

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Feb 16 2010 09:28 a.m.
Tracie K. Lindeman

DRESDEN MICHAEL WILLIAMS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No.: 54676

District Court Case No.: C240317

MOTION FOR ENLARGEMENT OF PAGE LIMIT OF FAST TRACK STATEMENT

KALANI K. HOO, ESQ.
Nevada Bar No. 006687
EICHHORN & HOO, LLC
515 E. Bonneville Avenue
Las Vegas, Nevada 89101
(702) 382-8278

DAVID J. J. ROGER, ESQ.
Nevada Bar No. 002781
CLARK COUNTY DISTRICT ATTORNEY
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155
(702) 671-2500

Attorney for Appellant

Counsel for Respondent

1
2
3
4 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
5
6

7 DRESDEN MICHAEL WILLIAMS,

8 Appellant,

9 vs.

10 THE STATE OF NEVADA,

11 Respondent.
12
13

Supreme Court Case No.: 54676

District Court Case No.: C240317

14
15 **MOTION FOR ENLARGEMENT OF PAGE LIMIT OF FAST TRACK STATEMENT**

16 COMES NOW, the Appellant, by and through his Counsel of Record, KALANI K. HOO,
17 ESQ., and moves this Court for an Order granting Appellant's Motion to Enlarge his FAST TRACK
18 STATEMENT to 16 pages, pursuant to NRAP 32(a)(7)(c).
19

20 DATED this 15th day of February, 2010.

EICHHORN & HOO, LLC

21 By: /s/KALANI K. HOO

22 KALANI K. HOO, ESQ.
23 Nevada Bar No.: 006687
24 515 E. Bonneville Avenue
25 Las Vegas, Nevada 89101
26 (702) 382-8278

27 Trial Counsel for Appellant:
28 DRESDEN MICHAEL WILLIAMS

1 **APPLICABLE RULE**

2 NRAP 3(C)(e)(1) provides:

3
4 (1) The fast track statement shall not exceed 10 pages in length....

5 NRAP 32(a)(7)(c) provides:

6 (ii) A motion seeking an enlargement of the page limit for a brief shall be filed on
7 or before the brief's due date and shall be accompanied by a declaration stating
8 in detail the reasons for the motion and the number of additional pages
9 requested.

10 (iii) The motion shall also be accompanied by a single copy of the brief the
11 applicant proposes to file.

12 Trial in this matter lasted eight (8) days, and the defendant was convicted of several counts.

13 The charges, sentences, and a rendition of the facts spanned several pages in the Fast Track Statement.

14 To fully discuss the issues presented, Appellant requires sixteen (16) pages, and has attached

15 WILLIAMS' proposed Fast Track Statement.

16 DATED this 15th day of February, 2010.

17
18 By: EICHHORN & HOO, LLC
19 /s/KALANI K. HOO
20 KALANI K. HOO, ESQ.
21 Nevada Bar No.: 006687
22 515 E. Bonneville Avenue
23 Las Vegas, Nevada 89101
24 (702) 382-8278
25 Trial Counsel for Appellant:
26 DRESDEN MICHAEL WILLIAMS
27
28

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

2
3
4 DRESDEN MICHAEL WILLIAMS,

5 Appellant,

6 vs.

7 THE STATE OF NEVADA,

8 Respondent.
9
10
11

Supreme Court Case No.: 54676

District Court Case No.: C240317

12 **APPELLANT'S FAST TRACK STATEMENT**

13 **1. Name of party filing this fast track statement:** DRESDEN MICHAEL WILLIAMS.

14 **2. Name, law firm, address, and telephone number of attorney submitting this fast track**
15 **statement:** Kalani K. Hoo, Esq., Eichhorn & Hoo, LLC, 515 E. Bonneville Avenue, Las Vegas,
16 Nevada, 89101, (702) 382-8278.

17 **3. Name, law firm, address, and telephone number of appellate counsel if different from**
18 **trial counsel:** Same as above.

19 **4. Judicial district, county, and district court docket number of lower court proceedings:**
20 Eighth Judicial District, Dept. No. XVII, Clark County, District Court Docket number C240317.

21 **5. Name of judge issuing decision, judgment, or order appealed from:** Hon. Michael Villani.

22 **6. Length of trial. If this action proceeded to trial in the district court, how many days did**
23 **the trial last?** Eight days (jury selection started June 22, 2009, and trial concluded on July 2, 2009).

24 **7. Convictions appealed from:** Conspiracy to Commit Murder, NRS 199.480, 200.010;
25
26
27
28

1 Attempt Murder with Use of a Deadly Weapon, NRS 193.330, 193.165, 200.010 and 200.030.
2 Appendix, pp. 099-102.

3 **8. Sentence for each count:** Appellant was sentenced on September 1, 2009, as follows: In
4 addition to the \$25.00 Administrative Assessment fee, and \$150.00 DNA Analysis fee, as to COUNT
5 1 - to a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SIXTY (60)
6 MONTHS in the Nevada Department of Corrections (NDC); COUNT 2 - to a MINIMUM of FORTY-
7 EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the
8 Nevada Department of Corrections (NDC) plus a CONSECUTIVE term of a MINIMUM of
9 TWENTY-FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS for use of a deadly
10 weapon to run CONCURRENT with Count 1; COUNT 3 - to a MINIMUM of FORTY-EIGHT (48)
11 MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada
12 Department of Corrections (NDC) plus a CONSECUTIVE term of a MINIMUM of TWENTY-
13 FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS for use of a deadly weapon to run
14 CONSECUTIVE to Count 2; COUNT 4 - to a MINIMUM of FORTY-EIGHT (48) MONTHS and a
15 MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of
16 Corrections (NDC) plus a CONSECUTIVE term of a MINIMUM of TWENTY-FOUR (24)
17 MONTHS and a MAXIMUM of SIXTY (60) MONTHS for use of a deadly weapon to run
18 CONCURRENT with Count 3; COUNT 5 - to a MINIMUM of FORTY-EIGHT (48) MONTHS and
19 a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of
20 Corrections (NDC) plus a CONSECUTIVE term of a MINIMUM of TWENTY-FOUR (24)
21 MONTHS and a MAXIMUM of SIXTY (60) MONTHS for use of a deadly weapon to run
22 CONCURRENT with Count 3; COUNT 6 - to a MINIMUM of FORTY-EIGHT (48) MONTHS and
23
24
25
26
27
28

1 a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of
2 Corrections (NDC) plus a CONSECUTIVE term of a MINIMUM of TWENTY-FOUR (24)
3 MONTHS and a MAXIMUM of SIXTY (60) MONTHS for use of a deadly weapon to run
4 CONCURRENT with Count 5; COUNT 7 - to a MINIMUM of FORTY-EIGHT (48) MONTHS and
5 a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of
6 Corrections (NDC) plus a CONSECUTIVE term of a MINIMUM of TWENTY-FOUR (24)
7 MONTHS and a MAXIMUM of SIXTY (60) MONTHS for use of a deadly weapon to run
8 CONSECUTIVE to Count 3; COUNT 8 - to a MINIMUM of FORTY-EIGHT (48) MONTHS and a
9 MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of
10 Corrections (NDC) plus a CONSECUTIVE term of a MINIMUM of TWENTY-FOUR (24)
11 MONTHS and a MAXIMUM of SIXTY (60) MONTHS for use of a deadly weapon to run
12 CONCURRENT with Count 3 with 625 DAYS credit for time served. Appendix, pp. 099-102.

13
14
15
16 **9. Date district court announced decision, sentence, or order appealed from:** March 20,
17 2008; June 16, 2009; September 1, 2009.

18
19 **10. Date of entry of written judgment or order appealed from:** September 17, 2009.

20 (a) **If no written judgment or order was filed in the district court, explain the basis**
21 **for seeking appellate review:** The Court denied appellant's Writ in open court on March 20, 2008.
22 Additionally, the Court heard argument on WILLIAMS' Motion to Dismiss on June 16, 2009, and the
23 Motion was denied in open court.

24
25 **11. If this appeal is from an order granting or denying a petition for a writ of habeas corpus,**
26 **indicate the date written notice of entry of judgment or order was served by the court:** N/A.

27 (a) **Specify whether service was by delivery or by mail:** N/A.
28

1 **12. If the time for filing the notice of appeal was tolled by a post judgment motion,**

2 (a) Specify the type of motion, and date of filing the motion: N/A.

3 (b) Date of entry of written order resolving motion: N/A.

4
5 **13. Date of notice of appeal filed:** September 29, 2009. Appendix, pp. 103-104.

6 **14. Specify statute or rule governing the time limit for filing the notice of appeal:** N.R.A.P.

7 4(b).

8
9 **15. Specify statute, rule or other authority, which grants this court jurisdiction to review the**
10 **judgment or order appealed from:** N.R.A.P. Rule 3(a), N.R.A.P. 3C.

11 **16. Specify the nature of disposition below, e.g. judgment after bench trial, judgment after**
12 **jury verdict, judgment upon guilty plea, etc.:** Judgment after jury verdict.

13
14 **17. Pending and prior proceedings in this court. List the case name and docket number of**
15 **all appeals or original proceedings presently pending before this court which are related to this**
16 **appeal (e.g., separate appeals by co-Defendants, appeal after post conviction proceedings):**

17 FRANKLIN JACKSON v. Nevada, Case. No.54735.

18
19 **18. Pending and prior proceedings in other courts. List the case name, number and court of**
20 **all pending and prior proceedings in other courts which are related to this appeal (e.g. habeas**
21 **corpus proceedings in state or federal court, bifurcated proceedings against co-Defendant):**

22 None known.

23
24 **19. Proceedings raising same issues. List the case name and docket number of all appeals or**
25 **original proceedings presently pending before this court, of which you are aware, which raise**
26 **the same issues you intend to raise in this appeal:** FRANKLIN JACKSON v. NEVADA, No.

27 54735.

1 **20. Procedural history. Briefly describe the procedural history of the case (provide citation**
2 **for every assertion of fact to the appendix, if any, or to the rough draft transcript):**

3
4 A Criminal Complaint was filed on or about December 26, 2007. Preliminary hearing was set
5 for January 10, 2008. On or about December 31, 2007, the District Attorney's office faxed to counsel
6 for WILLIAMS a letter informing counsel that WILLIAMS was served with a Notice of Intent to
7 Seek Indictment. Appendix, pp. 001. The fax informed WILLIAMS that the Clark County Grand
8 Jury would be convened on January 8, 2008, and welcomed WILLIAMS to present any exculpatory
9 evidence. Additionally, WILLIAMS was offered an opportunity to testify.

10
11 On or about January 4, 2008, Counsel for WILLIAMS responded by fax, requesting that
12 individuals taken to view WILLIAMS shortly after his initial detention be presented to the Grand
13 Jury to give testimony. Appendix, pp. 002-003. WILLIAMS also requested that the Metro officers
14 that detained WILLIAMS also be brought before the Grand Jury to provide testimony. The matter
15 was presented to the Grand Jury on January 8, 2008 without the presentation of the requested
16 witnesses. A true bill was returned, and WILLIAMS was indicted on the charges contained in the
17 Information. Appendix, pp. 008-022.

18
19 On or about January 15, 2008, the Grand Jury reconvened, with the purpose of adding
20 Defendant Nicco Tatum and adding additional charges. No notice was provided to regarding the
21 reconvening of the Grand Jury. Following the reconvening, a Superseding Indictment was filed,
22 charging WILLIAMS with additional felony offenses. Appendix, pp. 023-039.

23
24 WILLIAMS was arraigned in District Court on January 23, 2008. WILLIAMS entered a not
25 guilty plea, and initially invoked his right to a trial within sixty days. The first Grand Jury Transcript
26 was filed on January 17, 2008. The second transcript was filed on or about January 29, 2008.
27
28

1 Exhibits used during the presentation(s) to the Grand Jury were provided to WILLIAMS on February
2 13, 2008. WILLIAMS' Writ was filed on February 29, 2008. Appendix, pp. 040-056. The Writ was
3 denied on or about March 20, 2008. Recorder's Transcript of Hearing re: All Pending Motions, dated
4 March 20, 2008, pp. 5-6.
5

6 WILLIAMS filed a Motion to Sever counts 16-19 on or about June 2, 2009. The Court
7 granted the motion, and the trial on Counts 16-19 is currently set in January of 2011.
8

9 On or about June 2, 2009, WILLIAMS filed a Motion to Dismiss based upon late disclosure of
10 witness statements. Appendix, pp. 071-098. A hearing on the Motion was held on June 16, 2009
11 whereupon the Court denied the motion. Recorder's Transcript of Hearing re: All Pending Motions,
12 dated June 16, 2009, pp. 6. Trial commenced on June 22, 2009, and concluded on July 2, 2009, with
13 the jury reaching verdicts of guilty as to all counts. The Appellant was sentenced on September 1,
14 2009. On September 17, 2009, a Judgment of Conviction was filed. Appendix, pp. 099-102. On
15 October 1, 2009, a Notice of Appeal was filed. Appendix, pp. 103-104.
16

17 **21. Statement of facts. Briefly set forth the facts material to the issues on appeal:** On
18 December 10, 2007, an altercation occurred between Nicco Tatum and David Macias at the corner of
19 Walnut and Alexander in Las Vegas, Nevada. Rough Draft Transcript of Jury Trial—Day 4, p. 76.
20 Words were exchanged between Macias and Tatum, and a physical confrontation ensued. Rough
21 Draft Transcript of Jury Trial—Day 4, p. 79. After the confrontation, Tatum left the scene. Rough
22 Draft Transcript of Jury Trial—Day 4, p. 80.
23
24

25 When Macias arrived home, he informed several of his family and friends about what had
26 occurred at the bus stop. Rough Draft Transcript of Jury Trial—Day 4, p. 24; 82. Several of his
27
28

1 family and friends planned to come to the bus stop the following day to confront Tatum. Rough Draft
2 Transcript of Jury Trial—Day 3, p. 339.

3 On December 11, 2007, Macias again rode the bus home. As he was exiting the bus, he saw
4 that his friends and family were waiting for him, as he had previously requested. Rough Draft
5 Transcript of Jury Trial—Day 3, p. 339. Macias approached his group and shook their hands.
6 Macias noticed Nicco Tatum amongst a group of black males down the street from his location.
7 Macias approached Tatum with the intention of fighting him. Rough Draft Transcript of Jury Trial—
8 Day 4, p. 120. As Macias’ group approached the African-American group, someone stated that the
9 “Mexicans have a weapon.” Rough Draft Transcript of Jury Trial—Day 4, p. 362. Before Macias’
10 group was able to reach the group of black males, two males produced guns and fired in Macias’
11 direction. Rough Draft Transcript of Jury Trial—Day 4, p. 362. Several individuals were injured in
12 the shooting. A witness identified WILLIAMS and FRANKLIN as having guns. Rough Draft
13 Transcript of Jury Trial—Day 4, p. 362. Rough Draft Transcript of Jury Trial—Day 5, p. 7.

14
15
16
17
18 **22. Issues on appeal. State concisely the principal issues in this appeal:**

- 19 1. Whether the trial Court erred by denying WILLIAMS’ relief sought in his Writ of
20 Habeas Corpus;
21 2. Whether the trial court erred by denying WILLIAMS’ Motion to Dismiss; and
22 3. Whether the trial court erred by not dismissing the Indictment because of the
23 Government’s late disclosure of potentially exculpatory witnesses.
24

25 **23. Legal argument, including authorities:**

- 26 1. **The Trial Court erred by denying WILLIAMS’ Writ of Habeas Corpus, as the**
27 **Government failed to present exculpatory evidence to the Grand Jury pursuant to NRS 172.145.**
28

1 NRS 172.145 provides:

2 1. The grand jury is not bound to hear evidence for the defendant. It is their
3 duty, however, to weigh all evidence submitted to them, and when they have reason to
4 believe that other evidence within their reach will explain away the charge, they shall
5 order that evidence to be produced, and for that purpose may require the district
6 attorney to issue process for the witnesses.

7 2. If the district attorney is aware of any evidence which will explain away the
8 charge, he shall submit it to the grand jury.

9 In a fax dated January 4, 2008, Counsel for WILLIAMS informed the State that within an hour
10 of the shooting, WILLIAMS, along with several other black males, was detained by LVMPD.
11 Appendix, pp. 002-003. Several police cars with tinted windows, presumably occupied by witnesses
12 to the alleged shooting, drove near and stopped by WILLIAMS for purposes of identification. No
13 identifications were made. Counsel for WILLIAMS had requested that these Metro officers and
14 witnesses be identified, and brought before the Grand Jury to provide possible exculpatory testimony.
15 Counsel for WILLIAMS believed that this testimony would have been exculpatory in nature because
16 these witnesses did not identify WILLIAMS as a participant in the shooting.

17 On January 4, 2008, Counsel for WILLIAMS spoke telephonically with Deputy District
18 Attorney Victoria Villegas. Counsel was informed by Villegas that she was not aware of any line-up
19 or show-up involving WILLIAMS prior to his arrest on December 17, 2007. Villegas also informed
20 Counsel that she had not received all of the discovery obtained by Metro.

21 On January 9, 2008, Counsel for WILLIAMS received by facsimile a transcript of an interview
22 conducted by Detective Baughman of the Las Vegas Metropolitan Police Department of WILLIAMS,
23 taken on December 17, 2007 at 12:49 a.m. Appendix, pp. 004-007. In the transcript, immediately
24 after informing WILLIAMS of his rights, WILLIAMS informs Detective Baughman that he was
25 detained and released immediately after the shooting. WILLIAMS also mentions that he has alibi
26 witnesses, but METRO detectives failed to investigate any of the potential alibi witnesses.

27 A district attorney violates NRS 172.145(2) if he fails to present to the grand jury evidence
28 which has a tendency to explain away the charge. Ostman v. Eighth Judicial District Court,

1 107 Nev. 563; 816 P.2d 458; (1991) (quoting Sheriff v. Frank, 103 Nev. 160, 165, 734 P.2d 1241,
2 1244 (1987).

3 Counsel for Williams made the State aware of these potentially exculpatory witnesses on
4 January 4, 2008, four days *prior* to the Grand Jury proceedings. No effort was made by the State to
5 determine who these witnesses were, and what statements were made. Police Detectives were made
6 aware of potential alibi witnesses during their questioning of WILLIAMS but failed to do any
7 investigation into their identities. This failure to present evidence which could explain away the
8 charge to the Grand Jury is a clear violation of NRS 172.145(2), and the Trial Court erred by denying
9 WILLIAMS' Writ.

10 **2. The Trial Court Erred by denying WILLIAMS' Writ of Habeas Corpus, as the**
11 **Government failed to notice WILLIAMS of its intent to proceed before the Grand Jury**
12 **pursuant to NRS 172.241(2).**

13 NRS 172.241(2) provides:

14 2. A district attorney or a peace officer *shall* serve reasonable notice upon a person
15 whose indictment is being considered by a grand jury unless the court determines that
adequate cause exists to withhold notice.

16

17 3. The district attorney may apply to the court for a determination that adequate cause
exists to withhold notice if he:

18 (a) Determines that the notice may result in the flight of the person whose
19 indictment is being considered, on the basis of:

- 20 (1) A previous failure of the person to appear in matters arising out of the
- 21 subject matter of the proposed indictment;
- 22 (2) The fact that the person is a fugitive from justice arising from charges in
- 23 another jurisdiction;
- (3) Outstanding local warrants pending against the person; or
- (4) Any other objective factor;

24 (b) Determines that the notice may endanger the life or property of other
persons; or

25 (c) Is unable, after reasonable diligence, to notify the person.

26 4. If a district attorney applies to the court for a determination that adequate cause
27 exists to withhold notice, the court shall hold a closed hearing on the matter. Upon a
28 finding of adequate cause, the court may order that no notice be given.

1 In the instant matter, the Grand Jury convened on January 8, 2008. Notice of this convening
2 was provided by the District Attorney's Office on December 31, 2007, and WILLIAMS responded to
3 the notice. The District Attorney's office again presented evidence before the Grand Jury on or
4 about January 15, 2008, without notice to WILLIAMS or his counsel. WILLIAMS was in custody at
5 the time of the January 15, 2008 hearing. WILLIAMS is not aware of any efforts by the District
6 Attorney's office to withhold notice pursuant to NRS 172.241(3). As the State failed to provide the
7 statutorily-required notice as provided by NRS 172.241, the District Court Judge erred by not
8 dismissing the Superseding Indictment.
9

11 **3. The Trial Court erred by failing to dismiss the Superseding Indictment due to the**
12 **Government's late disclosure of Brady Materials.¹**
13

14 On or about June 12, 2008, FRANKLIN filed his Motion for the State to Disclose All
15 Information Regarding Two Percipient/Confidential Informants; and Disclosure of All Potentially
16 Exculpatory Evidence. Appendix, pp. 057-068. WILLIAMS joined in the discovery motion on or
17 about June 23, 2008. Appendix, pp. 069-070. Specifically, FRANKLIN requested: recordings of
18 confidential informants; the identities of anyone arrested in this matter; "exculpatory information,
19 including information in the government's possession, custody, or control, or the existence of which
20 is either known or through the exercise of due diligence may become known to the State which would
21 tend to exculpate (FRANKLIN) of the State's Charges, might mitigate the punishment she he be
22 convicted, or would be or may lead to information which would tend to impeach or affect the
23
24

25
26 ¹ This issue is similar to the issue raised in Issue on Appeal, and raises the same objections as
27 previously raised in WILLIAMS' Writ of Habeas Corpus. The Motion to Dismiss was brought after
28 the late disclosure of witness statements and additional discovery.

1 credibility of a witness anticipated to be present by the State.” Appendix, pp. 065-067. The Court
2 never ruled on this Motion; however, the State was on notice of its duty to learn of any exculpatory
3 evidence known to others acting on the government’s behalf. U.S. v. Price, 566 F.3d 900 (9th Cir.
4 2009) (quoting Carriger v. Stewart, 132 F.3d 463, 479-80 (9th Cir. 1997).

6 On or about January 15, 2009, counsel for WILLIAMS met with deputy district attorneys at
7 the DA’s office to review the State’s case file. Copies of items not within the possession of the
8 Defense were requested, and copies were provided to the Defense. Counsel for WILLIAMS believed
9 that all discovery within the State’s possession was provided to the Defense.

11 On Friday, May 29, 2009, the District Attorney’s Office made available roughly 80 pages of
12 new discovery. Appendix, pp. 081-098. Contained within the pages—and not previously disclosed
13 in more than *eighteen months* since the filing of the case—were a transcript of confidential informant,
14 Farard Elder, dated December 12, 2007; voluntary statements, completed on the day of incident,
15 December 11, 2007, from: Wesley Carr; Henrita Fallen (previously disclosed); Ronnie Perdue;
16 Kassioeia Hood; Steven Hawkins; Harvey Robertson; Lianne Mireles; Cristina Scrun; Andy Sardinas;
17 a voluntary statement of Rebecca Ester Cruz, completed December 12, 2007; and a voluntary
18 statement of Kyle William Kraus (completion time unknown; previously disclosed). Additionally,
19 several pages of graffiti were provided; a dispatch log, entitled “Las Vegas Metropolitan Police
20 Incident Recall;” and a handwritten statement discussing the events of December 11, 2007.

24 The statements—judging by the handwritten dates on the forms--were made
25 contemporaneously with the event in December 2007, yet were not produced to the Defense until
26 May 29, 2009. The statements, directly on their face, are exculpatory, and these witnesses should
27
28

1 have, pursuant to WILLIAMS' fax to the District Attorney dated January 4, 2008, be presented to the
2 Grand Jury.

3 Witness Henrita Fallen identified two kids as having guns—a “tall Hispanic kid wearing a
4 black beany hat and a black hoody with white writing” and a “shorter black kid next to the tall kid.”
5 Appendix, pp. 081.

7 Witness Steven Lamar Hawkins noted “(2) Mexican teen dressed in black walk up and then
8 start firing round
9

10 (1) 5'7” about 195 lbs

11 (2) 5'6” about 165 lbs

12 Approximately 5 rounds.” Appendix, pp. 083.

13 Witness Lianne Mireles, a student at Mojave High School, noted “some Mexican guys with
14 guns” started shooting at the Mexican people.” She wrote “they all go to Mojave HS.” Appendix,
15 pp.085.
16

17 Witness Rebecca Ester Cruz noted that there were two people shooting. Notably, she
18 described one as black; the other as 5'7”, 18-19 years old, “dark skinned pacific Islander.” She
19 described the Black kid as being involved in the prior fight; the pacific islander with a “pudgy
20 stomach.” Appendix, pp. 087.
21

22 The Incident Recall notes “2 LAM's BOTH HAD HAND GUNS” at 07/12/11 14:04. At
23 07/12/11, Lolise Gallon/642-6244 called Metro, advising that she was aware a HMA was spotted in a
24 maroon car with a gun prior to the shooting. Additionally, the Recall details an arrest of Isaac
25 Gonzales ID#1973486 at 07/12/11 14:28. No details were provided as to why this individual was
26 arrested. Appendix, pp. 089-098.
27
28

1 Clearly, the above *four* eye-witnesses provided physical descriptions of the shooters that do
2 not remotely resemble WILLIAMS, as he is African American, not pacific islander, nor Mexican.
3 This is on its face exculpatory. The State was aware of these potentially exculpatory witnesses nearly
4 a month *prior* to the Grand Jury proceedings. No effort to learn of this additional discovery was made
5 by the State prior to its presentment to the Grand Jury. This failure to present exculpatory evidence to
6 the Grand Jury is a clear violation of NRS 172.145(2), and has tainted the Grand Jury in its
7 deliberations.
8
9

10 Brady violations have recently been revisited in The United States v. Price, 566 F.3d 900 (9th
11 Cir. 2009). Specifically, the Court delineated the three components required for a Brady violation:
12 The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it
13 is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently;
14 and prejudice must have ensued. Ibid. (quoting Strickler v. Green, 527 U.S. 263, 281-82 (1999)).
15

16 Various witnesses present during the shooting scene described individuals that did not
17 resemble WILLIAMS. As the descriptions taken shortly after the event occurred differ from
18 WILLIAMS' actual description, the evidence was material.
19

20 Suppression by the State is required to meet the second prong of Brady. The court
21 determined that even an “innocent failure to disclose favorable evidence constitutes a *Brady*
22 violation.” The Court acknowledged that a prosecutor has a “duty to learn of any exculpatory
23 evidence known to others acting on the government’s behalf.” Id. (quoting Carriger v. Stewart, 132
24 F.3d 463, 479-80 (9th Cir. 1997)). These witnesses and material discovery were not made available
25 during the State’s initial disclosure of discovery, nor were they made available to the Defense at the
26 ‘Open File’ meeting held in January 2009. The identities of these witnesses were concealed for over
27
28

1 eight months. The Government failed in its duty to learn of Brady material, which was simply in
2 the possession of the LVMPD detectives.

3 The final prong is prejudice. Prejudice occurs when admission of the suppressed evidence
4 would have created a “reasonable probability of a different result.” Id. (quoting US v. Jernigan, 492
5 F.3d 1050 (2007). Because of the late disclosure, WILLIAMS was deprived of a meaningful way of
6 investigating the case, and determining his defense strategy.
7

8 **24. Preservation of issues. State concisely how each enumerated issue on appeal was**
9 **preserved during trial. If the issue was not preserved, explain why this court should review the**
10 **issue:** All issues were properly preserved during the time of the hearings and during trial on the
11 record.
12

13
14 **25. Issues of first impression or of public interest. Does this appeal present a substantial**
15 **legal issue or first impression in this jurisdiction or one affecting an important public interest?**

16 **If so, explain:** None.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION – CERTIFICATE OF COMPLIANCE

I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track statement and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track statement, or failing to raise material issues or argument in the fast track statement, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information, and belief.

DATED this 15th day of February, 2010.

**RESPECTFULLY SUBMITTED:
EICHHORN & HOO, LLC**

By: _____
KALANI K. HOO, ESQ.
Nevada Bar No.: 006687
Trial Counsel for Appellant:
DRESDEN MICHAEL WILLIAMS

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of EICHHORN & HOO, LLC, and that on this 20th day of February, 2009, I placed a true and correct copy of the Fast Track Statement and Appellant’s Fast Track Appendix, in the United States Mail, First Class, Postage Pre-paid, and addressed to the following:

DRESDEN MICHAEL WILLIAMS #1028801
H.D.S.P.
P.O. Box 650
Indian Springs, NV 89070

An employee of EICHHORN & HOO, LLC