney's staff with any and all medical/psychiatric records of the defendant upon request and NaphCare staff including but not limited to physician and nursing records. Lastly, they shall speak with the referring attorney and/or their staff about the defendant's condition including but not limited to prognosis, diagnosis and treatment.

IT IS FINALLY ORDERED that the report(s) of said examination be submitted to the Specialty Courts Division no later than 5:00 PM on the third judicial day preceding the scheduled hearing.

DATED this 16th day of Nov, 20 17

U.S. District Court
JUDGE

17F14369B
RFEC
Request for Evaluation for Competency
8746268



COMPETENCY EVALUATION - COVER SHEET

☒ **COMPETENT**
☐ **NOT COMPETENT**

DEFENDANT NAME: Raequan RobertsCASE NO.: 17 F 14369BEVALUATION DATE: 11-28-17LENGTH OF EVALUATION: 45 minutesREPORT DATE: 11-28-17INFORMED CONSENT: ☒ YES ☐ NO**SUMMARY OF RESULTS PERTAINING TO DUSKY vs. UNITED STATES**

Is there substantial impairment or gross deficit in the following areas:

YES

NO

1. Capacity to understand the nature of the criminal charges.
2. Capacity to understand the nature and purpose of court proceedings.
3. Capacity to aid and assist counsel in the defense.

☐
☐
☐

☒
☒
☒

DIAGNOSTIC IMPRESSIONS:

Axis I Schizophrenia, Bipolar DO. by history
 Axis II History of Learning Disability
 Axis III History of Attention Deficit Hyperactivity Disorder
 Axis IV _____
 Axis V _____

PSYCHIATRIC HISTORY:

YES

NO

Currently taking medication for mental illness:

☒☐

If yes, specify: _____

Prior mental health treatment:

☒☐

Prior hospitalizations:

☒☒

If yes, dates and duration: _____

MALINGERING:

Is there a substantial degree of weakness in the interview, response style, or testing data that suggests a malingered disorder is present?

☐ YES ☒ NO ☐ NOT RULED OUT**REVIEW OF RECORDS - COLLATERAL INFORMATION**☒ Discovery ☒ Jail Medical Records☐ Jail Disciplinary Records ☐ Mental Health Records☐ Other: _____Submitted by: Lawrence Kapel
PrintSignature L. Kapel

LAWRENCE KAPEL, Ph.D.

1090 Wigwam Pkwy #100
Henderson, NV 89074

(702) 454-0201

Competency Evaluation

Client Name: Raekwon Roberts

Case Number: 17F14369B

Date of Evaluation: 11-28-17

Date of Report: 11-28-17

The results of my evaluation are summarized in this report. Mr. Roberts reported a history of "bipolar disorder, schizophrenia and ADHD". He reported that he is currently receiving treatment. He reported that he had been off his medication for over one year prior to his arrest. In applying the Dusky standard he is aware of the charges he is facing and the options secondary to the charges. He is aware of the adversarial nature of the legal process. He is motivated to help himself and can relate in a rational and goal directed fashion. He reported no memory for the alleged offenses but is able to remember what he is accused of having done. He is able to relate his mental state at the time of the offense and is open to his attorney presenting his mental health history and mental state as factors in his defense. Overall, it is my opinion that he can aid in his defense and is competent to proceed.

Information used to render the above opinion:

1. Jail medical record
2. Request for evaluation of competency
3. Criminal complaint
4. Clinical interview with Mr. Roberts

Identifying information: Raekwon Roberts is a 20 year old male who was evaluated in the Clark County Detention Center (CCDC). He is charged with Burglary while in possession of a firearm, 2 counts of Robbery with use of a deadly weapon, 2 counts of Conspiracy to commit robbery, Attempt robbery with use of a deadly weapon and Murder with use of a deadly weapon. He was referred by the Eighth Judicial District Court, Specialty Courts Division to aid in determining if he is competent to stand trial. He was advised that a copy of this report would be sent to the court and the customary

Client Name: Raekwon Roberts
Case Number: 17F14369B
Date of Evaluation: 11-28-17

psychologist-client confidentiality didn't apply. He agreed to proceed with the evaluation.

Behavioral observation and mental status: Mr. Roberts was interviewed in a private room at CCDC. He was cooperative with the interview. His speech was fluent and goal directed. His responses were appropriate to the questions asked and wasn't suggestive of loose associations or tangential thinking. His responses weren't reflective of active paranoia or psychosis. He was oriented to the month and year. He thought the current president was "Obama". He couldn't spell WORLD forward. He was able to complete serial 3's. He was able to answer simple abstract reasoning problems. Overall, his mental status was grossly within normal limits and not suggestive of active psychotic process or irrational thought process.

Current psychological symptoms: Mr. Roberts reported that he is currently taking medication for bipolar disorder and schizophrenia. He wasn't sure what the medication was. He reported that when he isn't taking his medication he will "hear stuff" that he described as "spirit voices" and that this will occur daily when he isn't on his medication but has stopped when he is on his medication. He also reported that he is "paranoid" thinking that people are "out to get me". He reported poor sleep. He reported intact appetite and energy level. He reported "memory loss" and "blackouts". He reported "mood swings". He denied suicidal ideation. He reported marked anger when he is provoked but denied premeditated desire to hurt anyone.

Past mental health history: Mr. Roberts reported that he has been under psychiatric care since he was 6 years old. He reported that his psychiatrist is Dr. Zedek. He reported that he has been diagnosed with bipolar disorder, schizophrenia and ADHD. He reported that his medical regimen had included "Adderal and bars" but that he hadn't been taking medication for over one year prior to his arrest. He denied any history of psychiatric hospitalizations.

Family mental health history: Mr. Roberts reported that both his grandmother and mother have bipolar disorder and his grandmother had schizophrenia.

Substance abuse history: Mr. Roberts reported that he would only drink alcohol on "special occasions" and that it wasn't a problem. He reported that he would smoke excessive amounts of marijuana daily ("20 blunts") for the year prior to his arrest and that he was smoking as a form of treating his psychiatric illness.

Legal history: Mr. Roberts reported that he was arrested one time for misdemeanor J-walking and that he was released on his "OR".

Health: Mr. Roberts reported that he has "sickle cell anemia" but isn't taking any medication for this.

Client Name: Raekwon Roberts

Case Number: 17F14369B

Date of Evaluation: 11-28-17

Education: Mr. Roberts reported that he left school in the 11th grade citing that he was in special education and didn't like this. He reported that he was in special education for "learning disability".

Psychosocial history: Mr. Roberts was raised in Las Vegas by his mother. He denied any childhood abuse. He has never been married and has no children. He wasn't working at the time of his arrest. He was receiving disability for his psychiatric illness and his mother is his payee.

Competency issues: Mr. Roberts reported that he is charged with "2 counts of conspiracy to commit robbery, 2 counts of armed robbery, burglary with possession of a deadly weapon, attempted robbery and open murder". He was aware that he is accused of committing acts on different days in August and that he was alleged to have done this with other people. He reported that the charges are serious and he could serve life in prison if convicted. He was aware that the murder charge was the most serious. He was able to define what guilty and not guilty meant. He was open to his attorney presenting mental health factors in his defense stating "I wasn't in a right state of mind". He was aware that a plea bargain was a deal for a lesser sentence and he would be open to plea offers if he could serve less than ten years in prison. He reported that he would rely on his mother for advice about accepting a plea offer. He was aware that probation entailed being under supervision. Overall, Mr. Roberts has the capacity to appreciate the legal charges and options secondary to the charges.

Mr. Roberts reported that his attorneys are "Robert Lawson and Jason". He reported that they are court appointed private attorneys. He is aware that they are supposed to be his advocate and that he would share information with his attorneys. He is aware that the district attorney is going to "send me away" and that the judge is referee in the trial. He was aware that in trial the district attorney will "use what they got against me" and that would include witness statements and physical evidence. Overall, Mr. Roberts has the capacity to appreciate the adversarial legal process.

Mr. Roberts is motivated to help himself. He reported no memory for the alleged offenses citing his not taking his psychiatric medication and having "black outs". However, he is aware of what he is alleged to have done. He reported that he would share information with his attorney and he related to the undersigned in a rational and goal directed fashion. He is open to his attorney presenting his mental state and mental health history both as mitigating factors to resolve his case and factors in his defense. Overall, he has the capacity to aid in his defense.

Client Name: Raekwon Roberts

Case Number: 17F14369B

Date of Evaluation: 11-28-17

Impression:

History of Bipolar disorder and Schizophrenia-per his report

History of Learning disability-per his report

History of Attention Deficit Hyperactivity Disorder


LAURENCE KAPEL, Ph.D.

Licensed Clinical Psychologist

COMPETENCY EVALUATION - COVERSHEET

☒ competent
☐ not competent

DEFENDANT'S NAME: Raekwon Robertson **CASE #:** 17F14369B

EVALUATION DATE: Dec. 5, 2017 **LENGTH OF EVALUATION:** 70 minutes

REPORT DATE: Dec. 6, 2017 **INFORMED CONSENT:** ☒ YES ☐ NO

SUMMARY OF RESULTS PERTAINING TO DUSKY VS UNITED STATES

Is there substantial impairment or gross deficit in the following areas:	YES	NO
1. Capacity to understand the nature of the criminal charges.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Capacity to understand that nature and purpose of court proceedings:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Capacity to aid and assist counsel in the defense.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

DIAGNOSTIC IMPRESSIONS

Rule Out Bipolar Disorder without Psychotic Features Versus Mood Disorder;
Cannabis Use Disorder Severe in Remission due to Incarceration;
Rule Out Antisocial Personality Traits;
Rule Out Malingering.

PSYCHIATRIC HISTORY

	YES	NO
Currently taking medication for mental illness: If yes, specify: Zyprox and Benadryl	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Prior mental health treatment: Dr. Zedek	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Prior hospitalizations: If yes, dates and duration:	<input type="checkbox"/>	<input checked="" type="checkbox"/>

MALINGERING

Is there a substantial degree of weakness in the interview, response style, or testing data that suggests a malingered disorder is present?

☐ YES ☐ NO ☒ NOT RULED OUT

REVIEW OF RECORDS - collateral information

☒ Discovery
☒ Jail Medical records
☐ Jail disciplinary records
☒ Mental health records
☐ Other

SUBMITTED BY: John Paglini, Psy.D.

SIGNATURE _____

John Paglini Psy.D.

John Paglini, Psy.D.

Licensed Psychologist
9163 West Flamingo, Suite 120
Las Vegas, Nevada 89147

Phone: (702) 869-9188

Fax: (702) 869-9203

December 6, 2017

COMPETENCY EVALUATION

CLIENT:	Raekwon Robertson
CASE NUMBER:	17F14369B
DATE OF BIRTH:	February 6, 1997
AGE:	20-years/9-months
SEX:	Male
STATUS:	Single
ETHNICITY:	Black
REFERRAL SOURCE:	Specialty Courts
EVALUATOR:	John Paglini, Psy.D.

REASON FOR REFERRAL

The Specialty Courts requested an assessment of Mr. Robertson to determine if he is competent to stand trial and aid and assist counsel in defense of his case. His attorney wrote defendant has conveyed to counsel on more than one occasion that he hears voices. Further and previous meetings with Mr. Robertson at CCDC he has pleaded with counsel to pursue the death penalty if he will be forced to serve more than ten years in custody. He has vacillated between claims of actual innocence on the one hand, and imploring counsel to pursue capital punishment in the event of a conviction. He has confided in counsel that he pretends to be normal to meet expectations. He exhibits erratic behavior, severe mood swings and occasional emotional and or history manic behavior. The Dusky Standard was utilized.

Mr. Robertson is competent to stand trial and aid and assist counsel in defense of his case.
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PROCEDURES OF EVALUATION

1. Competency evaluation of Raekwon Robertson conducted by John Paglini, Psy.D., at Clark County Detention Center, December 5, 2017.
2. Utilization of Revised Competency Assessment Instrument.
3. Review of Discovery provided by Specialty Courts:
 - State of Nevada versus Raekwon Robertson Commit and Order; Clark County Courts Request Evaluation of Competency November 16, 2017; State of Nevada versus Raekwon Robertson and Codefendants Amended Criminal Complaint/Criminal Complaint; Court Minutes; LVMPD Medical and Behavioral Records.

CRIMINAL CHARGES

Mr. Robertson and codefendants are charged with burglary while in possession of a firearm; conspiracy to commit robbery; robbery with use of a deadly weapon; attempt robbery with use of a deadly weapon; and murder with use of a deadly weapon.

INFORMED CONSENT

Mr. Rackwon Robertson was advised that this is a court ordered competency evaluation. Mr. Rackwon Robertson was advised there is no confidentiality. Mr. Rackwon Robertson was informed that a report will be submitted to the presiding judge, and then disseminated to the district attorney and defense counsel. Mr. Rackwon Robertson provided written consent for this evaluation.

MENTAL STATUS EXAMINATION/BEHAVIORAL OBSERVATIONS

Mr. Rackwon Robertson is a 20-year-old single black male who was approximately 5'11" and exhibits a thin build. He was dressed in detention center clothing and exhibited good hygiene. He has some arm tattoos. He has short hair and beard.

Mr. Robertson believed the date was August 30, 2017 when it was December 5, 2017. He was accurate on the day of the week, city and state and preceding President of the United States. He did not know the current President. His speech quantity was talkative with normal speech quality and no speech impairment. His mood was calm with appropriate range of affect. Mr. Robertson's thought processes were logical and goal oriented, yet simplistic. His thought content was appropriate to issues discussed. He claims that he has experienced auditory hallucinations. Mr. Robertson denied current suicidal/homicidal ideation intent or plan.

BRIEF PSYCHOSOCIAL HISTORY

Mr. Robertson was born on February 6, 1997 in Phoenix, Arizona. He resided there for a few months. He has lived in Las Vegas, Nevada since 1997. He denied he has lived elsewhere. He has been incarcerated since August 15, 2017. Mr. Robertson reported he was raised by his mother. His father was incarcerated in federal prison for 15 years and recently released. He described his childhood as "good, all I can dream of."

EDUCATIONAL HISTORY

Mr. Robertson believed he may have repeated 8th grade. He has always been in special education classes. He had some Clark County School District educational records. He appeared to be eligible for special education for being emotionally disturbed as assessed in 8th grade. Per nurse he was on no medications for his diagnosis of ADHD, but apparently he had a diagnosis of bipolar disorder and he had previously been tried on Abilify.

Mr. Robertson reported initially he attended Sunrise Mountain High School. He then was in Morris Behavioral School and another behavioral school. He dropped out 11th grade when he was in El Dorado High School.

EMPLOYMENT HISTORY

Mr. Robertson reported he has never worked. He believes he has been on Social Security Disability but he is not sure what for. He reported that he may have been on Social Security Disability for "bipolar disorder, anxiety, schizophrenia, ADHD and ADD."

PSYCHOLOGICAL HISTORY

Mr. Robertson reported he has never been psychiatrically hospitalized. Mr. Robertson reported he has been diagnosed with bipolar disorder "I do, I have mood swings a lot, I'm calm and then I'm irritable." He reported he has always had racing thoughts as well as sleep problems. Sometimes he can sleep five to six hours a day. Mr. Robertson reported that he experiences auditory hallucinations. He reported that sometimes he hears laughter, but the voices do not tell him anything. He believes in spirits and ghosts and sometimes dead people like his grandmother will say his name. When asked when the auditory hallucinations began, he initially stated they began in jail. I reviewed Dr. Zedek's letter and asked him if he experienced auditory hallucinations previously. He then stated "yes, but not as bad." He reported the auditory hallucinations began at the age of 16. Regarding what the voices tell him in jail, he reported it is laughter, maybe a relative calls his name. He stated it occurs three to four times a day when he was not incarcerated and now while incarcerated "all day every day." He reported it is worse at night, then during the day. He was asked if the voices tell him to kill himself, and he reported no. Regarding paranoia he reported he always thinks people are out to get him or talk about him.

Mr. Robertson denied previous suicide attempts or self mutilating behavior. Mr. Robertson did have a progress note from by Dr. Zedek a psychiatrist. Dr. Zedek saw Mr. Robertson on May 11, 2015 for a psychiatric evaluation. Dr. Zedek diagnosed Mr. Robertson with a bipolar disorder without psychotic features. Dr. Zedek stated that Mr. Robertson was never in a psychiatric hospital, nor was there any drug or alcohol problems in his life. This is obviously inconsistent because Mr. Robertson acknowledged consistent marijuana usage. Mr. Robertson's mental status exam was within normal limits.

Mr. Robertson reported that he may have taken Adderall as a child, but when he was prescribed medication from Dr. Zedek he never took it because they did not have a car to get to the pharmacy.

SUBSTANCE USE HISTORY

Mr. Robertson reported he previously drank, but he does not have an alcohol problem. He began to smoke marijuana at the age of eight. He stated he would take multiple ADHD pills and the marijuana calmed him down. Mr. Robertson reported from the age of 12 or 13 until his incarceration he smoked marijuana daily. Mr. Robertson denied all other drug usage.

MEDICAL HISTORY

Mr. Robertson denied surgeries or traumatic brain injuries. He reported he has a sickle cell trait and he denied any other medical problems. He reported he is on mental health medication but he cannot recall the name.

CRIMINAL HISTORY

Mr. Robertson denied gang involvement or a prior arrest. He stated he was not arrested until the current index offense.

RELATIONSHIP HISTORY

Mr. Robertson reported he is single. He dated one female for approximately four to five years.

COMPETENCY EVALUATION

This evaluator utilized the Revised Competency Assessment Instrument as a guide. Mr. Robertson was asked about his current charges. He discussed that he has codefendants, has been charged with open murder, conspiracy, burglary with a deadly weapon, and two additional counts. He was asked about the alleged weapon and he was accurate. He also was asked about the alleged victim and he acknowledged that it was a stranger. He reported all of the charges are felonies and a felony is more serious than a misdemeanor. He reported he could receive life in prison and the charges are exceptionally serious.

Mr. Robertson provided appropriate definitions to the following: probation, conditions of probation, guilty, not guilty, public defender, judge, evidence and plea bargain. He is aware that he has to plead guilty to get a plea bargain and he also is aware of the rights he would give up. He initially exhibited some difficulties with the definition of district attorney and confidentiality. He is aware that a jury is a group of people who decide if he is guilty or innocent. He is aware that defendants do not have to testify but he could not explain why. He could not differentiate between a court trial and a jury trial. He reported that he was arrested at his home. He stated that he has two attorneys. He reported he gets along with them. He can help his attorney by "telling them the truth." He was asked if he disagreed with his attorney how he would handle this? He reported "fire them get a new PD." Regarding his behavior in court, he reported "cool, calm and collected, listen." He reported he can speak only when a judge asks him questions. If he acted out he will be taken out.

This evaluator utilized a brief hypothetical legal story to assess Mr. Robertson's legal reasoning abilities. He was asked four initial questions and he responded accurately to all four questions. He believed that the hypothetical defendant should take a plea bargain and he provided an advantage and disadvantage of a plea. Later, he was retested regarding prosecuting attorney, defendant, and confidentiality. He initially had some difficulties with the district attorney but once explained to him again he was accurate. He recognizes the district attorney is a person who is on the other side and is against him. Confidentiality "a secret," and defendant "me."

REVIEW OF CCDC RECORDS

Mental Health Evaluation September 28, 2017 indicates that he was hearing voices. Per CO patient stated he was hearing people to hurt people. "I hear voices to hurt people sometimes. Just at night though." "They tell me like to choke people or something when they're standing in front of me." He reported he only hears the voices between midnight and 1am. "When I think a lot I don't hear it but when I sit on my bunk around midnight I hear it." He also reported he cannot sleep. He does not want medication but he wants to talk to a counselor. He finally admitted he was not hearing voices, but he wants to speak to a counselor about his feelings. He is having

trouble dealing with events that led to his arrest. "I'm possibly facing life in prison. That doesn't scare me. The other charges don't scare me but the murder charge does."

Psychiatric Evaluation on November 8, 2017. He was interviewed. "I want to kill anybody in my presence." He reported auditory hallucinations which he describes that tell him to hurt people. He states that his auditory hallucinations began in his childhood. He reported that he is diagnosed with schizophrenia at the age of 15 and saw Dr. Zedek starting at the age of 15. Treatment was Adderall and a medication that starts with an I. Cannabis usage since the age of 19 until he was booked. Diagnostic impression was schizophrenia and antisocial personality disorder. No medication indicated at this time. Transferred to 2C.

Psychiatric Progress Note on November 15, 2017. Still wants to hurt people. "The urge to hurt people will never go away." Denied suicidal ideation "I never want to hurt myself, only others." Continues to endorse auditory hallucinations which tell him to return to the devil's playground. He exhibits a positive affect when he talks about harming others and begins to smile and laugh. Does not appear to respond to internal stimuli. Calm and cooperate with the interview.

Psychiatric Progress Note on November 22, 2017. Inmate on Zyprexa and Benadryl. Compliant with Zyprexa and Benadryl. Inmate stated "I'm good. I want to go back to general population." He denies suicidal ideation, homicidal ideation, auditory and visual hallucinations. "This is contrast to the way he presented during his last several appointments when he reported thoughts of hurting others as well as auditory hallucinations telling him to do so and to go to the devil's playground when confronted about this inmate began to smirk and stated "I just want to get out of here." On November 15th he refused the Zyprexa and Benadryl; on November 16th he refused the Olanzapine and Benadryl; on November 18th he refused the Olanzapine and Benadryl. He refused the Diphenhydramine on November 19th through 21st 2017.

ANALYSIS OF CASE

The Specialty Courts requested an assessment of Mr. Robertson for competency. Mr. Robertson was interviewed on Tuesday December 5, 2017. Mr. Robertson reported he was previously on Social Security Disability for bipolar disorder, ADHD, and schizophrenia. He was seen by Dr. Zedek a local psychiatrist at the age of 18 on May 5, 2015. Dr. Zedek diagnosed him with bipolar disorder without psychotic features. Dr. Zedek noted that he was not on medication, he had no prior psychiatric hospitalizations, and no drug or alcohol problems. Obviously Mr. Robertson did not tell the truth to the psychiatrist because he smoked marijuana daily since the age of 12 or 13. There are no indications that Mr. Robertson is psychotic. Mr. Robertson did have a piece of paper from Clark County School District Records indicating that in 8th grade he was eligible for special education secondary to being emotionally disturbed. He was not on medication for ADHD but did have a diagnosis of bipolar disorder. Mr. Robertson reported he normally did not take any medication because he could not get to the pharmacy. Mr. Robertson denied prior suicide attempts. As noted he began to smoke marijuana at the age of eight and smoked marijuana daily since the age of 12 or 13. He denied other drug usage. It is possible that Mr. Robertson feigned psychotic symptoms with incarcerated. That needs to be ruled out.

Mr. Robertson's report to this evaluator was somewhat inconsistent with what was recorded in the records. To illustrate, Mr. Robertson reported in CCDC he began to experience auditory

hallucinations since he was a child. He told me that the voices began while he was incarcerated. He then backtracked this to the age of 16. This would be inconsistent because Dr. Zedek's notes do not indicate that he was psychotic. It appears that Mr. Robertson claimed he was psychotic while incarcerated at CCDC but often at times the writer noted his thought processes appeared goal oriented and he did not appear to be responding to internal stimuli. He has been placed on psychiatric medication. He may have a diagnosis of bipolar disorder, but this needs to be ruled out.

DSM-V PROVISIONAL DIAGNOSTIC IMPRESSION

Rule Out Bipolar Disorder without Psychotic Features Versus Mood Disorder;
Cannabis Use Disorder Severe in Remission due to Incarceration;
Rule Out Antisocial Personality Traits;
Rule Out Malingering.

Mr. Robertson's IQ was not formally assessed but based on his word structure and responses he likely has a low average IQ. Mr. Robertson is competent to stand trial and aid and assist counsel in defense of his case. Mr. Robertson does not exhibit significant competency deficits. He has a good understanding of the current criminal charges. He exhibits adequate factual understanding and rational understanding of competency. He has the ability to aid and assist counsel in defense of his case.

I appreciate this interesting referral.

Respectfully submitted,



John Paglini, PsyD.
Licensed Psychologist
JPmc: 12/06/17

Exhibit 8

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 1

EVENT #: 170809-0029

SPECIFIC CRIME: MURDER WITH A DEADLY WEAPON**DATE OCCURRED:****TIME OCCURRED:****LOCATION OF OCCURRENCE:**

CITY OF LAS VEGAS**CLARK COUNTY**

NAME OF PERSON GIVING STATEMENT: ERIKA LOYD**DOB:****SOCIAL SECURITY #:****RACE:****SEX:****HEIGHT:****WEIGHT:****HAIR:****EYES:****HOME ADDRESS:** 6647 W. TROPICANA AVE #104 LV,
NV 89103**PHONE 1:** 702-559-5117**WORK ADDRESS:****PHONE 2:**

The following is the transcription of a tape-recorded interview conducted by DETECTIVE M. BOGATAY, P# 7782, LVMPD HOMICIDE SECTION, on 08/15/2017 at 1515 hours. Also present is DETECTIVE MERRICK, P# 7549, LVMPD HOMICIDE SECTION.

Q: Operator this is Detective Bogatay, P# 7782, along with Detective Merrick, M-E-R-R-I-C-K, conducting an interview referenced at 17089-0029. Location of the interview is in the parking lot of 6647 West Tropicana Avenue, Las Vegas, Nevada, 89103. Person being interviewed is Erika, E-R-I-K-A, Loyd, L-O-Y-D. Date of birth is Social Security Number is . Her home address is 6647 West Tropicana Avenue, Apartment 104, uh, Las Vegas, Nevada, 89103. Her phone number is 702-559-5117 and today's date is 8-15-

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 2

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

2017 and the time - make sure I get the right time - is - it's 1515 hours. Okay.

Okay Erika thank you so much for meeting and talking with us. Uh, we just said - talked about that you live here in these apartments. What are these apartments names?

A: Uh, Casa Mesa Villas.

Q: Okay. And can you tell me who you live here with?

A: Uh, with - my son's live with me.

?: Okay, yeah.

Q: Who lives with you? Who do you live with?

A: I have two sons.

Q: Okay. And who are they?

A: Uh, Taedeeon and Raekwon.

Q: Taedeeon?

A: Uh-huh.

Q: And how do you spell Taedeeon?

A: T-A-E-D-E-O-N.

Q: Okay. Same last name?

A: Uh, Taedeeon, yeah.

Q: Okay.

A: Loyd.

Q: How old is Taedeeon Loyd?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 3

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

A: Taedeeon is 20 - hell, is Taedeeon 23 or 24. Damn, Tae just had a bi- whoo that embarrassing.

Q1: What's his birthday?

A: Uh, '94. He just had a birthday. Twenty-four. Did he just turn 24.

Q: What's birth - what's his month and day?

A: Wait - wait. Kwon should be 20 - yeah, so he's 24.

Q: Okay. And what's his birthday and (unintelligible)?

A: Uh, Taedeeon was the second one, '94.

Q: Okay. And your other son?

A: Uh, Raekwon

Q: And how do you spell Raekwon?

A: R-A-E-K-W-O-N. Now I would like to know what did - what is this about though?

Q: Yeah, we're - I'm just getting (unintelligible).

Q1: We're getting there.

A: Okay. Okay. 'Cause (unintelligible).

((Crosstalk))

Q: First of all there's a lot of information that we're gonna be talking to somebody because we might find out very well that we don't need to talk to because you're not even related.

A: Okay.

Q: And now that we're getting a foundation for your (unintelligible).

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 4

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

((Crosstalk))

A: You see my thing is I've never been any kind of trouble before or police and detectives so to me this is just like, "What the hell?"

Q: Oh, sure. Well you're definitely not in trouble.

A: Well I know that. Okay.

Q: You were certainly in the front seat and since and since you are with my dry cleaning...

A: Okay. All right. Okay.

Q: ...this is not, you know, uh, so yeah so we're just getting a foundation and then we'll start talking about...

A: Okay.

Q: ...what - what you may know, what - who you were with.

A: Okay.

Q: Things like that.

A: Okay.

Q: You might not know anything.

A: All right.

Q: Okay.

A: That's just strange 'cause they askin' about my oldest son and - okay. All right.

Q: Well it's very common that whenever we talk to anybody...

A: Mm-hm.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 5

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

Q: ...and it really doesn't matter if we're talkin' about a dog and a disturbance
neighbor problem...

A: Okay.

Q: ...to see who lives with whom - everybody so that then we...

A: Okay.

Q: ...really talk to you.

A: Okay.

Q: Or something more serious and that's...

A: Okay. Okay.

Q: So Raekwon is your son?

A: Uh-huh.

Q: What's his last name?

A: Robertson.

Q: Robertson. And how about his birth date?

A: Uh, 2-6-97.

Q: Okay. And so the three of you live here?

A: Yes.

Q: You're the mother...

A: Yep.

Q: ...of both?

A: Yep.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 6

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

Q: Okay. And my partners showed up today and I don't know what happened.

Were you inside the apartments? Was somebody else...

A: No, actually...

Q: ...made contact with you?

A: ...I was on my home. Um, uh, I talked to my sons regularly. Um, I did get a phone call indicating that someone was at the door. Um, and as I explained, you know, I'm on my way home anyway. And here I am and I couldn't get into my home and,...

Q1: Who called you?

A: Uh, my son Raekwon.

Q1: Raekwon was there?

A: Oh-huh, yeah.

Q1: And what did he tell you?

A: Um, he just said someone was banging at the door. Um, however though the maintenance man was on his way over and normally I kinda notify them, you know what I mean, when somebody is about to come as far as the changing of the apartment things. And I came here and that was the last I've heard. I don't know anything.

Q: Okay.

Q1: How long has your son lived with you - Raekwon?

A: Shit his whole life.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 7

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

Q1: He's never moved out?

A: Mm, I won't necessarily say moved out. He would go and stay at friends for say some weeks at a time but he's always, always resided, uh, with me. Raekwon actually receives Social Security so he has to reside with me.

Q1: What was he injured?

A: Raekwon has - has mental illnesses. Raekwon has - Raekwon just has issues.

Q: And is he the oldest?

A: The baby.

Q: He's the baby.

A: Yeah.

Q: How many kids do you have total?

A: Two.

Q: Just these two?

A: Yep.

Q: Okay. And, um, so the reason why we're here is because of something that happened days ago. And we're tryin' to figure out about who was involved and we know you're not involved. You had left.

A: Okay.

Q: You're obviously a working mom.

A: (Unintelligible).

Q: You said you just came from work?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 8

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

A: Uh-huh.

Q: Where do you work?

A: The Surety Labs.

Q: Okay. And how about your sons do they work or go to school-

A: Neither one. Raekwon receives Social Security. My oldest one has his son and he helps his girlfriend with the baby.

Q: Okay. And Raekwon is what, 21?

A: He will be 21.

Q: Will be 21, okay. So he's still twenty right now.

A: He's been receiving, shit, Social Security since birth.

Q: Okay.

A: Literally.

Q1: So was he born with a...

A: Raekwon is, uh, they diagnosed Raekwon with schizophrenic, schizophrenia, mild mental retardation, learning disability, sickle cell trait. He just has a list of shit.

Q: Okay. Does he require, um, I mean the constant care? Is it just partial care? Medication or...

A: Um...

Q: ...is there something?

A: I - me puttin' my foot up in his ass. I mean, seriously, I mean as little, I mean

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 9

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

they had him on all kinda shit. Uh, Adderall, Abilify, you name it. I actually stopped it 'cause he was like a fuckin' zombie.

Q: Okay. Does he drive or - and I know he's on disability but does he do...

A: No, he doesn't have a vehicle.

Q: Okay.

Q1: What's your vehicle?

A: I got the, um, Chevy Impala over there.

Q1: What year?

A: 2001, Hm-hm.

Q1: Chevy Impala?

A: Mm-hm.

Q1: What color?

A: Tan. Then as a matter of fact, shoot, it's been down for shit like a week or two. I just got it outta the shop Saturday.

Q1: Saturday?

A: Yep, this Saturday.

Q1: Let's move onto - in the last two weeks, okay?

A: Okay.

Q1: Does Raekwon have a lot of friends?

A: Huh, to be honest with you I'm gonna say no 'cause he's actually like a fuckin' loner 'cause I talk about him about, like, "Why you don't you guys have like

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 10

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

fuckin' girlfriends." I'm almost - I hate to say it like this but I'm almost kind of accused him of - I was like, "Shit is you fruity?" Because I've never - he doesn't do shit like - I'd say like normal 20-years old would do if that makes sense.

Q1: Okay. What's your work schedule?

A: I am Monday through Friday 8:00 to 5:00.

Q1: Okay. Does Raekwon ever leave the - the house in the middle of the night?

A: See that's the thing. Raekwon - that's thing. I go to sleep, Officer. I'm gonna be honest with you. Sh, I drink my vodka, okay, about 9:00-9:30, shit I'm out.

Q1: I'm out at 8:30 (unintelligible).

((Crosstalk))

A: I'm gonna be honest with you sometimes like 8:30, 9:00 literally and then on top of it I actually close my bedroom door because I do have sons and they are always in the living room watching TV or like the music. So it's just easier for me to just close my door. And shit by the time I get up...

Q1: So what I'm getting is...

A: I'm going to work and everybody asleep.

Q1: Right. So what I'm gettin' is they could leave and you wouldn't know it?

A: It's a possibility. It's a possibility, yep.

Q1: You never caught 'em comin' in late at night?

A: No 'cause every time I wake up they're always there.

Q1: Okay. But do you always check - if you wake up in the middle of night do you

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 11

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

always go out and check and see if they're there?

A: I do. I do. I do and that's just - I hate to say it I guess just bein' a mom.

Q1: Sure.

A: Um, and like I said with them actually - technically they're supposed to share rooms but Taedeon has this girlfriend now that has his son now all of sudden she done kinda moved in so Rae's actually been on the, uh, has been in the living room lately.

Q1: Okay.

A: So I always see him.

Q1: I'm gonna show you some photos, okay? Tell me if you recognize any cars in that photo ever comin' over and pickin' up Raekwon?

A: Nothing, no. No, sir.

Q1: Okay. There's nothing (unintelligible).

A: It kinda looks - it kinda looks like Rae.

Q1: Yeah, it is Rae.

A: It kinda looks but who the hell is that?

Q1: It's a hat.

A: That kinda looks like him.

Q1: Yeah. It is him. I'm here to tell you that's him. And that was at about 11:30 at night on what day the 9th?

Q: The - the 8th.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 12

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

Q1: 8th.

Q: Yeah, the 9th, you're right.

Q1: Yeah.

Q: Uh, actually 8 is 11 o'clock, yeah.

Q1: 8th into the 9th.

Q: Yeah.

Q1: Do you know the guy behind him?

A: No, who is that?

Q1: You've never seen him?

A: Uh-uh.

Q1: Let me swap you. I want you to see if you know the guy that came in right before. You ever seen him over here for...

A: Hell no. And you see and then that's the thing as well, um, as far as my - my home they already know we don't bring - we don't bring company to - to my house at all. That - that's a no-no. That's a no-no.

Q1: Okay.

A: Know what I'm saying?

Q: And this is a Tuesday night going into like Wednesday morning would be midnight.

Q1: Last week.

Q: So last week.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 13

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

A: I don't even know. I've never seen that person before.

Q1: Okay. Here's your son again with all four of the individuals. And I know that and I'm sure you're not gonna be able to tell me since you don't let anybody in your house, that's between 11:30 at night and midnight, 8th and the 9th.

A: Okay.

Q1: Now I'm gonna ask you something really serious, okay? If you want to look at that other picture I gave you really close...

A: Uh-huh.

Q1: ...he's wearing a gun.

A: Who was?

Q1: Raekwon.

A: Let me see that picture again.

Q1: In fact he's actually grabbing it.

A: I don't see a gun and I don't see him grabbin' at a gun.

Q1: Okay. See where his hand is, his right hand?

A: I see both hands here.

Q1: Oh, okay. Okay. The guy in front of him...

A: Okay.

Q1: I thought you pointed to him. But this guy - this is Raekwon, right?

A: It looks like him.

Q1: That's the one that looks like him, right. So you've never seen this guy right

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 14

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

here?

A: I don't know who that is.

Q1: Okay. Have you ever seen Raekwon with a gun?

A: No, I don't even condone guns.

Q1: Have you ever seen Raekwon - does he have any black sweatshirts like that?

A: Shit all - everybody. I got black sweatshirts like that.

Q1: No, he does,

A: So, I mean, who doesn't.

Q1: Yeah, he does?

A: Yeah.

Q1: Okay. Let me see if I can find a - where he's wearing one.

A: Sure hope he was...

Q1: Does he ever where tennis shoes - again wear N- does he ever wear red Nike tennis shoes?

A: I've never seen - I've never seen any red shoes before.

Q1: Okay. Um, and before...

A: All I can say it'd be easier you guys can have access to the room. You know what I'm sayin' you guys...

Q1: Okay.

A: To me that would make more because like I said there's a lot of shit I don't know if he does, does not.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 15

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

Q1: Okay.

A: Like I said Raekwon gets Social Security. I get some - Raekwon money.

Q1: Right.

A: He - sometimes I don't know what Raekwon purchases.

Q1: Right.

A: Um, I don't know if he has, you know what I'm saying that this...

Q1: We got rules we gotta follow.

A: Okay.

Q1: And - and it's just for the courts.

A: Okay.

Q1: So we have to get the search warrant. That's what we're waiting for. But I will -
that's where I was going. Before we came over here and we were on the
recording...

A: Uh-huh.

Q1: ...I asked if you would sign consent for us to look in your car for the items that
we're looking for.

A: Uh-huh. Yeah.

Q1: Yeah, and you would do that?

A: Yeah, I'll take you to my car. It don't even - that type of party.

Q1: Okay.

A: Yeah please by all means.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 16

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

Q1: Okay. So I'm probably gonna make you freak out right now. Can you read my lanyard?

A: I'm reading - I - I know - I know something ain't good. I know that.

Q1: Can you read my lanyard?

A: I know...

Q1: What's that say?

A: God damn. I know I wasn't even lookin' at that shit at first.

Q1: I work homicide.

A: What the fuck? Come on you all, what's up for real?

Q1: I work homicide.

A: What you tellin' me.

Q1: That there was a murder last week.

A: You sayin' that my son has something to do with that?

Q1: He was with three other guys.

A: You all bullshittin' me.

Q1: Excuse me, ma'am. I'll take this. Merrick.

Q: Yeah.

Q1: Hey, buddy how are you?

Q: Last week, three other people and the four of them together.

Q1: Yes.

?: What kind of deal is (unintelligible).

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 17

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

((Crosstalk))

A: It's serious.

Q1: We ran a search warrant on the house. We're gonna look through the car. Uh,
just (unintelligible).

((Crosstalk))

Q: We've been working on this all week.

A: No, not - not - not Raekwon.

Q1: 0029 on the 9th.

A: Not Raekwon. I do too much for, mm.

Q1: Okay. Yep.

Q: And part of what you're looking at is we took photographs...

Q1: Yeah, 6647 (unintelligible)...

((Crosstalk))

Q: ...of an ongoing video surveillance.

Q1: Number 104 and I haven't got word from Mitch or (unintelligible).

((Crosstalk))

Q: Those are just - does that make sense? That's just photographs of what we have
as an ongoing video surveillance.

Q1: He's after the judge's signature right now. Oh, we are in a parking - he just
texted me. We're in a parking lot.

((Crosstalk))

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 18

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

Q: And we do that in order to say, "Oh, this," because we cannot - not gonna show people whole videos and that's why sometimes those are a little grainy.

A: Gotcha.

Q1: Mm-hm.

Q: But is it, um, definitely a lot of pictures that we took from surveillance.

Q1: Uh, I can't really talk right now.

Q: Yeah.

A: Lord have mercy.

Q1: Bye-bye.

Q: So with any of that being said...

A: Lord have mercy.

Q: ...is there anything that you've noticed that's different or a conversation or him talking to you that just was either out of character or something you're not used to him asking.

A: That's the thing. Raekwon's, um, - how can I - Raekwon's a little mental, like, I don't - like I said, I'm a mom. He doesn't disrespect me or anything like that. But it's like I don't really ask too many questions. He don't volunteer information. Literally when I say this kid he stays to himself.

Q1: Okay.

A: So I just really - and he already knows the type of person that I am so he probably wouldn't tell me.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 19

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

Q: How about his phone? Who pays for it besides - I mean I know he's...

A: Obama.

Q: Okay. And haven't you arranged though to get - you guys don't exchange - I mean you don't look through his phone...

A: No.

Q: ...you don't do any of that kind of stuff?

A: No, no, no. 'Cause like I said these are adults, you know, these are not kids.

Q: Right, mm-hm.

((Crosstalk))

Q: But that's what I'm saying. No con- he didn't make - have any conversation...

A: These are - these are

Q: ...with you 'cause you kinda stay out of his business?

((Crosstalk

A: Yeah - yeah -yeah.

Q: Okay.

A: Yeah, 'cause.

Q1: Have you ever seen any indication of bipolar with Raekwon? Does he fly off the handle and just go crazy every now and again?

A: Um, I'm gonna not say fly off the handle 'cause like I said I'm - I'm a mom so it's only certain...

Q1: Against his brother?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 20

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

A: Um,...

Q1: Towards his brother?

A: No, 'cause they - like I said the two of them together they've always lived in the same hou- they - they know better and I don't - they know I work hard...

Q1: Right.

A: ...so it's like you guys bumpin' heads with one - now I do believe that they did have him - like I said bipolar, schizophrenia as far as his documentation, shit, they basically he was everything other than human...

Q: Yeah, ran the gamut.

A: ...if that makes sense.

Q1: Ran the gamut.

A: Okay, they - they put - put basically everything other than - other than human, uh, to the point to where literally even with some of the schooling I was, shit, trying to pull him out 'cause it's like hold on this boy's gonna grow up and just - you guys are still gonna have this label on him. Um, yeah, this is fuckin'...

Q1: So he didn't - he didn't finish school?

A: No.

Q1: Okay.

A: Nope.

Q1: Taedeeon where's he at right now?

A: Taedeeon my son? My - I don't know. He should - actually, shit, he might be over

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 21

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

there by my car 'cause we were conversating and talking.

Q1: Okay. Do you think...

A: Yeah, but I could tell you for a fact, uh,...

Q1: Would Raekwon, uh, confide in Taedeeon?

A: ...Taedeeon would be - that I don't know.

Q1: Okay.

A: Not really I don't know.

Q1: Okay.

A: Just like I said, they're, um,...

Q1: You understand...

A: Once you see Taedeeon they're - they're night and day.

Q1: Okay.

A: Completely. You could - you will see the whole mannerism, the way he look, everything that they're completely - literally you probably wouldn't even think these are both my sons. It's like that.

Q1: Okay.

A: Okay. And Tae hopefully he might be over here by the, uh, by the - by the apartment by now 'cause he actually had just went to drop off his step-son.

Q1: Okay.

A: So...

Q1: What does he drive?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 22

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

A: Well he drives his girlfriend's car it's a Sentra.

Q1: Okay.

A: And I could tell you for a fact Taedeon - Taedeon is like, uh, just like a, uh, like a old married man if that make sense. Him and his girlfriend - his girlfriend is always over at the house so...

Q1: Okay.

A: Yeah, and she doesn't let him go anywhere but to go get some fast food and back home. I'm sorry but...

Q1: Yeah.

A: ...seriously and - and they're always at the house.

Q1: Okay

A: And I actually was - we used to fuss. I was like, "I'm tired of you guys always," really, shit, oh my God. Huh. Lord have mercy.

Q1: You understand we just did not, uh, pick Raekwon's name out of a hat. We've done our research. We've done our investigation.

A: Mm, I'm sure you did. I'm sure you did.

Q1: And I'm sorry to be the one to tell you.

A: I'm sure you did. I'm sure you did.

Q1: But what I'm here right now for is - is if - listen to the hypothesis. If Raekwon told you what had happened...

A: Mm-hm.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 23

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

Q1: ...would you tell me?

A: Hell, yeah.

Q1: Okay.

A: Hell yeah.

Q1: Okay.

A: Yeah.

Q1: But he didn't?

A: No.

Q1: Okay.

A: No.

Q1: Okay.

Q: How about within your apartment? Is there anything that's there that, um, maybe they would have that's like their own storage place or your sons' own hiding - I mean, you know, how some parents have - like you said he's mostly on the couch...

A: Mm-hm.

Q: ...but some kids have a bedroom but they're adults that you don't even go in. Is there anywhere that you know...

A: No, not...

Q: ...that's off limits for you?

A: I don't want to say off limits...

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 24

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

Q: 'Cause he might...

A: ...like, for example, um, like I said, like, Taedeon uses like the -the little tall closet and the main big closet is normally where Raekwon would keep a lot of his stuff at. Okay so if that...

Q: Right.

A: ...I don't know if that helps any.

Q: Okay.

A: Um,...

Q: But no places where it's like, "Mom do not go in there. That's my stuff. It's off limits," kind of like a private...

A: No, we don't - we don't - come on they don't pay rent.

Q: Right. Which is...

A: Okay. They don't pay bills. So that's why I say...

Q: Yeah.

Q1: There's nothing off limits.

Q: There's nothing off limits.

A: There's nothin'. I mean I - I - I - out of respect for them I just don't, okay. But anything, I mean, hell yeah, I'll go throughout. Shit, yeah,...

Q: Okay.

A: ...I mean I will if...

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 25

EVENT #: 170809-0029
STATEMENT OF: ERIKA LOYD

Q1: Does he have more than one phone? Have you ever seen him with multiple phones? I know I've seen...

A: I've seen him like with different phones. There were num - you know what I mean?

Q1: Right. 'Cause of the Obama.

A: Exactly. Exactly.

Q1: Okay.

A: Damn.

Q1: You have anything else? Okay, let's end this and we'll drive over...

Q: Okay.

A: Yeah, please.

Q: Uh, it's the end of interview. Same people present and it's 1534 hours.

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 6647 W. TROPICANA AVENUE ON THE 15TH DAY OF AUGUST, 2017 AT 1534 HOURS.

MB:FM:Nettranscripts
MSB004

MSB7782

Exhibit 9

5.2.2022

CASE NO: A-20-823892-W

C-17-328587-2

Hello,

(Department: 12)

I Recieved Legal mail about a Week ago with Your Office address and couldnt help But Write You concerning my appeal.

somewhere in my paperwork states that, my co-defendant overturned the Judgement of his conviction last Year on May 14, 2021, and i WAS Wondering Why I havent Been Incontact with you concerning my "Notice of Appeal" ? Since sentencing, please understand that I Need You, I cannot Fight the system By myself, please "contact me Back, im currently housed at, "ely state prison".

(erika) - 702.470.3400 - mom

(Toeveon) - 702.273.5395 - Brother

x Return to sender requested

NEVADA DEPARTMENT OF CORRECTIONS
ELY STATE PRISON
LEGAL MAIL

NAME: Robertson, Robert DOC#: 1235056 UNIT: 1B42

REPORT TO CONTROL AT ADMIN FOR THE FOLLOWING:

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CERTIFIED MAIL: _____

REGISTERED MAIL: _____

DATE: 5/11/22

INMATE SIGNATURE: _____

OFFICER: Robbin

DOC#: _____ DATE: _____

DOC - 3020A (REV. 7/01)

Robertson, Robert
1235056
ELY State Prison

Box 1989
ELY, Nevada 89301

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 19th day of August, 2022, I served a true and correct copy of
3 the foregoing document entitled **SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION**
4 **FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)** to the Clark County District
5 Attorney's Office by sending a copy via electronic mail to:
6

7
8 CLARK COUNTY DISTRICT ATTORNEY'S OFFICE

9 Steve Wolfson

10 Motions@clarkcountyda.com
11

12 BY:

13
14 /s/ Steven S. Owens, Esq.
15 STEVEN S. OWENS, ESQ.
16 Nevada Bar No. 4352
17 1000 N. Green Valley #440-529
Henderson, Nevada 89074
(702) 595-1171

18 Attorney for Petitioner
19 RAEKWON ROBERTSON
20
21
22
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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on February 8, 2024. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

ALEXANDER CHEN
Chief Deputy District Attorney

/s/ Steven S. Owens
STEVEN S. OWENS, ESQ.