

No. 22-_____

IN THE
Supreme Court of the United States

JHESHUA JACKSON,
Petitioner,

v.

STATE OF COLORADO,
Respondent.

**On Petition for a Writ of Certiorari to the
Colorado Supreme Court**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Long before Justice Hugo Black emphasized that a “person’s . . . right to his day in court” is “basic in our system of jurisprudence,” *In re Oliver*, 333 U.S. 257, 273 (1948), the First Congress convened under our Constitution added the Sixth Amendment to our National Charter, which “stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not ‘still be done.’” *Johnson v. Zerbst*, 304 U.S. 458, 462 (1938) (quoting *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)). Indeed, [f]rom the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law]. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). At a minimum, the Constitution guarantees that a “defendant in a criminal case” has the constitutional right to, among other things, “notice and opportunity to answer the charge” and a “trial according to the established course of judicial proceedings.” *Powell v. Alabama*, 287 U.S. 45, 49 (1932).

The Petitioner, Mr. Jheshua Daniel Jackson, confronted criminal allegations related to his alleged use of another person’s credit card. During his trial, a Colorado judge refused his request to revoke his decision to represent himself while simultaneously holding him in criminal contempt and banishing him from his own criminal trial. Consequently, Mr. Jackson was tried in absentia and convicted of one felony and three misdemeanor charges.

THE QUESTIONS PRESENTED ARE:

1. Do the Sixth and Fourteenth Amendments to the United States Constitution permit a court to deny a criminal defendant his request for appointment of counsel while removing him from court, thereby trying him in absentia?
2. Do the Sixth and Fourteenth Amendments allow a court unfettered discretion to deny a criminal defendant's in-trial assertion of his right to counsel?

**PARTIES TO THE PROCEEDINGS AND CORPORATE
DISCLOSURE STATEMENT**

Petitioner, Mr. Jheshua Daniel Jackson, was the defendant, appellant, and petitioner in the proceedings below.

Respondent, the State of Colorado was the plaintiff, appellee, and respondent in the proceedings below.

No party to this proceeding is a corporation. Nor is there “parent or publicly held company owning 10% or more of the corporation’s stock.”

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PETITION FOR A WRIT OF CERTIORARI

INTRODUCTION

Mr. Jackson was convicted and sentenced to, among other things, four years of imprisonment, even though defense counsel's table was empty during the latter portion of his criminal trial. No one cross-examined the final witness. When the prosecution rested, no one could speak for the defense to state whether the defense would conduct its own presentation of evidence or would simply rest. And when jury instructions were presented, no one from the defense recommended jury instructions, objected to proposed jury instructions, or proposed revisions to the jury instructions.

The reason is the cumulative effect of two decisions reached by the trial court. The first was the denial of Mr. Jackson's request to revoke his decision to represent himself and instead avail himself of his Sixth Amendment right to counsel. The second was the trial court's decision to remove Mr. Jackson from the courtroom for asserting his Sixth Amendment right to counsel in front of the jury. Consequently, Mr. Jackson was locked in a courthouse bathroom with a shoddy audio feed of the proceedings and with writing materials to scrawl whatever objections he could muster in hopes that he could get them in front of the judge to be any use.

Neither the Sixth Amendment nor the Fourteenth Amendment's Due Process Clause have ever contemplated trials in absentia. Nor should this Court tolerate them. Because the decision by the trial court, and the affirmance by the Colorado Court of Appeals, conflicts both with decisions of other jurisdictions (as well as with all notions of due process and fundamental fairness), this Court

should either grant this petition for a writ of certiorari (or summarily reverse).

OPINION BELOW

The Colorado Court of Appeals' opinion is not reported, but it is reproduced at App. 1a–28a. The Colorado Supreme Court's order, which denied Mr. Jackson's state petition for a writ of certiorari, is available at *Jackson v. People*, No. 21SC754, 2022 Colo. LEXIS 677 (Colo. Jul. 25, 2022), and is reproduced at App. 30a.

JURISDICTION

The Colorado Court of Appeals' judgment was entered on September 2, 2021, *see* App. 1a–28a, and the Colorado Supreme Court's order denying Mr. Jackson's state petition for a writ of certiorari was entered on July 25, 2022, *see* App. 30a.

On October 11, 2022, Mr. Jackson, through counsel, filed an application for an extension of time to file a petition for a writ of certiorari with Justice Gorsuch. *See Jackson v. Colorado*, No. 22A310 (U.S. Oct. 11, 2022). On October 14, 2022, Justice Gorsuch extended the time to file this petition for a writ of certiorari to November 22, 2022. *See Jackson v. Colorado*, No. 22A310 (U.S. Oct. 21, 2022).

Accordingly, this Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Fourteenth Amendment to the United States Constitution provides:

No State shall . . . deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

A. On August 29, 2016, Mr. Jackson was arrested for allegedly stealing a credit card from the Colorado State University student gym and using it at a nearby restaurant. App. 2a; App. 32a. The State subsequently charged him for (1) felony identity theft, (2) misdemeanor criminal possession of a financial device, (3) misdemeanor theft in the amount of at least \$50 and not more than \$300, and (4) misdemeanor criminal trespass. App 32a. At a hearing early in the proceedings, Mr. Jackson was represented by the Office of the Colorado State Public Defender. App. 33a.

At a status hearing roughly three weeks later, Mr. Jackson informed the court that he desired to represent himself. App. 36a–37a. The Court asked Mr. Jackson whether he made that decision “on your own,” but declined to delve any deeper into the question of

representation. App. 37a. The prosecutor, for his part, told Mr. Jackson “that throughout the process if he does want an attorney, at that point he’s certainly entitled to request it.” App. 37a.

Two months later, Mr. Jackson reiterated his request to represent himself instead of relying on “the benefit” of public-defender representation. App. 41a–42a. This time, the judge asked him about his educational background, his potential legal training, and his mental state. App. 42a–43a. After answering those questions to the judge’s apparent satisfaction, Mr. Jackson then asked: “Is this going to be a civil action or a criminal action?” App. 44a.

Things degraded quickly from there. Despite the judge’s attempt to walk Mr. Jackson through some rudimentary criminal procedure, Mr. Jackson told her: “Some things I kind of understand, some things I don’t,” and insisted to her that he did not “understand . . . the mention of cause and action against me.” App. 46a. In Mr. Jackson’s view, the Colorado Court seeking to try him for felony charges must have jurisdiction under “common law” or “under military or admiralty law.” App. 46a–47a. Despite his confusion, the judge insisted that “the immediate question for today that I need to know the answer to before we proceed any further is whether or not you intend to represent yourself or whether you intend to have your appointed attorney continue to represent you.” App. 47a. She breezily told Mr. Jackson that the court had jurisdiction under the Colorado Constitution and Colorado statutes, App. 48a–49a; declined to repeat the provisions for him when asked, App. 49a; and when he tried to ask another question about jurisdiction, she retorted, “would you like to be escorted from the courtroom?” App. 50a.

Mr. Jackson’s first attempt at arraignment occurred on December 23, 2016. App. 51a–58a. After the judge

inquired about a few discovery matters, Mr. Jackson stated: “Let the record reflect that I’m here and present in life and in blood and staying in common law jurisdiction,” and informed the court that “I’m not exactly sure . . . what the heck is going on.” App. 53a. After asking the judge whether he was in “a court of record,” Mr. Jackson explained:

Your Honor, I’m—I’m not trying to be difficult. I’m just a simple, common man standing in common law trying to . . . make sure that I have a right to a fair trial. I’m just trying to understand and—so I have a few questions that are—in order for me to represent myself—as you know, I’m doing it pro se. I understand that I have the right to represent myself pro se. But I want to do it and make sure that I’m going about the procedures the right way, the jurisdiction I’m in the right way. I want to make intelligent decisions.

App. 54a. Following this colloquy, Mr. Jackson requested the appointment of advisory counsel. App. 58a.¹ Rather than discuss this request further, the court said that it would address the request at the next hearing. App. 58a.

After rescheduling the hearing, the judge again tried to arraign Mr. Jackson on February 7, 2017. App. 70a. When asked his plea, Mr. Jackson refused to respond. App. 70a. When the judge announced that she would enter not-guilty pleas on his behalf, Mr. Jackson objected and asked the

¹ Given his belief that the court might be one sounding in military jurisdiction, Mr. Jackson asked for a lawyer “from either the United States Navy, United States Marines, or some private attorney.” App. 58a.

court to rule on his motions to dismiss for lack of jurisdiction. App. 70a–72a. After she informed him that she had already done so, he verbally asked her to dismiss the case based on her entry of a not-guilty plea for him. App. 73a. Eventually, the court set a motions hearing for March 24, 2017, App. 78a, and a three-day trial to begin on April 12, 2017. App. 76a.

At the March 24th motions hearing,² Mr. Jackson (1) told the court that he was there “on behalf of [his] trust account,” App. 83a; (2) asked if the clerk was “the trustee of the court,” App. 85a; (3) informed the trial court that he did “not understand the nature and the cause of the laws,” App. 87a; (4) asked again about the court’s jurisdiction, App. 87a; (5) inquired whether “whether this is a commercial court, this is a court of equity, is this a court of record,” App. 87a; and (6) filed two motions to dismiss along with “an Oath of Office . . . apparently . . . administered by the Holy Spirit.” App. 95a. The court denied his motions “as frivolous.” App. 103a.

A week before trial, another hearing ensued. App. 105a. There, Mr. Jackson cited the Code of Federal Regulations Section 72.11, declared that the crimes for which he was charged were “all . . . commercial,” and, accordingly, insisted that “the People . . . produce the contract in dispute for which the defendant has allegedly breached this contract and for the People to produce this contract, bring it forward, show how I am a party to it, and what duties I am to perform under it.” App. 106a. The judge largely opted to ignore Mr. Jackson. When she asked

² At this March 24, 2017 hearing, the court also addressed issues related to a separate criminal case brought against Mr. Jackson. App. 85a.

him if thirty-five minutes would suffice for voir dire, Mr. Jackson responded “How would I know?” App. 108a.

Mr. Jackson then again requested that the court explain its jurisdiction; specifically, “[i]s this a court of equity, a common law court, or a commercial court?” App. 110a. The judge simply directed Mr. Jackson to her written orders. App. 110a. His confusion persisted, and to alleviate it, he “reserve[d] the right to petition any last minute motions before trial,” specifically:

Any motions I deem necessary as I continue to try to figure out what the nature and the cause is of this, these claims, as I try to figure out what jurisdiction I am supposed to be in, as I have asked the Court to ask on the record as to whether this is a court—common law court, or is it a military tribunal, or admiralty court.

App. 111a. Mr. Jackson stated that he did not “mind which one,” but “just want[ed] to know which—if this is over my head and I need for the Court to give me representation, then that representation should come from a U.S. military JAG officer.”³ App. 111a.

³ Mr. Jackson’s confusion persisted through the remainder of the pre-trial conference See App. 113a (“So let the record reflect and let the record show that it is the intention of the Court to try me in—under criminal action in a secret jurisdiction known only to the Court and to licensed attorneys for which I have not pled to. As a matter of fact, the Court entered a plea unlawfully on my behalf, noticed practicing law from the bench, and refuses to answer as to whether this is a common law court, an equity court, or a commercial court.”); App 116a (“So are you saying, as it stands, that there—on the record you are saying that the People do not have an international contract to produce, and as we

B. Mr. Jackson's trial began on April 12, 2017. App 125a. From the outset of voir dire, Mr. Jackson expressed his confusion about the proceedings taking place around him:

- "I have no idea about any of those things. I'm here for the benefit of the Court, so I'm here to represent the named defendant." App. 127a.
- "So I don't know what's going on. I don't know half the stuff that you guys are up to." App.130a.
- "Yes. I just—not trying to be difficult. I don't understand how certain things can be filed What court—what court is this? Is this an admiralty court? Is this an equity court? Is this a common law court? I need to know that before we proceed." App. 131a.

are still here under this same special appearance, that the witness is not here or the alleged victim is not here? Tyler Schmid is not here. I have a right to face my accuser. Since they are not here and have no sworn statement, then why is—how is there a crime? Where there's no victim, there's no crime. I am confused as to how these claims—what these commercial claims have to do with the defendant."); App. 116a–117a ("Just so that—just so that I can object, just for the record, that the alleged victim is not here. The People cannot both be a party and also be the victim, so I am a little confused there as to how that is operating. But, again, I don't know what court we are in. I am not exactly sure what jurisdiction this is and how this all plays out, so I am not sure how my United States constitutional rights have been violated thus far. I guess this whole thing is simply for appeal.")

- “I need to understand something. There’s a lot I’m trying to understand. Everyone is not letting me understand quite a bit.” App. 135a.
- “I’m completely flying blind here.” App. 138a.
- THE COURT: “What’s your first strategy?” MR. JACKSON: “Not exactly sure. You didn’t give me rules of public procedure.” THE COURT: “Mr. Jackson.” MR. JACKSON: “Kind of winging it here.” App. 141a.

As trial proceeded, Mr. Jackson remarked in front of the jury, “I’m just trying to understand and best represent myself, but maybe representing myself is not the best idea right now, because I’m being railroaded left and right.” App. 144a. Immediately, the district attorney called for a mistrial. App. 144a–145a. The judge ushered out the jury, admonished Mr. Jackson that he was out-of-order, and stated: “You need to be quiet. You are being warned, sir. You need to be quiet or I will have these deputies take you out of the courtroom into jail.” App. 145a.

The judge warned Mr. Jackson that “continuing that behavior will be determined by this Court to be in contempt of the authority of this Court,” and asked him, “Do you understand?” App. 148a. Mr. Jackson responded, “I comprehend. I do not understand. Your Honor, I want to state for the record, I’m sorry that I misspoke—” App. 148a. The judge interrupted him, warning again “if you persist in violating my orders to be quiet when I tell you to be quiet, I will direct the deputies to take you to jail and hold you in contempt of court.” App. 148a. And Mr. Jackson again responded:

Your Honor, it’s [not] my intention to be held in contempt. Nor is it my intention to disrespect this

Court in any way. When I was talking, you said I was talking too softly, I had to speak up. So I guess, I mean, what am I left to do?

....

But I do want to say I misspoke earlier. I apologize to the Court. I'm not trying to be a pain in the gluteus for a lack of a better euphemism. I'm simply wanting to have a fair trial. I want—I want to represent myself and not be held against me.

....

I'm having a hard time wrapping what a ruling and the relevancy of a ruling has to do with published rules of criminal procedure under what jurisdiction. Either admiralty, either equity, either common law. Those are the only three that I know of in my limited, novice understanding of the law.

App. 148a–149a. Mr. Jackson then asked, repeatedly, “do I have a constitutional right? A United States constitutional right? Do I have those rights? . . . Have I waived any of my rights to your knowledge?” App. 150a.

Apparently out of frustration, the court declined to answer any of Mr. Jackson's questions about waiver of his constitutional rights. App. 150a. When asked whether he “completed the record [he] wish[ed] to make,” Mr. Jackson responded “I wouldn't know. . . . Apparently there's a lot that I don't know.” App. 151a.

Towards the end of the trial's first day, the following colloquy took place, Mr. Jackson again asked “if [he] had a constitutional right.” App. 157a. When the judge told him “we've addressed this,” the following colloquy ensued:

MR. JACKSON: At this time I am requesting counsel—

THE COURT: Mr. Jackson, please be quiet.

MR. JACKSON:—because I understand I will not get a fair trial.

THE COURT: The jury will be excused. Mr. Jackson, please be quiet. The jury will be excused.

MR. JACKSON: I am requesting counsel.

THE COURT: The jury will be excused.

MR. JACKSON: I'm not going to get a fair trial.

THE COURT: Mr. Jackson, please be quiet. You are out of order, sir.

MR. JACKSON: I apologize, Your Honor. I'm not trying be out of order. I'm trying to understand what I'm doing.

THE COURT: Be quiet, sir.

App. 157a-158a. After the jury exited the courtroom, the judge stated:

Mr. Jackson, what is most definitely going to affect your ability to have a fair trial here is to have you taken away in contempt of court by these deputies in front of the jury.

App. 158a. As best as he could, Mr. Jackson again asserted his Sixth Amendment right to counsel:

[A]t this point I'm demanding representation probably from under United States military. I would like representation from that, because apparently it doesn't matter what I say. If you have any questions for the named defendant in a commercial court, then you can ask that piece of paper, because asking me the live man is obviously not getting me nowhere in my own representation, which I have not received proper instructions for.

App. 159a. As far as the record reveals, the judge provided no response whatsoever to Mr. Jackson's request for counsel, instead again threatening to hold him in contempt.. App. 159a.

On day two of the trial, Mr. Jackson informed the court that he was "putting a motion to continue because [he] can no longer represent [him]self." App. 163a. He told the court that he "contacted legal shield and they told me to contact them today." App. 163a. The judge responded that "[y]ou waived your right to counsel," and Mr. Jackson replied "I also retained them...I've also said that I preserve my right." App. 166a. The judge then declared "Mr. Jackson, it's too late. We're in the middle of the trial... [W]e're proceeding with this trial today." App. 166a. After the court insisted that Mr. Jackson proceed with pro se cross-examination, Mr. Jackson stated, in the presence of the jury, "Here's the problem with me proceeding... I want to, but at this point, as I've stated, I can no longer represent myself...I'm asking for an attorney." App. 168a.

Immediately, the court dismissed the jury, found Mr. Jackson to be in contempt of court, and had him escorted out of the courtroom. App. 168a-169a. Outside of his presence, the Court concluded that, although

Mr. Jackson would no longer be present for the remainder of his criminal trial, she did not “believe that appointing advisory counsel is necessary or appropriate, and that Mr. Jackson has made it clear that up until his statements late yesterday and early this morning that he wished to proceed and represent himself.” App. 175a.

When court resumed, Mr. Jackson was locked in a bathroom. He was not provided with a video feed of the proceedings, nor could he hear the proceedings well through the audio system the court tried to set up. App. 183a. Mr. Jackson was provided with a pen and paper to write objections. App. 186a, 189a, 209a. Throughout the rest of the proceedings, no one was present at defense counsel’s table. The jury was informed by the court that Mr. Jackson had “voluntarily absent[ed] himself from the courtroom.” App. 182a.

The prosecutor conducted a redirect of his witness. App. 191a. Then, he conducted a direct examination of the manager of the restaurant where Mr. Jackson purchased a drink with the allegedly stolen credit card—i.e., the purported eyewitness to the alleged crime. App. 193a–194a. Mr. Jackson had no opportunity to cross-examine this witness. App. 195a. After the prosecutor gave his closing statement, and after the jury was excused, the court read a statement from Mr. Jackson into the record. App. 220a. In it, he reiterated that he had retained a lawyer and wished to exercise his right to counsel, and explained that he “ha[d] no knowledge of the proceedings as the audio malfunctioned in the holding cell and [he] did not hear anything.” App. 220a.

The jury returned a unanimous guilty verdict on all four counts. App.225a.

C. On appeal, Mr. Jackson argued that the trial court committed reversible error when it (1) refused to reappoint counsel, (2) denied his request for a continuance, and (3) removed him from the courtroom. App. 3a. The Court of Appeals of Colorado rejected each of his arguments.

First, the court held that Mr. Jackson had validly waived his right to counsel. App. 11a. *Second*, the court held that Mr. Jackson had no constitutional right to reappointment of counsel after he waived it. App. 13a. And *third*, the court held that Mr. Jackson did not experience a deprivation of his right to be present for his trial, because, in the court's view, he had waived that right via disruption. App. 20a–22a.

Critically, the Colorado Court of Appeals held that Mr. Jackson received a fair trial even though he was removed from the courtroom *and* the court declined to appoint standby counsel. In the court's view, providing Mr. Jackson with an audio feed, pen, and paper sufficed to protect his fundamental rights. App. 22a.

Mr. Jackson filed a state petition for certiorari to the Supreme Court of Colorado. The State Supreme Court denied it on July 25, 2022. App. 30a.

REASONS FOR GRANTING THE PETITION

Although courts have the right and the obligation to maintain courtroom order, a “defendant does not forfeit his right to representation at trial when he acts out.” *United States v. Mack*, 362 F.3d 597, 601 (9th Cir. 2004). Instead, “[h]e merely forfeits his right to represent himself in the proceeding.” *Id.* Basic and self-evident notions of fundamental fairness compel the conclusion that *someone* must be present to defend against criminal charges. Thus,

“the involuntary exclusion from the courtroom of a defendant who was representing himself, without other defense counsel present,” must be considered “fundamental error.” *People v. Carroll*, 140 Cal. App. 3d 135, 142 (1983).

During every appearance before the trial judge in this case, Mr. Jackson plainly would have benefited from the presence of counsel to, among other things, help him comprehend the questions of jurisdiction that he repeatedly raised and that the court largely declined to answer for him. Despite his evident confusion from start to finish, Mr. Jackson was involuntarily removed from his own criminal trial and deprived entirely of all criminal defense advocacy *because* he stated in the presence of the jury “I can no longer represent myself. . . . I’m asking for an attorney.” App. 163a, 168a.

By deciding to try him in absentia, the Colorado Supreme Court has split with the California Court of Appeal⁴ and the Ninth Circuit,⁵ which have flatly declined to allow trials in absentia under materially identical circumstances, and arguably split with the Second⁶ and Fourth Circuits,⁷ both of which have expressed serious reservations about the practice. The profound importance of the constitutional principles at issue warrant this Court’s attention. Indeed, the Second Circuit has stated explicitly that “[f]rankly, more guidance from the Supreme Court would be helpful” in dealing with situations like the one that resulted in Mr. Jackson’s conviction. *Davis v.*

⁴ *See Carroll*, 140 Cal. App. 3d, at 142.

⁵ *Mack*, 362 F.3d, at 601.

⁶ *Davis v. Grant*, 532 F.3d 132, 139 (2d Cir. 2008)

⁷ *United States v. Ductan*, 800 F.3d 642, 655 (4th Cir. 2015)

Grant, 532 F.3d 132, 140 (2d Cir. 2008). And given that Mr. Jackson’s case comes to the Court on direct review, it presents the ideal vehicle for settling this issue.⁸

Nothing short of the “the right to a fair opportunity to defend against the State’s accusations,” *Carroll*, 140 Cal. App. 3d, at 141, is at issue here. The Court should grant certiorari. In the alternative, the Court should summarily reverse the miscarriage of justice that the Colorado court system has inflicted on Mr. Jackson.

I. WHETHER A COURT MAY REMOVE A SELF-REPRESENTED CRIMINAL DEFENDANT FROM HIS TRIAL WITHOUT APPOINTING COUNSEL IS A FUNDAMENTALLY IMPORTANT QUESTION THAT HAS NOW SPLIT THE COURTS.

Mr. Jackson’s case is not an outlier. For nearly forty years, the precise issue his case presents has emerged in courts throughout the United States. Some courts have recognized that, no matter how difficult a criminal defendant’s actions might be for a trial court judge, trying a criminal defendant in absentia is *never* a constitutionally valid option. Others have expressed profound concern over the practice, but felt constrained by this Court’s silence on the issue. To the best of counsel’s knowledge, none before the Colorado Court of Appeals in this case has

⁸ See generally *Davis*, 532 F.3d, at 144 (noting that “if we were reviewing the issue on a blank slate, we might be inclined to conclude that a defendant *must* be ‘able and willing to abide by rules of procedure’ in order to waive his right to counsel, and thus that the Sixth Amendment requires that a defendant who is involuntarily removed from the courtroom must be provided with replacement counsel during his absence,” but concluding, on AEDPA review, that “we cannot conclude . . . [the] failure to instruct standby counsel to represent [the defendant] during his absence was an objectively unreasonable application of, or failure to extend, clearly established Supreme Court precedent”) (citing 28 U.S.C. § 2254(d)(1)).

lent its imprimatur to the practice without expressing any reservations whatsoever. This split warrants this Court's resolution.

A. In 1983, the California Court of Appeal addressed a situation materially identical to the one experienced by Mr. Jackson. In *People v. Carroll*, a "defendant exercised his right to represent himself at trial and, during the People's case, was, from time to time, excluded from the courtroom by court order for conduct which the court considered unacceptable." 140 Cal. App. 3d, at 137. "During these periods of exclusion, no defense counsel was present in the courtroom, and it does not appear that defendant had even such access to the proceedings as could have been provided by electronic means." *Id.* According to the court, "[p]roceeding with trial, under the circumstances of th[at] case, in the total absence of defendant or counsel for the defense, was" not only "error," but "[t]he kind of error" that was "so fundamental that it goes to the essence of a fair trial." *Id.*

In that case (like this one), the defendant insisted throughout his trial that "he was not competent to represent himself." *Id.*, at 139. In that case (like this one), the trial judge threatened the defendant that if he "start[ed] making statements, disrupting the trial, the court will have to have you removed." *Id.* And in that case (like this one), "excluding [the] defendant from the courtroom meant that certain parts of the People's case proceeded without the presence of the defendant, or counsel for the defense." *Id.*, at 141.

The California Court held bluntly that "[s]uch a situation offends the most fundamental idea of due process of law, as [the] defendant is totally deprived of presence at trial and even of knowledge of what has taken place." *Id.* "Because [the] defendant represented himself,

his removal from the courtroom deprived him not only of his own presence, but of legal representation.” *Id.* And “[b]ecause the right to assistance of counsel is one of the rights of due process which are necessary to insure the fundamental human rights to life and liberty,” it followed that “[i]f this safeguard is not provided, justice cannot be done.” *Id.* Simply put, “[t]he state is without the power and authority to deprive an accused of life and liberty unless he has or waives assistance of counsel, and provision of the right to counsel, or waiver thereof, is an essential jurisdictional prerequisite to the authority to convict an accused.” *Id.* In other words, “[c]onviction without this safeguard is void.” *Id.*

Critically, the court acknowledged that the defendants’ “repeated statements that he was incompetent to represent himself were, undoubtedly, annoying, provocative, and somewhat disruptive.” *Id.*, at 143. Even so, “excluding him as a defendant representing himself was a fundamental error requiring reversal, because there was, then, no defense counsel present.” *Id.*, at 144. “[W]here, as [t]here”—and as *here*—the defendant’s “activity amounted to no more than a repeated insistence on appointment of counsel,” fundamental, structural, constitutional error arises if the court absents him and then continues the trial without *anyone* representing him. *Id.* The solution, according to the California court, is to “appoint counsel.” *Id.*, at 142.

B. The Ninth Circuit is in accord. In *United States v. Mack*, that court took up the question whether “a pro se defendant” can, via involuntary removal, “forfeit his right to be represented at trial” altogether. 362 F.3d, at 600. In assessing this question, the Ninth Circuit “start[ed] with first principles”—i.e., that “[a] properly conducted judicial proceeding is required by the demands of due process”

and, “[m]ore particularly, a defendant is entitled to a ‘trial,’ and ‘to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.’” *Id.* (quoting U.S. Const. amends. V, VI). In the Ninth Circuit’s view, “[a] defendant does not forfeit his right to representation at trial when he acts out.” *Id.*, at 601. Instead, “[h]e merely forfeits his right to represent himself in the proceeding.” *Id.*

In *Mack*, as here, the defendant “had been removed as his own counsel and nobody stepped in to fill the gap.” *Id.* But in *Mack*, unlike here, the Ninth Circuit did “not see how the district court’s approach [could] be justified.” *Id.*, at 602. Indeed, “[d]eprivation of counsel is a structural error.” *Id.*, at 603 (citing *Bell v. Cone*, 535 U.S. 685, 695 (2002)). “Thus, . . . the interest of justice require[d] that [the defendant] be given a new trial.” *Id.*, at 603.

C. Judges of the Second Circuit share the view of their California brethren while acknowledging that they could use this Court’s help in settling this issue. In *Davis v. Grant*, the Second Circuit addressed whether, on AEDPA review, a defendant’s removal “from the courtroom for disruptive conduct with no standby counsel appointed to represent him in his absence involved an unreasonable application” of this Court’s precedent. 532 F.3d, at 139. In that Court’s view, it might have “conclude[d] that the trial court was constitutionally required to appoint standby counsel for [the defendant] during his involuntary absence from the courtroom” if it “were . . . considering the issue *de novo*.” *Id.*, at 139–40. But the Second Circuit could not, given the habeas posture, “conclude that the result constituted an unreasonable application of Supreme Court precedent.” *Id.*, at 145.

The Second Circuit distilled the issue to the following two-part question: “[c]an an unruly defendant . . . lose his

right to proceed as his own counsel and, if so, does such a loss constitutionally require attorney representation of the recalcitrant defendant?" *Id.*, at 142. "Given that the Supreme Court has made clear that courts must 'indulge every reasonable presumption against [a defendant's] waiver of fundamental constitutional rights,'" the Second Circuit found that "an affirmative answer to this question finds a good deal of support in the Court's precedent." *Id.* In fact, the *Davis* Court recognized that this Court "has explicitly approved— though not mandated—the procedure that [the defendant] would have [the court] declare constitutionally required." *Id.* (citing *Illinois v. Allen*, 397 U.S. 337 (1970); *Faretta v. California*, 422 U.S. 806 (1975)). And although the Second Circuit "acknowledge[d] the difficult position of the trial-court judge," it nonetheless recognized "a number of concerns favor requiring counsel to be appointed to represent a *pro se* defendant who is involuntarily removed from the courtroom":

- "First, respect for all of a defendant's Constitutional rights, including his Fifth Amendment right to 'due process of law,' U.S. Const. amend. V, and his Sixth Amendment rights to an 'impartial jury' and 'to be confronted with the witnesses against him,' *see id.* amend. VI, support the appointment of standby counsel."
- "Second, the government's 'independent interest' in ensuring that criminal trials are fair and accurate favors the appointment of replacement counsel."
- "Third, the judiciary's interest in ensuring that criminal proceedings 'appear fair to all

who observe them' strongly favors the appointment of replacement counsel."

Id., at 143–44. At bottom, "when such a defendant is removed from the courtroom as a result of his disruptive conduct and the trial continues without counsel, there is almost no chance that either his rights or the government's 'constitutionally essential interest in assuring that the defendant's trial is . . . fair' will be adequately protected in the resulting proceeding." *Id.* (quoting *Sell v. United States*, 539 U.S. 166, 180 (2003)).

Although it found itself confined by AEDPA's deferential standard, the Second Circuit concluded its opinion with a plea that "this is an area of law in need of further clarification." *Id.*, at 149. "In fact," the Second Circuit declared that it "would not be surprised if . . . the Supreme Court decided to adopt a bright line rule requiring the appointment of replacement counsel when a *pro se* defendant is absented from the courtroom." *Id.*, at 149-50.⁹ And after noting that the defendant in *Davis* was "not a strong candidate for public sympathy," it nonetheless proclaimed that the defendant's "constitutional claim, while personal, has significant institutional implications in a free society committed to the rule of law." *Id.* In the Second Circuit's view, "[t]he effectiveness and legitimacy of our criminal justice system is not defined by the complainant but by those who

⁹ See also *Ductan*, 800 F.3d at 655 (Diaz, J., concurring) ("[T]he weight of the cases makes it plain that when a *pro se* defendant is involuntarily removed from the courtroom, no 'critical stage' of the trial may be conducted in his absence without the appointment of counsel.").

through defiance or difficulty test the strength of our constitutional resolve.” *Id.*¹⁰

D. The Colorado Court of Appeal’s decision cannot be squared with precedent from the California Court of Appeals, the Ninth Circuit, and the wise deliberations of judges on both the Second and Fourth Circuits. It considered Mr. Jackson’s argument that the trial court violated “his right to be present in court and his right to counsel when he was removed from the courtroom,” and then “disagree[d].” App. 19a. In its view, the fact that Mr. Jackson was provided with audio equipment, paper, and a pen rendered his trial fair, and even if a Sixth Amendment violation arose, it was harmless. App. 22a.

Neither conclusion harmonizes Mr. Jackson’s case with the precedent discussed above. The Ninth Circuit found that “*effectively* leaving [a defendant] without representation” is “far from appropriate,” *Mack*, 362 F.3d, at 601 (emphasis added), and Colorado cannot, with any semblance of a straight face, assert that Mr. Jackson had any *effective* right to, e.g., cross-examine the State’s witnesses or to provide a closing argument to the jury while he was locked in a courthouse bathroom with a pen and a pad.¹¹ And the Ninth Circuit also held—unabashedly

¹⁰ See also *Thomas v. Carroll*, 581 F.3d 118, 127 (3d Cir. 2009) (affirming denial of habeas petition raising similar issues but commenting that “[i]f this appeal had come before us on a direct appeal from a federal court presented with a defendant who waived his right to counsel and then absented himself from the courtroom, we might hold differently”).

¹¹ See, e.g., *Mack*, 362 F.3d, at 602 (“It can hardly be doubted that a defendant has a right to closing argument. As the Supreme Court has put it: ‘[t]here can be no doubt that closing argument for the defense is a basic element of the adversary fact-finding process in a criminal trial. Accordingly, it has universally been held that counsel for the defense

and correctly—that “[d]eprivation of counsel is a structural error” not amenable to harmless error review. *Id.*, at 603 (citing *Bell*, 535 U.S., at 695).

* * *

To be certain, a split now exists. Colorado’s precedent is at loggerheads with its sister jurisdictions over an issue “with significant institutional implications in a free society committed to the rule of law.” *Davis*, 532 F.3d, at 139. Given this split, the fundamental nature of the question involved, and the explicit request from the Circuit Courts for this Court’s guidance on this issue, the Court should grant certiorari.

II. THE QUESTION AS TO WHEN A CRIMINAL DEFENDANT MAY RECLAIM HIS RIGHT TO COUNSEL IS ANOTHER FUNDAMENTALLY IMPORTANT QUESTION THAT HAS SPLIT THE COURTS.

The error discussed above is not the only one ripe for this Court’s attention. State and Federal courts throughout the country have adopted no fewer than four distinct approaches for determining when a criminal defendant may reclaim his right to counsel after he waives it. The Colorado Court of Appeals opinion entrenched that split even further.

A. In some jurisdictions, like Alabama and Indiana, criminal defendants have an unqualified, or lightly qualified, right to revoke their waiver of counsel any time. *Ex parte King*, 797 So. 2d 1191, 1193 (Ala. 2001). *Koehler v. State*, 499 N.E.2d 196, 199 (Ind. 1986). Massachusetts

has a right to make a closing summation to the jury, no matter how strong the case for the prosecution may appear to the presiding judge.”) (quoting *Herring v. New York*, 422 U.S. 853, 858 (1975)).

courts permit waiver once the defendant's conduct indicates that "one is vacillating on the issue or has abandoned one's request altogether." *Commonwealth v. Jordan*, 49 Mass. App. Ct. 802, 814 (2000). New Hampshire is in accord with Massachusetts. *State v. Ayer*, 834 A.2d 277, 289 (N.H. 2003).

Two federal circuit courts of appeal, the Eighth and Eleventh Circuits, seemingly recognize that after a valid waiver, and absent a showing that the reassertion is to manipulate the system, a defendant can reassert the right to counsel at any time, even during trial. *Horton v. Dugger*, 895 F.2d 714, 716 (11th Cir. 1990); *Raymond v. Weber*, No. CIV 99-1041, 2008 U.S. Dist. LEXIS 19165, at *17 (D.S.D. Mar. 5, 2008). If Mr. Jackson had been tried within these circuits, he would have been able to reassert his right to counsel and the courts there would have been "hard pressed" to deny his request. *Horton*, 895 F.2d at 716.

And in Michigan, a defendant's waiver of the right to counsel is not permanent and the trial court must give the following guidance at subsequent proceedings:

- (1) the defendant must reaffirm that a lawyer's assistance is not wanted;
- (2) if the defendant requests a lawyer and is financially unable to retain one, the court must refer the defendant to the local indigent criminal defense system's appointing authority for the appointment of one; or
- (3) if the defendant wants to retain a lawyer and has the financial ability to do so, the court must allow the defendant a reasonable opportunity to find one.

People v. Caston, Nos. 358510, 358514, 2022 Mich. App. LEXIS 4607, at *15-16 (Ct. App. Aug. 4, 2022).

In any of these jurisdictions, Mr. Jackson's assertion of his Sixth Amendment right to counsel likely would have come out differently.

B. Other courts, like Illinois,¹² Missouri,¹³ New York,¹⁴ Nevada,¹⁵ and North Carolina,¹⁶ err on the side of allowing a defendant to reassert the right so long as he is not doing it for purposes of delay or obstruction. In other words, "a waiver is valid until the trial is over or the defendant makes known to the court the desire to withdraw or rescind the waiver and makes a showing that the rescission of the waiver was *for good cause*," meaning the rescission was not a delay tactic. *State v. Banks*, 2016 N.C. App. LEXIS 546, at *7 (N.C. Ct. App. May 17, 2016) (emphasis added); *State v. Scott*, 653 S.E.2d 908, 910 (2007).

If Mr. Jackson's trial had occurred in any of these jurisdictions, his case similarly may have come out differently. Despite her frustration, the judge in Mr. Jackson's trial gave no indication whatsoever that she believed Mr. Jackson had asked for a lawyer for purposes of delay. Indeed, she failed to engage in *any* analysis as to why Mr. Jackson wanted counsel—instead, she opted to have him forcibly escorted from the courtroom and locked

¹² *People v. Pratt*, 908 N.E.2d 137, 146 (Ill. 2009).

¹³ *State v. Richardson*, 304 S.W.3d 280, 289 (Mo. App. S.D. 2010).

¹⁴ *People v. Howell*, 615 N.Y.S.2d 728, 729 (App. Div. 1994).

¹⁵ *Meisler v. State*, 321 P.3d 930, 933-34 (Nev. 2014).

¹⁶ *State v. Scott*, 653 S.E.2d 908, 910 (N.C. 2007).

in a bathroom. App. 169a. In her view, it was “too late. We’re in the middle of trial,” App.165a–166a, despite the self-evident conclusion that Mr. Jackson truly was not able to “represent [him]self.”

C. Some courts, including most of the federal circuits, have held that a trial court is vested with discretion to permit a defendant to withdraw from self-representation and reassert a right to counsel after trial has commenced.¹⁷ Because of the importance of the right to counsel, most have circumscribed that discretion. *Kerr*, 752 F.3d at 221. At a minimum, a trial judge must consider the defendant’s reasons for the request and then fully state its reasons if it chooses to deny it.¹⁸ Courts generally must balance the defendant’s request against whether the defendant is acting to delay trial and whether granting the

¹⁷ *United States v. Proctor*, 166 F.3d 396, 402 (1st Cir. 1999); *United States v. Kerr*, 752 F.3d 206, 220-21 (2d Cir. 2014); *United States v. Leveto*, 540 F.3d 200, 207 (3d Cir. 2008); *United States v. Cohen*, 888 F.3d 667, 681 (4th Cir. 2018); *United States v. Taylor*, 933 F.2d 307, 311 (5th Cir. 1991); *United States v. Tolliver*, 937 F.2d 1183, 1187 (7th Cir. 1991); *United States v. Thompson*, 587 F.3d 1165, 1175 (9th Cir. 2009); *United States v. Ontiveros*, 550 F. App’x 624, 631 (10th Cir. 2013) (citing *United States v. Merchant*, 992 F.2d 1091, 1095 (10th Cir. 1993)); *United States v. Wright*, 923 F.3d 183, 189 (D.C. Cir. 2019).

¹⁸ *Kerr*, 752 F.3d, at 221; *Leveto*, 540 F.3d, at 207-08 (stating that a failure to make a record for the decision to deny a reassertion of the right to counsel violates the Sixth Amendment); *Smith*, 895 F.3d, at 421 (requiring courts to determine whether the reappointment of counsel would cause delay); *United States v. McBride*, 362 F.3d 360, 367 (6th Cir. 2004) (requiring courts to make a determination if there is a substantial change in circumstances requiring new counsel); *United States v. Fazzini*, 871 F.2d 635, 643 (7th Cir. 1989) (requiring courts to engage in a fact intensive inquiry to determine if the defendant has revoked the earlier waiver); *United States v. Merchant*, 992 F.2d 1091, 1095-96 (10th Cir. 1993) (requiring courts to examine whether the defendant has demonstrated good cause and timeliness in reassert the right to counsel).

request will negatively impact the court's control of its docket. *See Leveto*, 540 F.3d, at 207; *Cohen*, 888 F.3d, at 681; *United States v. Frazier-El*, 204 F.3d 553, 560 (4th Cir. 2000). *Smith*, 895 F.3d, at 421-22 (stating that a defendant is "entitled to representation to the extent that standby counsel could take over representation without interrupting the orderly processes of the court" and stating that the court must therefore determine if reappointment would cause delay).

If Mr. Jackson were tried in the Second, Third, Fourth, Fifth, Sixth, Seventh, and Tenth Circuits, he would have had the benefit of a record—something more than "it's too late" followed by banishment to a courthouse bathroom.

In this case, the court apparently did not inquire whether Mr. Jackson's new counsel was prepared to begin trial that day. App. 166a; *Smith*, 895 F.3d, at 421-22; *Kerr*, 752 F.3d, at 221. It did not determine whether appointing new counsel would harm its control of the docket. *Leveto*, 540 F.3d, at 207-08; *Cohen*, 888 F.3d, at 681; *Frazier-El*, 204 F.3d, at 560. Nor did it engage in any determination as to whether Mr. Jackson exhibited good cause to merit revocation of his waiver. *Merchant*, 992 F.2d, at 1095-96. And it did not inquire as to whether there had been a substantial change in circumstances necessitating reappointment of counsel. *McBride*, 362 F.3d, at 367.

Similarly, California,¹⁹ Utah,²⁰ Delaware,²¹ Maryland,²² and Minnesota²³ vest trial judges with discretion in determining whether to grant a reassertion of the right to counsel but confine that discretion by prescribing multifactor tests or other moderate restraints such as the “interests of justice.”²⁴ The other non-exhaustive list of factors that these courts must fully explore²⁵ are (1) whether the defendant requested substitution previously; (2) the defendant’s reason for the request; (3) the stage of the proceedings and whether the request will disrupt or delay the proceedings; (4) the defendant’s effectiveness at self-representation.²⁶ Consideration of whether a postponement of trial to afford the defendant an opportunity to obtain counsel is in the “interest of justice” is a “virtually open-ended” standard.²⁷ Other courts are vested with the discretion to substitute counsel if “extraordinary circumstances” are present but the that term is not precisely defined.²⁸

Mr. Jackson’s right to counsel would have been violated in all six of these states because the trial court did not engage in any sort of balancing test between Mr. Jackson’s request and the burden on the court to permit substitution of counsel. App.165a-166a. The stringent factor

¹⁹ *People v. Lawrence*, 46 Cal. 4th 186, 192 (2009); *People v. Gallego*, 52 Cal. 3d 115, 164 (1990).

²⁰ *State v. Gallegos*, 147 P.3d 473, 477 (Utah Ct. App. 2006).

²¹ *Mayfield v. State*, 256 A.3d 747, 755 (Del. 2021).

²² *Jones v. State*, 175 Md. App. 58, 80-81 (2007); *Love v. State*, 95 Md. App. 420, 427 (1993).

²³ *State v. Richards*, 552 N.W.2d 197, 206 (Minn. 1996); *State v. Richards*, 463 N.W.2d 499 (Minn. 1990).

²⁴ *Jones*, 175 Md. App., at 80-81.

²⁵ *Mayfield*, 256 A.3d, at 755.

²⁶ *Gallegos*, 147 P.3d, at 477.

²⁷ *Love*, 95 Md. App., at 427.

²⁸ *Richards*, 463 N.W.2d 499 ¶4.

requirements of California and Utah were not even vaguely analyzed, and—regardless of the totality of the circumstances—trial courts in those states must at least show they reasoned through their discretion guided by those factors. Mr. Jackson’s trial court did no balancing using the factors. The court did not, as Delaware requires, “fully explore” all the different circumstances at play. And the court did not deal with Maryland’s “interest of justice” inquiry or Minnesota’s “extraordinary circumstances” one (which itself seems to incorporate the same type of balancing California and Utah do).

D. Finally, a substantial plurality (including Colorado) leave to the *unfettered* discretion of the trial judge the decision whether to allow a defendant to reclaim his right to counsel if he tries to reassert it during trial.²⁹ As evidenced by Mr. Jackson’s case, unfettered discretion can have catastrophic consequences both for an individual defendant and the rule of law.

Throughout the pretrial proceedings, Mr. Jackson had difficulty comprehending basic questions related to, among other things, the nature of the court’s jurisdiction. Early on, he asked for appointment of standby counsel; that request was pushed off and apparently never revisited. Leading up to his trial, he informed the court that he might be in over his head. App. 111a. During trial, he

²⁹ See, e.g., *Colorado v. Price*, 903 P.2d 1190, 1193 (Colo. App. 1995) (holding that the trial court is not compelled to grant a criminal defendant’s request to withdraw a valid waiver of the right to counsel); *State v. Richards*, 552 N.W.2d 197, 205 (Minn. 1996) (adopting discretion standard); *People v. Rosenberg*, 2017 NYLJ LEXIS 3744, *18 (N.Y. Crim. Ct. 2017); *State v. Harmon*, 575 N.W.2d 635, 645 (ND 1997) (affirming the discretion of the trial court); *State v. Eddy*, 68 A.3d 1089, 1103 (R.I. 2013) (affirming trial court’s denial of defendant’s request due to “defendant’s history of causing inordinate delay”).

confirmed that he was. His expressed, obvious confusion persisted throughout voir dire and the first stages of his trial, all the way to the moment that the judge removed him from the courtroom and tried him in absentia for after he asked for the assistance of lawyer. App. 168a-169a.

Trial judges are human, and even their patience has limits. But even when faced with defendants who might not be “strong candidate[s] for public sympathy,” a defendant’s constitutional right to counsel is the bedrock of a fair criminal justice system, and it “has significant institutional implications in a free society committed to the rule of law.” *Davis*, 532 F.3d at 150. Indeed, “[t]he effectiveness and legitimacy of our criminal justice system is not defined by the complainant but by those who through defiance or difficulty test the strength of our constitutional resolve.” *Id.* Because allowing trial courts unfettered discretion in this context provides too many opportunities for frustration to overcome cool and rational decision-making, and because the constitutional stakes are far too high, this Court should reject the all-discretion, all-the-time approach to reassertions of a criminal defendant’s constitutional right to counsel.

III. MR. JACKSON’S CASE PROVIDES A CLEAN VEHICLE FOR DECIDING BOTH (OR EITHER) OF THESE ISSUES.

As shown above, the Sixth Amendment questions at the heart of Mr. Jackson’s case are both profound and in need of harmonization throughout the Nation. And although the trial-in-absentia issue in particular has recurred since at least 1983, resolution of that issue has often been clouded by the posture of those previous cases. Indeed, the Second Circuit lamented that its resolution of the issue was hampered by AEDPA’s complexities, leading

it to conclude that “[f]rankly, more guidance from the Supreme Court would be helpful.” *Id.*, at 140.

Mr. Jackson’s case, in contrast, arrives at the Court on direct review. He raised both issues presented in this petition for a writ of certiorari before the Colorado Court of Appeals, and that court resolved both against him. Given that the issues raised here only arise when a criminal defendant is left floundering without legal counsel, rarely will a foundational Sixth and Fourteenth Amendment issue of this magnitude present itself to this Court with fewer obstacles in the way of this Court’s review.

It has been nearly fifteen years since the *Davis* Court identified “this . . . area of law” as one “in need of further clarification” from this Court. *Id.*, at 149. Back then, it appears that no appellate court had the audacity to allow a criminal trial court judge to simultaneously remove a defendant from court while denying his request for appointment of counsel. Because the Colorado Court of Appeals has now done so, and because doing so meant convicting Mr. Jackson for a felony based on proceedings in a *de facto* star chamber, the Court should not decline this opportunity to grant Mr. Jackson’s petition for a writ of certiorari and rectify this miscarriage of justice.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition.

Respectfully submitted,

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November 22, 2022

APPENDIX

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APPENDIX A

17CA1826 Peo v Jackson 09-02-2021

COLORADO COURT OF APPEALS

[DATE FILED: September 2, 2021]

Court of Appeals No. 17CA1826
Larimer County District Court No. 16CR1854
Honorable Julie Kunce Field, Judge

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff-Appellee,

v.

JHESHUA DANIEL JACKSON,
Defendant-Appellant.

JUDGMENT AND ORDER AFFIRMED

Division I

Opinion by JUDGE YUN
Freyre and Graham*, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced September 2, 2021

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for Plaintiff-Appellee

* Sitting by assignment of the Chief Justice under provisions
of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2020.

Megan A. Ring, Colorado State Public Defender, M. Shelby Deeney, Deputy State Public Defender, Denver, Colorado, for Defendant-Appellant

¶ 1 Jheshua Daniel Jackson appeals his judgment of conviction and asks us to vacate part of the district court's restitution order. We affirm the judgment and order.

I. Background

¶ 2 The victim, a freshman at Colorado State University, left a gym bag in a locker at the campus gym and returned after his workout to find it gone. His wallet and keys were in the bag.

¶ 3 Camera footage from the gym showed Jackson entering the men's locker room, exiting it dressed in different clothes, and turning in the victim's wallet (later found to be missing certain items) at the front desk. Jackson later used the victim's credit card to buy food and a mojito at a local restaurant, where he was also caught on camera.

¶ 4 The People charged Jackson with (1) identity theft, a class 4 felony in violation of section 18-5-902(1)(a), C.R.S. 2020; (2) criminal possession of a financial device, a class 1 misdemeanor in violation of section 18-5-903(1), (2)(a), C.R.S. 2020; (3) theft between \$50 and \$300, a class 3 misdemeanor in violation of section 18-4-401(1), (2)(c), C.R.S. 2020; and (4) second degree criminal trespass, a class 3 misdemeanor in violation of section 18-4-503(1)(a), C.R.S. 2020.

¶ 5 Before trial, Jackson fired his court-appointed attorney, waived his right to counsel, and chose to represent himself. In the middle of trial, however, he changed his mind and asked for a lawyer. The district

court denied his request for reappointment of counsel, denied his request for a continuance, and ultimately — after repeated warnings — had him removed from the courtroom for disruptive behavior.

¶ 6 Jackson was convicted as charged and sentenced to four years of supervised probation and 180 days of work release with 102 days of presentence confinement credit. He was also ordered to pay \$277.27 in restitution. He was represented by counsel at sentencing and at the restitution hearing.

II. Analysis

¶ 7 Jackson contends that the district court erred by (1) refusing to reappoint counsel; (2) denying his request for a continuance; and (3) removing him from the courtroom. He also contends that part of the restitution order must be vacated. After describing the facts underlying the first three issues, we address each contention in turn.

A. Additional Facts

1. Waiver of Right to Counsel

¶ 8 The court initially appointed the public defender's office to represent Jackson. Early on, Jackson informed the court that he wanted to proceed pro se. At an appearance on September 23, 2016, devoted to a discussion of converting Jackson's bond to a personal recognizance bond, the court asked whether it was still his wish to represent himself and whether he was making that choice of his own volition. Jackson replied that it was and he was. The prosecutor stated that he did not object to a personal recognizance bond and added that he had given Jackson his business card and "told him that throughout the process if he does want

an attorney, at that point he's certainly entitled to request it."

¶ 9 Jackson appeared twice more with appointed counsel. Then, at a status conference on November 22, 2016, Jackson fired his counsel and told the court he would proceed pro se. Defense counsel, in turn, moved to withdraw. The court inquired into Jackson's understanding of his right to counsel, the complexities of criminal law, his right to remain silent, his right to confront and cross-examine the witnesses against him, and his right to compel witnesses to appear and testify on his behalf. The court further inquired into Jackson's educational background and legal training, and it asked whether he was under the influence of any drugs, medication, or alcohol. Finally, the court reviewed the charges and possible penalties and warned Jackson that his liberty was at risk.

¶ 10 Jackson replied that he understood his rights and the complexities of criminal law, that he held a college degree and was a trained paralegal, and that he was not under the influence of any substances. He then told the court that although he understood that this case was "a criminal action brought against [him]," he did not understand "what jurisdiction" he was in. The court explained that this was an action "brought by the people of the state of Colorado with the allegation that the charges that I read against you occurred in the county of Larimer, state of Colorado." The court then asked Jackson whether he wished to represent himself or to have his appointed attorney continue to represent him, and Jackson confirmed that he wished to represent himself. The court found that Jackson had waived his right to counsel "knowingly and voluntary and based on complete information," and it granted defense counsel's request to withdraw.

¶ 11 As the court began to discuss the next steps, Jackson interjected with another question about jurisdiction. The court replied,

Okay. Mr. Jackson, let me tell you. This Court has authority over this criminal action based on Article VI of the Colorado Constitution, Section 1 and Section 9. The Court has subject matter jurisdiction under Article VI of the Colorado Constitution, Section 9 and CRS 18-1-201. The Court has personal jurisdiction over you under CRS 13-1-124. And the Colorado Rules of Criminal Procedure would apply to the proceedings in this case.

¶ 12 At the arraignment, on December 23, 2016, Jackson again questioned the court's jurisdiction. The court again explained the sources of its authority over criminal cases and its subject matter and personal jurisdiction. The court also reminded Jackson that it had previously appointed an attorney for him based on its finding that he was indigent and stated that it "would be willing to continue to appoint an attorney for you if you determine that is what — how you would like to proceed." Jackson said the court was not answering his questions.

¶ 13 At Jackson's next appearance, on January 24, 2017, the court asked whether he wished to continue representing himself, and Jackson confirmed that he did.

2. Jackson's Conduct During Trial and Reassertion of Right to Counsel

¶ 14 At the start of voir dire, the court informed the jury that Jackson was representing himself, as was his right, and that his self-representation could not be considered for any purpose.

¶ 15 During the second witness's testimony, the court asked Jackson whether he had any objections to the admission of the video recording from the campus gym. Jackson said he had "objections to quite a bit" and accused the court of refusing to answer his questions about jurisdiction and of not giving him a fair trial. The court asked him — for the ninth time that day — to keep his voice down, and reminded him that it had answered his jurisdictional questions before trial. When Jackson continued to insist that the court was refusing to answer his questions, the court advised him that he was out of order and attempted to excuse the jury. Before all the jurors could exit the courtroom, Jackson exclaimed that "maybe representing myself is not the best idea right now, because I'm being railroaded left and right."

¶ 16 The prosecutor moved for a mistrial. The court found that Jackson's conduct was inappropriate but did not warrant a mistrial. It warned Jackson that if he continued to speak when it was not his turn, he would be held in contempt. Before proceeding with the next witness, the court advised the jury to disregard any comments Jackson made regarding his decision to represent himself.

¶ 17 At the conclusion of the third witness's testimony, during which the video recording from the restaurant where Jackson used the victim's credit card was admitted into evidence, Jackson said, "At this time I am requesting counsel . . . because I understand I will not get a fair trial." The court excused the jury and reminded Jackson that he had had "a great number of opportunities to address those issues outside the presence of the jury and with this Court through the several months that this case has . . . been pending." The court again warned Jackson that if he

continued to raise issues in front of the jury that had been resolved pretrial, it would hold him in contempt and have him removed from the courtroom.

3. Jackson's Request for a Continuance and Removal from the Courtroom

¶ 18 At the start of the second day of trial, Jackson said,

I'm not entering the jurisdiction. As a matter of fact, I'm putting a motion to continue because I can no longer represent myself. I've contacted legal shield and they told me to contact them today. I retained Rick Borgenson, et cetera, et cetera. Thank you very much.

Jackson further claimed that he could not continue with the trial because he was "not adequate enough to handle these proceedings in their secret jurisdiction." After the court reminded Jackson that he had elected to represent himself, the following exchange occurred:

MR. JACKSON: Have I waived my rights?

THE COURT: You waived your right to counsel. That's very clear.

MR. JACKSON: I also retained them, yes.

THE COURT: Okay.

MR. JACKSON: I've also said that I preserve my right.

THE COURT: You've retained counsel this morning online, is that what you're saying?

MR. JACKSON: I've actually retained them a little while back, but now I'm electing to go ahead and use them.

THE COURT: Mr. Jackson, it's too late. We're in the middle of trial.

MR. JACKSON: I'm sorry. You're telling me that you're going to proceed with a proceeding where I am not qualified to represent myself, is that what you're saying?

THE COURT: Mr. Jackson, we're proceeding with this trial today.

¶ 19 The court warned Jackson that, if he continued to raise issues in the presence of the jury on which the court had already ruled, it would hold him in contempt, have him removed from the courtroom, and determine that Jackson's own conduct had caused him to voluntarily absent himself from the trial. After Jackson stated that he intended to respect the proceedings, the jury entered the courtroom, and the court invited Jackson to continue his cross-examination of the penultimate witness. Instead of doing so, Jackson stated that he could no longer represent himself. While the court again attempted to excuse the jury, Jackson continued to state that he was asking for an attorney and had retained counsel. The court held Jackson in contempt and had him removed from the courtroom.

¶ 20 After considering its options, the court concluded that it could not permit Jackson back into the courtroom due to his repeated disregard of the court's orders. As a result, court staff set up an audio feed in a room downstairs from the courtroom so that Jackson could listen to the proceedings and provided him with pen and paper so that he could write down any objections or questions and have them sent up to the court. Jackson then sent word to the court that he was

able to hear the proceedings but that he was not going to listen.

¶ 21 After Jackson was removed from the courtroom, the remainder of the proceedings consisted of a few questions to the penultimate witness on redirect; the brief testimony of the final witness, the bar manager at the restaurant where Jackson used the victim's credit card, confirming that she was able to get video off the security system and that the initials on the disc containing the video recording were hers; and the prosecutor's closing statement.

B. Reappointment of Counsel

¶ 22 Jackson contends that the district court reversibly erred and violated his constitutional right to counsel by accepting his waiver of his right to counsel and later denying his request for reappointment of counsel during trial. We disagree.

1. Standard of Review

¶ 23 Whether a defendant effectively waived the right to counsel, and therefore can exercise the right to self-representation, is a mixed question of fact and law that we review *de novo*. *People v. Lavadie*, 2021 CO 42, ¶ 22. In ascertaining the validity of a waiver, we look at the totality of the circumstances. *Id.* at ¶ 43. Once a valid waiver has been made, we review a district court's decision granting or denying a defendant's request to reappoint counsel for an abuse of discretion. *People v. Price*, 903 P.2d 1190, 1193 (Colo. App. 1995). A district court abuses its discretion "when its decision is manifestly arbitrary, unreasonable, or unfair, or is based on an erroneous understanding or application of the law." *People v. Johnson*, 2016 COA 15, ¶ 29.

2. Law

¶ 24 The United States and Colorado Constitutions guarantee a criminal defendant the right to counsel at all critical stages of his criminal case. *See* U.S. Const. amends. VI, XIV; Colo. Const. art. II, § 16. A criminal defendant has a corollary constitutional right to reject counsel and represent himself. *People v. Arguello*, 772 P.2d 87, 92 (Colo. 1989). “[A]n accused who elects to proceed pro se relinquishes many of the traditional benefits associated with the right to counsel, including the Sixth Amendment right to the effective representation of counsel.” *Downey v. People*, 25 P.3d 1200, 1203 (Colo. 2001).

¶ 25 Although a court must honor a defendant’s request for self-representation, it must first satisfy itself “that the defendant knows what he is doing and that his choice is made with eyes open to the consequences.” *People v. Smith*, 881 P.2d 385, 388 (Colo. App. 1994). Thus, before a defendant is allowed to proceed pro se, the court must conduct “a specific inquiry on the record to ensure that the defendant is voluntarily, knowingly and intelligently waiving the right to counsel.” *Arguello*, 772 P.2d at 95. For a waiver to be knowing and intelligent, the record must show that the defendant understands “the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.” *Id.* at 94 (citation omitted). In *Arguello*, our supreme court recommended that a trial court ask the defendant the fourteen questions outlined in the Colorado Trial Judges’ Benchbook before allowing the defendant to waive the right to counsel. *Id.* at 95-96.

¶ 26 Once a defendant makes a valid waiver of his constitutional right to counsel, he must then accept responsibility for the results. *People v. Woods*, 931 P.2d 530, 535 (Colo. App. 1996). A trial court has no duty to reappoint counsel “merely because the defendant has become dissatisfied with his performance.” *Id.* And having chosen self-representation, “a defendant cannot ‘whipsaw’ the court between this constitutional right and his or her own ineffectiveness at trial.” *Price*, 903 P.2d at 1192; see also *United States v. Smith*, 895 F.3d 410, 421 (5th Cir. 2018) (“We have held that a defendant is ‘not entitled . . . repeatedly to alternate his position on counsel in order to delay his trial or otherwise obstruct the orderly administration of justice.’” (quoting *United States v. Taylor*, 933 F.2d 307, 311 (5th Cir. 1991))).

3. Valid Waiver

¶ 27 Jackson argues that his waiver was insufficient because the district court did not advise him that he was waiving his right to seek reappointment of counsel during trial if he became dissatisfied with his performance. But nothing in *Arguello* requires such an advisement. Rather, guided by the questions outlined in the Colorado Trial Judges’ Benchbook, the district court reviewed the charges and the range of possible punishments; inquired into Jackson’s understanding of his rights, his educational background, and his legal training; and confirmed that he was not under the influence of any substances that would affect his understanding of the proceedings. See *Arguello*, 772 P.2d at 95-96, 98. The court thus complied with *Arguello*’s requirements, and Jackson’s responses demonstrated that his waiver was voluntary, knowing, and intelligent.

¶ 28 Jackson also argues that a valid waiver was not obtained because the waiver occurred pretrial and the court was required to readminister the Arguello advisement during trial after Jackson reasserted his right to counsel. But Jackson fails to identify — nor are we aware of — any Colorado law supporting his position. And the out-of-state cases that he relies on, *People v. Baker*, 440 N.E.2d 856 (Ill. 1982), and *Panagos v. United States*, 324 F.2d 764 (10th Cir. 1963), do not support his position. Rather, those cases hold that, after a defendant validly waives his right to counsel, the trial court is not required to renew the offer of counsel or ascertain whether the defendant has changed his mind at sentencing. *Baker*, 440 N.E.2d at 859; *Panagos*, 324 F.2d at 765 (“[I]f a waiver of the right to counsel had been properly made, the trial court should not be required at each subsequent proceeding to again ask the defendant whether he knew his rights and was again willing to waive them.”). Neither case involved a defendant’s attempt to reassert the right to counsel or discussed what the trial court should do in such a situation.

¶ 29 Jackson further argues that his pretrial waiver “did not include a knowing and intelligent waiver of the right to regain counsel” because of the prosecutor’s and the court’s assurances that he could continue to request counsel. Specifically, Jackson argues that — because of (1) the prosecutor’s statement on September 23, 2016, that he “told [Jackson] that throughout the process if he does want an attorney, at that point he’s certainly entitled to request it,” and (2) the court’s statement on December 23, 2016, that it “would be willing to continue to appoint an attorney” for Jackson if he wished — he “did not understand his initial waiver as waiving his right to regain counsel at a subsequent stage of the proceedings.” But the prosecutor’s

statement was made very early in the proceedings, while Jackson was merely considering waiving his right to counsel. Nothing in the prosecutor's statement suggested that Jackson would be entitled to reassert his right to counsel in the middle of trial. And after Jackson's waiver, the district court did indeed give him several opportunities to change his mind, including on December 23. But the court's offer four months before trial to appoint an attorney for Jackson did not guarantee that the court would be willing to do so at every subsequent stage of the proceedings, including in the middle of trial.

¶ 30 Accordingly, because a district court must honor a defendant's constitutional right to proceed pro se once the court is satisfied that the defendant knows what he is doing and understands the consequences, see *Smith*, 881 P.2d at 388, and the district court here made sufficient record findings that Jackson understood the consequences of proceeding pro se and knowingly made his choice, we conclude that Jackson validly waived his right to counsel.

4. Right to Reappointment of Counsel

¶ 31 Alternatively, Jackson argues that United States and Colorado Constitutions guarantee that a criminal defendant who has validly waived the right to counsel may reassert that right at any time. He contends that our supreme court has acknowledged a pro se defendant's constitutional right to have counsel reappointed. See *People v. Romero*, 694 P.2d 1256, 1265 n.5 (Colo. 1985). We disagree, as Colorado and federal case law suggests the opposite: there is no constitutional guarantee of the reappointment of counsel in the middle of trial after a valid pretrial waiver. See, e.g., *People v. Wilson*, 397 P.3d 1090, 1095 (Colo. App. 2011) ("Once a defendant validly waives

his right to counsel, he has no unconditional right to withdraw the waiver.”), *aff'd*, 2015 CO 37; *Price*, 903 P.2d at 1193 (concluding that trial courts in Colorado are “not compelled to grant a criminal defendant’s request to withdraw a valid waiver of the right to counsel”); *Robyn v. Butler*, 111 F. App’x 447, 447-48 (9th Cir. 2004) (recognizing that while a “defendant has both the right to counsel and the right to self representation, a request for either form of representation must be timely made,” and holding that the defendant’s “Sixth Amendment rights were not violated by the trial court’s denial of [his] request to revoke his waiver of counsel and have counsel appointed after the trial was underway”). And the district court certainly owed no duty to reappoint counsel in the middle of trial “merely because the defendant ha[d] become dissatisfied with his performance.” *Woods*, 931 P.2d at 535. Thus, Jackson lost the right to effective representation of counsel when he made a valid waiver of his right to counsel and elected to proceed pro se. *See Downey*, 25 P.3d at 1203.

¶ 32 The federal cases on which Jackson relies stand for the proposition that a defendant who validly waived his right to counsel may be entitled to reassert that right at a separate, post-trial proceeding. *See, e.g., Rodgers v. Marshall*, 678 F.3d 1149, 1160 (9th Cir. 2012) (recognizing a “substantial practical distinction between delay on the eve of trial and delay at the time of a post-trial hearing” and concluding that “a defendant’s *post-trial* revocation of his waiver should be allowed unless the government can show that the request is made ‘for a bad faith purpose’”) (citations omitted), *rev’d on other grounds*, 569 U.S. 58 (2013); *Taylor*, 933 F.2d at 311 (noting that “a defendant’s rights to waive counsel and to withdraw that waiver are not unqualified” and that a defendant is not entitled to “alternate

his position on counsel in order to delay his trial,” but concluding that the district court erred when it refused to reappoint counsel to represent the defendant at sentencing). Here, although the district court did not allow Jackson to reassert his right to counsel in the middle of trial, it did reappoint counsel for Jackson during post-trial proceedings. This is consistent with the approach outlined in the federal cases.

5. Abuse of Discretion

¶ 33 Lastly, Jackson contends that even if he lacked a constitutional right to the reappointment of counsel, the district court nonetheless abused its discretion by denying his request because it did not make a sufficient record of its consideration of factors including his pro se performance, the request’s timing, his familiarity with criminal proceedings, and his history of mental illness.

¶ 34 However, Jackson does not contend that his “performance [was] so inept as to demonstrate a fundamental inability to provide meaningful self-representation.” *Price*, 903 P.2d at 1192. Concerning the timing, the court explicitly stated that it was “too late” for Jackson to reassert his right to counsel because “[w]e’re in the middle of trial.” As to his familiarity with criminal proceedings, Jackson told the court he was a trained paralegal and that he understood his rights and the complexities of criminal law. And he provides no facts and raises no argument regarding mental illness.

¶ 35 Under these circumstances, given that a district court has no duty to reappoint counsel after a pro se defendant becomes dissatisfied with his performance, *see Woods*, 931 P.2d at 535, the district court was not required to make further record findings. We

thus conclude that the district court did not abuse its discretion in declining to reappoint counsel for Jackson.

C. Denial of Continuance

¶ 36 Jackson argues that the district court reversibly erred by denying his request for a continuance. We disagree.

1. Standard of Review

¶ 37 We review a district court's denial of a continuance for an abuse of discretion. *People v. Brown*, 2014 CO 25, ¶ 19.

2. Law

¶ 38 The Sixth Amendment affords a criminal defendant “the right to be represented by counsel of his or her choice.” *People v. Travis*, 2019 CO 15, ¶ 8. This right is not absolute, however, and “there are times when ‘judicial efficiency or “the public’s interest in maintaining the integrity of the judicial process,” may be deemed more important than the defendant’s interest in being represented by a particular attorney.’” *Id.* (citations omitted). In *Brown*, our supreme court directed that, “when deciding whether to grant a motion to continue a criminal trial for substitution of defense counsel, a trial court must weigh . . . eleven factors pertaining to judicial efficiency and integrity against the defendant’s Sixth Amendment right to counsel of choice.” *People v. Sifuentes*, 2019 COA 106, ¶ 9. Those factors are:

- (1) the defendant’s actions surrounding the request and apparent motive for making the request;
- (2) the availability of chosen counsel;

- (3) the length of continuance necessary to accommodate chosen counsel;
- (4) the potential prejudice of a delay to the prosecution beyond mere inconvenience;
- (5) the inconvenience to witnesses;
- (6) the age of the case, both in the judicial system and from the date of the offense;
- (7) the number of continuances already granted in the case;
- (8) the timing of the request to continue;
- (9) the impact of the continuance on the court's docket;
- (10) the victim's position, if the victims' rights act applies; and
- (11) any other case-specific factors necessitating or weighing against further delay.

Brown, ¶ 24.

¶ 39 “*Brown* does not apply in every case,” however, because a request for a continuance for substitution of defense counsel may be insufficient to invoke a defendant's Sixth Amendment right to counsel of choice. *Sifuentes*, ¶ 10. Unless the right to counsel of choice is at issue, the findings articulated in *Brown* are not required. *Id.*

¶ 40 In *Travis*, for example, our supreme court held that when the defendant “informed the court on the morning of trial that she wanted a continuance so that she could ‘look for and pay for an attorney,’ she did not trigger the assessment required by *Brown*.” *Travis*, ¶ 13. The defendant's expression of “a general interest in retaining counsel” was too “vague” to implicate her

right to be represented by counsel of her choosing, *id.* at ¶¶ 14, 17, and application of the *Brown* factors “would require an unrealistic level of speculation by the trial court,” *id.* at ¶ 15.

¶ 41 Similarly, in *People v. Flynn*, 2019 COA 105, ¶¶ 15-16, a division of this court held that the findings set forth in *Brown* were not required when the defendant identified an attorney by name in his requests for a continuance, but there was no indication that the attorney was available, or willing, to take the defendant’s case. Under those circumstances, the division concluded, the trial court had no way to “even begin to . . . consider[]” the length of a continuance necessary to accommodate counsel — and with the length of the delay unknown, the court “would be hard-pressed to fully consider other *Brown* factors, such as the potential prejudice to the prosecution and the inconvenience to witnesses.” *Id.* at ¶ 14.

¶ 42 Accordingly, when a defendant requests a continuance in order to be represented by private counsel, “the crux is the definiteness of the retention.” *Sifuentes*, ¶ 12. “A defendant’s right to counsel of choice is invoked when the defendant’s retention of private counsel is substantially definite, in name and in funds.” *Id.*

3. Discussion

¶ 43 Jackson argues that the district court erred by denying his request for a continuance without making the findings set forth in *Brown*. Here, however, no private attorney entered an appearance, showed up in court, or filed a motion, nor did Jackson indicate that an attorney would do so. Rather, Jackson initially told the court that he had “contacted” Legal Shield and been told to “contact them” that day, and then that he

had “retained Rick Borgenson, et cetera, et cetera.”¹ When the court reminded him that he had waived his right to counsel, Jackson said that he had “actually retained [counsel] a little while back,” but now he was “electing to go ahead and use them.”

¶ 44 These vague and seemingly contradictory statements, the credibility of which the district court was in the best position to assess, were insufficient to implicate Jackson’s Sixth Amendment right to be represented by counsel of his choosing. *See Travis*, ¶ 17. Jackson’s statements gave the district court no way to begin to consider the length of a continuance necessary to accommodate counsel, let alone the other *Brown* factors. *See Flynn*, ¶ 14. Thus, because Jackson’s retention of private counsel was not “substantially definite,” *Sifuentes*, ¶ 12, his request for a continuance did not trigger the assessment required by *Brown*, and the district court did not abuse its discretion by denying the continuance without applying the *Brown* factors.

D. Removal from the Courtroom

¶ 45 Jackson argues that the district court violated his right to be present in court and his right to counsel when he was removed from the courtroom. We disagree.

1. Standard of Review

¶ 46 “Whether a trial court violated a defendant’s right to be present is a constitutional question that is reviewed de novo.” *People v. Wingfield*, 2014 COA 173, ¶ 13. We also review de novo whether a defendant was

¹ No attorney by that name appears on the Colorado Supreme Court’s Office of Attorney Regulation Counsel website, Attorney Search & Disciplinary History, <https://perma.cc/AP3E-WXCS>.

deprived of his constitutional right to counsel. *People v. Bergerud*, 223 P.3d 686, 693 (Colo. 2010).

2. Right to Be Present in Court

¶ 47 “A defendant has a right to be present at every critical stage of a criminal trial.” *Wingfield*, ¶ 17. However, a defendant may waive this right by persisting in disruptive conduct. *Illinois v. Allen*, 397 U.S. 337, 343 (1970). A defendant can lose his right to be present at trial

if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.

Id. The decision of whether to remove a persistently disruptive defendant from the courtroom is committed to the trial judge’s discretion. *Id.*

¶ 48 In Colorado, Crim. P. 43(b)(2) provides that a defendant is deemed to have waived his right to be present if, “[a]fter being warned by the court that disruptive conduct will cause him to be removed from the courtroom, [he] persists in conduct which is such as to justify his being excluded from the courtroom.” See *People v. Cohn*, 160 P.3d 336, 341 (Colo. App. 2007) (“[A] defendant may forfeit the right to be present by persisting in disruptive conduct after being warned by the court that further similar conduct will result in removal.”).

¶ 49 Here, Jackson demonstrated consistent disregard for the district court’s orders and repeatedly disrupted the proceedings despite multiple warnings

that such behavior would result in his removal from the courtroom. He persistently questioned the court's jurisdiction, expressed in front of the jury his dissatisfaction with his decision to represent himself, made speeches to the jury, and refused to keep his voice down. The district court was not required to allow Jackson's disruptive activities to prevent his trial and thus "allow him to profit from his own wrong." *Allen*, 397 U.S. at 350 (Brennan, J., concurring). We therefore conclude that Jackson forfeited his Sixth Amendment right to be present at trial, and the district court did not err by removing him from the courtroom.

3. Right to Counsel

¶ 50 "Constitutional error occurs when a defendant is deprived of the presence of counsel at critical stages of the proceedings where there is more than a minimal risk that counsel's absence will undermine the defendant's right to a fair trial." *Cohn*, 160 P.3d at 342. In *Cohn*, a division of this court held that the exclusion of a pro se defendant from the courtroom during the exercise of peremptory challenges was constitutional error. *Id.* at 341. The division reasoned that,

[b]ecause the trial court was unable to make videoconferencing arrangements, defendant was not aware of what occurred while he was absent. He was denied the opportunity to exercise his own peremptory challenges. Thus, there was . . . more than minimal risk that his absence undermined his right to a fair trial.

Id. at 343.

¶ 51 The division suggested two ways that the trial court could have avoided the constitutional error. First, the trial court could have "appoint[ed] standby counsel to be ready to step in should the trial court find

it necessary . . . to exclude the defendant from the courtroom.” *Id.* at 345. Alternatively, once the defendant was removed from the courtroom, the trial court could have given him “access to videoconferencing equipment or similar technology, thus providing [him] with the means to observe and participate, while reducing [his] disruptive influence on the trial.” *Id.*

¶ 52 Here, after Jackson was removed from the courtroom, court staff set up an audio feed and provided him with pen and paper so that he could listen to the proceedings and send objections or questions to the court. Jackson instead sent word to the court that he was not listening. Because Jackson was able to listen and participate, although he chose not to, *Cohn* is distinguishable. Under these circumstances, Jackson’s absence from the courtroom did not violate his right to counsel.

¶ 53 Further, even when the absence of counsel at a critical stage of the proceedings results in the deprivation of a constitutional right, it is amenable to harmless error analysis. *Id.* at 344. “[A] constitutional error is harmless when the ‘evidence properly received against a defendant is so overwhelming’ that such error was harmless beyond a reasonable doubt.” *Id.* (citation omitted). Here, Jackson was excluded from the courtroom very near the end of the trial. And the evidence against him was overwhelming. Video recordings of him at the gym and the restaurant were admitted into evidence; the bartender who served him at the restaurant testified and identified him as the person who signed a credit card receipt with the victim’s name; and the receipt was also admitted into evidence. Under these circumstances, any error resulting from Jackson’s removal from the courtroom was harmless beyond a reasonable doubt.

E. Restitution

¶ 54 Jackson contends that the restitution order must be vacated in part, on the ground that it imposes restitution for conduct with which he was not charged. We disagree.

1. Additional Facts

¶ 55 The amended theft count charged Jackson with taking “things of value, namely: a VISA CREDIT CARD, \$80.00 CASH, a FOOTBALL TICKET, FOOD, and ALCOHOLIC BEVERAGES of [the victim] and [the restaurant], with the value of fifty dollars or more but less than three hundred dollars, in violation of section 18-4-401(1),(2)(c),(6), C.R.S.”

¶ 56 At trial, the victim testified that his gym bag contained his wallet, body spray, deodorant, and keys, including his car key, residence hall key, and dorm room key. He testified that he had ID, gift cards, credit cards, a football ticket, and eighty dollars in cash in his wallet. He testified that he got his wallet back but that it was missing certain items including the credit card Jackson used at the restaurant, the football ticket, and the eighty dollars in cash. He testified that he did not get back his gym bag or any of his keys.

¶ 57 After trial, the court appointed counsel for Jackson. Defense counsel filed an objection to the proposed restitution award, claiming that no documentation supported the alleged costs of the missing items and requesting a hearing.

¶ 58 At the restitution hearing, the victim repeated his trial testimony regarding the stolen items, including that he had eighty dollars in cash in his wallet, and testified that he had to get a new student ID as a result of this case. He testified that it cost \$102.27 to replace

his car key, \$40 total to replace his residence hall and dorm room keys, \$25 to replace his student ID, and \$20 to replace his gym bag. He presented receipts for these items, as well as a credit card receipt showing that the football ticket (which he did not replace) had cost \$10.

¶ 59 Defense counsel argued that there was insufficient evidence that the victim had eighty dollars in cash in his wallet and that Jackson should not have to pay the car key's replacement cost because the video from the campus gym showed that the car key was returned to the front desk. The district court found the victim's testimony credible and ordered \$277.27 in restitution for the car key, residence hall and dorm keys, student ID, gym bag, football ticket, and cash.

2. Standard of Review

¶ 60 We generally review a district court's restitution order for an abuse of discretion. *People v. Sosa*, 2019 COA 182, ¶ 10. However, we review de novo "issues of law, such as statutory interpretation of the criminal restitution statute" and the district court's authority to impose restitution. *People v. McCarthy*, 2012 COA 133, ¶ 6; *Sosa*, ¶ 11.

3. Law

¶ 61 In Colorado, with one exception not applicable here, "[e]very order of conviction of a felony [or] misdemeanor . . . offense . . . shall include consideration of restitution." § 18-1.3-603(1), C.R.S. 2020. Restitution is "any pecuniary loss suffered by a victim," including "all out-of-pocket expenses, interest, loss of use of money, anticipated future expenses . . . , and other losses or injuries proximately caused by an offender's conduct and that can be reasonably calculated and recompensed in money." § 18-1.3-602(3)(a), C.R.S. 2020. "One purpose of restitution is to make the victim

whole to the extent practicable.” *People in Interest of A.V.*, 2018 COA 138M, ¶ 23. A victim is considered “whole” when he is put in the financial position he would have been in had the crime not occurred. *People v. Reyes*, 166 P.3d 301, 304 (Colo. App. 2007). The restitution statutes should be liberally construed to accomplish this goal. § 18-1.3-601(2), C.R.S. 2020.

¶ 62 In *Sosa*, ¶ 1, a division of this court held that, absent a specific plea agreement in which the defendant agrees to pay restitution arising out of uncharged conduct, “Colorado’s restitution statutes do not authorize a trial court to order a defendant to pay restitution for pecuniary losses caused by conduct for which [the] defendant was never criminally charged.” After her boyfriend was involved in a drive-by shooting, the defendant in *Sosa* pleaded guilty to being an accessory to the crime of heat of passion second degree murder. *Id.* at ¶¶ 2-5. Because the “offense of accessory describes conduct that occurs after some underlying crime has already been committed by another person,” *id.* at ¶ 32, the division held that the district court was not authorized to order the defendant to pay restitution for losses (such as the victims’ medical bills and lost wages) that were proximately caused by the shooting and would have been sustained regardless of the defendant’s involvement after the shooting, *id.* at ¶¶ 36-37.

4. Discussion

¶ 63 Jackson argues that, because restitution may not be imposed for losses caused by conduct for which the defendant was not criminally charged, the district court was not authorized to order restitution for items not specifically listed in the information. Thus, according to Jackson’s argument, because the amended information charged him with taking “things of value,

namely: a VISA CREDIT CARD, \$80.00 CASH, a FOOTBALL TICKET, FOOD, and ALCOHOLIC BEVERAGES . . . with the value of fifty dollars or more but less than three hundred dollars,” the district court erred by ordering restitution for the victim’s car key, residence hall and dorm keys, student ID, and gym bag.

¶ 64 This case does not present an issue of uncharged conduct. To the extent that the amended information did not list some of the stolen items, those specific items were not an element of the offense. § 18-4-401(1)(a); see § 18-4-401(6). Rather, Jackson was charged with and convicted of theft of “anything of value” of at least fifty but less than three hundred dollars. § 18-4-401(1). At trial, the victim testified regarding all of the items that were stolen. In turn, the jury was instructed that, to prove theft, the prosecution had to prove that Jackson knowingly “obtained, retained, or exercised control over anything of value of another, without authorization or by threat or deception, and intended to deprive the other person permanently of the use or benefit of the thing of value.” See § 18-4-401(1)(a). Based on the evidence presented at trial, the jury found Jackson guilty of theft, and further found that the “value of the thing involved in the theft [was] fifty dollars or more but less than three hundred dollars.”

¶ 65 The fact that some of the stolen items were not specifically listed in the amended information does not mean that Jackson was ordered to pay restitution for uncharged conduct. Rather, the information serves to put a defendant on notice of what he must defend against. See *People v. Allen*, 167 Colo. 158, 160, 446 P.2d 223, 223-24 (1968); *People v. Joseph*, 920 P.2d 850, 852 (Colo. App. 1995) (noting that the information must “inform the defendant of the charges against him

or her so as to enable the defendant to prepare an effective defense”). Jackson does not dispute that he had notice of all the items in the victim’s gym bag for which restitution was ultimately awarded. Significantly, Jackson did not object to the victim’s trial testimony that some of the stolen items were the car key, residence hall and dorm keys, and gym bag. To the extent the failure to list these items constituted a defect in the information, the defect may be waived by the defendant in the absence of a timely objection. *See Joseph*, 920 P.2d at 853; *People v. Thompson*, 542 P.2d 93, 96 (Colo. App. 1975) (not published pursuant to C.A.R. 35(f)).

¶ 66 Jackson further argues that the imposition of restitution for items not specifically listed in the information violated his jury trial right under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004). Not so. In *Apprendi*, 530 U.S. at 490, the Court held that, “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” In *Blakely*, 542 U.S. at 303, the Court held that the “statutory maximum” for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant. Here, after hearing testimony related to all the stolen items, the jury found Jackson guilty of theft and found that the “value of the thing involved in the theft [was] fifty dollars or more but less than three hundred dollars.” The district court was thus authorized to impose its restitution order of \$277.27 based solely on the facts reflected in the jury’s verdict.

III. Conclusion

¶ 67 The judgment and order are affirmed.

JUDGE FREYRE and JUDGE GRAHAM concur.

Neutral

As of: October 5, 2022 2:44 PM Z

People v. Jackson

Court of Appeals of Colorado, Division One

September 2, 2021, Decided

Court of Appeals No. 17CA1826

Reporter

2021 Colo. App. LEXIS 1248 *; 2021 WL 4067280

The People of the State of Colorado, Plaintiff-Appellee,
v. Jheshua Daniel Jackson, Defendant-Appellant.

Notice: DECISION WITHOUT PUBLISHED OPINION

Subsequent History: Writ of certiorari denied *Jackson v. People, 2022 Colo. LEXIS 677, 2022 WL 3022065 (Colo., July 25, 2022)*

Decision reached on appeal by *People v. Jackson, 2022 Colo. App. LEXIS 1277 (Colo. Ct. App., Aug. 25, 2022)*

Prior History: [*1] Larimer County District Court No. 16CR1854. Honorable Julie Kunce Field, Judge.

Judges: Opinion by JUDGE YUN. Freyre and Graham*, JJ., concur.

Opinion by: YUN

Opinion

JUDGMENT AND ORDER AFFIRMED

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SHAWN SHEEHY

* Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2020.

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APPENDIX B

Jackson v. People

Supreme Court of Colorado

July 25, 2022, Decided

No. 21SC754

Reporter

2022 Colo. LEXIS 677 *; 2022 WL 3022065

Petitioner: Jheshua Daniel Jackson, v. Respondent:
The People of the State of Colorado.

Notice: DECISION WITHOUT PUBLISHED OPINION

Prior History: [*1] Court of Appeals Case No.
17CA1826.

*People v. Jackson, 2021 Colo. App. LEXIS 1248, 2021
WL 4067280 (Colo. Ct. App., Sept. 2, 2021)*

Opinion

Petition for Writ of Certiorari DENIED. EN BANC.

End of Document

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APPENDIX C

[1] DISTRICT COURT, COUNTY OF LARIMER
STATE OF COLORADO
201 Laporte Avenue
Fort Collins, Colorado 80521

Case No. 16CR1854, Division 1A

THE PEOPLE OF THE STATE OF COLORADO,
People,

vs.

JESHUA DANIEL JACKSON,
Defendant.

* For Court Use Only *

For the People:

LUKE BIRKY, ESQ.

For the Defendant:

NORM TOWNSEND, ESQ.

The matter came on for hearing on September 1,
2016, before the HONORABLE MATTHEW R. ZEHE,
Magistrate of the District Court, and the following
proceedings were had.

(Recorded and Transcribed)

Transcribed by:
LAURA L. CORNING, FCRR, CSR

[2] * * * * *

(This begins the requested portion of the proceedings contained within Media Unit 1, 2:03 p.m.)

In Open Court, September 1, 2016

The Honorable Matthew R. Zehe Presiding

-o0o-

THE COURT: Jheshua Jackson, 16CR1854.

Good afternoon. Can you tell me your name, please?

THE DEFENDANT: Jheshua Jackson.

THE COURT: Did you watch the video advisement that was played for you earlier this afternoon?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have questions regarding the information contained in that advisement?

THE DEFENDANT: No.

THE COURT: You are here because you're being investigated for identity theft, a Class 4 felony, criminal possession of a financial transaction device, a Class 1 misdemeanor, unauthorized use of a financial transaction device, a Class 1 petty offense, theft of [3] property worth between 50 and 300 dollars, a Class 3 misdemeanor, and second-degree criminal trespass, a Class 3 misdemeanor. These offenses are alleged to have occurred on August 29th, 2016 in Larimer County, Colorado.

Recommendations from the People regarding bond?

MR. BIRKY: Yes, Your Honor.

The defendant has a felony conviction, six misdemeanor convictions, and a pending case in Boulder, as well as six failures to appear. It appears that he also has prior theft charges and convictions. So we would recommend a \$5,000 cash, property, or surety bond with the conditions as listed in the bond application as well as the condition that the defendant remain law abiding.

THE COURT: Mr. Townsend?

MR. TOWNSEND: Your Honor, Mr. Jackson is an honorably discharged veteran. He is a CSU student. He is enrolled in the master's program for journalism and communications. He's lived in Colorado for over 20 years. His parents live in Aurora, as do other members of his family. That felony conviction was in 1990. He has just signed a lease, just started work at two different jobs and – on campus, and he is financially helping two children who reside in California. He has [4] a business of his own, a consulting firm. He also works with a veteran's outreach program, and – dealing with veterans who are waiting for assistance through the GI bill.

I believe that a nonmonetary bond, a PR or co-PR bond would be justified. In the absence of that, a hundred to a hundred-and-fifty-dollar cash bond.

THE COURT: The beginning circumstances presented by Mr. Townsend, in this Court's opinion, really affect the amount of bond but not the type. Taking, also, into consideration the nature of the criminal history, the failure-to-appear count, which includes one as recently as 2014, bond will be set in the amount of \$1,500 cash, property, or surety. It would require standard pretrial supervision, law-abiding behavior, and

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this matter returns to Courtroom 3B on September 9th, 2016, 8:30 a.m.

Are there any questions?

MR. TOWNSEND: No, sir.

THE COURT: Thank you.

(This ends the requested portion of the proceedings contained within Media Unit 1, 2:06 p.m.)

* * * * *

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APPENDIX D

[1] DISTRICT COURT
LARIMER COUNTY
COLORADO
201 LaPorte Avenue, Suite 100
Fort Collins, CO 80521

Case No. 2016CR1854 Division 3B

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff,

vs.

JHESHUA DANIEL JACKSON,
Defendant.

FOR COURT USE ONLY

For the People:
NICHOLAS G. CUMMINGS, ESQ.
Registration No. 41579

The defendant appeared pro se.

COURT REPORTER'S TRANSCRIPT

STATUS CONFERENCE
September 23, 2016

The hearing in the matter commenced at 10:07 a.m. on Friday, September 23, 2016, before the HONORABLE JULIE KUNCE FIELD, Judge of the District Court.

[2] PROCEEDINGS

(Whereupon, counsel and defendant were present, and the following proceedings were had:)

THE COURT: All right. Mr. Jackson, 16CR1854.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Good morning, Mr. Jackson. And it looks like we're here for a possible disposition. You – last time we spoke and you were in court, you'd indicated you wanted to proceed without an attorney. Is that still your wish?

THE DEFENDANT: That is correct, yes. I also thought that today was a status conference, not a disposition yet. But I just spoke with Mr. Cummings, and he is willing to not object to a PR so that I can get out today, since I was unable to –

THE COURT: You were unable to bond out with the –

THE DEFENDANT: Yes, ma'am.

THE COURT: – co-PR?

THE DEFENDANT: And then we can possibly go forward Monday with going over some – the discovery and things to see if I want to go forward with – with trial or – or work something out.

THE COURT: Okay. So just so I'm clear, Mr. Jackson, I know you had a moment to speak with Ms. Crowgey from the public defender's office, but is it your wish at this point to continue to represent yourself in this case?

THE DEFENDANT: Yes, it is.

[3] THE COURT: Okay. And are you making that choice of your own – on your own?

THE DEFENDANT: On my own volition, Your Honor. THE COURT: Anybody force you into –

THE DEFENDANT: No, ma'am.

THE COURT: Okay. All right. Mr. Cummings,

Mr. Jackson represented that you and he had spoken about modifying the bond.

MR. CUMMINGS: Yes, Your Honor. I think counsel – I certainly expected that Mr. Jackson was going to bond out on the last date based on the co-PR, and we had a status to see that. Because he hasn't, I do think this type of case is appropriate for a PR bond at this point, given the jail time that he has served.

THE COURT: Okay.

MR. CUMMINGS: So I would not object to that. And then I have spoken with Mr. Jackson and given him the option to meet and talk with me. I've given him my card and told him that throughout the process if he does want an attorney, at that point he's certainly entitled to request it.

THE COURT: Okay. And, Mr. Jackson, you understand that? You can –

THE DEFENDANT: Yes. I just wanted to reserve my right to a preliminary hearing.

THE COURT: Okay.

THE DEFENDANT: To make sure I state that for the [4] record.

THE COURT: Well, if you – if you bond out, I don't believe you will be entitled to a preliminary hearing based on the level of charges here. If you remain in custody, then you would be entitled to a preliminary hearing.

THE DEFENDANT: Is that the 35-day preliminary hearing or –

THE COURT: No. Any preliminary hearing on the – under Colorado law, there are certain matters for which you are entitled to a preliminary hearing and some which you are not if you are on bond. If you're in custody, then you're entitled to a preliminary hearing. Does that make sense?

THE DEFENDANT: That makes sense.

THE COURT: Okay. So the People have indicated that they are willing to agree to have your bond converted to a personal recognizance bond. Is that what you would like?

THE DEFENDANT: It is.

THE COURT: Okay. All right. I will modify your bond, Mr. Jackson, to a personal recognizance bond with the same terms and conditions that were previously ordered, which is standard pretrial supervision, remain law-abiding. So you'll need to contact pretrial upon your release.

THE DEFENDANT: Yes.

THE COURT: Okay? And then we can set this out for further proceedings. On my docket, I will call it a possible [5] disposition. Okay? We could set it for October 4th or 7th, Tuesday or a Friday.

THE DEFENDANT: October 4th is fine, Your Honor.

THE COURT: Okay.

THE CLERK: How about ten o'clock?

THE DEFENDANT: Ten o'clock is fine.

THE COURT: Okay. Does that work for the People?

MR. CUMMINGS: Yes, Your Honor.

THE COURT: All right. October 4th at 10 a.m. So we'll put that for a possible disposition. All right?

Mr. Jackson, we'll see you then.

THE DEFENDANT: Thank you, Your Honor.

THE COURT: All right. Thank you.

(The proceedings were concluded at 10:12 a.m. on Friday, September 23, 2016.)

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APPENDIX E

[1] DISTRICT COURT
LARIMER COUNTY
COLORADO
201 La Porte Avenue
Fort Collins, CO 80521

Case Nos. 2016CR1854
2017CR522
Division 3B

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff,

v.

JHESHUA DANIEL JACKSON,
Defendant.

FOR COURT USE ONLY

For the People:

MS. ERIN JAN McELROY
Registration No. 38317

For the Defendant:

MS. NORMAN A. TOWNSEND
Registration No. 16281

COURT REPORTER'S TRANSCRIPT

STATUS CONFERENCE

The matter came on for Status Conference on November 22, 2016, before the HONORABLE JULIE KUNCE FIELD, Judge of the District Court, and the following proceedings were had:

Reported by Nicole B. Holden, RPR

[2] PROCEEDINGS

THE COURT: Mr. Jackson, Joshua Jackson, 16CR1854.

THE DEFENDANT: Your Honor, I would like to state for the record that the defense counsel is fired, and I continue pro se. And I stand now in common law jurisdiction.

MR. TOWNSEND: I move to withdraw.

THE COURT: Okay. Let me – before I consider that motion, Mr. Jackson, let me ask you some questions. You understand that you do have the right to be represented by an attorney in this case?

THE DEFENDANT: I understand that I have the right to represent myself.

THE COURT: Well, that's my second question. The first is do you understand you have a right either to represent yourself or to be represented by an attorney?

THE DEFENDANT: I understand that I have the right to represent myself and my own person.

THE COURT: Okay. You also understand you do have the right to an attorney. If you can't afford to hire an attorney, the Court will appoint an attorney for you. And, in fact, the Court has found that you do

qualify for appointed counsel and has appointed the office of the public defender to represent you.

Do you understand that?

THE DEFENDANT: I waive the benefit, Your Honor.

[3] THE COURT: Okay. I just want to be sure, you do understand you do have a right to an attorney?

THE DEFENDANT: I'm aware of my rights, Your Honor. Thank you.

THE COURT: You understand that you have the right to have an attorney appointed to represent you? Yes or no?

THE DEFENDANT: Yes.

THE COURT: Okay. You also have a right to represent yourself. And I hear you say that you are choosing at this point to represent yourself; is that correct?

THE DEFENDANT: That's correct, Your Honor. I'm just seeking a fair and amicable trial.

THE COURT: So, Mr. Jackson, let me ask you, what's your educational background?

THE DEFENDANT: Bachelor's of Science and Communications. And paralegal.

THE COURT: Okay. That was my next question, whether you had any legal training. Do you have a paralegal degree or certificate of any kind? Or just had the training?

THE DEFENDANT: I've had a lot of training. I've had training in both paralegal and pleadings. I've had a chance to work with truly honorable judges.

THE COURT: Okay. All right. Are you under the influence of any drugs, medication, alcohol, anything that would affect your ability to make good choices here today?

[4] THE DEFENDANT: No.

THE COURT: And do you understand that criminal law can be a very complicated area?

THE DEFENDANT: I do. It's the reason why I have a couple questions before we begin.

THE COURT: Well, you certainly have the right to an attorney. And I'm not granted Mr. Townsend's motion to withdraw yet, so you certainly can consult with Mr. Townsend as well about any questions that you may have.

THE DEFENDANT: No. These questions are for the Court, Your Honor – I don't.

THE COURT: Well, let me – before you say anything else, let advise you that you have the right to remain silent, and anything you say can and may be used against you in a court of law.

THE DEFENDANT: I heard you, Your Honor.

THE COURT: Do you understand? I know you heard me. Do you understand that?

THE DEFENDANT: The word "understand" is kind of a sort of a tricky word.

THE COURT: Why don't you tell me what it means to you to have the right to remain silent.

THE DEFENDANT: It means just that. You have the right to not speak. I can stand here and look like Jesus all day long in front of a Pontius Pilate.

[5] THE COURT: You understand if you do say anything that what you say can be used against you in a court of law? You understand that?

THE DEFENDANT: It makes sense to me, Your Honor.

THE COURT: Okay. I'll take that as a "yes."

THE DEFENDANT: That is correct.

THE COURT: Okay.

THE DEFENDANT: Your Honor, before – because, like I said, the whole understanding and before I enter a plea, I need to get some questions answered. There are some things I don't understand. Nature and cause and the actions against me.

Is this going to be a civil action or a criminal action?

THE COURT: This a criminal case that has been brought by the People of the state of Colorado. The allegations are Count I, identity theft, Class 4 Felony.

Would you like me to read the charges to you?

THE DEFENDANT: Please, Your Honor.

THE COURT: Okay. Count I, Identity Theft, Class 4 Felony, alleges on or about August 29, 2016, Jheshua Daniel Jackson unlawfully, feloniously, and knowingly used a personal identifying information, financial identifying information, or financial device of Tyler Schmid without permission or lawful authority with the intent to obtain cash, credit, property, services, or any other thing of value, or to make a financial [6] payment in violation of Section 18-5-902 1(a) of the Colorado Revised Statutes.

Count II is Criminal Possession of a Financial Device, Class 1 Misdemeanor. The allegation is on or

about August 29, 2016, Joshua Daniel Jackson unlawfully possessed or controlled one financial device which the defendant knew or reasonably should have known was lost, stolen, or delivered under a mistake as to the identity or address of the account holder in violation of Section 18-5-903(1)(2)(a) of the Colorado Revised Statutes.

Count III, Theft, Class 3 Misdemeanor, alleges on or about August 29, 2016, Joshua Daniel Jackson unlawfully and knowingly took a thing of value, namely a Visa credit card, for food and alcoholic beverages, of Tyler Schmid and Yum Yum's, with a value of \$50 or more but less than \$300 in violation of Section 18-4-401(1)(2)(c)(6) of the Colorado Revised Statutes.

And Count IV, Second-degree Criminal Trespass, Class 3 Misdemeanor, alleges on or about August 29, 2016, Joshua Daniel Jackson unlawfully entered or remained in or upon the premise of Colorado State University Recreation Center located at 951 Meridian Avenue, Fort Collins, Colorado, which were enclosed in a manner designed to exclude intruders or were fenced in violation of Section 18-4-503(1)(a) of the Colorado Revised Statutes.

Let me further advise you that Count I, the Class 4 Felony, Identify Theft, carries a penalty of 2 to 6 years in the [7] presumptive range, up to 12 years if aggravated circumstances exist, plus 3 years of mandatory parole. Count II, Criminal Possession of a Financial Device, Class 1 Misdemeanor, carries a penalty range of 6 to 18 months in jail, a fine of 500 to \$5,000. And the Counts III and IV are each counts of Class 3 Misdemeanors, and the penalty range for each of those is up to 6 months in jail, and a \$50 to \$750 fine.

So these are criminal actions. And, sir, your liberty is at risk if the People were to prove these charges against you beyond a reasonable doubt at trial.

Do you understand that you, as we discussed,

Mr. Jackson, you do have a right to represent yourself. You understand you have a right to confront witnesses against you and to cross-examine those witnesses?

THE DEFENDANT: I understand that I have a right to a fair and meaningful trial, yes.

THE COURT: Do you understand that you have the right to confront the witnesses against you and to cross-examine them?

THE DEFENDANT: I understand.

THE COURT: And do you understand that you have the right to have witnesses that you choose to compel to appear and testify on your behalf?

THE DEFENDANT: That's part of procedure, correct?

THE COURT: Do you understand that you have a right to compel witnesses to come and testify?

[8] THE DEFENDANT: Isn't that part of procedure?

THE COURT: That is part of the criminal trial process, yes, sir.

THE DEFENDANT: Okay. Some things I kind of understand, some things I don't. What I don't understand is the mention of cause and action against me. But I do understand that you said this is a criminal action now against me. So let the record reflect that this is a criminal action brought against me.

Your Honor, the key issue that I have is the Sixth Amendment affords me the right to know what jurisdiction I'm in. Grants you the duty to inform me under

Article I, section eight clause 17 United States constitution, the constitution grants only two jurisdictions in criminal procedure. One being under the common law. Rules of criminal procedure under common law. The other is criminal procedure under military tribunal or admiralty law. What I would like to know, Your Honor, is in which of these two jurisdictions does this Court intend to try me.

THE COURT: Mr. Jackson, this action is brought by the people of the state of Colorado with the allegation that the charges that I read against you occurred in the county of Larimer, state of Colorado.

Mr. Jackson, the immediate question for today that I need to know the answer to before we proceed any further is [9] whether or not you intend to represent yourself or whether you intend to have your appointed attorney continue to represent you. That is the question that I need to know the answer to today.

THE DEFENDANT: Your Honor, I understand. It is my intent to represent myself. I understand that I have a right to appear as myself in my own person without a licensed attorney. And in order to intelligently defend myself, I have to know the jurisdiction that this Court is operating under. Because the rules of criminal under common law jurisdiction are very different than the rules of criminal procedure –

THE COURT: Mr. Jackson, I understand that you are seeking to represent yourself. Are you making that decision of your own choice?

THE DEFENDANT: Yes, Your Honor. I am enforcing my right to represent myself.

THE COURT: Anybody promise you anything, threaten you in any way, to get you give up your right to have an attorney represent you?

THE DEFENDANT: Nope.

THE COURT: Okay. Mr. Townsend, I will grant your motion to withdraw as counsel. I will grant Mr. Jackson's right to appear in this proceeding and represent himself. And I find that he is making this decision knowingly and voluntary and based on complete information.

[10] Mr. Jackson, the charges that you are facing do not entitle you to a preliminary hearing under Colorado law. In terms of next steps, I can give you an opportunity to talk with the district attorney to see if there might be a possible plea disposition that could be agreed upon by the People as represented by the district attorney and yourself. Or in the alternative, we can set this matter for trial.

THE DEFENDANT: Before I plea, Your Honor, I just have to know – please understand, I'm not trying to be difficult. I'm simply trying to put myself in the best position to represent myself. In order to do that, I just have to have a couple questions, Your Honor. Because from what I understand as I prepare for trial and all these different things to go about the correct procedure. So I'm either going to go about it under the criminal procedure under common law or I'm going to go about it under the rules of common law under military tribunal or admiralty law.

THE COURT: Okay. Mr. Jackson, let me tell you. This Court has authority over this criminal action based on Article VI of the Colorado Constitution, Section 1 and Section 9. The Court has subject matter jurisdiction under Article VI of the Colorado Constitution,

Section 9 and CRS 18-1-201. The Court has personal jurisdiction over you under CRS 13-1-124. And the Colorado Rules of Criminal Procedure would apply to the proceedings in this case.

[11] If you have a dispute about that, Mr. Jackson, certainly you can take that up to a higher court. But at this point –

THE DEFENDANT: And the issue –

THE COURT: Mr. Jackson, the issue at this point is whether or not you want an opportunity to talk with the district attorney to see if there is any resolution that you can reach in terms of a plea disposition or if we are setting this matter for trial.

THE DEFENDANT: I object, Your Honor.

THE COURT: Here's what we're going to do, Mr. Jackson, we're going to set this matter for an arraignment, and have you return to this Court for arraignment on December 23rd at 10:30.

THE DEFENDANT: Your Honor, I appreciate the information that you did give me, Your Honor. What was the –

THE COURT: 10:30 arraignment –

THE DEFENDANT: Not that. You gave some articles a few moments ago of the jurisdiction. What did you say they were?

THE COURT: The Colorado Constitution. Mr. Jackson, we'll see you December 23rd at 10:30.

THE DEFENDANT: Your Honor –

THE COURT: Your bond will continue, sir, along with all of the conditions. Mr. Jackson, I have a number of other folks in this courtroom I need to

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address. You can address your issues with me when we come back. And we can address your [12] arraignment at that time. Thank you, sir. You're excused.

THE DEFENDANT: Your Honor, are you not going to afford me –

THE COURT: You're excused, sir. Thank you.

THE DEFENDANT: Let the record reflect that the Judge did not answer the question as to which jurisdiction that is under between common law jurisdiction –

THE COURT: Mr. Jackson, would you like to be escorted from the courtroom?

THE DEFENDANT: Thank you very much.

(Proceedings concluded.)

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APPENDIX F

[1] DISTRICT COURT
LARIMER COUNTY
COLORADO
201 LaPorte Avenue, Suite 100
Fort Collins, CO 80521

Case No. 2016CR1854
Division 3B

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff,

vs.

JHESHUA DANIEL JACKSON,
Defendant.

FOR COURT USE ONLY

For the People:
NICHOLAS G. CUMMINGS, ESQ.
Registration No. 41579

The defendant appeared pro se.

COURT REPORTER'S TRANSCRIPT

ARRAIGNMENT
December 23, 2016

The hearing in the matter commenced at 11:56 a.m. on Friday, December 23, 2016, before the HONORABLE JULIE KUNCE FIELD, Judge of the District Court.

Erin E. Valenti, RPR, CRR
8th Judicial District
201 LaPorte Ave, Suite 100, Fort Collins, CO 80521

[2] PROCEEDINGS

(Whereupon, counsel and defendant were present, and the following proceedings were had:)

THE COURT: Mr. Jackson, Jheshua Jackson, 16CR1854. And Mr. Jackson is appearing here in person on bond representing himself. And we had this set for arraignment, but I wasn't sure, Mr. Cummings, whether or not the People got the discovery to Mr. Jackson after Mr. Townsend withdrew.

MR. CUMMINGS: I believe a disk was provided to him, but I was not in court. I know I'm the one who printed the disk for Mr. Jackson. If he doesn't have it, I can get it for him.

THE COURT: Okay. Mr. Jackson, have you received a discovery disk from the District Attorney's Office? Or is that something that he would have to come and pick up, Mr. Cummings? What would that –

MR. CUMMINGS: Generally, yes. But my understanding – I gave the disk to Ms. McElroy on the date of 11/22. I'm not sure, based on Mr. Townsend's withdrawal, if that was given to him. If not, it should be no issue in providing the disk to Mr. Jackson.

THE COURT: Okay. Well, Mr. Jackson, we have this set for arraignment. A couple things, though. I'm concerned that you haven't received the discovery and that it may not be appropriate to proceed with an arraignment at this point when you've not yet received

the discovery. I also just received – you had filed a [3] written motion to dismiss based on, it says, failure to establish or prove jurisdiction under a number of different provisions that you’ve identified here.

So in terms of the arraignment, I guess my thought is that I would take this motion under advisement, that we would set this out for further arraignment to give you an opportunity to make sure that you have all of the discovery materials before you determine which plea you would like to enter. Does that make sense, Mr. Jackson, to proceed that way?

THE DEFENDANT: Let the record reflect that I’m here and present in life and in blood and staying in common law jurisdiction.

To be honest with you, I’m not exactly sure, since this entire episode went down in my life, what the heck is going on. I made a motion, and I have several, several concerns. I mentioned the jurisdiction. Before we begin, I just want to – this is, of course, a court of record, correct?

THE COURT: Mr. Jackson, it is a court of law for the state – the People of the State of Colorado.

THE DEFENDANT: It’s a court of law. Is it a court of record?

THE COURT: Mr. Jackson, this is a – the district court for the 8th Judicial District for the State of Colorado.

THE DEFENDANT: Okay. Is this –

THE COURT: And the proceedings are being recorded [4] here.

THE DEFENDANT: So it is a court of record?

Your Honor, I'm – I'm not trying to be difficult. I'm just a simple, common man standing in common law trying to –

THE COURT: Okay. Mr. Jackson –

THE DEFENDANT: – make sure that I have a right to a fair trial. I'm just trying to understand and – so I have a few questions that are – in order for me to represent myself – as you know, I'm doing it pro se. I understand that I have the right to represent myself pro se. But I want to do it and make sure that I'm going about the procedures the right way, the jurisdiction I'm in the right way. I want to make intelligent decisions.

And so if this is, in fact, a court of record, then the Sixth Amendment protects my rights to represent myself and/or to be represented by an attorney. And, of course, it's this Court's duty to inform me what criminal jurisdiction I am in, I am to be tried in. Under Article I, Section 8, Clause 17 of the

United States Constitution, it allows for criminal proceedings under two jurisdictions: one, a common law; and, number two, a military tribunal. So I need to know whether this case is in the wrong court. We're supposed to be in civil court.

I don't see the victim, Mr. Schmid, or whatever his name is. I actually make a motion to dismiss the case since he's not here. If there's no victim, then there should be no crime.

Or, if this is a military tribunal, which I would need to have advisory counsel from the United States military.

THE COURT: Okay. Thank you, Mr. Jackson.

Mr. Jackson, you certainly have the right to represent yourself or the right to be represented by an attorney. And I had previously appointed an attorney

for you based on the Court's finding that you are indigent, and I would be willing to continue to appoint an attorney for you if you determine that is what – how you would like to proceed.

As I understand it, you are wishing to proceed today representing yourself, which, of course, is absolutely your right to do that. If you do choose to represent yourself, though,

Mr. Jackson, you will be expected to follow the rules of the courtroom, the rules of evidence, the rules of criminal procedure, and the rules of law. If you need assistance with understanding any of those, there is a self-represented litigant coordinator office downstairs who may be able to answer your questions for you in regard to procedures.

In terms of your answer – answering your question concerning the authority that this Court has, this Court does have authority over criminal cases pursuant to Article VI of the Colorado Constitution, Section 1 and Section 9. The Court has subject matter jurisdiction under Article VII of the Colorado Constitution, Section 9, and Colorado Revised Statutes 18 –

THE DEFENDANT: I'm sorry. Can you slow down? I can't [6] write that fast. I'm sorry. Can you start again? Article VI what?

THE COURT: Article VI of the Colorado Constitution, Section 1 and Section 9.

THE DEFENDANT: Okay. Go on.

THE COURT: And Article VI [sic] of the Colorado Constitution, Section 9. And Colorado Revised Statute Section 18-1-201.

THE DEFENDANT: Dash-one-dash-201?

THE COURT: Correct. The Court also has personal jurisdiction over you under Colorado Revised Statute 13-1-124.

THE DEFENDANT: C.R.S. dash 13 what?

THE COURT: Dash-one-dash-124. And, certainly, the U.S. and Colorado Constitutions do apply to the proceedings here. So in terms of where we're at with your case, Mr. Jackson, we had this set for an arraignment. As I said, you may not have received the discovery, so I want to give you an opportunity to have as much information as possible before deciding whether you're going to enter a plea of guilty, not guilty, or no contest. If you do enter a not guilty plea subsequently to today, then the matter will be set for trial. This matter is not eligible for a preliminary hearing under Colorado statutes.

My suggestion is that we set this out for further proceedings to give you an opportunity to review the discovery [7] that the People will provide to you. I have received your motion that was just filed this morning. As you can see, I've had a very busy docket today and have been on the bench since 8:30 this morning, have not had an opportunity to read or study your motion. I'll take it under advisement and issue a written order, but I'd like to set this for a possible arraignment date in an appropriate amount of time to give you an opportunity to review the discovery that the People have in this case.

I will note that I've previously advised you of the charges on, I believe, at least two and possibly three different occasions when you've been in court. So you should be well aware of those.

My suggestion would be to set this out to give you enough time to go over that information and to talk

with the self-represented litigant office, if you wish to do so, to January 24th at 2:30.

Does that work for the People?

MR. CUMMINGS: Yes, Your Honor.

THE COURT: Okay. January 24th at 2:30. That's a Tuesday afternoon.

THE DEFENDANT: Your Honor, I'm sorry. I object. I –

THE COURT: Okay.

THE DEFENDANT: I do believe I asked a couple questions, and I – I didn't get the answer to – to my questions. So I understand you mention –

[8] THE COURT: Mr. – Mr. Jackson, just so we're clear, I cannot give you legal advice.

THE DEFENDANT: I'm not asking for legal advice. I'm trying to understand the intent.

THE COURT: So at this point – at this point, I am setting this out for further proceedings for the arraignment. I'm taking your motion under advisement.

THE DEFENDANT: You didn't answer the motion to dismiss.

THE COURT: And that's my – I said I'm taking it under advisement.

THE DEFENDANT: I'm sorry. I – let me – let me be clear. The motion to dismiss for jurisdiction, that's under – you're taking that under advisement. I just made a verbal motion right now to dismiss because there is no victim present. If there's no victim present, there's no crime. How do you –

THE COURT: I will take that – I will take your verbal motion under advisement as well.

THE DEFENDANT: So you're taking that under advisement as well?

THE COURT: Correct. Anything else?

THE DEFENDANT: I'll also make a motion to have advisory counsel be appointed. You have your choice from either the United States Navy, United States Marines, or some private attorney.

[9] THE COURT: Okay. Mr. Jackson, we can address that at your next hearing. Okay? We'll see you January 24th at 2:30.

THE DEFENDANT: Okay. And just –

THE COURT: We're adjourned.

THE DEFENDANT: – lastly –

THE COURT: Thank you. We'll see you then. Your bond will continue, along with all the conditions.

(The proceedings were concluded at 12:07 p.m. on Friday, December 23, 2016.)

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APPENDIX G

[1] DISTRICT COURT
LARIMER COUNTY
STATE OF COLORADO
201 LaPorte Avenue
Fort Collins, CO 80521-2761

CASE NO. 2016 CR 1854
DIVISION 3B

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff,

vs.

JHESHUA DANIEL JACKSON,
Defendant.

FOR COURT USE ONLY

For the People:
ROBERT J. AXMACHER
Reg. No. 43229

Defendant appeared pro se.

REPORTER'S TRANSCRIPT
TUESDAY, JANUARY 24, 2017, 2:31 P.M.

The matter came on for BOND HEARING and
ARRAIGNMENT before the HONORABLE JULIE

KUNCE FIELD, Judge of the Eighth Judicial District Court.

THE DEFENDANT WAS PERSONALLY PRESENT.

Reported by Amy Schmidt, RPR, CRCR, CSR

[2] TUESDAY, JANUARY 24, 2017, 2:31 P.M.

* * * * *

(The following proceedings were had in open court.)

THE COURT: Mr. Jackson, Jheshua Jackson, 16CR1854. Good afternoon, Mr. Jackson.

THE DEFENDANT: Good afternoon, Your Honor.

THE COURT: Mr. Jackson, you are here on a couple of things. One is this date and time was set originally for arraignment in your case on the underlying charges, and since that time the People have filed a motion to modify bond, which has brought you before the Court arrested on the warrant that the Court issued in relation to that. So those are the two matters that we need to address; first, the modification of bond and then, second of all, the arraignment.

And, Mr. Jackson, you, I believe, have determined to represent yourself in this case, and I assume that you are continuing to do so; correct?

THE DEFENDANT: Yes, Your Honor.

Can I speak with the DA for a second to address bond?

THE COURT: Mr. Axmacher, Mr. Jackson is representing himself in this case.

MR. AXMACHER: Your Honor, with respect to the matters of bond, I believe it's the best approach – it's

most appropriate to address that with the Court directly so –

[3] THE COURT: Mr. Jackson, why don't you go ahead and tell me what your position is in regard to bond.

The People have filed, as I said, a motion to modify bond. The allegation is that you have not complied with pretrial supervision requirements.

Let me see what your original bond was. So \$1500 cash, property, or surety was the original bond. That bond was modified to a \$2,000 co-PR bond.

THE DEFENDANT: And then it was modified to a PR bond.

THE COURT: That may be. Sorry, I may not be looking at the latest report. All right. Let me double-check that.

My recollection is it was, but I am not finding that offhand.

THE DEFENDANT: Because I had to wait for Boulder.

THE COURT: Right. Let me double-check. Okay.

THE DEFENDANT: Sure.

THE COURT: Yes, it was modified to a PR bond on September 23rd.

Okay. Mr. Jackson, what would you like me to know about bond?

THE DEFENDANT: I am confused as to how I failed to comply.

THE COURT: Okay. The allegations in the motion [4] include the following: The pretrial services filed a

non-compliance report on December 12th alleging that Mr. Jackson was released from custody on October 14th and contacted pretrial services as he was directed. On October 15th, 2016, Mr. Jackson reported to pretrial, signed his pretrial supervision contract acknowledging the conditions of bond, including making weekly telephone contact every Monday. Mr. Jackson failed to complete his telephone contacts on Monday and has failed to pay his pretrial supervision fee. On December 5th, pretrial attempted to contact Mr. Jackson on the number that he provided reminding him to maintain contact via weekly telephone messages every Monday. However, his phone was busy, and you could not leave a message at that time.

And you were directed to report to pretrial immediately and did not do so.

So those are the allegations. In terms of the motion that's pending, it is to modify bond and modify any bond conditions or amount. Okay?

THE DEFENDANT: Okay.

THE COURT: What would you like me to know?

THE DEFENDANT: First of all, I apologize if I misunderstood anything. I did make the phone calls, and I guess I was under the impression that those phone calls – because I did make the phone calls, but that was like the first time that I came to court. I didn't know that I am – am I supposed to be [5] making those calls from now on? I did not know if that is the case. I did make the phone calls, and I have made every court date since then.

The payment issue – not to compare myself to Lemony Snicket, but I have had the most series of

unfortunate events I think anybody could possibly have.

When I got arrested, I was at the social security office because I am still trying to gather the documents needed to even get a job; namely, a social security card and ID card. I do not possess them as of right now because they were stolen as the government has it. You cannot get – the DMV will not give me my license without a social security card. The social security will not give me a social security card without the DMV, so I am having to wait for my birth certificate to come from out of state in order to produce the documents necessary to get a job.

Now, in the meantime, I have tried to do what I can to find whatever I can and haven't been successful with that. I've been in and out of Catholic Charities. I've been working with the Murphy Center for Hope here in town.

So that has been my situation. And I am fighting homelessness, but I've been blessed enough to be able to find some individuals that I've been able to stay with. I do not have a permanent residence.

My phone got stolen during the time those things [6] happened. Those things happen when you are at a homeless shelter. Homeless people steal things and they come up missing. That's the reason I did not have a phone, have not had the ability to pay for another phone to have a number to turn in. When I did call, the times I did call, I was using random people's phone to just make the call, but I was unaware that I was supposed to continue doing that after I made my court date.

If it pleases the Court and the Court will reinstate – revoke and reinstate bond, I don't have a problem with finding a way to make a call every single day if that's

what it takes. I have been successful at making a few friends, and I do believe that if I were to be awarded a PR bond or a co-PR bond I would have someone who would be able to bond me out at this time, which wasn't the situation last time because I was pretty fresh in town.

With respect to arraignment –

THE COURT: Let's just deal with bond first. Okay?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right.

MR. AXMACHER: Your Honor, Mr. Jackson asserts that this was an honest mistake, his failure to maintain contact with pretrial services. As I look through his history, I see a number of prior criminal cases, including some prior felony cases, which suggests to me that he should be familiar with the system, and so I am at least skeptical of what he has to say [7] there.

I believe that bond was appropriately set initially in this case when it was a cash, property, or surety bond, and I would ask the Court to go that direction.

THE COURT: Okay. Mr. Jackson, anything else on the issue of bond?

THE DEFENDANT: Yes. With respect to the counselor's retort, again, those prior cases were in the past and really have nothing to do with this case. Again, every court date we have had – this is the fourth arraignment I believe I have gone to, and I have made every single appearance, so it's not that I have any intentions to not show up for court or any of that matter.

That was just the situation. Again, that was my understanding, that if I was supposed to continue making phone calls, then that I was – I assumed that

was only for when I came to court, and once I come to court, then that's negated.

THE COURT: All right. Mr. Jackson, I have reviewed the file in this case and considered what would be an appropriate bond to ensure your compliance with the Court's orders. I am going to modify the bond to a \$2,000 co-signed PR bond. The terms and conditions are that you will remain law-abiding, you will comply with the no contact order, and standard pretrial supervision, which will mean contacting pretrial every week.

[8] THE DEFENDANT: Okay.

THE COURT: Anything further?

Any other conditions the People would request?

MR. AXMACHER: Your Honor, I am not sure if it's already a condition, but I would ask for just no contact with the CSU campus.

THE COURT: Mr. Jackson, any –

THE DEFENDANT: I already knew that.

THE COURT: All right. The no contact order will – to the extent – I believe it already does include that.

THE DEFENDANT: It did.

THE COURT: To the extent it does not –

THE DEFENDANT: I've been law-abiding on that as well.

THE COURT: You are reminded to not have contact with CSU.

Let's address the issue of arraignment.

Mr. Jackson, we had this set for arraignment today. I want to be sure.

I know the last time we were in court, Mr. Jackson was to have received the discovery back on December 23rd. Mr. Axmacher, do you know whether that was provided?

MR. AXMACHER: Your Honor, as the Court is aware, as demonstrated through the PTS memo, being able to get ahold of Mr. Jackson has been difficult. I have in my possession today a [9] physical disk with the discovery, which I am now giving to him, so that has now been provided. It would have been provided sooner, but with his whereabouts being unknown, we were unable to provide it.

THE COURT: Okay. Mr. Jackson, we can proceed with arraignment today, or I can give you a week or so to review that discovery.

THE DEFENDANT: I am going to need to review this, Your Honor.

THE COURT: Okay. Mr. Jackson, let me – before we set a new court date, let me get for our information, for the Court’s file, your address and phone number, contact information.

THE DEFENDANT: I don’t have an address, Your Honor. I don’t have –

THE COURT: You have been staying at the Murphy Center?

THE DEFENDANT: Murphy Center and Catholic Charities. That was where I had them send the information to.

THE COURT: Do you have a message number or anybody –

THE DEFENDANT: I do not. When I did have a phone, again, that got stolen, and now I have to get

another phone. But I will find a way to make a call. That's what I will do.

THE COURT: It's not just that. It's that, since [10] you are representing yourself, we need to be able to get ahold of you.

THE DEFENDANT: What can I do to please the Court?

THE COURT: I think bonding out, having a message number or some contact information would be helpful, and providing that to the District Attorney as well.

THE DEFENDANT: I don't often talk to my family, my dad, but that is a number that I can give. They are stable. And if there's a message, then I will have to get that from them when I do contact them. They live out of the county, but they are here in the state.

THE COURT: Okay. What is that message number?

THE DEFENDANT: (303) 872-3727.

THE COURT: And whose number is that?

THE DEFENDANT: That's my father, John Hunter.

THE COURT: Okay. Mr. Jackson, let's set this to come back in soon. We will set it for arraignment. How about February 7th? That's two weeks.

Mr. Axmacher, can you help him write a reminder there?

THE COURT: We can set that for 2:30. Does that work for the People?

MR. AXMACHER: That does, Your Honor, and I have provided Mr. Jackson, at the Court's request, a piece of paper with 2/7/17 on it – at 2:30 written on it.

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[11] THE COURT: Thank you.

And he has a disk with the discovery on it.

Anything else, Mr. Jackson?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. We will see you in two weeks.

(Proceedings adjourned; 2:45 p.m.)

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APPENDIX H

[1] DISTRICT COURT
LARIMER COUNTY
STATE OF COLORADO
201 LaPorte Avenue
Fort Collins, CO 80521-2761

CASE NO. 2016 CR 1854
DIVISION 3B

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff,

vs.

JHESHUA DANIEL JACKSON,
Defendant.

FOR COURT USE ONLY

For the People:
BRENT A. BEHLER
Reg. No. 44808

Defendant appeared pro se.

REPORTER'S TRANSCRIPT
TUESDAY, FEBRUARY 7, 2017, 2:43 P.M.

The matter came on for ARRAIGNMENT before the HONORABLE JULIE KUNCE FIELD, Judge of the Eighth Judicial District Court.

THE DEFENDANT WAS PERSONALLY PRESENT.

Reported by Amy Schmidt, RPR, CRCR, CSR

[2] TUESDAY, FEBRUARY 7, 2017, 2:43 P.M.

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(The following proceedings were had in open court.)

THE COURT: Jheshua Jackson, 16CR1854. Mr. Jackson? Mr. Jackson? Are you here? I called your name.

This is 16CR1854. We have this case. Mr. Jackson is appearing in person and is representing himself, and we have this matter set for arraignment.

Mr. Jackson, are you prepared to enter a not guilty plea and set the matter for trial?

THE DEFENDANT: I need to talk with the –

THE COURT: The DA? You may talk with him for a few minutes, um-hum.

(Mr. Jackson conferred with Mr. Behler.)

THE COURT: Mr. Jackson, are you ready to proceed with arraignment?

Is that a yes?

Mr. Jackson, if you choose to remain silent, then the Court will enter a not guilty plea on your behalf and set the matter for trial.

THE DEFENDANT: Objection, Your Honor. You cannot do that. Entering a plea on my behalf would be

calling – practicing the law through the bench. Only myself or an attorney can enter that on my behalf. I ask you to withdraw that so I can enter my own plea.

[3] THE COURT: All right. Mr. Jackson, on Count 1, identity theft, a class 4 felony, that alleges on or about August 29, 2016, Jheshua Daniel Jackson unlawfully, feloniously, and knowingly used the personal identifying information, financial identifying information, or financial device of Tyler Schmid without permission or lawful authority with the intent to obtain cash, credit, property, services, or any other thing of value, or to make a financial payment, in violation of

Section 18-5-901 – 902(1)(a) of the Colorado Revised Statutes. Mr. Jackson, as to Count 1, identity theft, a class 4 felony, do you plead guilty or not guilty?

Guilty or not guilty, Mr. Jackson?

In the event that you enter a not guilty plea, we will set the matter for trial.

Mr. Jackson, guilty or not guilty as to Count 1?

Mr. Jackson stands silent. Therefore, the Court will accept his silence as a not guilty plea and set Count 1 for trial.

Count 2, criminal possession of –

THE DEFENDANT: Objection, Your Honor. You cannot enter a plea on my behalf.

THE COURT: Mr. Jackson, what is your plea then on Count 1, guilty or not guilty?

THE DEFENDANT: I object to entering a plea.

THE COURT: The Court will set the matter for trial [4] on Count 1, accepting the refusal to enter a plea as a not guilty plea.

Count 2, criminal possession of a financial device, a class 1 misdemeanor, that alleges on or about August 29th, 2016, Jheshua Daniel Jackson unlawfully possessed or controlled one financial device, which defendant knew or reasonably should have known was lost, stolen, or delivered under a mistake as to the identity or address of the account holder in violation of Section 18-5-903(1)(2)(a) of the Colorado Revised Statutes.

Mr. Jackson, as to Count 2, criminal possession of a financial device, a class 1 misdemeanor, how do you plead, guilty or not guilty?

THE DEFENDANT: Objection, Your Honor.

THE COURT: The pleas are guilty or not guilty. How do you plead?

THE DEFENDANT: I object to entering a plea.

And I made a motion for this Court to make a ruling subject to my jurisdiction. It has been past 30 days. What is the Court's ruling?

THE COURT: As to Mr. Jackson not entering a plea as to Count 2, the Court will take his refusal to enter a plea as a not guilty plea on Count 2 and set the matter for trial.

THE DEFENDANT: Objection, Your Honor. The Court cannot enter a plea on my behalf. That is called practicing law from the bench.

[5] THE COURT: As to Count 3, a class 2 misdemeanor, that alleges on or about August 29, 2016, Jheshua Daniel Jackson unlawfully and knowingly took a thing of value; namely, a Visa credit card, food, and alcoholic beverages of Tyler Schmid and Yum Yum's with a value of \$50 or more but less than \$300 in violation of Section 18-4-401(1)(2)(c)(6) of the Colorado Revised Statutes.

Mr. Jackson, as to Count 3, theft, a class 3 misdemeanor, how do you plead, guilty or not guilty?

THE DEFENDANT: Has the Court made a judicial determination that I am not guilty?

THE COURT: You are – as you sit before the Court, Mr. Jackson, you are not guilty. You are presumed innocent, and the People have the obligation to prove your guilt beyond a reasonable doubt.

THE DEFENDANT: Thank you, Your Honor. Let the record reflect that Your Honor just stated that I am not guilty. I make a motion to dismiss this case.

THE COURT: Okay. The Court will accept

Mr. Jackson's plea of not guilty on Count 3, theft, a class 3 misdemeanor, and will set the matter for trial.

THE DEFENDANT: Objection, Your Honor.

THE COURT: Count 4. Just a moment. Count 4, second degree criminal trespass, a class 3 misdemeanor. That alleges on or about August 29, 2016, Jheshua Daniel Jackson [6] unlawfully entered or remained in or upon the premises of Colorado State University Recreation Center located at 951 Meridian Avenue, Fort Collins, Colorado, which were enclosed in a manner designed to exclude intruders or were fenced, in violation of Section 18-4-503(1)(a) of the Colorado Revised Statutes.

Mr. Jackson, as to Count 4, second degree criminal trespass, a class 3 misdemeanor, how do you plead, guilty or not guilty?

THE DEFENDANT: Your Honor, I don't think you would be violating your oath of office if you did your duty under the constitution of the United States of America today.

THE COURT: Okay. Mr. Jackson, how do you plead, guilty or not guilty?

THE DEFENDANT: I object to entering a plea, Your Honor. I made a motion to dismiss the case. How does the Court rule?

THE COURT: Okay. In regards to Count 4, second degree criminal trespass, the Court will enter a not guilty plea on behalf of Mr. Jackson, and the matter will be set for trial.

THE DEFENDANT: Objection, Your Honor.

THE COURT: In response to your motion, the Court previously issued a written order in regard to your motion to dismiss based on jurisdiction on December 23rd, 2016, so that order is in the file.

[7] Mr. Behler, how long do you think a trial in this matter will take?

THE DEFENDANT: Your Honor, before we set a date over for trial, there's some key pivotal issues that I have got to get understood and squared away in terms of the criminal jurisdiction.

Is this still a court of record, Your Honor?

THE COURT: Mr. Jackson, we have addressed this repeatedly.

THE DEFENDANT: Is this a court of record?

THE COURT: Mr. Jackson, let me finish.

We have addressed this repeatedly. I have issued a written order. If you have any motions, I will give you an opportunity prior to trial to file any other written motions that you would like to file. At this point there is no written motion before me, so unless and until

there's a written motion before me, the Court will not hear any argument on your request.

Mr. Behler, how long do you think a trial in this case would take?

MR. BEHLER: Your Honor, my inclination is three days, to be safe.

THE COURT: I think that makes sense.

Speedy trial would run August 7th, 2017. So let's set this for trial.

And, Mr. Jackson, as I said, I will give you an [8] opportunity to file any written motions that you would like the Court to consider prior to trial.

THE DEFENDANT: Thank you, Your Honor. I would like a motions date set, please.

THE COURT: We will set the trial first and then we will set the motions day. Okay?

All right. Let's set this for trial. My suggestion would be May 17th, 18th, and 19th.

MR. BEHLER: Your Honor, I am looking. I took the liberty of running the officers' vacations.

THE COURT: Thank you.

MR. BEHLER: I show one of my officers is due to be out for about three months starting May 10th. Because of that three months, I am going to guess that's potentially a maternity leave, but I don't – I haven't spoken to that officer directly. So that would be May 10th through the 20th, so I would ask – sorry, May 10 through August 20th, which I know is outside speedy trial.

THE COURT: Let's see if we can set that before then.

MR. BEHLER: Thank you.

THE COURT: Um-hum.

We can set this trial to start – let me see one second.

THE DEFENDANT: Your Honor, do I have a right to [9] speak at these hearings?

THE COURT: Just a moment. I am looking at the calendar. I will give you an opportunity in a moment.

This would be setting over a couple cases, but I think we can get senior judge coverage if we need to. I am looking at April – the week of April 10th, maybe the 12th, 13th, 14th. I have the Federer trial and the Rohrbouck trial.

Both are set that week.

MR. BEHLER: Understood, Your Honor. I would accept that date. Thank you.

THE COURT: So April 12th, 13th, and 14th will be our trial dates.

THE DEFENDANT: What date?

THE COURT: April – we will start Wednesday, April 12, April 12th, 13th, and 14th.

And let's set a pretrial readiness conference for a couple of weeks before that, maybe at – how about 1:00 on April 4th? The trial will start April 12th at 8:30.

Do those dates and times work for the People?

MR. BEHLER: They do, Your Honor. Thank you.

THE COURT: All right. So, Mr. Jackson, I will give you an opportunity to file any motions that you would like the Court to consider, and then we will set a motions hearing.

Today is February 7th. I would give you – how about until February 28th to file any motions? Mr. Jackson, does that time [10] frame work for you?

THE DEFENDANT: February 28.

THE COURT: Um-hum. That's three weeks. Does that give you enough time?

THE DEFENDANT: It does. And so we will be meeting on February 28 for a motions trial?

THE COURT: No, any written motions would have to be filed before that date.

THE DEFENDANT: So it's the deadline for written motions.

THE COURT: The deadline for written motions is February 28, the close of business, which is – the clerk's office closes at 4:30.

THE DEFENDANT: So my four verbal motions to dismiss upon entering pleas on my behalf, those are still on the record, and I would like the record to reflect that and also the record reflect this Court has tried to constrain me to entering a plea in some statutory jurisdiction which does not exist, and –

THE COURT: Mr. Jackson, let me suggest that if there are any motions that you would like the Court to consider regarding jurisdiction, the power of the Court, any statutes you think do or don't apply here, let me ask you to put those in written form and file those by close of business on February 28th.

And I will give the People an opportunity to file a [11] written response. If the People could file any written response by – let's say March 13th. That's a little less than two weeks. Does that work? I will give you until the 14th. That's two weeks.

MR. BEHLER: Thank you, Your Honor.

THE COURT: All right. Then let's set a motions hearing date on March 24th at 3:30, March 24th at 3:30. That is when we will hear the motions.

THE DEFENDANT: March what?

THE COURT: March 24th, that's a Friday, at 3:30.

THE DEFENDANT: So that would be the next appearance.

THE COURT: That would be the next time you would be expected to appear in Court. That would be a bond return date for you, Mr. Jackson, so we will see you at 3:30 on March 24th.

And at this point, I will reserve the better part of an hour for that.

THE DEFENDANT: Your Honor, I also would like to make note and mention that Mr. Schmid is not here, so there's no sworn statement by an injured party. Again, another motion to dismiss for lack of an injured party.

THE COURT: Again, Mr. Jackson, the Court –

THE DEFENDANT: I just want to state it for the record.

THE COURT: The Court previously ruled on that [12] question in my written order of December 23rd.

Mr. Behler, any further record the People would like to make?

MR. BEHLER: No, Your Honor, I don't believe so.

THE COURT: All right. Mr. Jackson, your bond will continue along with all the conditions. And let me just remind you – I know I have mentioned this before, but

you are representing yourself in this court, and you are expected to comply with the court rules and to act appropriately in court. You are expected to participate in a way comparable to an attorney, although I will note you are not an attorney, but you are expected to comport yourself consistent with the rules.

THE DEFENDANT: With that being said, Your Honor, I have asked the People to produce the published Rules of Criminal Procedure, and that still has yet to be produced, physical – an actual piece of paper, something published, Rules of Criminal Procedure under statutory jurisdiction of Article 6, Section 19 or whatever –

THE COURT: Mr. Jackson, let me give you a couple of resources that are available to you.

THE DEFENDANT: I have looked at the CRS online. In fact, I brought my notes here.

THE COURT: Mr. Jackson, the court rules are available at the public library. They are also available online. There is a self-represented litigant office downstairs [13] on the first floor, and they may also be able to provide you with some assistance in terms of directing you to the appropriate locations. It is not the District Attorney's obligation to provide you with a copy of the Rules of Criminal Procedure. All right?

Mr. Jackson, we will see you on the 24th of March at 3:30. Thank you.

(Proceedings adjourned; 3:03 p.m.)

* * * * *

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APPENDIX I

[1] DISTRICT COURT
LARIMER COUNTY
STATE OF COLORADO
201 LaPorte Avenue
Fort Collins, CO 80521-2761

CASE NOS. 2016 CR 1854
2017 CR 522
DIVISION 3B

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff,

vs.

JHESHUA DANIEL JACKSON,
Defendant.

FOR COURT USE ONLY

For the People:
BRENT A. BEHLER
Reg. No. 44808
ROBERT J. AXMACHER
Reg. No. 43229

Defendant appeared pro se.

REPORTER'S TRANSCRIPT
FRIDAY, MARCH 24, 2017, 3:32 P.M.

The matters came on for MOTIONS HEARING and APPEARANCE of COUNSEL before the HONORABLE JULIE KUNCE FIELD, Judge of the Eighth Judicial District Court.

THE DEFENDANT WAS PERSONALLY PRESENT.

Reported by Amy Schmidt, RPR, CRCR, CSR

[2] FRIDAY, MARCH 24, 2017, 3:32 P.M.

* * * * *

(The following proceedings were had in open court outside the presence of the defendant.)

THE COURT: The cases for Mr. Jackson are set at 3:30, 16CR1854, 17CR522, and I do not see Mr. Jackson.

Ms. Lowrey, do you have any information for me?

MS. LOWREY: Your Honor, I do for some reason have a number on the file, although I was going to tell the Court we would need him to fill out an application. If you let me step out a minute, I will try to call this number I have.

THE COURT: Sure. Thanks.

MS. LOWREY: I am going to see if I can find one more contact number.

THE COURT: Well, we just – the Clerk just got an instant message from the clerk’s office downstairs indicating that Mr. Jackson is at the front desk there attempting to file some papers.

MS. LOWREY: Should I go down there? Are they going to send him up?

THE COURT: I will leave that up to you.

MS. LOWREY: I will go see what I can find out.
(Recess; 3:36 p.m. - 3:38 p.m.)

MS. LOWREY: He is filing something, and he said when he got late he asked the clerk –

[3] THE COURT: That's the information that we got was that he was downstairs.

MS. LOWREY: Yes, so he asked the clerk to let you know that, and he apparently is almost done so –

THE COURT: Okay.

MS. LOWREY: I didn't want to slow it down any more by having a lengthy conversation.

THE COURT: Thank you.

(Mr. Jackson entered.)

THE COURT: All right. I see Mr. Jackson is here now. Let me call his cases.

Jheshua Jackson, 16CR1854 and 17CR522, and we have the 2016 case set here for a motions hearing. Mr. Jackson is representing himself in that case. And in 17CR522, we have that case set for appearance of counsel.

Ms. Lowrey, I know that you had been appointed to represent Mr. Jackson when he was in custody. I don't know now that he is on bond what the status of that is.

MS. LOWREY: I don't know if Mr. Jackson would like us to continue representing him. If so, we will need him to fill out an application. As far as I am aware, that hasn't been done yet.

THE COURT: Mr. Jackson, would you like the public defender to represent you in the new case, 17 CR 522?

Mr. Jackson?

[4] THE DEFENDANT: Let the record reflect that I am here on a special appearance and –

THE COURT: Mr. Jackson, simple question, sir. Would you like me to appoint the public defender to represent you in 17CR522?

THE DEFENDANT: Okay. So you are referring to me, the living man, at this moment?

THE COURT: Mr. Jackson, are you present in court? If Mr. Jackson is not present, I will call and issue a warrant for his arrest for his failure to appear.

THE DEFENDANT: All right. So –

THE COURT: Mr. Jackson, my question to you, sir, and based on your response to my question when I called the name Mr. Jackson, is would you like me to appoint the public defender to represent you.

THE DEFENDANT: There are several different types of Jacksons out there, and I am here on behalf of my trust account, which beholds several of these names, so I am here to answer for that trust.

THE COURT: For Mr. Jackson you are here, and are you –

THE DEFENDANT: For the defendant named Jheshua Jackson.

THE COURT: Are you telling me that you are not Mr. Jackson?

[5] THE DEFENDANT: I am telling you I am the trustee, as you can see by what's in the file in the court and what the DA now has, in charge of and responsible for that name. I am the flesh and blood man for whom these trust accounts were made after. I am also the

holder in due course of these trust accounts, and I am here and present at a special appearance.

THE COURT: To the extent that you are telling me, Mr. Jackson, that you are not –

THE DEFENDANT: I never said that, Your Honor. I said I am the person responsible and in charge of the trust accounts with the defendant's names. I am the living man, whose name you do not have completely down on these documents.

THE COURT: What is your name? What is your name, sir?

THE DEFENDANT: You do possess some of the wardship names that I am now holder in due course of –

THE COURT: Mr. Jackson –

THE DEFENDANT: – and trustee on behalf of that name.

THE COURT: Sir, what is your name?

THE DEFENDANT: I am :Prince: J'eshua BEN-EL-DAVID: Y'SHUA: BEN: YHWH. That is my original name. I also have a birth certificate if you need to see that.

THE COURT: And do you –

THE DEFENDANT: That's also attached.

[6] THE COURT: Do you go by Mr. Jackson?

THE DEFENDANT: I go by many names, Dad and Chief among them.

THE COURT: Simple answer, sir. Do you go by Mr. Jackson?

THE DEFENDANT: I answer to the wardship names.

That's the system that we are in.

THE COURT: All right. Mr. Jackson, in terms –

THE DEFENDANT: Can we establish something first before we begin? Are you the – this young lady here, Donna, I think, is her name, is she the trustee of the court?

THE COURT: Mr. Jackson –

THE DEFENDANT: Are you, in fact, the trustee?

THE COURT: Mr. Jackson, Mr. Jackson, sir, you are here on two cases, 16CR1854 and 17CR522.

THE DEFENDANT: Um-hum.

THE COURT: In 16CR1854, the business of the Court today is a motions hearing on the pretrial motion that was filed by the district attorney, and the Court is prepared to address that today.

THE DEFENDANT: When you say “the business of the court –”

THE COURT: Excuse me, sir.

In 17CR522, we are here for appearance of counsel. Do you wish to have counsel appointed to you to represent you in [7] 17CR522?

THE DEFENDANT: Okay. I don't know if you have seen the documents that I have already filed, but I am my own counsel.

THE COURT: You are representing yourself in 17CR522?

THE DEFENDANT: According to the documents that you received.

THE COURT: I have not received any documents, sir, to that effect in the new case, but let me inquire of

you. Let me ask you some questions about that. All right?

Mr. Jackson, you do have the right to represent yourself, if that is what you choose to do. You also have the right to request the appointment of an attorney. If you cannot afford to hire an attorney, then the Court can appoint an attorney for you.

Do you understand that you do have the right to an attorney, and if you cannot afford to hire one, that the Court will appoint an attorney for you?

Do you understand that, sir? Yes or no.

THE DEFENDANT: Are you asking if I am here to represent myself?

THE COURT: In the new case, yes, sir. You are already representing yourself in the 2016 case. Are you representing yourself in the 2017 case?

[8] THE DEFENDANT: That is affirmative.

THE COURT: Okay. And do you understand that criminal law can be very complex?

THE DEFENDANT: You know, it's funny you say that because that is the part I don't understand and what I am trying to understand, so that I can best represent myself – I do understand that the Sixth Amendment affords me the right to know what jurisdiction I am in, and it grants you the duty and responsibility to tell me. So I have asked –

THE COURT: Mr. Jackson, you are not answering my question, sir. My question to you is whether or not you understand that criminal law is very complex. Yes or no, sir.

THE DEFENDANT: It's different than – are you referring to the procedures? Are you referring – in what sense is criminal law complex? The procedures?

THE COURT: The procedures, the substance of the law, yes, sir. Do you understand that the law is very complex?

THE DEFENDANT: I do not understand the nature and the cause of the laws. However, I am understanding that I have a right to represent myself. I have the right to know what jurisdiction that these proceedings are in.

THE COURT: Mr. Jackson, let me ask you this, sir. How far have you gone in school?

THE DEFENDANT: As I have stated before and the record also reflects that I have asked this Court, I have asked [9] for published Rules of Criminal Procedure. I have asked for this Court to define as to whether this is a commercial court, this is a court of equity, is this a court of record.

THE COURT: Mr. Jackson, simple question.

THE DEFENDANT: Can you answer that question before we go further?

THE COURT: How far have you gone – how far have you gone in school, sir?

THE DEFENDANT: Can you answer that question before we go further?

THE COURT: Mr. Jackson, if you have any questions about the Court's jurisdiction, you can file a written motion and the Court will clarify to the extent that the Court needs to clarify anything further than the Court has already done in the 2016 case. If there is any issue that you would like the Court to rule on,

you need to file a written motion to have the Court issue a ruling.

Mr. Jackson, my question to you is how far have you gone in school.

THE DEFENDANT: Quite far.

THE COURT: Have you graduated high school?

THE DEFENDANT: Yes.

THE COURT: Have you graduated college?

THE DEFENDANT: Yes.

THE COURT: Have you gotten a master's degree?

[10] THE DEFENDANT: Very close to.

THE COURT: Okay. So do you read and understand the English language?

THE DEFENDANT: More than most.

THE COURT: Okay.

THE DEFENDANT: I am quite apt at interpreting things as well, which I think that's the –

THE COURT: Excuse me, sir.

Do you understand that you have the right to remain silent and that anything that you say can and may be used against you in court?

THE DEFENDANT: I am familiar with the rights that have been given to citizens.

THE COURT: Okay. And do you understand that because the law can be complex, including the procedures and the substance of the law –

THE DEFENDANT: And the jurisdiction –

THE COURT: – that an attorney – that an attorney trained in this field could be of great help to you in preparing and presenting your defense? Do you understand that, sir?

THE DEFENDANT: No, I do not. I do not see how –

THE COURT: You don't believe an attorney could help you?

THE DEFENDANT: I don't see how an attorney who represents a secret jurisdiction, known only to judges and [11] attorneys, could help me when I am trying to establish jurisdiction. I am trying to get this court to tell the truth. I am trying to get the trustee, Miss Donna up there, to acknowledge that she is not, in fact, the trustee of this account, that I am as it has been filed.

I am trying to get the Court to admit the truth, that this is an admiralty court, which if that's the case, then we can proceed as long as I know, but as long as this Court continues to use plausible deniability, then there's probably going to be some misunderstandings.

THE COURT: Okay. Mr. Jackson, do you understand that you do have the right to represent yourself but by doing so you run a great risk in not properly presenting your case?

THE DEFENDANT: I understand there is some procedures that have not been forthwith and – as far as the process. I have asked for this Court to –

THE COURT: Mr. Jackson – Mr. Jackson, do you understand, sir –

THE DEFENDANT: – divulge which procedure –

THE COURT: Excuse me, sir.

Mr. Jackson, do you understand that you have the right to confront the witnesses against you and to cross-examine them?

THE DEFENDANT: If you don't want me to speak, I can be quiet.

[12] THE COURT: I want you to answer my questions, please, sir.

THE DEFENDANT: Why are you not answering my questions?

THE COURT: Do you understand that you have the right to confront witnesses against you and to cross-examine them?

THE DEFENDANT: Speaking of, where are the witnesses? Is Tyler Schmid here today? Tyler?

Let the record reflect that Tyler Schmid is not here, has never been here. There is no sworn statement from the injured party. And, again, I have made motions to dismiss.

Go on.

THE COURT: Do you understand you have the right to confront the witnesses against you at trial? Yes or no, sir.

THE DEFENDANT: I understand there are procedures in place.

THE COURT: Okay. And that you would be expected to follow those procedures if you represent yourself?

THE DEFENDANT: If I can get a published copy of those rules and procedures, that would be great but – if you can instruct –

THE COURT: As I have previously –

THE DEFENDANT: – the district attorney to provide the rules – published Rules of Criminal Procedure under your [13] alleged statutory jurisdiction, that would be great.

THE COURT: And as I have previously advised you, Mr. Jackson, those are available at the public library.

Do you understand that you would have the right –

THE DEFENDANT: Actually, they are not. Let the record reflect that they are not.

THE COURT: – that you would have the right to compel the witnesses to come and testify on your behalf? Do you understand that you can compel witnesses to come to trial?

THE DEFENDANT: I understand there are procedures in place.

THE COURT: All right. And, of course, you understand you would be expected to follow those procedures.

THE DEFENDANT: If I can get the published Rules of Criminal Procedure for the alleged statutory jurisdiction that is not in the state and U.S. courts, not in the State's website, the County's website, the Court's website, and librarians don't seem to have any clue what I am asking for.

THE COURT: Mr. Jackson, what I am hearing you say is that you –

THE DEFENDANT: There are no published Rules of Criminal Procedure under statutory jurisdiction. That is what I am saying clear and for the record.

THE COURT: Mr. Jackson, looking at the new case, what I hear you saying is that you wish to give up your right to [14] an attorney and that you wish to represent yourself; correct?

THE DEFENDANT: I am representing myself.

THE COURT: Okay. And, Mr. Jackson, are you making that decision of your own choice?

Are you making that decision of your own choice, sir? Yes or no.

THE DEFENDANT: To represent myself?

THE COURT: Correct.

THE DEFENDANT: I am representing myself.

THE COURT: Okay. I believe that based on Mr. Jackson's answers to my questions and his very clear statement that he is representing himself that he is opting to give up his right to an attorney in 17CR522, and that he is doing so knowingly and voluntarily, and that the Court will proceed with 17CR522 with Mr. Jackson representing himself. The Court has previously determined that Mr. Jackson is representing himself in 16CR1854.

So, Mr. Jackson, let's turn to case number 16CR1854. That case is set today for a motions hearing. The only motion that was filed within the Court's deadlines for filing pretrial motions was the People's motion, notice of intent to introduce acts of dishonesty if the defendant testifies under Rule 608(b).

THE DEFENDANT: What happened to the motion that I filed previously, the written motion that I filed previously to dismiss for failure to establish jurisdiction that you, quote, [15] took under advisement?

THE COURT: A written order was issued on that quite some time ago, sir. Let me find the date on that.

That was – the written order was issued December 23rd, 2016, and I will have the clerk print out a copy

of that for you, if you wish. It was served by mail at the last known address.

Mr. Behler or Mr. Axmacher, who is arguing for the People?

MR. BEHLER: Your Honor, I will.

THE COURT: Okay.

MR. BEHLER: Your Honor, I will be pretty darn concise on this.

I did file the notice pursuant to 608. I don't know that we necessarily need to pursuant to case law, but I always note that *People v. Pratt* case, 759 P.2d 676. I believe both of these acts that I have put forth in there are admissible if the defendant chooses to testify.

And unless the Court has questions for me on case law or anything, I believe that's it, Your Honor.

THE COURT: Okay. Thank you.

Mr. Jackson, in the People's motion they are requesting the ability, if you choose to testify in trial in 16CR1854, to cross-examine you in regard to the acts that are outlined in their motion and the attachment. What is your [16] position in regard to that motion?

THE DEFENDANT: I object.

THE COURT: Okay. Anything further that you would like me to know about that?

THE DEFENDANT: Using something from a previous case –

THE COURT: Sir, if you can please stand when you address the Court and stand at the podium, please.

THE DEFENDANT: Why do I have to stand?

THE COURT: Because I have asked you to, sir.

Please, if you could stand at the podium, please.

THE DEFENDANT: Let the record reflect that I have to stand at the podium under the duress of the instructions of the Court.

THE COURT: Okay. Anything else you would like me to know, sir?

THE DEFENDANT: Using a prior – using a prior case to establish intent? Yeah, I object to that, especially when the outcome of that case wasn't – was different than the charge. I was not convicted on that charge.

THE COURT: Okay.

THE DEFENDANT: But nice try.

THE COURT: Mr. Behler, just so I am clear, the intent is to address credibility; is that correct?

MR. BEHLER: Yes, Your Honor.

[17] THE COURT: All right. In reviewing the People's notice and the information attached to that, I will allow the People to inquire to the extent allowed under Rule 608(b) of Mr. Jackson in regard to the prior acts of dishonesty. I do believe that a prior theft, particularly under the circumstances of the prior action that is raised here in the attachments to the notice, does meet the requirements of Rule 608(b) and may be inquired into only as to cross-examination.

Mr. Jackson, if there's any additional objection, you can raise that at the time of trial.

In terms of that 16CR1854, we do have that case set for trial to begin April 12th at 8:30, and we have a pretrial conference in that matter set at 1:00 p.m. on April 4th, so our next –

THE DEFENDANT: Did the Court receive the motions that I filed?

THE COURT: No. When did you file them?

THE DEFENDANT: Moments ago.

THE COURT: Then they won't be available.

THE DEFENDANT: He said that he would send them through to your system. If not, I am sure the People can share with you a copy, or if you like, I can share with you a copy.

THE COURT: Okay. So you have just given a copy to the district attorney?

MR. BEHLER: I'm sorry, Your Honor. I was given a [18] copy of a few different things here.

THE COURT: Okay.

THE DEFENDANT: Why don't you take – give him a moment so he can review.

MR. BEHLER: Your Honor, I have reviewed them. If the Court would like to look at them, I can bring them up to the Court, if I may approach.

THE COURT: Yes. Thank you.

At this point I don't believe they will be in my inbox until Monday.

THE DEFENDANT: Permission to approach the bench? I want to make sure you have the correct copies.

THE COURT: No, I will tell you what I have, sir.

I have a Motion to Dismiss Failure to Establish Jurisdiction and a Motion to Dismiss, Summary Judgment. I have an Oath of Office, and apparently this oath was administered by the Holy Spirit. I have

an Affidavit of Declaration of Trust, and I have an Amended Affidavit of Truth and Fact at Law.

Okay. In terms of any motions that – or any of these filings – let me ask, first, Mr. Jackson, anything that I missed?

THE DEFENDANT: You have the dismiss for failure to establish jurisdiction, you have the Affidavit of Declaration of Trust, you have dismiss for summary judgment, and truth and fact at law, and, of course, the Oath of Office for private attorney [19] general.

THE COURT: Um-hum. Okay.

It looks like the only two matters that you filed that would require any Court involvement would be the Motion to Dismiss Failure to Establish Jurisdiction and the Motion to Dismiss, Summary Judgment. Those are titled as motions.

It looks, however, Mr. Jackson, like the Motion to Dismiss Failure to Establish Jurisdiction –

THE DEFENDANT: That's the second motion that I made.

THE COURT: It's the same thing that you filed back in December? It looks like it is.

THE DEFENDANT: No, it's a little different.

THE COURT: Okay.

THE DEFENDANT: Do you not have the one that I filed back in December?

THE COURT: I do have the one you filed in December, and I have the order denying that.

THE DEFENDANT: Okay.

THE COURT: And –

THE DEFENDANT: Have the People provided a contract, an international contract in dispute? If so, can you ask them to provide that and to show how I am a party to it and to perform under it? And if you cannot, then I make a motion to dismiss.

[20] THE COURT: Mr. Jackson, in terms of the motion to dismiss regarding jurisdiction, in reviewing that, it appears to be the same claims that were previously made by your filing of December 23rd, 2016, which were addressed in the order regarding the motion to dismiss that the Court issued on December 23rd, 2016.

THE DEFENDANT: Can you state for the record what the original motion to dismiss was and how it was read?

THE COURT: The title of it was Motion to Dismiss: Failure to Establish/Prove Jurisdiction.

In regard to the other motion –

THE DEFENDANT: I'm sorry. Can you state what was in the request to the Court and the applicable laws that applied in the original for the record?

THE COURT: Mr. Jackson, I have issued a written order on that. I am not going to rehash that.

THE DEFENDANT: I didn't get that written order. Do you have a copy of that order?

THE COURT: I do.

Mr. Behler, if you wouldn't mind.

In regard to the other motion, any argument from the People in regard to that?

MR. BEHLER: Your Honor, I would ask it be denied. I think on the initial – in the newest dismiss for failure

to establish jurisdiction, I think it's substantively similar to a [21] motion previously filed.

THE COURT: Right, and I am denying that on the same basis as the December 23rd order.

MR. BEHLER: Your Honor, on the dismiss summary judgment, it's talking about some sort of international contract in dispute. Your Honor, I would ask that be denied as well.

THE COURT: Okay.

THE DEFENDANT: Before you do that –

MR. BEHLER: I would also –

THE DEFENDANT: – I would highly advise that you take that under advisement because we are talking about contract law. We are talking about trust law at this moment. Okay? So I have asked again, and would the Court please state for the record, is this a court –

As a matter of fact, Donna, if you would like to answer this since you are the trustee. Is this a court of –

THE COURT: Mr. Jackson, Mr. Jackson, you are out of order, sir, you are out of order. You will address me, and you will not address my clerk, you will not address the district attorney directly in court. You will address me.

Mr. Behler, what else did you want to say before you were interrupted –

THE DEFENDANT: I wasn't done saying what I was saying.

THE COURT: – before you were interrupted. [22] Mr. Behler?

MR. BEHLER: Thank you, Your Honor.

I would also note that these motions are significantly past a motions deadline as set by the Court.

THE DEFENDANT: Today is the motions deadline. How is it past?

THE COURT: No. Mr. Jackson, the motions deadline was February 27th as my – in accordance with my prior order.

THE DEFENDANT: For 1854?

THE COURT: Yes.

THE DEFENDANT: How is it past when we have gone through five arraignments and we are just now coming to motions today?

THE COURT: Okay. As you requested, Mr. Jackson, I will take the motion under advisement. Okay? And I will issue a written order in regard to that.

THE DEFENDANT: Please let the record reflect that it is the intention of the Court to take under advisement, again, the trust account, the commercial account under the wardship name. Let the record reflect –

THE COURT: Mr. Jackson, let me just tell you that, if I say something, it is on the record, so you don't need to repeat that. The record should reflect the things that I just said.

THE DEFENDANT: I am perfecting for myself, so the [23] record reflects what I said.

THE COURT: Okay. All right. Mr. Jackson, in terms of our pretrial conference, we will see you April 4th at 1:00 p.m. There are particular orders that the Court has issued –

THE DEFENDANT: I have asked the Court to make a motion –

THE COURT: Mr. Jackson, let me finish.

Mr. Jackson, April 4th at 1:00 p.m. we are having our pretrial conference. I had issued an order on February 7th with jury trial procedures and deadlines.

Mr. Behler, do you mind giving this to Mr. Jackson?

Mr. Jackson was previously given a copy of that.

MR. BEHLER: If I may approach?

THE COURT: Please, but I want to make sure that he has that.

Trial is set to begin April 12th at 8:30 a.m. The question is further what we need to do with case number 17CR522. What is the People's position in regard to proceeding with that case?

MR. BEHLER: Your Honor, I ask to set that case for arraignment on April 4th.

THE COURT: Mr. Jackson?

THE DEFENDANT: Your Honor, I am looking at this Order Regarding Motion to Dismiss, and it says:

[24] "The Court has reviewed the motion to dismiss and denies the motion."

And it says here that:

"The Court need not address those arguments as they are frivolous . . . (holding that arguments challenging jurisdiction under claims of being a 'sovereign citizen' –"

I have never made such a claim as a sovereign citizen. Let me inform and correct the Court. There is no such thing as a sovereign citizen.

THE COURT: Mr. Jackson, that issue –

THE DEFENDANT: One cannot both be sovereign and one cannot be both a citizen.

THE COURT: Mr. Jackson –

THE DEFENDANT: So any idiots that come forward saying that –

THE COURT: Sorry?

THE DEFENDANT: – any people that come forward claiming sovereign citizens don't know what they are talking about. I never made such a claim.

THE COURT: Mr. Jackson, Mr. Jackson, that ruling has issued, that order has issued. That is not before the Court at this time.

Mr. Behler.

MR. BEHLER: Your Honor, I just want –

[25] THE DEFENDANT: I object to the ruling.

MR. BEHLER: Your Honor, I just wanted to let the Court know, we did file, and I believe the Court has already had it, an additional count of violation of bail bond on 17CR522.

THE COURT: Um-hum. Okay.

Mr. Jackson, we will set 17CR522 for arraignment on April 4th, 2017, at 1:00 p.m. You were previously advised of the charges in regard to that case. I am going to remind you, sir, of what those charges are so that you can be prepared at that time to enter your plea of guilty, not guilty, or no contest.

Count 1 is possession of a controlled substance, a class 4 drug felony, alleged to have occurred on or about February 24, 2017. Jheshua Daniel Jackson

unlawfully, feloniously, and knowingly possessed a material, compound, mixture, or preparation that contained psilocin, a schedule I or II controlled substance, in violation of section 18-18-403.5(1)(2)(a) of the Colorado Revised Statutes.

Count 2 is driving under restraint, a misdemeanor. It alleges on or about February 24, 2017, Jheshua Daniel Jackson unlawfully operated or drove a motor vehicle upon a highway with knowledge that the defendant's license or driving privilege was under restraint in violation of section 42-2-138(1)(a) of the Colorado Revised Statutes.

And additional Count 3, violation of bail bond [26] conditions, a class 6 felony, alleges on or about February 24, 2017, in the County of Larimer, State of Colorado, Jheshua Daniel Jackson, having been released on bail bond, in Larimer County case number 16CR1854, in which he was accused by complaint and information of the commission of identity theft, 18-5-902(1)(a) of the Colorado Revised Statutes, a felony, arising from the conduct for which he was arrested, unlawfully, feloniously, and knowingly violated a condition of the bond, in violation of section 18-8-212(1) of the Colorado Revised Statutes.

So those are the outstanding charges. I will set that for arraignment, at which time you can enter your plea of guilty, not guilty, or no contest. That will be April 4th at 1:00 p.m., and our trial in the 2016 case is scheduled to begin at 8:30 on April 12th.

Mr. Jackson, your bond will continue along with all the conditions, and I will issue written orders on the motions that you have filed today.

THE DEFENDANT: Your Honor, I ask for you to read the motion to – I asked for a motion – for ruling

on 1854, the motion for summary judgment. I am asking for that now.

THE COURT: Mr. Jackson, based on my review of that motion, that motion is respectfully denied as frivolous.

Thank you. We will see you April 4th at 1:00 p.m.

THE DEFENDANT: "Denied as frivolous." Please [27] define the word "frivolous."

THE COURT: You are excused. You are excused.

Thank you.

THE DEFENDANT: Please define the word "frivolous."

THE COURT: You are excused, sir. Thank you.

THE DEFENDANT: Let the record reflect that I do object –

THE COURT: Sir, you are excused from the courtroom.

Thank you.

THE DEFENDANT: I have April 4 for 522, CR522.

THE COURT: Both cases are set on April 4th at 1:00 p.m., and your bonds will continue to that date, along with all of the bond conditions.

(Proceedings adjourned; 4:15 p.m.)

* * * * *

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APPENDIX J

[1] DISTRICT COURT
LARIMER COUNTY
STATE OF COLORADO
201 LaPorte Avenue
Fort Collins, CO 80521-2761

CASE NOS. 2016 CR 1854
2017 CR 522 DIVISION 3B

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff,

vs.

JHESHUA DANIEL JACKSON,
Defendant.

FOR COURT USE ONLY

For the People:
ROBERT J. AXMACHER
Reg. No. 43229
BRENT A. BEHLER
Reg. No. 44808

Defendant appeared pro se.

REPORTER'S TRANSCRIPT
TUESDAY, APRIL 4, 2017, 2:00 P.M.

The matters came on for PRETRIAL READINESS CONFERENCE and ARRAIGNMENT before the HONORABLE JULIE KUNCE FIELD, Judge of the Eighth Judicial District Court.

THE DEFENDANT WAS PERSONALLY PRESENT.

Reported by Amy Schmidt, RPR, CRCR, CSR

[2] TUESDAY, APRIL 4, 2017, 2:00 P.M.

* * * * *

(The following proceedings were had in open court.)

THE COURT: Let's go on the record in Mr. Jackson's cases, 16CR1854 and 17CR522.

In terms of 16CR1854 –

Mr. Jackson, you can come on up to the counsel table.

THE DEFENDANT: Can the Court hear me?

THE COURT: I want you to sit at the counsel table, please.

All right. Thank you.

We have the 16CR1854 case set for a pretrial conference and the 17CR522 case set for arraignment.

Let's start first with the pretrial conference. I see that the district attorney has filed jury instructions, witness lists, trial exhibit lists, and an Amended Count 3.

MR. BEHLER: Your Honor, that is all accurate. I filed all those yesterday. I do have copies for the defendant if he should desire them. They are right on the podium.

Sorry to interrupt the Court. I had a quick amendment to Count 3, just to add a few things; specifically, some cash and a football ticket on the amended count. I would note that is an amendment very much to form, not substance. It doesn't change the type of charge. It doesn't change the level [3] of offense or anything like that, so I ask the Court grant that motion pursuant to 7(e). Beyond that, Your Honor, we are ready for trial.

THE COURT: Okay. So the People are prepared to – for trial, which is scheduled to begin April 12th at 8:30.

MR. BEHLER: Yes, Your Honor.

THE COURT: Mr. Jackson, are you prepared for trial to begin April 12 at 8:30?

THE DEFENDANT: Let the record reflect that I am here on special appearance as trustee and holder in due course on behalf of the name Jheshua Jackson, the debtor. Let the record also reflect I am also here as a benefit to the Court, and I am here to settle the account of 522 and 1854.

Under CFR 7211, all crimes are commercial. So since that being the case, and this is, in fact, a commercial crime, I need for the – I need for the People to produce the contract in dispute for which the defendant has allegedly breached this contract and for the People to produce this contract, bring it forward, show how I am a party to it, and what duties I am to perform under it.

THE COURT: Okay. So, Mr. Jackson, we have four charges in the complaint: Count 1, identity theft, a class 4 felony; Count 2, possession of a financial device, a class 1 misdemeanor –

THE DEFENDANT: Sorry, you misunderstood. I wasn't [4] asking what the claims were. I was asking for the –

THE COURT: I know. Mr. Jackson –

THE DEFENDANT: – contract.

THE COURT: – I listened politely, and it's your turn to listen politely to me.

Count 1, identity theft, a class 4 felony. The penalty range for that charge is two to six years in the presumptive range, plus three years of mandatory parole.

Is there anything that would modify the presumptive sentence on Count 1?

MR. BEHLER: Your Honor, I do not believe so.

THE COURT: Count 2, criminal possession of a financial device, a class 1 misdemeanor. The sentencing range for that is 6 to 18 months in jail and a fine of 500 to \$5,000.

Anything that would modify the presumptive sentence there?

MR. BEHLER: Your Honor, I'm sorry. On Count 2, no, and I believe that would hold true for Counts 3 and 4, Your Honor.

THE COURT: And Counts 3 and 4 are each class 3 misdemeanors. Amended Count 3, which the Court will approve, has a penalty range of up to six months in jail and a fine of 50 to \$750. That is a theft count. And Count 4 is second degree criminal trespass, a class 3 misdemeanor, with the same penalty range that I just outlined.

[5] Those counts are set for trial, and the Court is ready to proceed to trial on April 12th at 8:30 a.m.

In terms of jurors, we have this set for a three-day trial. Do you anticipate needing any alternate jurors?

MR. BEHLER: Your Honor, I am always hesitant to go without any alternate jurors. I don't see this going all three days, but I have been wrong before. I would ask for one alternate juror, please.

THE COURT: Okay. I will approve one alternate juror.

How long would each side like for voir dire?

MR. BEHLER: Your Honor, I usually ask for 45. I don't know that quite that long will be necessary in this case, so 30, 35 minutes would be the People's recommendation.

THE COURT: Okay. All right. Mr. Jackson, is 35 minutes sufficient for voir dire?

THE DEFENDANT: How would I know?

THE COURT: Okay. All right. I will grant 35 minutes per side for voir dire.

THE DEFENDANT: Objection.

THE COURT: In terms of opening statements –

THE DEFENDANT: Objection.

THE COURT: – how long would the People like?

MR. BEHLER: I think 10 minutes should be sufficient.

[6] THE COURT: So 10 minutes for openings? Okay.

Mr. Jackson, 10 minutes for openings, or would you like 15?

THE DEFENDANT: I would like for this Court to answer my questions. I would like for this Court to act in its oath of office, and I would like for this Court to respond by the Sixth Amendment right to the questions that I have.

THE COURT: Okay. Mr. Jackson, I appreciate your comments. I have issued several written orders in each of the cases that address the questions that you are repeatedly asking. If you need to review those, those are available to you and have been provided to you.

Today, the task is to set this case for trial and to deal with any pretrial matters that we need to address for the April 12th trial.

THE DEFENDANT: So if the Court has its answers to the questions I asked before, then it should have no problem reiterating and repeating what the answers were because I don't have them.

THE COURT: Mr. Jackson, I am happy to have copies of those printed out for you after this pretrial conference if you would like to see copies of those written orders again.

THE DEFENDANT: So you can't just tell me what you stated on the record, what the motions answer was?

THE COURT: The motions were denied.

[7] THE DEFENDANT: Okay. That's the reason why – I need to have an answer, Your Honor. You haven't given me an answer why you denied them under the law. I understand if it's a matter of law it's for the judge to decide, if it's a matter of fact it's for the jury to decide. If you make it an order, I will ask you to –

THE COURT: Mr. Jackson, thank you. I have asked my clerk to print out copies for you of all of the orders that I have issued in your case. You will have those available to you in writing, which is, I think –

THE DEFENDANT: Could you answer one question?

THE COURT: – probably the clearest way –

THE DEFENDANT: Your Honor, could you answer one question? I just want one question answered.

THE COURT: If it's an appropriate question that I can answer –

THE DEFENDANT: It's a Sixth Amendment question. It's very appropriate.

THE COURT: Okay. Ask your question, sir.

THE DEFENDANT: Is this a court of equity, a common law court, or a commercial court?

THE COURT: Okay. That question, sir, respectfully has been answered several times.

THE DEFENDANT: No, I have not had that answered for me. Please answer and state it on the record. Can you please [8] state it on the record? Please act in your oath of office, please. I don't think you will violate your oath of office if you do your constitutional duty under the United States constitution today.

THE COURT: Mr. Jackson, I am giving you additional copies of the written orders that I have issued. No other additional orders will be issued without a written motion being filed.

You are repeating the same things over and over again, and I have issued written orders, actually several in this case, on the same topic. I will give you copies of those when we are done here today.

The question that I have right now, sir, is 15 minutes for opening statements?

THE DEFENDANT: Twenty.

THE COURT: So 20 minutes for openings on each side. I will approve 20 minutes for openings on each side.

I would also like to set time now for closing arguments. Mr. Behler?

MR. BEHLER: Your Honor, my inclination on that is 30 minutes. I don't view the evidence here as incredibly lengthy. If things get drawn out, I suppose I would ask to revisit this with the Court, but that would be my inclination, Your Honor.

THE COURT: Mr. Jackson, 30 minutes for closings?

[9] THE DEFENDANT: Yes, 30 minutes, and I also reserve the right to petition any last minute motions before trial.

THE COURT: What sort of motions, Mr. Jackson?

THE DEFENDANT: Any motions I deem necessary as I continue to try to figure out what the nature and the cause is of this, these claims, as I try to figure out what jurisdiction I am supposed to be in, as I have asked the Court to ask on the record as to whether this is a court – common law court, or is it a military tribunal, or admiralty court. I don't mind which one. I just want to know which – if this is over my head and I need for the Court to give me representation, then that representation should come from a U.S. military JAG officer.

But if the Court is going to continue using plausible deniability and not answering as to whether this is a common law court, providing me the opportunity to

defend myself properly, if the Court is not going to answer as to which jurisdiction it is in, how can I proceed forward? How can this possibly be a fair trial?

THE COURT: Mr. Jackson, I have a question for you. Do you have any jury instructions that you intend to provide, any proposed jury instructions?

THE DEFENDANT: If I had received the published copy of criminal procedure under the statutory jurisdiction that you allege, I would know how to do so, but I have not received that. This Court has failed to produce it. It has failed to tell the [10] People to bring forth the contract in dispute.

THE COURT: Okay. I will take that answer as a, no, you do not intend to offer at this time any alternative jury instructions. We can re-address that at the appropriate time in the trial.

Mr. Jackson, do you anticipate calling any witnesses?

THE DEFENDANT: I would imagine I would cross-examine whomever is called.

THE COURT: Okay. Do you intend to call any witnesses on your own behalf?

THE DEFENDANT: I do.

THE COURT: And can you – have you identified those individuals to the district attorney?

THE DEFENDANT: Not yet.

THE COURT: Okay. Mr. Jackson, I will give you until close of business tomorrow to identify any witnesses, including contact information, name and address and phone numbers, if available. Those would need to be filed as a written witness list in the court file and provided to the district attorney.

THE DEFENDANT: By what time?

THE COURT: By 5:00 p.m. tomorrow. So today is April 4th, so that would be by 5:00 p.m. on April 5th, which is one week before trial.

[11] THE DEFENDANT: So, Your Honor, is it true that the Sixth Amendment affords me the right to know what jurisdiction I am in and it grants you the responsibility and the duty to inform me?

THE COURT: Mr. Jackson –

THE DEFENDANT: That's a yes or no question, please.

THE COURT: Mr. Jackson, let me tell you. I have answered that question repeatedly in writing in several orders. I am not going to continue to answer that question.

THE DEFENDANT: So you are not going to state it on the record.

Okay. So let the record reflect and let the record show that it is the intention of the Court to try me in – under criminal action in a secret jurisdiction known only to the Court and to licensed attorneys for which I have not pled to. As a matter of fact, the Court entered a plea unlawfully on my behalf, noticed practicing law from the bench, and refuses to answer as to whether this is a common law court, an equity court, or a commercial court.

THE COURT: Let me ask. Do the People wish to have witnesses sequestered?

MR. BEHLER: Please, Your Honor, and I have advised them anticipating that ruling.

THE COURT: All right. I will issue a sequestration order, so any individual who is identified as being a

witness [12] will wait in the hall and may not be allowed in the courtroom until after they have provided their testimony and are released from any subpoena.

MR. BEHLER: Your Honor, I will have one advisory witness. It's Officer Ashleigh Rose from the CSU police department.

THE COURT: All right. I will allow Officer Rose to be seated at counsel table with the district attorney.

Mr. Jackson, you have the right as a defendant in a criminal action to write a –

THE DEFENDANT: I am just a trustee, Your Honor, in charge of the name.

THE COURT: – to write a theory of the case instruction, if you would like me to consider and have the jury consider a short jury instruction that gives your theory of what your defense is. If you could have that prepared by the first day of trial, at least as a draft. We can look at it and revise it towards the end of trial, but I would like to see that at 8:30 on April 12th.

Okay. In terms of conduct in the courtroom, I expect that counsel and the defendant will treat each other, the Court, witnesses, and members of the jury panel and any observers with respect; that Mr. Jackson and counsel will rise when making any objections; and to the extent that objections need to be heard outside the presence of the jury, the jury will [13] either be excused or we will address those matters here at the bench. You should ask before approaching a witness or the witness stand. You should ask before approaching the reporter's table or the Court.

I expect that Mr. Jackson and counsel will instruct witnesses as to any orders that affect them; particularly,

the sequestration order, and advise them that they are not to discuss any testimony that they have heard with other witnesses prior to the conclusion of their own testimony.

Counsel and Mr. Jackson should inform witnesses that they should answer questions clearly and verbally and that counsel, Mr. Jackson, and the witnesses and the Court should not talk over each other. I will treat everyone with respect in this courtroom, but to the extent that matters are not focused on the issues that the jury is to decide and that the Court is to decide, then those side notes will be cut short as appropriate.

Witnesses may not argue with counsel, nor may they ask questions of counsel or Mr. Jackson while they are on the witness stand, and that level of respect will include referring to witnesses and the defendant and counsel by sir names, Mr. Jackson, Mr. Behler, Mr. Axmacher, Officer Rose.

Anything further from the People?

THE DEFENDANT: Yes.

THE COURT: I'm sorry. I asked from the People [14] first.

MR. BEHLER: Your Honor, I believe that is it.

Thank you.

THE COURT: Mr. Jackson, anything further?

THE DEFENDANT: Yes. Can you tell the People to produce the contact, please? Just ask them to produce the contract.

THE COURT: The People have filed and presented and given you a copy of the witness list and trial exhibits that will be at issue and that relate to the charges.

THE DEFENDANT: The witness list is different than an international contract. Please bring forth the international contract in dispute.

THE COURT: Mr. Jackson, why don't you take a look at the exhibit list before you make any further requests.

That will conclude what we need to do in case number 16CR1854. I expect Mr. Jackson and counsel to be here at 8:30 on Wednesday, April 12. The jury should be brought up around 9:00.

THE DEFENDANT: So are you saying, as it stands, that there – on the record you are saying that the People do not have an international contract to produce, and as we are still here under this same special appearance, that the witness is not here or the alleged victim is not here? Tyler Schmid is not here. I have a right to face my accuser. Since they are [15] not here and have no sworn statement, then why is – how is there a crime? Where there's no victim, there's no crime. I am confused as to how these claims – what these commercial claims have to do with the defendant.

THE COURT: It looks like Mr. Schmid is on the People's witness list.

MR. BEHLER: He is, Your Honor. We will be calling him.

THE DEFENDANT: Mr. Schmid is not here now.

THE COURT: We will take this matter up then on April 12th. In regard to –

THE DEFENDANT: Just so that – just so that I can object, just for the record, that the alleged victim is not here. The People cannot both be a party and also be the victim, so I am a little confused there as to how that is operating. But, again, I don't know what court

we are in. I am not exactly sure what jurisdiction this is and how this all plays out, so I am not sure how my United States constitutional rights have been violated thus far. I guess this whole thing is simply for appeal.

THE COURT: All right. Thank you. Mr. Jackson, your concerns are certainly on the record.

THE DEFENDANT: Duly noted. Certainly they are.

THE COURT: In 17CR522, we had this case set for arraignment, and let me pull up the charges there. It looks [16] like there's an additional count that was filed as well?

THE AXMACHER: There is, Your Honor, Count 3, violation of bail bond conditions. I believe the Court has already signed the order authorizing that count.

THE COURT: Mr. Jackson – sorry. Just one moment. Let me pull up all of the charges here.

Mr. Jackson, in case number 17CR522, on Count 1, possession of a controlled substance, a class 4 drug felony, which alleges on or about February 24, 2017, Jheshua Daniel Jackson unlawfully, feloniously, and knowingly possessed a material, compound, mixture, or preparation that contained psilocin, a schedule I or II controlled substance, in violation of section 18-18-403.5(1)(2)(a) of the Colorado Revised Statutes, how do you plead, sir, guilty or not guilty?

THE DEFENDANT: I object.

THE COURT: The Court will enter a not guilty –

THE DEFENDANT: I object.

THE COURT: – plea for Mr. Jackson on Count 1.

THE DEFENDANT: I object.

THE COURT: Count 2, driving under restraint, alleges on or about February 24, 2017, Jheshua Daniel Jackson unlawfully operated or drove a motor vehicle upon a highway with knowledge that the defendant's license or driving privilege was under restraint in violation of section 42-2-138(1)(a) of the Colorado Revised Statutes.

[17] Mr. Jackson, how do you plead, guilty or not guilty?

THE DEFENDANT: I object to entering into a plea.

THE COURT: Okay. The Court will accept Mr. Jackson's statement as a not guilty plea as to Count 2.

As to additional count 3, violation of bail bond, a class 6 felony, that alleges on or about February 24, 2017, in the County of Larimer, State of Colorado, Jheshua Daniel Jackson, having been released on bail bond in Larimer County case number 16CR1854, in which he was accused by complaint and information of the commission of identity theft, 18-5-902(1)(a) of the Colorado Revised Statutes, a felony, arising from the conduct for which he was arrested, unlawfully, feloniously, and knowingly violated a condition of the bond in violation of section 18-8-212(1) of the Colorado Revised Statutes.

Mr. Jackson, as to additional Count 3, how do you plead, guilty or not guilty?

THE DEFENDANT: Let the record reflect that I object to entering into a plea, and I object that the Court has entered a plea on my behalf. That is called practicing law from the bench, which you already know you are not allowed to do that. Only I or my attorney can enter a plea on my behalf. So I actually make a motion for you to withdraw your plea so that I

can enter my own plea. I do object to you entering a plea unlawfully on my behalf.

THE COURT: So, Mr. Jackson, then if you could [18] please answer my question. As to additional Count 3, violation of bail bond –

THE DEFENDANT: Has this Court made a judicial determination that I am not guilty on Count 2?

THE COURT: As you sit before the Court, sir, you are presumed innocent.

THE DEFENDANT: So if you made the judicial determination that I am not guilty, then I guess that's the conclusion. You have made the determination that I am not guilty.

THE COURT: So I will take that as a not guilty plea on all three counts.

THE DEFENDANT: I am not entering a plea, and I object to entering a plea because I do not understand the nature and the charges of this entire proceeding.

THE COURT: The Court will enter a not guilty plea –

THE DEFENDANT: I object to you entering that plea.

THE COURT: – on all three counts of 17CR522, and we will set the matter for trial.

THE DEFENDANT: I object and make a motion to dismiss.

THE COURT: Just a moment. Mr. Jackson, I have a question for you. You referenced an attorney. Do you have an attorney in 17CR522?

[19] I have not seen an entry of appearance, and we have gone through an advisement where you indicated

to me that you are representing yourself. I just want to clarify whether that has changed in regard to 17CR522 because you did reference an attorney.

THE DEFENDANT: Is this Court asking me a question?

THE COURT: Do you have an attorney, sir?

THE DEFENDANT: And by the same token that you are asking me a question, I am asking this Court a question. Is this a commercial court, equity court, or a common law court? It's a simple question. If you answer mine, I will answer yours.

THE COURT: Mr. Jackson, do you have an attorney?

THE DEFENDANT: Is this a commercial court, an equity court, or a court of common law?

THE COURT: Okay. Not seeing an entry of appearance in 17CR522, the Court presumes that Mr. Jackson is continuing to represent himself consistent with the advisement that the Court previously gave.

We will set 17CR522 for trial. Mr. Axmacher,

Mr. Behler, how long do you think that this case would take to try?

MR. AXMACHER: Your Honor, it's a simple case. I think it would be tried in two, but I suppose blocking out three would be prudent.

[20] THE DEFENDANT: I object. I move this Court to move this matter over to federal court. I make a motion to change the venue to move this matter over to federal court.

THE COURT: Mr. Jackson, any motion that you make must be in writing, so if you wish to make a

written motion to that effect, the Court will consider it.

THE DEFENDANT: Very well.

THE COURT: Speedy trial runs October 4th of 2017.

THE DEFENDANT: And last but not least, since it is the intent of this Court to bring criminal action against me, against the defendant, the debtor, and all other names being used in this commercial court, since it is the intention of this Court to bring criminal action against the account, let the record reflect that I object.

I have made motions to dismiss and verbally make a motion. I shouldn't have to make a physical one unless this Court really sees fit to again. You know, I don't know your laws. I don't know what all your intangibles are and things of that nature, and I am not a licensed attorney. I am not licensed to practice in the bar like you guys are.

THE COURT: Let's set a deadline for motions to be filed. Mr. Jackson, I am going to set a deadline for motions to be filed in 17CR522. So if any motions could be filed by May 5th and any responses by May 26th, and we will set a motions hearing to occur on May 26th at 1:30.

[21] THE DEFENDANT: Motions deadline by when?

THE COURT: If you could file any written motions by May 5th, and any responses to any motions that are filed by the other side would need to be filed by May 26th.

Actually, maybe I want to set a motions hearing after that to give you all an opportunity to look at any responses.

MR. AXMACHER: Whatever the Court prefers, Your Honor. Maybe I might suggest just moving up that response deadline a couple of days. I am happy to get those in sooner.

THE COURT: All right. What if we said responses by May 22nd?

MR. AXMACHER: That would be perfect.

THE COURT: So responses by May 22nd, and then let's set a motions hearing at 1:30 on May 26. Okay?

Just so we are clear, Mr. Axmacher and Mr. Jackson, any motions would need to be filed by May 5th. Any responses to any motions that have been filed would need to be filed by May 22nd, and a motions hearing will be set for 1:30 on May 26.

Let's set trial in this case then to occur after that.

Do you have any information about the Gilmore trial that's set for that first week in June?

MR. AXMACHER: Your Honor, I believe we expect that to dispo.

[22] THE COURT: I would have – well, that's a little tight. Let me set something else. Any information about the Marks trial set at the end of June?

MR. AXMACHER: Your Honor, there's been discussion of a resolution, but I have not heard from defense counsel recently on that.

THE COURT: Okay. My preference would be, given my – what July and August looks like after that, would be to set this trial – it would be second set after the Marks trial, but I imagine that we would be able to find some coverage for one or the other. Okay. So June 26. Trial would be begin at 8:30. All right? June 26 at 8:30. All right. Three days.

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MR. AXMACHER: Thank you, Judge. That works for the People.

THE COURT: Mr. Jackson, June 26 at 8:30 would be our trial, our jury trial, and I will next see you in that case at 1:30 on May 26 for the motions hearing. Certainly, written motions should be filed by the deadlines that I previously gave.

In 16CR1854, I will see you at 8:30 on April 12th, and that will be for trial. If there are any additional motions that, Mr. Jackson, you would like me to consider, that would need to be filed in writing.

All right. We are adjourned. Thank you.

(Proceedings adjourned; 2:32 p.m.)

* * * * *

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APPENDIX K

[1] DISTRICT COURT
LARIMER COUNTY
COLORADO
201 La Porte Avenue
Fort Collins, CO 80521

Case No. 2016CR1854
Division 3B

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff,

v.

JHESHUA DANIEL JACKSON,
Defendant.

FOR COURT USE ONLY

For the People:

MR. BRENT A. BEHLER
Registration No. 44808

For the Defendant:

MR. JHESHUA DANIEL JACKSON, Pro se

COURT REPORTER'S TRANSCRIPT

JURY TRIAL - DAY 1

The matter came on for Jury Trial on April 12, 2017, before the HONORABLE JULIE KUNCE FIELD, Judge of the District Court, and the following proceedings were had:

Reported by Nicole B. Holden, RPR

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[3] PROCEEDINGS

THE COURT: People of the State of Colorado versus Jheshua Daniel Jackson, 16CR1854. This matter is set for trial this morning. I see the district attorney – and are you Officer Rose?

THE WITNESS: Yes, ma'am.

THE COURT: – with Officer Rose. I don't see

Mr. Jackson. Although, we did receive information from the clerk's office that he is downstairs in the clerk's office. I'm willing to wait a few minutes based on that information and see when he appears.

MR. BEHLER: Understood. Thank you.

THE COURT: Mr. Jackson, you can come on up to the defense table if you would. If you would remove your hat in the courtroom, please.

Just as reminder to everyone no cell phones in the courtroom and no recording. If everyone could be sure your cell phones are off.

MR. JACKSON: I have documents on here that I need for trial.

THE COURT: You have documents that you need –

MR. JACKSON: Yeah. I couldn't make copies so I made photos of them. I have no problem showing them to you.

THE COURT: Okay. Do you have means to print those out? Because if you're showing them to witnesses. Otherwise, [4] you'll have to show them your phone, and we may be at a place where we would need to take your phone into evidence. Do you have a means of printing those out?

MR. JACKSON: Sure. I can go downstairs and do it.

THE COURT: Okay. Well, I think you should have an opportunity to do that. Certainly this morning we'll be doing voir dire, so you should have an opportunity to do that over the break. We may even have a few minutes this morning before we bring the jury in.

MR. JACKSON: If you would like, I could go get started now.

THE COURT: Let's get started with the pretrial matters that is we need to address. Mr. Jackson, has appeared in court this morning, and calling the case of the people of the state of Colorado versus Jheshua Jackson, 16CR1854. Mr. Jackson is here pro se.

As I was going through the pretrial notes, I don't believe that we identified, or if we did, I did not write down who the alternate would be. So we can just pick a seat number. Seat No. 5 is always a choice that I like to make. Or Seat No. 13. Or the last person who is in the box could be the alternate.

Any preference, Mr. Behler?

MR. BEHLER: No, Your Honor. Whatever works for the Court.

[5] THE COURT: Mr. Jackson, any preference who the alternate would be in terms of seat number or last person in the box?

MR. JACKSON: I have no idea about any of those things. I'm here for the benefit of the Court, so I'm here to represent the named defendant.

THE COURT: Okay. Mr. Jackson, Mr. Behler, let's choose Seat No. 5. Whoever is in Seat No. 5 at the time of jury selection and ends up there after the preemptory challenges will be the alternate. We did say jury questions would be allowed, correct?

MR. BEHLER: Your Honor, that is my recollection.

THE COURT: Okay. My note wasn't entirely clear, but that was my recollection as well. Are there any other matters before we bring the jury up, Mr. Behler?

MR. JACKSON: I have one matter.

THE COURT: Let me ask Mr. Behler first and then, Mr. Jackson, it'll be your turn.

MR. BEHLER: Your Honor, I don't believe so at this time.

THE COURT: Okay. All right. Mr. Jackson, what is your issue?

MR. JACKSON: I may need to make copies of this affidavit of truth and fact of law and submit that.

THE COURT: Okay. All right.

[6] MR. JACKSON: I only have the one here.

THE COURT: Mr. Jackson, you understand that this is the trial? The case is set for trial this morning. And the first step in the trial is that the jury will be brought up. We'll be doing voir dire of the jury. I've allowed each side 35 minutes for questions to the jury panel. After that, once the jury is sworn in and selected, then the opening statements would be the next opportunity. Any evidence would come at a later point in the trial.

So after opening statements, first the district attorney will have his opportunity for opening, then you'll have your opportunity for opening with 20 minutes allotted for each side. Then the district attorney will present their evidence. You will have an opportunity to cross-examine their witnesses. And then once the district attorney has rested and presented all of the evidence

that they wish to present in their case in chief, then you will have an opportunity to present your evidence.

So at that point it seems like your documents would not be needed certainly during the voir dire time. They may be needed during cross-examination of witnesses. But with any defense that you wish to put on, and, certainly, you don't need to present any witnesses at all if that is your choice.

Let me also remind you, sir, that you are charged here with a crime, four counts. Anything that you say can and may be [7] used against you in court. I know that you are representing yourself, but did want to caution you about that in regard to any admissions.

After you have concluded your evidence, any evidence that you wish to present, and of course you do not have to present any evidence at all, the district attorney will have an opportunity for rebuttal. Then it would be time for closing arguments starting with the district attorney. You would have an opportunity for closing argument. And then the district attorney would have a chance for rebuttal argument. Then the case would be submitted to the jury.

So in terms of your documents, it's a long way to answer your question that if you need copies of your documents you should have an opportunity between now and when the evidence begins to get those copies. If there are no other matters we need to address now, I expect that the jury would be ready to go around 9:00.

MR. JACKSON: There are matters.

THE COURT: All right. Mr. Jackson, what would you like to address now?

MR. JACKSON: Two things. Actually, several things. I just want to state that I'm here as a benefit

to the Court, and I'm also here on special appearance. I'm stating for the record that I'm the trustee and holder in due course of this commercial account concerning the name all capital name of the defendant. [8] I have also the birth certificate for that name, which I see here that you have me down as Mr. Ben El David on the transcripts. Wasn't there before. So I don't know what's going on. I don't know half the stuff that you guys are up to.

THE COURT: Okay. Ms. Holden, if you could make sure on the realtime that it shows Mr. Jackson's name. Thank you.

MR. JACKSON: Again, as I've stated, I'm here for the benefit of the Court. I'm here to settle the matters of this transaction of this account. I'd just like to know how this Court is operating, because everything depends on it. In order for me to defend myself properly I have to know that, and I haven't received anything on that.

So if there are questions to the defendant who is all capital name here, can set this up here and you can ask [verbatim]. If you have any questions for the account, for the trustee account for which I'm here representing. Under UCC filed No. 1702078326839, I am the trustee, and I will be more than happy to help resolve and charge off whatever the debt transactions is in this case, but I have not been informed of what the debt transactions are because I have not received the contract. So can you please ask the district attorney to submit the contract for which is the reason why I'm here today.

THE COURT: Thank you, Mr. Jackson. I listened to everything you said. Sounds like these are all issues that have been previously dealt with through various written orders of [9] this Court. This case is set today

for jury trial on the charges in Case No. 16CR1854. It is the Court's intention to proceed to trial on those charges today. If you have any concerns about any prior rulings that the Court has made, certainly you can address those with the court of appeals.

Anything else, Mr. Behler?

MR. BEHLER: No, Your Honor.

THE COURT: Anything else, Mr. Jackson, before we bring the jury in? I believe that the bailiff just went downstairs to retrieve the jury.

MR. JACKSON: Yes. I just – not trying to be difficult. I don't understand how certain things can be filed and not responded to or not answered. It's my understanding that according to CR 47211 all crimes are commercial. So then this being the commercial court – well, that's just it. What court – what court is this? Is this an admiralty court? Is this an equity court? Is this a common law court? I need to know that before we proceed.

THE COURT: Mr. Jackson, those issues have been ruled on, and you have been given copies repeatedly of the Court's orders in regard to that.

MR. JACKSON: The ruling –

THE COURT: Mr. Jackson, just a moment. As far as that issue is concerned, the Court has resolved those issues –

MR. JACKSON: No, it has not.

[10] THE COURT: – in pretrial. Any concerns you have going forward, you can raise with the court of appeals. The jury will be brought up in 15 minutes, Mr. Jackson. You have an opportunity between now and 9:00 to take care of any copying or anything that

you would like to do. I expect everyone to be in their seats by 9:00 at the time that the jury comes.

MR. JACKSON: For the record interpretation, a ruling on a motion has nothing to do with answering what type of administrative court this is. A ruling that this Court's existence was long before that ruling occurred. So a ruling on the question is irrelevant. I need to know what type of court this is. Can you please answer that.

THE COURT: Mr. Jackson, do you want another copy of my written order from December? I'm happy to give that to you.

MR. JACKSON: A written order on denying a motion for dismissal has nothing to do with a Sixth Amendment question asking the Court to answer, which you have a duty and responsibility to answer the question.

THE COURT: Mr. Jackson, anything else? I've already ruled on that. I'm not going to continue this.

MR. JACKSON: So you're not going to answer the question?

THE COURT: I'm not going to continue this discussion, sir. I already ruled on it.

MR. JACKSON: Let the record reflect the Court refuses [11] to answer what type of court this is.

THE COURT: All right. Anything else?

MR. BEHLER: No, Your Honor.

MR. PATRICK: We will be back here at 9:00 with the jury. Mr. Jackson, I expect you to be in your seat at 9:00 and the district attorney and their advisory witness as well. See you back here at 9. Thank you.

(Brief recess.)

(The following discussions held outside the hearing of the jury:)

THE COURT: Mr. Jackson, I wanted to let you know that you have a list with the jurors' names on it. You may only use in the courtroom and must return it to the Court after trial. Or not after trial, after voir dire this morning. Do you understand that?

MR. JACKSON: I guess.

THE COURT: Okay. Mr. Behler, you understand that as well?

MR. BEHLER: Yes, Your Honor.

THE COURT: Thank you.

MR. JACKSON: Can I use the restroom right outside of the courtroom?

THE COURT: There is a restroom to the right.

MR. JACKSON: One minute is all I'll take. Thank you.

(The following discussions held within the hearing of

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[29] questions honestly and completely. Please listen carefully to all the questions and answers even when we're talking with someone else. By listening to what we ask others, you will be better prepared to answer when you will be questioned. This will help to shorten the jury selection process.

So at this point, we're going to call up 25 people to the jury box and the chairs in front of the jury box. Please take the seat that the bailiff indicates. We will be keeping a seating chart to keep track of your names. So we'll start at the top row, then the second row, then

the chairs in front of the box. So the clerk will now call 25 names. The names are randomly selected in this order by a computer program. If your name is called, I would venture to say it is your lucky day. I would suggest buying a lottery ticket. Just kidding. If we mispronounce your name, please let us know.

THE COURT CLERK: 4330, David McMaster. 4411, Scott Zuber. 4382, Karen Hammann. 3068, Gregory Dix. 4357, Adam Johnson. 4328, Joanie Vigil. 4403, Unique Cruz.

MR. JACKSON: Excuse me. I have a question.

THE COURT: Mr. Jackson, you can come up here if you would like to talk to me about anything. Mr. Behler.

MR. JACKSON: This is a list of jurors, right?

THE COURT: Shh. Keep your voice down.

MR. JACKSON: This is a list of jurors, correct?

THE COURT: That is the alphabetical.

[30] MR. JACKSON: This is all the people right now?

THE COURT: Correct. That is the alphabetical list. There is a random list.

MR. JACKSON: If it's random, how is it selecting certain numbers?

THE COURT: It was randomly selected. There's a separate list that is a random list.

MR. JACKSON: So she's picking the names?

THE COURT: This is to give you all the names of the jurors. There's a separate list that is computer generated that is in random order of those people.

MR. JACKSON: Why does she get to call the names?

THE COURT: This is her job. Anything else? Go ahead and have a seat.

MR. JACKSON: I need to understand something. There's a lot I'm trying to understand. Everyone is not letting me understand quite a bit.

THE COURT: Mr. Jackson, settle down. What would you like to ask?

MR. JACKSON: I understand the computer generates, populates this name, but the ones she's asking for are they in order?

THE COURT: They're in a separate list called a random list that the clerk has; you do not have. You have a list of the names of each of the jurors that will turn back into us.

[31] MR. JACKSON: Am I entitled to a random list?

THE COURT: The computer generated. That is within the Court's purview to call out the names. Your objection is noted for the record. You can address this with the court of appeals if you have any concerns. Go ahead and have a seat.

THE COURT CLERK: 4383, Braede Wilcox. 4396, Donald Dwyer. 2692, Stephanie Curtis. 4406, Barbara Trujillo. 4379, Susan Vandervliet. 4339, Jeffrey Niemann. 4370, Ryan Nelson. 4321, Chelcie Barnett. 4360, Christina Joder. 4371, Lawrence Larson. 3729, Angelica Romero. 4348, Barbara Jenson. 4366, Lisa Moore. 4325, Jeffrey Harmon. 4376, Caleb Kroening. 4392, Deena McGrath. 4392, Michael Refner. 4332, Michael Pond.

THE COURT: Thank you. Those of you in the gallery, please know that you may still be called into the jury box. So if you have not been excused yet,

please listen carefully to all of the questions and all that is said because you may be asked to answer these same questions if you are called into the box.

Now, as I explained earlier, I will ask you some questions and then the prosecutor and then Mr. Jackson will have a chance to ask you questions. If you're in the box and you have an answer to the question, please raise your hand. If you think of something later that you think we should know about you and your ability to be fair and impartial, please raise your hand. If you would like to discuss a matter privately, please let me know, and, again, we can do that either here at the bench

* * *

[34] Ms. Wilcox?

MR. BEHLER: I don't have any questions.

THE COURT: Mr. Jackson, any questions for Ms. Wilcox.

MR. JACKSON: You said you work with them. You're an RA at the school.

MS. WILCOX: Yes.

MR. JACKSON: And this particular individual you've been in contact with several times in discussion about whatever the major – whatever the call was.

MS. WILCOX: Rose and Rayroux, yes.

MR. JACKSON: Have you interacted with her outside of your professional capacity, outside of the school, and only answering to those calls or whatever?

MS. WILCOX: I have not worked with her outside of – neither of them have ever been out of uniform.

MR. JACKSON: But the question have you worked with – the question have you interacted with her outside of work –

THE COURT: Like socialized.

MS. WILCOX: No.

MR. JACKSON: Okay.

THE COURT: Okay. Any other questions?

MR. BEHLER: No, Your Honor. Thank you.

THE COURT: Go ahead and have a seat. We'll let you know. Mr. Behler.

MR. BEHLER: Your Honor, she indicated she would weigh [35] their testimony higher than other potential witnesses. I think it's pretty clear right off the bat there. I don't object to her being excused.

THE COURT: Okay.

MR. JACKSON: I do object to her being excused. Currently a student at the time of this incident. I was a paying student. Technically doesn't qualify as a jury of my peers technically.

THE COURT: Well, Mr. Jackson, she did – the concern that I have is she did say that she would weigh the officer's testimony more favorably than some of the other witnesses. And so I want to be sure that people come to this with an open mind and without any preconceived notions about any of the witnesses.

So based on that, I will grant the request to excuse Ms. Wilcox in an abundance of caution and to make sure that the process is that we have a jury that is open minded and not weighing one witness greater than another right off the bat. Thank you.

(The following discussions held within the hearing of the jury:)

THE COURT: Ms. Wilcox, you are excused with the thanks of the Court. If you could call someone else. The next lottery ticket purchaser.

THE COURT CLERK: 4367, Peter Wray.

THE COURT: Hello, Mr. Wray. Mr. Wray, same question

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[63] THE COURT: Mr. Jackson, let me make it clear to you that you are not to speak directly to the jurors unless you are asking them questions when it is your turn in voir dire. Do you understand that, sir?

MR. JACKSON: I comprehend.

THE COURT: I expect you to honor that Court's direction. Just to let both Mr. Behler and Mr. Jackson know, Mr. Nelson did come forward and ask if the case would extend until Monday. He was just concerned about that. Juror Ryan Nelson. I assured him that it would not. So that was the extent of that interaction with Mr. Nelson. Anything else before we take our break?

MR. BEHLER: No, Your Honor.

THE COURT: Mr. Jackson, anything else?

MR. JACKSON: Yes. I object to the proceedings. I do not have the rules of procedure under this jurisdiction. Have not been given them. Have not been submitted with them. There are no published rules. This Court has failed to tell me how we're operating. What we're operating in. I'm completely flying blind here.

THE COURT: Mr. Jackson, thank you. Your objections are repetitive and have been noted. You do not need to repeat them and are on the record and will be reviewed by the court of appeals to the extent necessary. And, also, as a reminder, Mr. Jackson, and I believe certainly Mr. Behler is aware of [64] this, the voir dire is directed to ask the attorneys about whether they have any bias or any issues that might prevent them from being fair and impartial jurors in this case. It is not an opportunity to preview the evidence that is going to be presented at trial. That will be your opportunity at the opening statement after the jurors have been selected. So just as reminder to you both. Thank you.

(Brief recess.)

THE COURT: Let's go back on the record in People of the State of Colorado versus Jheshua Jackson, 16CR1854. As I said, my questions to you all are concluded. Mr. Behler, do you have questions for these folks?

MR. BEHLER: Please, Your Honor. May I move the podium?

THE COURT: Yes.

MR. BEHLER: Thank you, Your Honor.

Good morning, folks. Come on. Can do a little bit better than that. Good morning.

JURY PANEL: Good morning.

MR. BEHLER: That's perfect. Forceful interaction, that's great. My name is Brent. I work at the district attorney's office. It's my privilege to represent the people of the state of Colorado in this case. As the Judge indicated, this process is called voir dire. We're

looking for the jury for this case. To that end, there's no wrong answers here.

* * *

[90] For my next row down, if I were to prove this case to you beyond a reasonable doubt and you felt I have proven this case to you beyond a reasonable doubt at closing, how would you find the defendant.

My third row of folks. Not going to repeat it again. Same question, folks. How would you find the defendant?

Folks in the front, any issues with that? Okay. Is there anything from anybody now that we've kind of gone through some of these concepts that I haven't touched on that you feel I or Mr. Jackson should know? No. Okay.

Folks, thank you very much for your time. Thank you for your attention this morning. I really do appreciate it.

THE COURT: Thank you, Mr. Behler.

MR. BEHLER: Your Honor, I pass the jury for cause.

THE COURT: Mr. Jackson, you have an opportunity to ask the jurors some questions if you wish.

MR. JACKSON: Good morning, everyone. First of all, I want to apologize to every single one of you. You should not be here. What you're going to witness in the next –

THE COURT: Mr. Jackson. Mr. Jackson.

MR. JACKSON: Am I allowed to speak?

THE COURT: Mr. Jackson, just a moment. If you could approach, please.

(The following discussions held outside the hearing of the jury:)

[91] THE COURT: When you started to say, You will witness in the next few days, or something along those lines, that indicated to me that you were going to be talking about the facts of this case.

MR. JACKSON: I'm sorry if that's your collection, but that's not what I'm doing. If you would give me rules as to the public procedure.

THE COURT: Tell me what you're intending to ask of these jurors?

MR. JACKSON: It's my strategy.

THE COURT: What's your first strategy?

MR. JACKSON: Not exactly sure. You didn't give me rules of public procedure.

THE COURT: Mr. Jackson.

MR. JACKSON: Kind of winging it here.

THE COURT: Keep your voice down. Mr. Jackson, the questions to these jurors are whether or not they can be fair and impartial jurors –

MR. JACKSON: I'm getting to that.

THE COURT: – in your case. You are not to discuss the evidence that will be presented or to give a preview of the evidence.

MR. JACKSON: I'm not going to do that.

THE COURT: What is your first question going to be?

MR. JACKSON: I'm not exactly sure.

[92] THE COURT: Keep your voice down, sir. Sir, if you are not able to follow the guidelines that I'm giving you, then I will cut off your voir dire.

MR. JACKSON: Do you have a copy of those guidelines, that published rule of procedure that I asked for?

THE COURT: I outlined what you can do and what you cannot do. You can ask these jurors about whether they have any biases, whether they have preconceived notions, whether as they sit here today they have a bias one way or another. You can ask them questions that go to –

MR. JACKSON: To answer your question, I'm going to ask them some legal terms.

THE COURT: Okay.

MR. JACKSON: Thank you.

THE COURT: I'll allow some leeway on that. But we may need to address things individually before you ask. You may proceed.

(The following discussions held within the hearing of the jury:)

MR. JACKSON: Again, I apologize because you shouldn't be here, but I'm glad that you are. I really am. I'm glad that you are here, because I am placing my life in your hands. And I'm hoping to place –

MR. BEHLER: Your Honor, objection.

THE COURT: Sustained. Mr. Jackson, we talked about

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[160] THE COURT: Mr. Jackson, keep your voice down.

(The following discussions held within the hearing of the jury:)

THE COURT: Exhibit 1 will be admitted.

Q (By Mr. Behler) Sir, did you any further involvement in this case?

A No.

MR. BEHLER: Thank you. No further questions.

THE COURT: Any questions for Mr. Gilbert?

MR. JACKSON: You know what –

THE COURT: Mr. Jackson, do you have any questions for this witness who is on the witness stand?

MR. JACKSON: I have a lot of questions on a lot of different things.

THE COURT: Do you have any questions for Mr. Gilbert?

MR. JACKSON: It just seems like I'm not getting – it seems like my questions are not being answered. Not being answered –

THE COURT: Mr. Jackson, do you have any questions for Mr. Gilbert?

MR. JACKSON: If the Court is not going to give me a fair trial, let me ask questions –

THE COURT: Mr. Jackson.

MR. JACKSON: – to the Court that the Court is going to answer and with full disclosure. Maybe I should ask the jury [161] to ask you questions –

THE COURT: Mr. Jackson.

MR. JACKSON: – you're not answering me with the questions on the record. Maybe you can answer the questions of them on the record.

THE COURT: Mr. Jackson, please stop. All of your questions were answered pretrial with written orders and clear instructions by this Court.

MR. JACKSON: No, they were not.

THE COURT: We are here for the trial.

MR. JACKSON: No, they were not.

THE COURT: They are having witnesses testify –

MR. JACKSON: I asked you what jurisdiction –

THE COURT: I take it that there are no questions. Mr. Jackson –

MR. JACKSON: I've asked you on the record. I've asked you –

THE COURT: Mr. Jackson, sir, you are out of order.

MR. JACKSON: I'm not trying to be out of order.

THE COURT: Can you excuse the jury, please. All rise for the jury.

MR. JACKSON: Your Honor, I'm not trying to be out of order.

THE COURT: Mr. Jackson.

MR. JACKSON: I'm just trying to understand and best [162] represent myself, but maybe representing myself is not the best idea right now, because I'm being railroaded left and right.

MR. BEHLER: Your Honor, at this time I don't think I have any other choice, especially when he goes on that dive right in front of the jury about not representing himself. I have to ask for a mistrial.

(The jury exited the courtroom.)

THE COURT: Go ahead and have a seat. Mr. Behler, would you like to make a motion?

MR. BEHLER: I apologize, Your Honor. I did not mean to lose my temper. Your Honor, at this point I don't know that I have another option than to move for a mistrial. There has been repeated statements by Mr. Jackson in front of this jury detailing many matters that were covered pretrial. Loudly speaking at the microphone in front of the jury so clearly the jury can hear him, and just now making assertions about representation, being railroaded by the Court, the courthouse is somehow doing something illegal. Your Honor, I guess –

MR. JACKSON: Well, you're not operating in the right jurisdiction, that's for sure.

THE COURT: Mr. Jackson, you are out of order.

MR. JACKSON: I'm sorry, Your Honor.

THE COURT: You are out of order. You need to be quiet. You are being warned, sir. You need to be quiet or I will have these deputies take you out of the courtroom into [163] jail.

Mr. Behler.

MR. BEHLER: Your Honor, my concern – again, I apologize for making an upset record a moment ago, but my concern is now the sheer number of things that the jury has heard. The jury – I guess I have a concern this is not going to be asserted for the truth at some point, it's going to be speculating as to Mr. Jackson's theories on jurisdiction and counsel and things of that nature. So, Your Honor, I don't know what else to do other than to request a mistrial at this time.

MR. JACKSON: I have no objections with that.

THE COURT: Well, it's certainly Mr. Jackson's conduct contrary to the directions of this Court to keep his voice down, to not speak about the issues that were ruled on pretrial, and continuing to assert those things. I will note that when

Mr. Jackson was making his statements in regard to representing himself that the majority of the jurors were out of the courtroom. There were one or two jurors that were still in the courtroom on the way out at the time. Mr. Behler, I don't know if that changes your concern.

MR. BEHLER: Perhaps if the Court gives some sort of curative instruction, but then I think we're drawing more attention to it. Certainly note it was not in any sort of quiet voice, and the door was open. I don't want to speculate as to what the jurors did or did not hear. I can tell the Court there [164] were, at least what I saw, I would agree, several jurors and several presumably right there walking back.

THE COURT: Okay.

MR. JACKSON: Your Honor, as I have objected to the proceedings, I move this Court to mistrial.

THE COURT: Mr. Jackson, it's your own conduct that presented this question. It is in your own improper conduct before the jury and before the Court that has presented this question. I am going to take a recess to consider the matter.

(Recess.)

THE COURT: The question before the Court is whether or not the Court finds that there is manifest necessity to declare a mistrial based upon the district attorney's motion, which is in turn based upon the

repeated improper conduct of the defendant before the jury. Specifically, being very loud at bench conferences and with the last comment as the jury was leaving the courtroom Mr. Jackson asserting that perhaps he had made an error in representing himself.

In evaluating whether or not manifest necessity requires the granting of the motion, the Court will note that there is an option for the Court to take remedial action that is necessary to neutralize the effect of any irregularities or misconduct at trial. And I do think that we are basically one witness in. Mr. Gilbert was on some level just a foundational witness. So we are one witness in after jury selection. I do [165] not believe that the conduct of Mr. Jackson, while inappropriate and improper in front of the jury, is sufficient to declare a mistrial. And the Court will note further that I believe that a curative instruction to the jury to disregard the comments of Mr. Jackson in regard to his assertion that he may have made a mistake in representing himself, and the loud statements that he has made on various topics at the bench topics, and to direct the jury to disregard that will be sufficient at this juncture to cure any impropriety.

Mr. Jackson, you will not make statements on issues that have been previously ruled on. I have repeatedly stated that your motions regarding jurisdiction, your requests in regard to various materials and matters have been addressed repeatedly pretrial. You may not like the answers, sir, but I have given you the answers. And there are written orders that address your issues. If you have concerns going forward with my rulings pretrial, you may bring those up with the court of appeals. You may not bring those up in the presence of the jury.

In terms of having bench conferences, given that Mr. Jackson is not able to keep his voice down, I will determine the limited number of situations in which a bench conference is necessary. And in the main, will excuse the jury from the courtroom to have any discussions that need to be had outside the presence of the jury.

[166] Mr. Behler, anything further?

MR. BEHLER: No, Your Honor.

THE COURT: Mr. Jackson, I have directed you –

MR. JACKSON: Are you asking me a question? Is it my chance to speak?

THE COURT: Mr. Jackson, I want to tell you something, I have repeatedly throughout the day advised you to keep your voice down, when it was not your turn to speak and you persisted in speaking over me, continuing that behavior will be determined by this Court to be in contempt of the authority of this Court.

Do you understand?

MR. JACKSON: I comprehend. I do not understand. Your Honor, I want to state for the record, I'm sorry that I misspoke –

THE COURT: Mr. Jackson, given that you comprehend those things, if you persist in violating my orders to be quiet when I tell you to be quiet, I will direct the deputies to take you to jail and hold you in contempt of court.

MR. JACKSON: Your Honor, it's my intention to be held in contempt. Nor is it my intention to disrespect this Court in any way. When I was talking, you said I was talking too softly, I had to speak up. So I guess, I mean, what am I left to do? First you told me to speak

up. And when I speak up at a regular decibel, that's too loud. I'm sorry I don't know the proper decibel level to speak with it.

[167] But I do want to say I misspoke earlier. I apologize to the Court. I'm not trying to be a pain in the gluteus for a lack of a better euphemism. I'm simply wanting to have a fair trial. I want – I want to represent myself and not be held against me.

Earlier I stated to move for mistrial, I misspoke. I actually move to dismiss without prejudice. You stated that you supplied. You did. You supplied a ruling, but I'm having a hard time wrapping what a ruling and the relevancy of a ruling has to do with published rules of criminal procedure under what jurisdiction. Either admiralty, either equity, either common law. Those are the only three that I know of in my limited, novice understanding of the law.

THE COURT: Mr. Jackson, this will be your last opportunity to raise these arguments. I do want not to hear them again. I will give you an opportunity right now to raise whatever jurisdictional arguments that you want to one last time, but that is it.

MR. JACKSON: Do I have a constitutional right?

THE COURT: If you persist in raising them again, I will find you in contempt of court.

MR. JACKSON: Do I have –

THE COURT: Go ahead. Tell me what you would like me to know.

MR. JACKSON: Do I have a constitutional right? I'm [168] asking the Court, do I have a constitutional right?

THE COURT: Are we ready to bring the jury back?

MR. JACKSON: You're not going to answer if I have a constitutional right? Have I waived any of my rights as far as you know?

THE COURT: Mr. Jackson, I understood that you wanted to repeat the objections that you made previously.

MR. JACKSON: No. This is a new question.

THE COURT: This is your opportunity to do that.

MR. JACKSON: I'm sorry. This is a new question. I'm asking you right here, right now, on the record, do I have United States – not Colorado Constitution – United States constitutional rights?

THE COURT: Mr. Jackson, you are expected in the proceeding of this trial to follow the rules of evidence and the rules of procedure and the rules of this trial and the rules of this Court and the direction of this Court.

MR. JACKSON: Okay. That's fine and great. Thank you. I appreciate that. I'm asking do I have a constitutional right? A United States constitutional right? Do I have those rights?

THE COURT: Mr. Jackson, are we ready to proceed with the trial?

MR. JACKSON: Okay.

THE COURT: Mr. Behler.

MR. JACKSON: Have I waived any of my rights to your [169] knowledge?

THE COURT: Mr. Jackson, are we ready to proceed with the trial?

MR. JACKSON: So, again, I'm left with having to – I'm left with having to ask questions as I'm trying to defend myself. If I believe correctly, the Sixth Amendment affords me the right to ask those questions. And

it grants you the duty to answer them. I'm simply wanting to know, do I have United States constitutional rights? Can you please answer that?

So you're not going to answer. When I ask – how can I be expected to proceed – how can I lawfully be expected to proceed if I'm not given a fair chance and my questions aren't being answered? I'm not getting rules of published procedure. As far as my understanding, CFR 7211, all crimes are commercial.

THE COURT: Okay.

MR. JACKSON: I ask this Court – I've given affidavits. I've shown that I'm the trustee and holder of due course on this commercial account, and this is – I don't understand why I'm not – why am I not given an answer. Why am I not receiving answers from this Court.

THE COURT: Mr. Jackson, have you completed the record you wish to make?

MR. JACKSON: I wouldn't know.

THE COURT: Okay.

MR. JACKSON: Apparently there's a lot that I don't [170] know.

THE COURT: I'm not hearing any new information. I believe we are ready to bring the jury back.

MR. BEHLER: Your Honor, I just want to be sure, I believe we were done with Mr. Gilbert.

THE COURT: Correct.

MR. BEHLER: So, Your Honor, on my next witness is Kate Miller. She is coming up from Denver. Apparently just got here. I don't want to waste any more of the jury's time. If it's okay with the Court, I ask to call Officer Rose just to get her testimony

started. Perhaps put in an exhibit, then take her off the stand and put Ms. Miller on the stand, so not to waste their time. If that's okay with the Court.

THE COURT: How long do you think before Ms. Miller will be here?

MR. BEHLER: I think she may already be here. I wanted to check one thing with her. Maybe 10 minutes.

THE COURT: Go ahead and take 10 minutes. That's fine.

MR. BEHLER: Okay.

THE COURT: We'll be in recess for 10 minutes.

(Recess.)

THE COURT: Ready to bring the jury in?

MR. BEHLER: Yes, Your Honor. We are ready.

THE COURT: Ladies and gentlemen of the jury, I would like to remind you that Mr. Jackson is representing himself.

* * *

[180] previously marked as People's Exhibit No. 2. Do you recognize that CD?

A Yeah.

Q What is it?

A It is the video interaction of this night.

Q Okay. So are you on that video?

A Yeah.

Q Is Mr. Jackson on that video?

A Yeah.

Q Okay. And did you review that video just a few minutes ago to make sure?

A Yes.

Q Okay. Is it a fair and accurate copy of your interaction?

A Yeah.

MR. BEHLER: Your Honor, I would move to admit People's Exhibit No. 2 into evidence.

THE COURT: Any objection based on the rules of evidence?

MR. JACKSON: Rules of evidence in which rules of evidence?

THE COURT: Any objection based on the rules of evidence? Lack of foundation, relevance, hearsay.

MR. JACKSON: And my answer to that – a signature on a document. So –

[181] THE COURT: Mr. Jackson, the issue is whether or not the video should be admitted. I'm not hearing an objection based on the rules of evidence; therefore, Exhibit 2 will be admitted.

MR. JACKSON: I didn't say I wasn't objecting. I'm trying to get to something here if you would let me speak. Yes, I do object. And I object because I don't know that I received an international contract in good faith, so I do not accept a contract exists. If this Court is existing jurisdiction in admiralty, then please pursuant to Section 3501 of UCC, the prosecutor will have no difficulty placing this contract into evidence so that I can review it.

THE COURT: Overruled. The jurors will disregard the last comments from Mr. Jackson.

MR. JACKSON: You're not going to produce international contract?

THE COURT: Exhibit 2 will be admitted.

MR. BEHLER: Thank you, Your Honor. Your Honor, I would ask permission for the Court to publish this exhibit to the jury.

THE COURT: You may.

MR. BEHLER: If the Court would give me a quick moment. It takes a second.

THE COURT: Yes.

MR. BEHLER: Thank you.

[182] MR. JACKSON: When I ask –

THE COURT: Mr. Jackson, there's nothing on the table right now. It's not your turn to speak. You'll have an opportunity to cross-examine this witness. Go ahead, Mr. Behler.

MR. BEHLER: Your Honor, may I retrieve that exhibit, please?

THE COURT: Yes.

MR. BEHLER: Thank you.

MR. JACKSON: You're not going to answer my question?

THE COURT: Mr. Jackson, there's nothing on the table right now. You're out of order, sir.

By MR. BEHLER:

Q Okay, Ms. Miller, this is the video at Yum Yum's?

A Uh-huh.

Q Okay. Just let it play for a second.

THE COURT: Do you want the lights out?

MR. BEHLER: Please, Your Honor. Actually, that would be wonderful. Thank you.

Q (By Mr. Behler) Ma'am, fair to say that's you?

A Yeah.

Q Okay. And we see a time stamp on there. Do you have any knowledge if that system is accurate or anything like that?

A No.

Q So fair to say, this is you but you don't know how the

* * *

[186] Q So they don't demand of you. Do you demand it of yourself?

A No. I hadn't when I worked there.

Q Okay. Is it possible that if you had asked for ID and – I don't want to say that. I guess that would be speculation. Let me reword it. Let me ask a few other questions.

You know, Your Honor, you're really putting me in a little bit of a bind here.

THE COURT: Mr. Jackson.

MR. JACKSON: I'm trying to ask questions. I have so much restriction – I'm not.

THE COURT: Mr. Jackson, you need to follow the rules of evidence. That's what I'm asking you to do. Do you have any questions for this witness based on the testimony she provided?

MR. JACKSON: Let the record reflect that I asked several times for the rules of criminal procedure for which it would have those type of things –

THE COURT: Mr. Jackson, the jury will disregard Mr. Jackson's last comment. Mr. Jackson, if you have no further questions for this witness, you may sit down.

Q (By Mr. Jackson) What would you say the – when I came in that night, my demeanor was?

A You were friendly. Fairly normal.

Q Did you happen to take a look at my eyes?

[187] A I suppose.

Q How would you describe them?

A I don't know I've ever really thought about that.

Q Did I look intoxicated? Did I look high?

A Not to me or I wouldn't have served you.

Q Okay. Were my eyes fairly red? Or were they not as white as they are now, I should say?

A I don't recall.

Q You don't recall. But you didn't – you do remember not asking for ID?

A Yeah. No, I didn't ask for an ID.

MR. JACKSON: No further questions.

THE COURT: All right. Any redirect?

MR. BEHLER: No thank you, Your Honor.

THE COURT: Okay. Any questions from the jurors? I don't see any.

Ms. Miller, you are excused. Thank you for your time today.

MR. BEHLER: The People will call Ashleigh Rose.

THE COURT: Officer Rose, if you step forward, please.

MR. JACKSON: Your Honor, I had ask earlier if I had a constitutional right –

THE COURT: Mr. Jackson, we've addressed this.

MR. JACKSON: You didn't – I just asked that question a few seconds ago and you didn't answer.

[188] THE COURT: Sir, you are out of order.

MR. JACKSON: At this time –

THE COURT: We have addressed this –

MR. JACKSON: At this time I am requesting counsel –

THE COURT: Mr. Jackson, please be quiet.

MR. JACKSON: – because I understand I will not get a fair trial.

THE COURT: The jury will be excused. Mr. Jackson, please be quiet. The jury will be excused.

MR. JACKSON: I am requesting counsel.

THE COURT: The jury will be excused.

MR. JACKSON: I'm not going to get a fair trial.

THE COURT: Mr. Jackson, please be quiet. You are out of order, sir.

MR. JACKSON: I apologize, Your Honor. I'm not trying be out of order. I'm trying to understand what I'm doing.

THE COURT: Be quiet, sir.

(The jury exited the courtroom.)

THE COURT: You may be seated. Mr. Jackson, what is most definitely going to affect your ability to have a fair trial here is to have you taken away in contempt of court by these deputies in front of the jury. I want to avoid that at all costs. I imagine that you do as well. I directed you several times to not reference those objections that you have in front of the jury. You have been given a great number of [189] opportunities to address those issues outside the presence of the jury and with this Court through the several months that this case has –

MR. JACKSON: I did. I made motions.

THE COURT: Mr. Jackson, sir, through the several months that this case has been pending and during various times today. Your objections are noted for the record. They are available for review by the court of appeals.

If you raise them again in the presence of the jury, I will hold you in contempt of court. I will have these deputies take you out of the courtroom for contempt of court for disregarding my orders and I will sentence you accordingly.

Mr. Jackson, are you ready to proceed with the trial and respect this Court?

MR. JACKSON: Not under duress. Not under coercion and intimidation.

THE COURT: Okay. Mr. Jackson, sir, no more outbursts in front of the jury. That is my direction to you. That is my final warning.

MR. JACKSON: I would like to submit to the Court.

THE SHERIFF'S DEPUTY: Sir, do not step forward.

THE COURT: Mr. Jackson, step back.

MR. JACKSON: Have a seat, please.

THE COURT: Mr. Jackson, have a seat. The deputy can bring that up to me. Mr. Jackson, has given me copy of his [190] birth certificate it looks like.

MR. JACKSON: It's not a copy. That's the original. I need that back. That's the seal is on there and trust account number is on the back. Take a look.

THE COURT: I received that. Thank you. Anything else while the jury is out of the room?

MR. JACKSON: I do need that back. That's my actual live birth certificate. I'm not submitting that for evidence.

THE COURT: You just wanted me to look at it?

MR. JACKSON: Yes.

THE COURT: All right.

MR. JACKSON: Because at this point I'm demanding representation probably from under United States military. I would like representation from that, because apparently it doesn't matter what I say. If you have any questions for the named defendant in a commercial court, then you can ask that piece of paper, because asking me the live man is obviously not getting me nowhere in my own representation, which I have not received proper instructions for.

THE COURT: Mr. Jackson, any further statements in front of the jury that I have previously prohibited will result in you being held in contempt of this Court.

MR. JACKSON: It's not my intention to be held in contempt. I do not wish to be held in contempt.

THE COURT: I do not wish to hold you in contempt, sir, [191] but your actions are –

MR. JACKSON: If my actions –

THE COURT: – disrespectful of this Court.

MR. JACKSON: Then I apologize. I'm not trying to be disrespectful by any means. I'm simply trying to have a fair trial. I'm asking constitutional questions. From my limited understanding of law, I do understand that it is a matter of law for a judge to decide. It is a matter of fact for the jury decide. We come all the way down to this part of the process. Where as in Erie Railroad versus Thompkins [phonetic], the laws of several states except for the constitution treated in the statutes of the United States. Otherwise, required shall be regarded of rules of decision and trials in common law in the courts of the United States in cases where they apply.

So matters of law, I brought it up. You are just disregarding them. The contract is being brought forward. I don't know what's going on. This is way over my head. You guys are on some whole other – a whole other level.

THE COURT: Mr. Jackson, the original of your birth certificate is being –

MR. JACKSON: I request a JAG officer from the United States Navy.

THE COURT: Mr. Jackson, the original of your birth certificate has been returned to you. We will bring the jury back in, but, Mr. Jackson, you have been warned.

* * *

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APPENDIX L

[1] DISTRICT COURT
LARIMER COUNTY COLORADO
201 La Porte Avenue
Fort Collins, CO 80521

Case No. 2016CR1854
Division 3B

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff,

v.

JHESHUA DANIEL JACKSON,
Defendant.

FOR COURT USE ONLY

For the People:

MR. BRENT A. BEHLER
Registration No. 44808

For the Defendant:

MR. JHESHUA DANIEL JACKSON, Pro se

COURT REPORTER'S TRANSCRIPT

JURY TRIAL - DAY 2

The matter came on for Jury Trial on April 13, 2017,
before the HONORABLE JULIE KUNCE FIELD,
Judge of the District Court, and the following
proceedings were had:

Reported by Nicole B. Holden, RPR

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[3] PROCEEDINGS

THE COURT: Given the length of the security line, maybe makes sense since we don't have all the jurors yet, just to recess until we find all the jurors are here. At that point I'll call the case up.

MR. BEHLER: Understood, Your Honor.

(Brief recess.)

THE COURT: We have all of our jurors. Apparently Mr. Jackson called the clerk's office and said that he would be here shortly. I would take "shortly" to be 10 minutes.

MR. BEHLER: Whatever the Court thinks, Your Honor.

THE COURT: If he's not here in 10 minutes we'll – or if he is here in 10 minutes, we'll start up quarter till.

Mr. Nealer, if you could advise the jury we're going to be a few minutes. I'll come back at quarter till.

(Brief recess.)

THE COURT: Mr. Jackson, I appreciate you rising when I come into the courtroom. If you could please stand, sir.

MR. JACKSON: Is it a law to stand?

THE COURT: Mr. Jackson, it shows respect for the jury the Court and for this justice system.

You may be seated. Mr. Jackson, you can come on up to the defense table. Mr. Jackson.

MR. JACKSON: Is the Court – can the record hear me?

THE COURT: Mr. Jackson, no, we can't hear.

[4] MR. JACKSON: You can't hear me? Should I talk louder?

THE COURT: Mr. Jackson, please come up to the defense table or to the podium.

MR. JACKSON: I'm not entering the jurisdiction. As a matter of fact, I'm putting a motion to continue because I can no longer represent myself. I've contacted legal shield and they told me to contact them today. I retained Rick Borgenson, et cetera, et cetera. Thank you very much.

THE COURT: Mr. Jackson, are you leaving the courtroom? Is that your intention to leave the courtroom?

MR. JACKSON: My intention is to address myself in my seat.

THE COURT: Okay. Mr. Jackson, you have two choices, sir. You can come on up to the defense table and participate in this trial, which will continue. Or you can choose not to participate in the trial, in which case I will determine that you have voluntarily absented yourself from the trial and the trial will proceed without you. You have been warned several times –

MR. JACKSON: How –

THE COURT: Just a moment, sir. It is your conduct that has caused this issue. So, Mr. Jackson, I see you standing up. Are you planning to sit at the defense table and participate in the trial?

MR. JACKSON: Let the record reflect that the coercion [5] and constraintment, I enter the jurisdiction not of my own volition.

THE COURT: Mr. Jackson, let me warn you. I see you're seated at the defense table. I take it that you do intend to participate in this trial as your own counsel, correct?

Mr. Jackson.

MR. JACKSON: I'm here as special appearances as I've said before.

THE COURT: Mr. Jackson.

MR. JACKSON: Here to deal with the treasury account.

THE COURT: Mr. Jackson, let me remind you that we talked at length yesterday about a number of things that are not to be raised in the presence of the jury. I have warned you that if those things continue to be raised or discussed in the presence of the jury that the Court will find you in contempt and you will be removed from the courtroom.

In the event that you are removed from the courtroom, I will note that it is your conduct, sir, that has caused you to be removed from the courtroom and will take that as a voluntary absence from the courtroom for these proceedings.

Do you understand, sir?

MR. JACKSON: I do not because you just said I will note that it is your conduct that has caused you to be

removed from the courtroom as though it's past tense. So it already happened.

[6] THE COURT: It will cause you. In the event that you are taken out for contempt.

MR. JACKSON: Let the record reflect –

THE COURT: Okay. Certainly the record reflects everything that is being said here.

Mr. Jackson, are you ready to proceed and to respect the orders of this Court?

MR. JACKSON: Do I have constitutional rights?

THE COURT: Mr. Jackson, do you wish to proceed and participate in this trial and respect the orders of this Court?

MR. JACKSON: Before I answer that question, I am asking this Court do I have United States constitutional rights in this court?

THE COURT: Mr. Jackson, the entirety of this proceeding has been directed to protecting your due process and constitutional rights.

MR. JACKSON: Good. Then I can no longer continue because I am not adequate enough to handle these proceedings in their secret jurisdiction.

THE COURT: Mr. Jackson, you elected to represent yourself. We've had many conversations about this. We are proceeding today.

MR. JACKSON: Is it a law? Am I breaking the law by choosing to uphold or retain my rights? Have my rights been – to your knowledge, have I waived my rights?

[7] THE COURT: Mr. Jackson.

MR. JACKSON: Have I waived my rights?

THE COURT: You waived your right to counsel. That's very clear.

MR. JACKSON: I also retained them, yes.

THE COURT: Okay.

MR. JACKSON: I've also said that I preserve my right.

THE COURT: You've retained counsel this morning online, is that what you're saying?

MR. JACKSON: I've actually retained them a little while back, but I'm now electing to go ahead and use them.

THE COURT: Mr. Jackson, it's too late. We're in the middle of the trial.

MR. JACKSON: I'm sorry. You're telling me that you're going to proceed with a proceeding where I am not qualified to represent myself, is that what you're saying?

THE COURT: Mr. Jackson, we're proceeding with this trial today.

Are the People prepared to proceed?

MR. JACKSON: Let the record reflect that it is the intent of this Court –

THE COURT: Are the People prepared to proceed to trial?

Mr. Jackson.

MR. BEHLER: Yes, Your Honor.

[8] THE COURT: All right. Are we ready to bring the jury in?

MR. BEHLER: Yes, Your Honor.

THE COURT: All right. All the jurors are here. We will be bringing the jury in. Mr. Jackson, I expect that you will follow the orders that I issued both this morning and yesterday in regard to your conduct in the courtroom. If you violate those orders, I will hold you in contempt. You will be removed from the courtroom and based upon the circumstances of that, the Court could determine that your conduct has caused you to voluntarily absent yourself from this trial.

MR. JACKSON: So please take note that I am with full intention to respect the proceedings and this honorable room.

THE COURT: Thank you. I appreciate that. Let's bring the jury in.

(The jury entered the courtroom.)

THE COURT: We are back on the record in the People of the State of Colorado versus Jheshua Jackson, 16CR1854. I hope everyone had a good evening. We are ready to begin again this morning. We had Officer Rose on the stand. I believe that's where we are picking up then.

Officer Rose, if you would come forward please and retake the witness stand. And, ma'am, you are still under oath.

THE WITNESS: Thank you.

THE COURT: Mr. Jackson, we were in the middle of your [9] cross-examination of Officer Rose. Do you have further questions for Officer Rose? Please stand when you address the witness or the Court.

MR. JACKSON: I do have a lot of questions.

THE COURT: You may proceed with cross-examination of Officer Rose.

MR. JACKSON: Here's the problem with me proceeding –

THE COURT: Mr. Jackson, this is the opportunity for cross-examination of Officer Rose. You need to ask questions based upon her knowledge and information.

MR. JACKSON: I want to, but at this point, as I've stated, that I can no longer represent myself.

THE COURT: Okay, Mr. Jackson. The jury will be excused.

MR. JACKSON: I'm asking for an attorney –

THE COURT: The jury will be excused.

MR. JACKSON: I'm asking for an attorney.

THE COURT: All rise for the jury.

MR. JACKSON: I retained counsel.

THE COURT: Mr. Jackson, Mr. Jackson, I've told you several times to be quiet. And to not make –

MR. JACKSON: Let full disclosure –

THE COURT: – statements in front of the jury.

MR. JACKSON: I don't know – I don't know –

THE COURT: Mr. Jackson, stop right now.

[10] (The jury exited the courtroom.)

THE COURT: Mr. Jackson, you are in violation of a direct order of this Court. You are found to be in contempt of this Court.

MR. JACKSON: I do not wish to be held in contempt.

THE COURT: You will be remanded to the Larimer County Jail. The sentence that I will impose is a period of 10 days.

Please take Mr. Jackson to Larimer County Jail.

(At this time Mr. Jackson was escorted out of the courtroom by Larimer County Sheriff's Deputies.)

THE COURT: Mr. Behler, let me ask how would you like to proceed?

MR. BEHLER: Your Honor, I can't say I've ever dealt with this situation before. I would ask the Court grant me a few minutes to consult with some folks in my office about the best way to proceed. And I guess my question for the Court – please, correct me if I'm wrong, I think there are two options going forward. One, the Court instruct the jury that

Mr. Jackson voluntarily absented himself from the trial. I would request a curative instruction.

THE COURT: Based on the last comments?

MR. BEHLER: Yes, Your Honor. A curative instruction at this point which details that he had an attorney and fired that attorney. I think the jury now has an impression that he's never been given an attorney which is clearly erroneous.

[11] THE COURT: Actually, my recollection is he had two different attorneys.

MR. BEHLER: That's even better, Your Honor. It's either that or a full mistrial at this point. Am I correct in that?

THE COURT: Yes. Those are the options. I did look at – based on Mr. Jackson's conduct in court yesterday, I did look at some of the law on this issue. And one of the cases that I pulled up that outlines is *People versus*

Price, 240 Pacific 3d 557. So if we want to recess for a few minutes.

MR. BEHLER: If the Court would be – and may I approach?

THE COURT: Yes.

MR. BEHLER: I don't wish to waste the Court's time.

THE COURT: That's fine. I'm here all day. Why don't we take – let's take a 15-minute recess. Give everyone a chance to sort of gather their thoughts, and you can let me know what your thoughts are, Mr. Behler, in terms of going forward.

MR. BEHLER: My inclination is to go forward. If I could have that time, I would greatly appreciate it.

THE COURT: Yes, of course.

(Brief recess.)

THE COURT: We're going back on the record in the People of State of Colorado versus Jheshua Jackson, 16CR1854. The People are present. Mr. Jackson is not having been removed [12] from the courtroom for violation of a direct order of this Court.

Mr. Behler, how would you like to proceed?

MR. BEHLER: Your Honor, the People are not requesting a mistrial at this time. I can tell the Court the remainder of my case in chief will be a question or two on redirect and maybe seven questions to my next witness, who is waiting in the hall.

The concern I have and the concern the folks in my office have, and I appreciate the Court giving me a few moments to chat with folks, is what to do. There are cases on point. I read the *Price* case. I've also consulted

State of Illinois v. Allen. The cite on that case is 397 U.S. 337. That talks about – I have a copy if the Court would like it.

THE COURT: Yes. Thanks.

MR. BEHLER: If I may approach?

THE COURT: Yes.

MR. BEHLER: That deals in a similar way in some ways.

It talks about the judge's use of the contempt power of the court, which is appropriate in this case.

My concern is what happens going forward. The way I see it, there's three or four options for the Court. Option No. 1 would be, I guess, attempt to bring Mr. Jackson back and ask if he'll promise to behave. I have relatively serious doubts about that working. But I do think that's an option for the Court, but I have a fear we're just going to be in the same [13] boat in a half hour where we are right now.

I guess I would make a record on that particular issue. The Court took some time to advise Mr. Jackson this morning repeatedly. And his first statement in front of the jury was exactly what the Court told him not to do. And he continued to yell that at the Court with the jury present. Very intentional I felt like what he was doing. I think that's one option.

Another option is potentially to have Mr. Jackson view the proceedings via some sort of closed-circuit television or something like that. It occurs to me maybe he'll be able to do that in Courtroom 1A. Again, I have concerns with him being at the jail. That doesn't look good for a jury. But I think that's an option.

Third option would be to appoint advisory counsel for Mr. Jackson. My concern on that particular front, of course, is delaying the jury's time when it is already been delayed substantially. But I think that is an option. I don't relish putting opposing – I don't relish putting another attorney in that position halfway through trial. I've not seen discovery. I think that's an option for the Court.

The fourth option is just to continue. I don't know that – to be frank, I don't know there's a great option. I don't know a case on point in Colorado that I've been able to find that deals with this exact issue. I certainly don't want to do a mistrial because I think that communicates to [14] Mr. Jackson that if you don't like how a trial is going you can be unruly and sabotage a trial. It was very clear what he was doing there.

I guess that is a long roundabout way of saying, Your Honor, I'm not sure what to do. I guess my preference would be to do some closed-circuit camera so he can continue to observe the proceedings. I don't know the tenability of that. I would ask the Court not to do a mistrial at this time. But I suppose in some ways I'm deferring to the Court as to what we do next. I apologize. I don't have a clearer answer. I can't find a clear case to this issue.

THE COURT: Right. In the cases that I've reviewed and looking at Rule 43(b), the trial court in its discretion may complete the trial, and the defendant shall be considered to have waived his right to be present. Whenever a defendant initially present voluntarily absents himself after the trial has commenced, that's number one. Number two, after being warned by the court, the disruptive conduct will cause him to be removed from the courtroom. Persistent conduct

which is such as to justify his being excluded from the courtroom.

I think based upon the repeated warnings that the Court gave yesterday and this morning, I think we're squarely within 43(b)(2). So as Mr. Behler pointed out, the question then is what to do going forward. And what I hear the district attorney saying is that a mistrial is not something that they are [15] requesting at this time. I think under 43(b)(2), I think the Court does have the authority under these kinds of circumstances to go forward. And I think that the reason that 43(b)(2) exists and the analysis in the Price case, and I did see a case note, but haven't the read the entire case of *People versus Davis*, 851 Pacific 2d 239, Colorado appellate 1993. And the headnote on that says, Removal of the defendant from court during trial does not abridge his constitutional rights where the defendant had been warned numerous times about his courtroom behavior.

Here I believe I gave many warnings to the defendant both yesterday and this morning, was extraordinary patient on some level with the defendant yesterday in trying to preserve his ability to remain involved in the proceedings. But I do think that his conduct is what caused his absence from the courtroom quite clearly.

So in terms of what to do, I do believe that he has, within the meaning of that rule and the case law, voluntarily absented himself by his conduct. In fact, this morning I made it quite clear to him that if he were removed that would be considered a voluntary absence from the courtroom for the remainder of the trial.

I agree with Mr. Behler. I don't think that option one in terms of asking him to come back and having him

come back and asking him to behave will necessarily succeed given the number of warnings that Mr. Jackson was given by this Court over the [16] course of more than a day. And, frankly, throughout all of the proceedings in this case in terms of his conduct and behavior in the courtroom. So I do agree that that is unlikely to work. And given that he was clearly warned this morning, I don't believe that is necessary for the Court to give him yet another opportunity to misbehave in front of the jury, which I would anticipate he would do.

In terms of a video option, I think we would have to look into that a little bit and see if we could make that work. That might be a viable option to have him at least observe the proceedings. The concern that I would have with that would be both that Mr. Jackson is in custody and if we would need to ensure that he's observing and not participating necessarily, because I think we could have the same problem. Even if he's in custody, even if he's at the Larimer County jail, being disrespectful and continuing to be disrespectful of the Court and the jury process.

So, Mr. Behler, when you were suggesting the video, were you suggesting observation only or participation or not clear?

MR. BEHLER: It's a great question, Your Honor. I guess my inclination would be participation but . . .

THE COURT: That would be my inclination too, but I'm not sure that can be done without a similar problem with Mr. Jackson.

[17] MR. BEHLER: I share the Court's concern. The Court has warned him so many times. I believe the Court has been very patient with Mr. Jackson. Your Honor, I'm not sure that him – I guess I'm concerned on two fronts. One, concerned of the prejudicial nature

of him appearing in custody to be fair. And I'm not sure that if he's not in the courtroom that it would stop. May even be worse. I apologize, Your Honor.

THE COURT: I think we're all in the same position in terms of I am very cognizant of and want to work hard to protect Mr. Jackson's due process rights. But I also know that

Mr. Jackson by his conduct has indicated that he is not willing to abide by Court orders that will allow the Court to make those attempts effectively to protect his due process rights.

I'm putting that on hold for just a moment, that video idea. In terms of appointing advisory counsel, I am looking at the file. I believe I misspoke earlier when I said that I thought that Mr. Jackson had two attorneys appear. It looks like Mr. Townsend, who is the head of the public defender's office here, did appear at several appearances and had been appointed for Mr. Jackson. I believe it was a different attorney from the public defender's office that was appointed in a different matter that is before this Court. He has only had one attorney, but he has that attorney make several appearances with him and he in the Court's assessment did knowingly and voluntarily and intelligently waive his right to an attorney in [18] this matter, and we've had several conversations throughout the proceedings, Mr. Jackson and I, about that choice, including most recently yesterday.

So I don't believe that appointing advisory counsel is necessary or appropriate, and that Mr. Jackson has made it clear that up until his statements late yesterday and early this morning that he wished to proceed and represent himself.

In terms of continuing with the trial with or without a video feed, I believe that the record is very clear that the Court has repeatedly warned Mr. Jackson. That the Court made it very clear to him several times this morning that his conduct could result in him being determined to have been voluntarily absent from the trial by his conduct and that the Court could proceed without him. And even despite those warnings, he continued with his disrespectful conduct, and beyond disrespectful, he directly violated orders of the Court in making statements in front of the jury that had been specifically previously ruled on and prohibited given the concern that the Court had with prejudice.

So I do find that he voluntarily absented himself by his conduct. I do believe that the Court can – based upon the record in this case – and I will say that the Court does not take this action lightly, but I do believe that we can under these very unique circumstances continue with the trial that started more than 24 hours ago without Mr. Jackson. I would [19] like to explore for a few minutes the video option and see if that makes sense to do something along those lines.

Anything further?

MR. BEHLER: Your Honor, I guess if I may just make a quick record?

THE COURT: Yes.

MR. BEHLER: I would note that the People are declining a mistrial only because I think it was very clear Mr. Jackson was intentionally trying to cause this case to mistrial. I have concerns going forward, but I also have concerns if the Court were to declare a mistrial, this is kind of a sign guide or a sign post, Hey, if you don't like how the trial is going, misbehave, violate the Court's orders, get a mistrial, try it again.

See better luck next time after you've seen all the People's evidence. You know, who knows where the People's witnesses will be in months. I can tell the Court it was work getting a few of the witnesses here. So, you know, I don't relish putting my investigators off to work and serving folks and everything. That is the reason I am declining the mistrial or not requesting a mistrial, I think would be more accurately placed.

I guess I would just note that it was very clear Mr. Jackson had been advised, frankly, ad nauseam by the Court how to behave. We had a mistrial motion yesterday. It was clear this morning, he didn't even ask a question, he just [20] immediately went right down that same road. I think the record is relatively clear on that.

Your Honor, I don't know of any other record I should be making right now.

THE COURT: Okay. I do think that upon the continuation of the trial, which I have determined we should do, just a question of video or not video. I will give a curative instruction to the jury. And, in particular, Mr. Jackson was alluding to the fact that he was somehow denied his right to an attorney, to make it clear that he had an attorney and that he fired that attorney and elected to proceed pro se after many discussions with the Court.

So not sure that's exactly the wording, but it will be something along those lines.

THE DEFENSE: I would appreciate that, Your Honor. I would also ask the Court's leave to potentially – I have one in mind. Draft a jury instruction for the Court. I would like to do a little research if that's been done before. But considering his actions, I would appreciate a curative instruction now from the Court

and potentially one if the Court's sees fit during jury instructions.

THE COURT: I think that would be absolutely correct. And that jury instruction can include depending on the circumstances of whether we do a video feed or not.

MR. BEHLER: Understood.

[21] THE COURT: Okay. I'm just trying to think how long it's going to take us to figure out whether we could do a video feed.

Is he downstairs?

DEPUTY LEWIS: I believe so.

THE COURT: He's still downstairs. Is that something we can do from downstairs, do you know, if we went into Courtroom 1A?

DEPUTY LEWIS: With Mr. Jackson in our video room?

THE COURT: Yeah. Okay. In the video room at the jail?

DEPUTY LEWIS: Yes. I don't believe we have any municipal court scheduled for this morning.

THE COURT: They have things this afternoon. I'm hoping we will have this wrapped up by this morning. There's no way to do a feed from downstairs?

DEPUTY LEWIS: Not that I'm aware of.

THE COURT: Would you mind checking on that, and we'll check with 1A.

DEPUTY LEWIS: Are you thinking Mr. Jackson would be downstairs in 1A and the proceedings would continue up here?

THE COURT: No. That becomes another problem. We'd have to move the jury downstairs. It may take us as much as a half hour to sort all of this out.

MR. BEHLER: The last thing I would say this, Your [22] Honor, I do have concerns with trying to figure out best way to put this. I certainly think he should be able to see the jury and the case. I have concerns with the jury seeing him in handcuffs or surrounded by deputies.

THE COURT: Is there an audio feed? Could we do an audio feed? Keep him downstairs and do an audio feed.

DEPUTY LEWIS: Your Honor, I have to ask about that. We're not set up for that at this point. The only way we communicate with anybody that's not in custody that's outside is usually through an intercom system. And then he would be out of our secured area.

THE COURT: Okay. We don't want that.

MR. BEHLER: Your Honor, my understanding is there's potentially, I could be incorrect, a video system that could be potentially used up here. I'm not aware of it. But I've been informed may be a possibility as well.

THE COURT: Mr. Reidel, do you have some information about that?

MR. REIDEL: Your Honor, yes. I apologize for not having a coat on.

THE COURT: That's okay. Thank you for coming up and helping us.

MR. REIDEL: At the last en banc meeting, I don't believe you were able to be there.

THE COURT: That's right. No, I remember that.

[23] MR. REIDEL: They have the cart. They can zoom in on different things. I know Kristin was operating that. That might be something that could be brought up and then that can go to any computer. He could be in a side room out here with a computer because it's all internet based. He would be able to watch what's going on.

THE COURT: Okay.

DEPUTY LEWIS: We have a bathroom that we can close. Well, we have deputies with him, obviously. But he can be in there. It's surrounded just by concrete. It's a bathroom. He would be secure in there. He would remain in cuffs. Can I assume then that there would be no video?

THE COURT: Of him.

DEPUTY LEWIS: Right.

THE COURT: Or could we just do a head and shoulder shot?

DEPUTY LEWIS: Yes. Because he will be in belly chains and leg irons at this point.

THE COURT: Let's see if we can do a video feed with him just head and shoulders shot.

THE SHERIFF: I'm assuming no microphone then?

THE COURT: Correct. All right. I'm going to ask, Mr. Nealer, just let the jury know we're working with some things on here in the courtroom. They have food and drink back there. They are fine.

[24] Judicial administration is sending someone up to try and get that set up.

MR. BEHLER: Thank you, Your Honor. I appreciate it.

THE COURT: We might be able to make this work that he can observe what's going on.

MR. BEHLER: Thank you. I would appreciate. Just make the request that if there's any way to have this video do not show Mr. Jackson shackled in any way. I strongly –

THE COURT: I agree. That's why I'm thinking that just a head and shoulder shot and not the hands or below the waist.

DEPUTY LEWIS: Just a heads up, if this is going to go through the computer, have a deputy in there holding the computer. He will be in restraints but not restrained, so there's nothing to say that he won't be jumping up or – I mean, just so you are aware that this may show him more agitated or we may not hear him but . . .

THE COURT: Well, I certainly will advise him and warn him before as effective as that may be.

DEPUTY LEWIS: Right. Okay.

THE COURT: Anything else?

MR. BEHLER: I don't think so.

THE COURT: We have a lot of smart minds working on this, but it is a tough situation. Okay. All right. If you could check and see if that's something we can do. We're going to check with judicial administration. I'm hoping that we will [25] be able to resume within half an hour or so.

MR. BEHLER: Thank you, Your Honor. I appreciate the Court's time and patience.

THE COURT: Thank you.

(Brief recess.)

THE COURT: Mr. Behler, any other record you want to make?

MR. BEHLER: Your Honor, not at this point. I may in the future.

THE COURT: All right. Thank you.

(Brief recess.)

THE COURT: I just want to preview for you the instruction that I intend to give to the jury.

MR. BEHLER: Thank you.

THE COURT: At this time I don't know about the final jury instruction, but we can formulate that. I will repeat this in front of Mr. Jackson once we have the audio or video set up.

MR. BEHLER: I would appreciate that, Your Honor. Thank you.

THE COURT: Mr. Jackson, has the right to represent himself and he chose to do so. But he is required to follow the rules of the Court. He did not do so after repeated warnings, so I had Mr. Jackson removed from the courtroom. I determined that his conduct has resulted in him voluntarily absenting himself from the courtroom. We have set up a video or audio – [26] whichever we can arrange – feed so that Mr. Jackson can watch or hear – depending on what we have I'll say watch and hear – the rest of the proceedings from outside the courtroom.

Mr. Jackson was previously appointed an attorney at no cost to him, and he discharged that attorney before trial and decided to go forward with the trial and represent himself, which is within his constitutional rights.

The jurors are directed to disregard the comments that were made by Mr. Jackson just before he left the courtroom regarding his self-representation and as to any issues that the Court resolved prior to trial. This case is to be decided on the evidence presented in the court, that is the witness testimony and exhibits admitted into evidence and the instructions on the law that I give you.

MR. BEHLER: Your Honor, I think that's very thorough. I appreciate the Court's record on that. I don't have any objection to that.

THE COURT: Okay.

(Brief recess.)

THE COURT: Going back on the record in the Jackson case, 16CR1854. It's my understanding that they have an audio feed that has been set up, but we're not able to get the video connected. But Mr. Jackson is downstairs and does have the ability to hear what is happening in the courtroom.

Is that correct?

[27] DEPUTY GRAHAM: Yes, Your Honor. That is our understanding. I will verify with the deputies down there right now to make sure they can hear and let you know.

THE COURT: All right. Thank you.

DEPUTY GRAHAM: Your Honor, Mr. Jackson states that he is having trouble hearing the computer the way it's set up now. IT is currently working on getting a set of auxillary speakers so they can make it louder for him so he can hear.

THE COURT: We can also – if we talk more into the microphone, does that make it better? Testing one,

two, three. Can you hear us now? Can you hear us when we talk into the microphone? Can you hear me now?

DEPUTY GRAHAM: Can you hear us now? Testing, one, two, three.

THE COURT: I have speakers right here if that would be helpful. You can take those downstairs.

MR. BEHLER: My office has speakers. I would be happy to provide if we need them.

Your Honor, Mr. Reidel brought up an interesting idea. I think everyone has a concern with Mr. Jackson hearing or seeing things, but not necessarily be able to participate. A potential idea, I have no idea if this is practical or not, would be if we had some way he could instant message the court or something like that with an objection. That I think reduces the issue of his outbursts in court or what I would assume would [28] happen on the audio, but still allows him to object to anything I say. The Court can rule on it granted I have an opportunity to respond to the objection. Again, I don't know if that's practicable or not.

THE COURT: We're checking on that. Thank you. I think part of the problem is that the computer is in a separate area from him with a barrier, a glass barrier between, so he might need to state his objections out loud and have whoever has the computer type it.

MR. BEHLER: I have no idea on the security downstairs, so I don't want to put my foot in my mouth here. If he's not allowed to do that, I certainly understand. I don't what to cause a problem with our fine deputies here.

THE COURT: I think the idea was to maintain distance with him from the computer but still allow

him to have access to the proceedings up here out of safety concerns. Is that fair?

DEPUTY GRAHAM: Yes, Your Honor. I mean, we're willing to do whatever the Court needs to have done in order to facilitate this. The way we have it set up now was our original idea. But if the Court deems it necessary to change or alter that idea, we're more than willing to work with the Court on that.

THE COURT: Let's just check and see if it's feasible to do that instant messaging, and so I'm willing to take a few more minutes to do that.

[29] DEPUTY GRAHAM: Or would it be a possibility to use a cell phone?

THE COURT: Possibly. The concern again is having him make verbal outbursts.

DEPUTY GRAHAM: But if he was able to send text messages to a phone here in the court, those text messages could be read on the record.

THE COURT: That's true.

MR. BEHLER: I can tell the Court, as the Court knows, I have very, very little evidence remaining. Couple recross questions. I have a witness who is sitting downstairs. I have about six questions for her. I'm happy to go very slowly through those questions to allow him an opportunity to object. It becomes a bit more interesting in a closing argument, but I can certainly endeavor to slow down.

THE COURT: Okay. We have been checking. We can't do an instant messaging. In terms of the cell phone idea, I think that is an idea, but I guess a couple things. One, given the limited amount of evidence that remains, given that it is Mr. Jackson's conduct that has caused his removal from the courtroom, given that

we have undertaken great efforts over the past almost two hours with the jury waiting to develop a number of ways to allow Mr. Jackson to have access to the proceedings without further disrupting the proceedings and, frankly, creating a problem for him in front of the jury, I believe that [30] the method that we have put in place of having the audio feed is sufficient to protect Mr. Jackson's due process rights under all of the circumstances.

MR. BEHLER: I understand, Your Honor.

THE COURT: So why don't we bring those speakers back up. Are we ready to bring the jury in? Can they hear down there? I guess that's the final question.

Can you hear us?

DEPUTY GRAHAM: They're attempting to give him ear buds so that we won't have any issues with the audio feed.

THE COURT: Okay. We can bring those back up.

MR. BEHLER: Thank you, Your Honor. If I could approach?

THE COURT: Yes. Thanks.

(Brief pause in the proceedings.)

THE COURT: Mr. Behler, have you had a chance to develop a jury instruction, a final jury instruction, regarding the circumstances here?

MR. BEHLER: Your Honor, I have been working on that. It occurred to me that, frankly, I like the Court's wording of a curative instruction better than what I have written. I think perhaps if we included that instruction that the Court is going to read to the jury again as a jury instruction – frankly, that was better

than what I have written so far. That would be my request at this time.

[31] (Brief pause in the proceedings.)

THE COURT: Okay. Mr. Behler, did you submit your jury instructions without citations?

MR. BEHLER: I apologize, Your Honor. I believe I just submitted the one with citations. I'm happy to go through and remove them.

THE COURT: Where are we at in terms of his ability to hear?

DEPUTY GRAHAM: Your Honor, they are still working on the audio.

THE COURT: Can the person who is sitting next in there with Mr. Jackson, can that person hear?

DEPUTY GRAHAM: So they're trying out different speakers. Different speakers have various levels of volume. When we originally spoke – or with the original setup, it seemed to be okay, and then for some reason or another, that original setup is not working now. My apologies to the Court. I'm not an IT person. I don't know exactly what's going on. I'm just relaying information. They are still actively working on the problem. They've been given instructions to let us know as soon as they know.

THE COURT: Was the person sitting next to Mr. Jackson able to hear?

DEPUTY GRAHAM: The logistics of the cell down there, nobody would be sitting next to –

[32] THE COURT: I know, but would they be able to hear if they were?

DEPUTY GRAHAM: Initially, yes. But now is no longer the case. They are going to go test it again with somebody standing in there with him.

THE COURT: Very good.

DEPUTY GRAHAM: Can you hear me now? How about now? Can you hear me better now? How about now? Can you hear me now? Testing one, two. Testing one, two, three. Testing one, two, three.

THE COURT: The computer has been on mute. I don't know if that's mute to come in or to go out.

DEPUTY GRAHAM: They heard us periodically. It wasn't a sense that they never heard us. It was a sense that they didn't hear us well.

THE COURT: I got these speakers right now if you want to take them down.

DEPUTY LEWIS: Your Honor, it sounds like it's a problem with the computer, not the speakers.

MR. BEHLER: Your Honor, if we're just doing audio, potentially we could just do a speakerphone.

THE COURT: Yeah. Let's do that. Is there a phone jack down there?

DEPUTY GRAHAM: We'll figure it out. We'll figure it out, Your Honor.

[33] THE COURT: Let's do a cell phone.

MR. BEHLER: It would have to be on mute, I suppose.

THE COURT: It would be on mute here. We can do that on this.

DEPUTY GRAHAM: They are retrieving Mr. Jackson's cell phone now.

THE COURT: We have his phone number on the pleadings.

DEPUTY GRAHAM: You can call him?

THE COURT: Uh-huh.

DEPUTY GRAHAM: Very well. Testing one, two. Test, test. Can you hear me now?

(Brief pause in the proceedings.)

DEPUTY LEWIS: Testing, testing, testing.

THE COURT: Can you hear us?

DEPUTY LEWIS: He can hear them.

THE COURT: We don't need a cell phone then? Sounds like the audio on the computer is working. We don't need the cell phone. Mr. Jackson can hear us. We can bring the jury in.

Is there anything else before we do that?

MR. BEHLER: We have confirmed that Mr. Jackson can hear?

THE COURT: Yes.

MR. BEHLER: Your Honor, I have nothing further.

THE COURT: All right. Thank you.

(The jury entered the courtroom.)

[34] THE COURT: Ladies and gentlemen of the jury, thank you so much for your patience this morning. We had quite a few technical issues that we had to sort out, and it took a great deal longer than we had anticipated. So my apologies to you.

I had some things I'd like to advise you of. First, Mr. Jackson has the right to represent himself and he chose to do so, but he is and was required to follow the

rules of this Court. He did not do so after repeated warnings, so I had Mr. Jackson removed from the courtroom. I determined that his conduct has resulted in him voluntarily absenting himself from the courtroom. We have set up an audio feed so that Mr. Jackson can hear the rest of the proceedings from outside the courtroom.

I will also note that Mr. Jackson was previously appointed an attorney at no cost to him, and that he discharged that attorney before trial and decided to go forward with the trial and represent himself, which is within his constitutional rights to do so.

The jurors are directed to disregard the comments that were made by Mr. Jackson just before you left the courtroom regarding his self-representation and as to any issues that the Court had previously resolved before trial. This case is to be decided on the evidence presented in the Court, the witness testimony, and exhibits admitted into evidence, and the instructions on the law that I give you.

With that, we will continue with the trial.

[35] Mr. Behler.

MR. BEHLER: Your Honor, I believe Officer Rose was still on the stand.

THE COURT: Yes. Officer Rose, if you would resume the witness seat, and please know that you are still under oath.

THE WITNESS: Yes, Your Honor.

THE COURT: Mr. Behler, do you have any redirect examination for Officer Rose?

MR. BEHLER: Very, very briefly, Your Honor, please.

REDIRECT EXAMINATION

By MR. BEHLER:

Q Good morning, Officer Rose.

A Good morning.

Q Officer Rose, Mr. Jackson talked about his pending admission to CSU; do you recall that?

A Yes, I do.

Q Okay. And when someone is pending admission, do you know what that means at CSU?

A Yes. They've applied and they receive a student ID number, but it doesn't give them full access to what all students get after they pay and are admitted into CSU.

Q And fair to say, ma'am, as an officer at CSU, pretty good working knowledge of the systems there?

A Yes, sir.

Q Now, are students pending admission allowed generally [36] on campus?

A Yes.

Q Are members of the general public allowed generally on campus?

A Yes.

Q Now, folks that are pending admission or members of the general public, are they allowed inside the Rec Center?

A Not past the check-in zone.

Q So not a CSU student can't go in to the Rec Center past that check-in zone?

A A non-CSU student cannot go past that check-in zone.

Q I phrased that terribly. I'm sorry. Folks who are not students, folks who are pending admission, do they get the student IDs, to your knowledge?

A I'm not sure if they get student IDs. I know they get a number, but that doesn't get them all the amenities that admitted students will receive.

Q So fair to say, pending students can't register for classes or anything like that?

A That's correct.

Q They can't go and just sit in on any class?

A That's correct.

Q Okay. Fair to say, those folks cannot go into the Rec Center?

A Correct.

[37] Q Past the check-in zone?

A [Witness shakes head in the affirmative.]

THE COURT: Your Honor, I have no further questions for the witness. All right. Are there any questions from the jury for Officer Rose? I don't see any questions.

Officer Rose, you may step down. Thank you for your time today.

THE WITNESS: Thank you, Your Honor.

MR. BEHLER: Your Honor, the People call Lisa Lucas.

THE COURT: All right. You can leave your coat and things back there if you would like. Ms. Lucas, if you would step forward, please, here and raise your right hand.

193a

LISA LUCAS,

Called as a witness on behalf of the People, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. BEHLER:

Q Ms. Lucas, I apologize for the wait this morning. My first question is if you could spell your last name for our court reporter.

A Lisa Lucas. L-u-c-a-s.

Q And, ma'am, where do you work?

A Yum Yum's and Ma's Juice Bar.

Q And Yum Yum's, is that a restaurant next to CSU?

A It is.

[38] Q And what is your role there?

A I do a lot of the logistics and manage the bar and work the bar as well.

Q Fair to say you kind of run the place?

A Yes.

Q Okay. Now, do you recall providing a video to law enforcement of an interaction that happened on August 29th, 2016?

A Yes.

Q And to be clear, did you provide that to law enforcement a few days later?

A I did.

Q Okay. And as a manager of the bar, are you able to get video off your security system?

A Yes.

Q And were you able to provide a copy of that to law enforcement?

A I was.

MR. BEHLER: Your Honor, if I may approach the reporter, please.

THE COURT: Yes.

MR. BEHLER: And then the witness?

THE COURT: Yes.

Q (By Mr. Behler) Ma'am, I have just handed you what's been previously marked as People's Exhibit No. 2. Could you [39] open that disk, please. Do you recognize that disk?

A I do.

Q And are your initials on that disk?

A They are.

Q And did you and I review that disk a week or two ago before trial?

A We did.

Q And on that disk, is there the video of the interaction at Yum Yum's on August 29th, 2016?

A It is.

Q I want to talk a little bit on the time stamps on that video. Are the time stamps on the – well, let me go back. I apologize.

On your video system, are the time stamps accurate?

A They are not. For whatever reason our system got shut down, but they are consistently off by a couple of hours.

Q I just want to make sure I understand. They are consistently off by, you said, a couple hours?

A Yes.

Q Okay. And are the dates still correct on there?

A They are.

Q Okay. When you say a "couple hours," fair to say about two hours?

A Yes.

MR. BEHLER: Your Honor, may I have a brief moment?

[40] THE COURT: Yes.

Q (By Mr. Behler) Finish off with an easy one. Yum Yum's Restaurant, is that in Larimer County, Colorado?

A It is.

MR. BEHLER: Thank you, ma'am.

Your Honor, I have no further questions for this witness.

THE COURT: All right. Any questions from the jury? Not seeing any. Ms. Lucas, thank you for your time today. You're excused.

MR. BEHLER: Your Honor, can I retrieve that exhibit, please?

THE COURT: Yes. If you want to just leave it there, Ms. Lucas. Thank you.

MR. BEHLER: Your Honor, the People rest.

THE COURT: All right. Ladies and gentlemen of the jury, the People have rested and completed their evidence in this case. Under the circumstances, the case is ready to go to you for your consideration. However, we need a few minutes to finalize some jury instructions. I know that you've been waiting quite a long time while we've been dealing with our technical issues. I'm going to give you a couple of options. It's about 11:30. I anticipate it will take us maybe 15 minutes to finalize the jury instructions and get those ready to go. You could wait, and then we could proceed with closing argument [41] and jury instructions, and then have the case to you shortly after 12. Probably close to 12:30. And we could also provide lunch for you in the jury room.

The other option is that if you would like to break for lunch now, go out of the building, and then come back, say, at 1:00, and then we could proceed with the case then. So those are the options. Any consensus?

UNKNOWN JUROR: I'd like going for lunch now.

UNKNOWN JUROR: Lunch in.

THE COURT: Okay. Raise your hand if you would like to proceed at this point? Raise your hand if you would like to go out for lunch now? How about if we do this, I will give you some time outside the building just to give you a break. I know you've been waiting in the jury room for a long time. And we'll have you come back, let's say, at 12, and then proceed with the case. You can go outside, get some fresh air, get a little something to eat maybe other than what's back there in the jury room. And then be ready to go back at 12. We should have the case ready for you very quickly at that point.

But before I let you go, let me remind you that the trial is not yet complete so you must not discuss this case with anyone, either in person, using the Internet, or by any other means, this includes members of your family, people involved in the trial, other jurors, or anyone else.

If someone approaches you and tries to discuss the [42] trial with you or if you see or hear anything about it even accidentally, let me know about that immediately. You must not conduct any research, undertake any investigation, or otherwise obtain information about this case or cases like this case from any outside source. You must not read or listen to any news reports or Internet information or other electronic sources about the trial. And your verdict must be based solely on the evidence presented in the courtroom and the law as I instruct you. And it is especially important that you do not form or express any opinion on the case until your deliberations at the end of the trial. So with that, we will see you back here at 12:00.

(The jury exited the courtroom.)

MR. BEHLER: Your Honor, if I may before we jump into jury instructions, I do have one quick thing on the evidence?

THE COURT: Yes.

MR. BEHLER: On People's Exhibits 1 and 2, that is the Rec Center video and the Yum Yum's video, both those disks are quite frankly quite large. The Rec Center video itself is – I've spent quite a few hours getting to navigate and work. It's a big file I guess is what I'm saying. It is not isolated on those CDs.

So my concern or my request, and I apologize not bringing this up earlier, there are on I think both CDs

audio of Mr. Jackson being arrested. Certainly things that are not [43] relevant and haven't been introduced to the jury. I would rather not have the jury unfeathered access. I'm happy to detail for your clerk how to access the videos that have been admitted into evidence. I am happy to do it for the jury should they desire to view the video again. I don't want them to see something that hasn't been introduced in evidence by me. So I just want to make a very clear record on that. I'm happy to do whatever the Court would prefer.

THE COURT: I think my preference – Mr. Behler, I appreciate you bringing that to my attention – would be to have the jury view that on your equipment here in the jury room with the clerk present, the bailiff present, while they are viewing it. No discussion about what they are observing while they are in here viewing that. But you can get that set up to the point that was admitted into evidence.

MR. BEHLER: Yes, Your Honor. I can have it ready to go should the jury desire to look at it. I'm happy to do that on People's 1, that is the Rec Center video. If they desire the other video, I'm happy – it's relatively simple to detail how to do that for your bailiff or clerk. Just to ensure that that is only the video that's been admitted. Should the Court desire, I'm happy to show the Court that before, you know, having access to it.

THE COURT: I think what we'll do with the video is we'll retain that. Not put it into the jury room. I don't [44] think they have a means of seeing it anyway back there. But if they ask for it, then we'll proceed as I just outlined.

MR. BEHLER: So I will make sure that I have my computer, video, everything set up, if something arises or it's not working. I will give Donna my phone number.

And I'm happy to come out here outside of the presence of the jury just to make sure it's working and leave before they come back in.

THE COURT: That's fine. All right. Let's look at jury instructions. Did you get to finish those? Looks like Mr. Nealer made the changes that we had talked about in terms of removing the citations. These are based on the jury instructions that you sent previously that were filed April 3rd. If you want to refer to those.

MR. BEHLER: Understood, Your Honor. I have them queued up.

THE COURT: Okay. So let's go through them and make sure we have all the jury instructions. The first one here is the advisement that I just gave to the jury. I don't know if we want that first or want that later. I think we want it later.

THE DEFENSE: I would agree. I'm hesitant to have that as the first instruction.

THE COURT: Okay. I will move that.

MR. BEHLER: If the Court would mind me not standing for every –

THE COURT: That's fine. I'll move that to later on.

[45] So then the first instruction would be, Members of the jury, the evidence in this case has been completed. So basically the introductory instruction. Any changes to that, Mr. Behler?

MR. BEHLER: No thank you, Your Honor.

THE COURT: Okay. The second one, The charges against the defendant are not evidence. Any changes to that one?

MR. BEHLER: No thank you, Your Honor.

THE COURT: Okay. And then my thought was to put the instruction that I had just advised the jury of in regard to Mr. Jackson's right to represent himself and so on after that one.

MR. BEHLER: Your Honor, that strikes me as a prudent place to put it.

THE COURT: Okay. I may add some additional language from the preliminary instruction that I did not repeat just now in front of the jury, and that is the jury is not to either use that as a means of prejudice for or against Mr. Jackson, that language.

MR. BEHLER: Understood.

THE COURT: Let me do that right now. I'm going to remove the sentence about Mr. Jackson was previously appointed an attorney in terms of this instruction. I believe the jury has already heard that. Unless you have a contrary view,

Mr. Behler, that you would like me to consider.

[46] MR. BEHLER: Your Honor, is that the sentence that continues, He was previously appointed an attorney and elected to represent or fire the attorney, more or less?

THE COURT: Yes.

MR. BEHLER: Your Honor, because I think it's been such a big part of this trial, frankly, big part of what's taken place today, I would ask to include that still.

THE COURT: Okay. I will. And I will strike, The jurors are directed to disregard the comments that were made by Mr. Jackson just before you left the courtroom. I think that's not appropriate at the closing instruction.

THE DEFENSE: I would agree, Your Honor.

THE COURT: Okay. The sentences that I will add to this instruction is, Mr. Jackson's representation of himself has nothing to do with whether he's guilty or not. His representation of himself cannot be considered by the jury for any purpose and should not influence the jury's decision in any way. It must not result in either prejudice against Mr. Jackson or sympathy for Mr. Jackson.

MR. BEHLER: Understood.

THE COURT: All right. I'm just saving this before I do anything else. The next one that I have then is, In this case a separate offense is charged against the defendant in each count. Any changes to that?

MR. BEHLER: No, Your Honor. I believe that is [47] straight out of COLJI.

THE COURT: I think all of these are, in fact.

MR. BEHLER: I try to make it that way, Your Honor.

THE COURT: Every person charged with a crime is presumed innocent is the next instruction.

MR. BEHLER: I have no objection to that instruction, Your Honor.

THE COURT: The next is the direct or circumstantial evidence instruction. The question is whether we want to include the parentheticals examples. For example, a witness's testimony that he looked out of the window and saw snow falling, et cetera.

MR. BEHLER: Your Honor, I don't know those are necessary. I don't have a strong feeling one way or the other.

THE COURT: I will remove them then. Take out the examples of both paragraphs of the direct or circumstantial instruction.

Next, the Court admitted certain evidence for a limited purpose. Trying to think if there was anything other than the instructions that the jury were to disregard statements made by Mr. Jackson that were out of order, whether there was any evidence that was admitted for limited purpose.

MR. BEHLER: Your Honor, I don't recall any. I don't know if that instruction is necessary.

THE COURT: I don't recall any either. I will remove [48] that instruction. The next is, During the trial you were permitted to submit written questions to witnesses. I think that needs to be included.

MR. BEHLER: I would agree, Your Honor.

THE COURT: The next is, You are the sole judges of the credibility of each witness and the weight to be given to such testimony.

MR. BEHLER: I believe that is necessary.

THE COURT: Okay. And then the next is, The credibility of a witness may be challenged by showing that the witness has been convicted of a felony. We didn't have anyone who had a felony that was used for impeachment.

MR. BEHLER: I would agree, Your Honor. I would ask that we get rid of that instruction.

THE COURT: The next one, The credibility of a witness may be discredited or supported by testimony of his or her representation for truthfulness. Same thing.

THE DEFENSE: I would agree, Your Honor.

THE COURT: So that will be struck. The next one is, The number of witnesses testifying for or against a certain fact does not by itself prove or disprove that fact. We'll include that.

The next is, Every defendant has a constitutional right not to testify. I think that needs to be given to the jury in this circumstance.

[49] MR. BEHLER: I would agree, Your Honor.

THE COURT: The next is, A crime is committed when the defendant has committed a voluntary act prohibited by law together with the culpable state of mind, including both the definitions of intentionally or with intent and knowingly or willfully.

MR. BEHLER: I believe, and I'll double check the instructions, I believe all of them contemplate a mental state of knowing or intent. I think so. I don't think we need any others. But I think those are necessary.

THE COURT: I don't think we need any others either. Okay. Then the definitions. We have account holder, benefit, enters unlawfully, a thing of value is that of another, benefit, enters unlawfully or remains unlawfully, financial device of another, personal identifying information, possession, premise, and thing of value. I don't know that we need any other definitions.

MR. BEHLER: No, Your Honor. When I made these I went through COLJI and included every definition they recommended. I think some are arguably irrelevant to this case, but I think to be safe we should include them so not to have any jury questions on that.

THE COURT: Agreed. All right. The next is the elements of the crime of identity theft. I looked at those earlier. I did think they tracked COLJI and the charges here.

[50] MR. BEHLER: I think so, Your Honor.

THE COURT: Okay. And next is the elements of criminal possession of a financial device. And same thing, I did read through those earlier. I do believe those track COLJI and the charges here.

MR. BEHLER: I believe so, Your Honor.

THE COURT: And I also did not see that there were any lesser included potential charges on any of these.

MR. BEHLER: I don't recall any, Your Honor. I didn't note any.

THE COURT: Yeah. I've looked with an eye towards that and didn't see any issues with that when I reviewed them again this morning. The next is the elements of the crime of theft. I do believe that tracks COLJI and the charges here.

And the next is the instructions on the question. If you find the defendant not guilty of theft, you should disregard this instruction and sign the verdict form to indicate you're not guilty verdict. And the thing of value is \$50 or more but less than \$300, which is the Class 3 Misdemeanor.

MR. BEHLER: Yes, Your Honor.

THE COURT: Okay. So no changes or corrections to that.

MR. BEHLER: I don't believe so. I note on that verdict instruction there's also a question there.

THE COURT: I did notice that. The elements of [51] second-degree criminal trespass, again, I believe those track COLJI and the charges here.

Members of the jury, you may discuss this case only when you are all present and may deliberate only in the jury room. Standard instruction.

Next is, Once you begin your deliberations, if you have a question, your foreperson should write it on a piece of paper, sign it, and give it to the bailiff, and so on.

Generally I add to that standard instruction, something like, Please note transcripts are not available, because that is often the first question that is asked. So sometimes, not always, but sometimes that cuts that question off. Any objection to that?

MR. BEHLER: I don't have an objection to that, Your Honor.

THE COURT: Okay. Then the next is the final instruction, Bailiff will now escort you to the jury room. And something else that I often add to that is to advise them not when I'm reading the instructions but when I'm excusing them to the jury room, I advise them that their cell phones will be held while they are in deliberations.

MR. BEHLER: I have no objection to that, Your Honor.

THE COURT: All right. Looking at the verdict forms, verdict Count I, identity theft. I didn't see any changes to that. And that is Count I. Count II, criminal possession of a [52] financial device. Same thing. I didn't see any changes to that. Count 3, theft. And that does include the question. Question has a number two on it. I think that should be either no number or number one.

MR. BEHLER: I would agree. That's a typo on my part. Whatever the Court would prefer.

THE COURT: I'll just take it off since there's only one. So on verdict form three I'll remove that number two in front of the question. And then the last one – otherwise, I didn't see any changes. And the last one was verdict Count IV, second-degree criminal trespass. And I didn't see any changes to that.

MR. BEHLER: I would agree.

THE COURT: Okay. And let me also note on the record, in evaluating and listening to the evidence that was presented by the district attorney as part of their case in chief, that the Court did evaluate whether or not the evidence was sufficient to withstand any motion that might have been made regarding judgment of acquittal. And I do find that the prosecution has presented sufficient evidence for the issues to go to the jury on each of the counts. And taking that evidence in the light most favorable to the prosecution that such evidence is sufficient and substantial to support a conclusion by a reasonable jury that the defendant is guilty of the crimes charged beyond a reasonable doubt. Therefore, the Court does [53] not find that a judgment by acquittal on any of the counts would be appropriate, and that the matter should go to the jury.

Anything else before we finalize the jury instructions?

MR. BEHLER: I can't think of anything, Your Honor, no.

THE COURT: Okay. All right. I will go ahead and clean these up, print them out, and we'll have copies made. Each of the jurors will have a copy to read along with while I'm reading them. Then you can proceed with your closing.

MR. BEHLER: Your Honor, while the Court is doing that, may I retrieve one of the exhibits? I'd like to use it in closing argument.

THE COURT: Yes, of course. Go right ahead. I'm going to do this right here and print it out so that we're ready to go.

MR. BEHLER: Thank you, Your Honor.

THE COURT: We're going to come back into court probably in about 15 minutes or so. So you can let folks downstairs know if Mr. Jackson needs to use the restroom or anything like that, that there should be some time to do that.

DEPUTY GRAHAM: Yes, Your Honor. With the Court's permission, I think it would be better for us to leave up the audio feed since we had so much trouble getting it established.

THE COURT: I absolutely want the audio feed up.

DEPUTY GRAHAM: We'll leave it up the entire time. Just so the Court is aware, the mic is open the entire time.

[54] THE COURT: Thank you. I want that kept up until after the jury has been dismissed from the courtroom for their deliberations. At that point, we can take it down.

DEPUTY GRAHAM: Yes, Your Honor.

THE COURT: All right. You can go ahead and do what you need to do.

(Brief recess.)

THE COURT: Let's go back on the record in

Mr. Jackson's case, 16CR1854. Mr. Jackson is downstairs able to hear what is being said. Just after

we broke one of the deputies reported to me that Mr. Jackson wanted the Court to know that he was able to hear but that he was not listening. So I think based on that I am confident that the sound system that we took great pains to set up this morning is working.

I've asked the deputies to take a copy of the jury instructions down to Mr. Jackson so he would have them as he is able to hear them read at the same time that he can go along with them if he would like.

Are we ready to bring the jury in?

MR. BEHLER: Yes, Your Honor.

THE COURT: Okay.

MR. BEHLER: Your Honor, did the Court set a time on closing? I'm not planning on taking more than 15 minutes.

THE COURT: I didn't. But let's say 15 to 20.

MR. BEHLER: That's fine, Your Honor. If I'm getting [55] close to that 20-minute mark, could the Court yell at me.

THE COURT: Sure.

MR. BEHLER: Thank you.

DEPUTY GRAHAM: Your Honor, Mr. Jackson is being moved back to the cell where he could hear all the proceedings right now.

THE COURT: All right. Very good. Thank you.

DEPUTY GRAHAM: I did have an opportunity to talk to him. We have provided him some things do. Do you want me to go ahead and state that on the record?

THE COURT: If you would, please.

DEPUTY GRAHAM: So during the break I had an opportunity to talk to Mr. Jackson. Mr. Jackson informed me that while he is able to hear what is going on, he is not listening to it. He has also been given pen and paper. If he so chooses, he can right down any objections or any questions that he has for the Court. And I've instructed my officers to bring anything that he chooses to write up to the Court and also make copies for him. And we have also made arrangements for his lunch.

THE COURT: All right. Deputy, thank you very much for all of the accommodations that you all have done throughout the morning in regard to this and in regard to Mr. Jackson. Thank you for that.

DEPUTY GRAHAM: It's our pleasure, Your Honor.

[56] (The jury entered the courtroom.)

THE COURT: Thank you. You may be seated. Mr. Nealer, if you could pass out copies of the jury instructions to each of the jury panel members.

Ladies and gentlemen of the jury, we are at the point in the trial where the evidence is closed and I will give you the instructions on the law that you are to follow.

(The Court read the jury instructions at this time.)

THE COURT: You will have four verdict forms. I will make the change on the original jury instructions and initial and date that change. You'll be provided with four verdict forms.

(The Court continued reading the jury instructions.)

THE COURT: With that, I will turn to the district attorney to present his closing argument.

MR. BEHLER: Thank you, Your Honor. May I manipulate the podium?

THE COURT: Yes.

MR. BEHLER: He trespassed, he took the wallet, he returned the wallet, but without that credit card and \$80, he went to Yum Yum's, he used the credit card. Ladies and gentlemen, that's what I first said to you in my opening argument. That's what the evidence has shown here over these last few days. Evidence in the case which you heard on that stand, and the evidence you will have in the jury room has shown [57] that.

The evidence has shown that Mr. Jackson trespassed into the Rec Center. You saw it. You'll have that video. You saw him go around the outside not where you're supposed to go. Take a glance on his phone. You saw him go into the locker room. You saw Mr. Schmid enter the locker room. You saw Mr. Jackson leave when Mr. Schmid was gone. You saw Mr. Jackson return the wallet. You heard testimony that they returned that wallet to Mr. Schmid. You heard and saw Mr. Jackson leave the Rec Center in that gray CSU Ram's shirt. You saw him at Yum Yum's in that gray CSU Ram's shirt identified by Kate Miller and used that credit card. Used the card of Tyler Schmid. Folks, you got the receipt back in the jury room with you.

DEPUTY GRAHAM: Your Honor, I just got a report that the sound is not currently working.

THE COURT: Okay. Mr. Behler, if you could talk as much as possible into the microphone.

MR. BEHLER: Could we test from there?

DEPUTY GRAHAM: Testing, test, test, test.

THE COURT: How about if I'm speaking?

DEPUTY GRAHAM: We don't have any audio down there,

Your Honor.

THE COURT: Okay.

DEPUTY GRAHAM: Testing, test, test, test. Test, test test, testing.

[58] THE COURT: Loud and clear. Okay. We can proceed. Go ahead.

MR. BEHLER: Your Honor, I'm happy to restart in order to make the record clear and possible.

THE COURT: If you would. And talk as much as possible into the microphone.

MR. BEHLER: I will, Your Honor.

He trespassed, he took the wallet, he returned the wallet but not with that credit card, not with those \$80, not with that football ticket. And he used the credit card minutes later. Ladies and gentlemen of the jury, that's what the evidence has shown. That is what the evidence you heard on this witness stand, and the evidence, the physical evidence, that you will have back in the jury room has shown you.

Ladies and gentlemen, that's what the evidence has shown. That video, that CSU Rec Center video, shows Mr. Jackson trespassing into the Recreation Center. You'll have a copy of that video should you like to see it. Trespassing into the locker room. Shows Mr. Schmid walking into the Recreation Center. Leave that locker room. Shows Mr. Jackson leave the locker room. Return that wallet. You heard that that wallet was given back to Mr. Schmid. You saw Mr. Jackson leave the Rec Center in that gray CSU Ram's shirt.

You saw him at Yum Yum's in that gray CSU Ram's shirt. He was identified by Kate Miller, our bartender at Yum Yum's, as [59] buying it. He used this. He

bought the food with this receipt. He signed it. You'll have a copy of this back there in the jury room. You'll have a copy of all of this evidence back with you.

Ladies and gentlemen, that is what the evidence has shown. Just briefly, let's walk back through these witnesses. Tyler Schmid, you heard him. College kid. He never met

Mr. Jackson before. He detailed what happened. He detailed how it happened to him. How it felt. And that he got his stuff back. Folks, Mr. Jackson returned that wallet. Absolutely true. You saw it on video. But he used that credit card that was not his to use. He possessed that credit card which he could not do. He committed the crime of theft by taking the \$80 and the food at Yum Yum's, and he trespassed.

You heard from Brian Gilbert briefly. CSU video tech guy. They got all the video in this case. You heard from Kate Miller. You heard her memory. Quickly identified him as

Mr. Jackson. That's who I served. He was a nice guy to her, no doubt about it. What happened? She didn't check an ID, but he gave her that card.

Ladies and gentlemen, you heard from Officer Rose, CSU Police Department, detail the investigation. You saw video. You heard from Lisa Lucas after a bit of delay this morning. The evidence has shown that Mr. Jackson is guilty of all four charges beyond a reasonable doubt.

I know it's been a long morning. I do want to walk [60] through a few of these instructions. Let's talk about the elephant in the room. Jury Instruction No. 3. I have put the instruction number on all of my slides. If you would like to follow along, you certainly

can do so. You cannot hold the fact that Mr. Jackson chose to represent himself against him. This is very important. Cannot hold that against him. Cannot hold that against him, folks. You are to assess the evidence in the case.

Has the evidence met my elements? We're going to go through those elements. Can't hold that for or against him. You heard the outbursts in court. Judge Field told you to disregard those. You are to disregard those. That is the law you said you would follow in this case. Mr. Jackson, again, it's in Instruction 3, that is the law of the Court, has chosen to voluntarily absent himself. That's all I will say on that.

Let's look at the actual evidence in this case. You heard from witnesses. And let's contrast the actual evidence to all this other sideshow on this case. Focus on what you heard from those witnesses on that stand and this physical evidence you will be able to review should you desire to do so. You heard what happened. You heard what was going on. And the question for you, folks, is have Officer Rose and I proven each and every element beyond a reasonable doubt? Not this sideshow, not anything else. Does the evidence prove the crimes alleged? That is the question for you folks.

[61] Jury Instruction No. 1. Important one. If you decide that I have proven this case beyond a reasonable doubt, it's the Judge's decision to decide what any sentence would be. You are not to consider it at all. Again, touched on this, it was an issue on this trial, if the Judge told you not to consider a statement, you must not consider it in your deliberations.

Those are the rules, folks.

Let's jump into some of the evidence. Jury Instruction No. 13. Identity theft. That the defendant. How do we

know Mr. Jackson did it? How do we know it was him? Let's look. He was identified by Officer Rose. He was identified by Kate Miller. Of course was not identified by Tyler Schmid.

Mr. Schmid never met him. But you saw him on that video. Saw him on the video at Yum Yum's. You saw him on the video at the Rec Center. You'll have evidence. The credit cards.

Mr. Jackson's credit cards in his wallet. Take a look at these, folks. One of them says – I agree, it's a bad copy – Jheshua Jackson. Those are Exhibits 5A and 5B. That the defendant, we have met that.

State of Colorado at or about the date and place charged. August 29, 2016. Larimer County, Colorado. Met that one.

Knowingly. This is defined in Jury Instruction No. 11 if you'd like to consult it. Did he know what he was doing? That is an element I have to prove. Absolutely he did. We'll [62] detail why. Used the personal identifying information, financial identifying information, or financial device of another. Folks, be very simple, he used a credit card. That's a financial device. That one has been met. You heard from Mr. Schmid, he gave no one permission to use that credit card. No one had permission. No one had lawful authority to use that credit card. Clearly Mr. Jackson didn't. With the intent to obtain cash, credit, property, services, or any other thing of value. Well, folks, what did he use that credit card for? He used it to pay for a meal. That's what he used it for. He used it to obtain a thing of value. That is all I have to prove. Those are my elements of identity theft. Ladies and gentlemen, the People have proven that beyond a reasonable doubt.

Count No. 2, criminal possession of a financial device. Instruction No. 14. Again, I don't want to drone on to you folks. That the defendant, has been shown it's Mr. Jackson. State of Colorado at or about the date and place charged, august 29, 2016. Not contested here. Had in his possession or under his control. Did he have it? Any financial device. In this case, Mr. Schmid's financial device, that he knew or should have known to be lost, stolen – well, stop right there. He took it. He took the wallet. He took these things out of the wallet then used them. That is the evidence that you have in this case.

I want to talk briefly about that credit card. I don't [63] have it. Absolutely true. You heard from Officer Rose. Didn't have it when he was contacted by Officer Rose. That doesn't mean he didn't have. In fact, you saw it on the Yum Yum's video. Theft, defendant, state of Colorado, date and place charged, did he obtain a thing of value of another without authorization. Yes, folks. No one authorized him to take \$80. No one authorized him to take food of Yum Yum's. No one authorized him to take Mr. Schmid's credit card.

And intended to deprive the other person permanently of the use and benefit of a thing of value. There is no reason you would take a wallet from a Rec Center, return the wallet without the \$80, other than to deprive someone of the \$80. There's an interrogatory on this one. Instruction No. 16. Was it \$50 or more but less than \$300. You heard from Mr. Schmid he had \$80 in the wallet. The receipt will detail an amount of \$28.68. I'm terrible at math, but that's over \$100 and certainly less than \$300.

Finally, folks, second-degree criminal trespass. This is Instruction No. 17. This is the trespass to the Recreation Center. You heard today he was not a

student. He was a prospective student. Prospective student and members of the public can't just go into the Rec Center. Are they allowed on campus? Absolutely. CSU, it's a beautiful campus. Can they walk into this Rec Center? No. Look at his actions in the video. You saw the flow of traffic. Students handing in their [64] ID, going through. There's about four little metal pillars. Students exiting out that way. Kind of like two lanes of a highway. One is going this way, the other one is going this way. Mr. Jackson doesn't go where he is supposed to go. He goes around, looks down at his phone as he quickly walks through. Folks, that's trespassing.

Ladies and gentlemen, back there in the jury room you're going to have access to People's Exhibits 5A, 5B. Just a reminder, 5A and 5B are the cards found with Mr. Jackson when he's contacted by Officer Rose. Really take time to look what's going on. Especially in Exhibit 5B. Again, these are all the cards found in his possession. Let's look. Jheshua Jackson, the name on one of the cards. On another one of the cards, I want to be clear, it is a different card, there's a signature. Three words. I'm not going to guess what that says, but you can see that signature. Funny that the signature on the receipt, which you'll have access to, looks nothing like that. It looks nothing like the signature on the back of Mr. Jackson's other cards. Why? He knew exactly what he was doing. He's making this one try to look like Mr. Schmid's name. It looks nothing like any of the other signatures that we have.

Again, folks, you'll have access to all of this. I want to talk just briefly on the timeline of this case and how it lines up. Mr. Jackson gets to the rec case center 7:42 p.m. Gets in that locker room 7:43 p.m. Again, have access to this. [65] Mr. Schmid nine minutes later

enters that locker room. Leaves it a minute later. He's off to go work out. Mr. Jackson leaves that locker room around 8:25 p.m. Turns the wallet in at 8:26 p.m. You saw that on the video. He goes right there, returns the wallet. After quite some time of shuffling around lockers and looking in other lockers on the outside – when he's looking in lockers outside of the locker room, you saw that on the video, there are several minutes of this, just going back and forth in lockers, he leaves some of his stuff. Low and behold, it's how he's eventually figured out. How they figure out his name and the CSU Rec Center staff finds that bag he had.

He leaves 8:32 p.m. A receipt at Yum Yum's when Ms. Miller printed it 9:00 p.m. In fact, 9:59 minutes. You heard from Officer Rose in that map it's a few minute walk from the Rec Center to Yum Yum's. That lines up, ladies and gentlemen.

Let's really look at this video from Yum Yum's. Again, provided to you as People's Exhibit No. 2. You heard from Ms. Miller. There's Mr. Jackson. Here comes the food. Notice the shirt he's wearing. Review the video when he walks in. Same shirt as before. There's Ms. Miller getting that receipt. Giving the receipt to Jackson. That is this receipt. Look what he does here. Seems like a long time to decide which credit card to use. That credit card is run. Mr. Schmid's credit card. We know it's Mr. Schmid's credit card because, again, [66] folks, we have the receipt that Ms. Miller testified to. This is the receipt. This is what Mr. Jackson signed. It's given back to him. He's holding something in his left hand. That would be a credit card. Again, folks, you'll have every opportunity to review this evidence, but look what he's doing with that credit card. He's holding it in his hand as he signs.

Why? Got to make sure he gets that name right. And gives over the receipt.

If I may have the lights. Thank you. I'm sorry, Your Honor.

THE COURT: No problem.

MR. BEHLER: Ladies and gentlemen, it's been an interesting trial. I know you folks had to wait. But the evidence in this case is what you are to judge. Does the evidence in this case prove the elements beyond a reasonable doubt? Ladies and gentlemen, the evidence does prove it. The evidence proves Mr. Jackson is guilty of identity theft, criminal possession of a financial device, theft, second-degree criminal trespass. I thank you for your time, and I thank you for your patience over the last two days.

THE COURT: All right. Thank you. Ladies and gentlemen of the jury, just one moment. Ladies and gentlemen of the jury, the bailiff will now escort you to the jury room where you will select one of the members to be your foreperson. Your foreperson will preside over deliberations and shall sign any [67] verdict form that you may agree on according to the rules that I have explained to you.

The verdict for each charge must represent the considered judgment of each juror and it must be unanimous. In other words, all of you must agree to all parts of it. This requirement also applies to any determinations that you make in response to the verdict questions that you conclude should be answered. Only one verdict shall be returned signed for each count. The verdict forms in these instructions shall remain in possession of your foreperson until I ask for them in open court.

Upon reaching a verdict and if required by your verdicts answering any verdict question, you will inform the bailiff who will in turn notify me and you will remain in the jury room until I call you into the courtroom.

I will also note that there were some videos that were admitted into evidence. We don't have the capacity for you to observe those immediately in the jury room. But if you decide that you would like to view those videos, please write a question form. Let the bailiff know, and we'll get that equipment set up for you. Preferably much quicker than some of the other technology that we had to set up today.

One other thing is that we did have as you know from the beginning of this an alternate. That alternate was selected randomly just based on the seat that you ended up with before [68] anyone ever came into the courtroom. So I will ask the individual that I identify as the alternate to please wait in the courtroom while I excuse the rest of the jury to the jury room. So the alternate is Mr. Adam Johnson.

So, Mr. Johnson, if would please wait here in the courtroom. And I will excuse the rest of the jurors.

At this point, I will swear in the bailiff. So Mr. Nealer.

(At this time the bailiff was duly sworn.)

THE COURT: Mr. Nealer, there are the original jury instructions and verdict forms. All rise for the jury. We are now in recess pending deliberations of the jury.

(The jury exited the courtroom.)

THE COURT: Got one more brief record to make.

MR. BEHLER: Yes, Your Honor.

THE COURT: That is that Mr. Jackson has submitted through the sheriff's deputy a letter to the Court or a statement that I will read into the record and will also have filed into the Court's electronic file. It reads as follows, I, Prince Jheshua Daniel J. El Ben David, on or about 8:30 entered the Court of 3B in Larimer and was given instruction and warning of contempt. I asserted it was my intent to comply with the code of conduct. Moments later, the jury of 13 entered and I was to continue cross-examining Officer Rose. I softly, politely, informed the Court and jury that I retained Legal [69] Shield, Inc, Services to hire Riggs, Abby, Borgenson, Turphen, and Lewis, LLP [phonetic] firm to represent me at their advice. Exercised my right to no longer to represent myself and asked the Court for continuance. The jury was excused and I was placed into custody. Question mark.

I have no knowledge of the proceedings as the audio malfunctioned in the holding cell and did not hear anything. Deputies Newby and Youngmeyer are witnesses to no audio of the proceedings. My rights to due process are being violated as I am being punished for asking a question and a motion for continuance. This transcript is being noted. I refuse – do not consent to not having my evidence submitted. And not being represented according to due process as I did not absentee myself for proceedings. And it is signed an illegible signature. TTEE in behalf of defendant 13:48.

I don't believe any additional record is necessary. That was handed to me just at the conclusion of closing arguments.

Deputy, what would you like me to know about the audio issue?

DEPUTY GRAHAM: The audio experience earlier I was told by my officer that the speaker that was near the opening that Mr. Jackson could access, the speaker that was facing the opening was the speaker that controls the volume on the speaker. When my officer went to troubleshoot the issues with the audio [70] that we had just at the beginning of this session –

THE COURT: And when we were talking on the record about that?

DEPUTY GRAHAM: That is correct. When he went to troubleshoot that, he found the speaker volume had been turned all the way down. The speaker issue or the volume issue was corrected by just turning the volume up. After that, the speaker with the volume control was moved far enough away from the opening in the cell so that Mr. Jackson would not have access to it. After that point in time, there were no other issues with the audio to my knowledge.

THE COURT: Okay. Thank you for that report. Based on everything that I've heard, I do believe that Mr. Jackson was able to hear all of the relevant proceedings in this case throughout the morning and early afternoon. And we did restart the closing argument after that raised concern that he could not hear. That volume issue was remedied, and we restarted the closing argument. I do believe Mr. Jackson was able to hear everything that he needed to in this case.

Mr. Behler, anything further?

MR. BEHLER: No, Your Honor. Thank you.

THE COURT: All right. If the court reporter and Mr. Behler could gather the exhibits. Make sure the jury has the exhibits available to them. If we need to

contact you for technical help to get the video set up, we will let you know [71] that. In any event, give Ms. MaCleod some contact information for you so that we can let you know if the jury has any questions or when they have reached a verdict.

MR. BEHLER: Your Honor, would you prefer – I'm happy to queue up one of the videos should the Court desire me to do so. I am happy to leave my computer here. Whatever the Court would prefer.

THE COURT: Either way. I think one of the problems that we run into, starting at 3:00 we have wellness court. If we could just check back. If you could just check back with us around 2:30 to see where things stand. That would be best.

MR. BEHLER: Not a problem, Your Honor. The exhibits are here. I will leave the computer. There is the user name and very secret password right on the front of the computer.

THE COURT: Thank you. We are in recess pending decision of the jury.

(Recess.)

THE COURT: We're back on the record in Jheshua Jackson, 16CR1854. And Mr. Behler is present. Again, Mr. Jackson is not present for the reasons previously stated. We have a jury deliberation question. The question is, We would like to see the video evidence, please.

The response that I've written is, You may view the videos in the courtroom with the equipment we have in there. The bailiff will be present and will assist you. You may not [72] have any discussions while you are in the courtroom when the bailiff is present, and you may resume your discussions in the jury room when all of you are present.

MR. BEHLER: Your Honor, I think that's appropriate. I guess I would just add a record that I have detailed instructions for opening specific videos that were admitted to the bailiff. I've tried to make them as thorough as possible to make sure that's the only thing the jury sees. I do apologize for the inconvenience.

THE COURT: Thank you. And Mr. Jackson also sent up another letter or continuation of his previous letter by way of the deputies. It says, I am holding my ears so as though not to hear the proceedings, so I do not consent to being forced to comply with violating my due process as witnessed by the Deputies Newberry, Youngmeyer, and Lewis. It is signed with an illegible signature. Copyright symbol. Letters "TTEE" in behalf of defendant.

I will also let the court staff know, but I have wellness court between 3 and 4. So if the jury comes back with a verdict at that time, they will simply, unfortunately, have to wait until after 4:00.

MR. BEHLER: Understood, Your Honor. Should the need arise, I'm happy to come up with the bailiff and figure out the video issues.

THE COURT: Very good. Thank you. I will give the [73] answer or have my clerk give the answer to the jury and we are in recess pending deliberations.

(Recess.)

THE COURT: We're on the record in the Jackson case. The jury has a verdict. Are we ready to bring the jury in?

MR. BEHLER: Your Honor, do we know the audio –

THE COURT CLERK: They said it was.

THE COURT: All right. Let's bring them in.

(The jury entered the courtroom.)

THE COURT: We're on the record in the Jackson case, 16CR1854. Ladies and gentlemen of the jury, have you reached a verdict?

THE FOREPERSON: We have.

THE COURT: If you could please hand the verdict to Mr. Nealer. Dispensing with the captions, the verdicts read as follows – and let me also note that Mr. Jackson is able to listen on audio to the proceedings in the courtroom.

Verdict Count 1, identity theft, we the jury find the defendant, Jheshua Daniel Jackson, guilty of identity theft, and it is signed by the foreperson.

Verdict Count II, criminal possession of a financial device, we the jury find the defendant, Jheshua Daniel Jackson, guilty of criminal possession of a financial device, and it is signed by the jury foreperson.

Verdict Count III, theft, we the jury find the [74] defendant, Jheshua Daniel Jackson, guilty of theft. It is signed by the foreperson. The verdict question, We further find with respect to the verdict question for this count as follows: Was the value of the thing involved in the theft \$50 or more but less than \$300, and the box “yes” is checked. And it's signed by the foreperson.

Verdict Count IV, second-degree criminal trespass, verdict reads, We the jury find the defendant, Jheshua Daniel Jackson, guilty of second-degree criminal trespass, and it is signed by the foreperson.

Is this your verdict so say you all?

(The jury panel responds “yes.”)

THE COURT: Would you like the jury polled?

MR. BEHLER: No thank you, Your Honor.

THE COURT: All right. Judgments of guilty are entered on all four counts. The Court will set the matter for sentencing. Before we get on the schedule to do that, I do want to speak very briefly to the jurors.

You have now completed your duties as jurors in this case. And are discharged with the thanks of the Court. The question may arise whether you may now discuss the case with the lawyers, the defendant, or other persons involved in the trial. For your guidance, the Court instructs you that whether you talk to anyone is entirely your decision. It is proper for others to discuss the case with you, and you may talk to them but you need [75] not. If you talk to them you may tell them as much or as little as you'd like about your deliberations or the facts that influenced your decisions.

If anyone persists in discussing the case over your objection or becomes critical of your service either before or after any discussion has begun, please report that to me.

I would like to add my comments, jury duty is something that people do not look forward to many times and sometimes seek to avoid. I believe that most jurors do find it to be an interesting and educational experience. I hope that you did. And while I know that there were many delays in the proceedings here that were beyond our control, I do want to recognize your patience and persistence and attention in this case. I hope that despite those inconveniences that you find your experience to be interesting and enlightening. And that while, again, it was inconvenient, I hope that you did not find your service here overly burdensome.

With that, you will be discharged as jurors from your duty. I would like you to – I almost hate to ask you

this. Just retire one last time to the jury room so that I can just come back and greet you personally and thank you individually for your service. I promise I won't be long. All rise for the jury.

(The jury exited the courtroom.)

THE COURT: In terms of the sentencing, I am going to [76] order a presentence investigation report and a Community Corrections screen. I would like to have Mr. Jackson in the courtroom and advise him of that and set the sentencing date when he is present. So my proposal would be to bring him into court at my regular docket tomorrow morning but after all of the 830s. Maybe 9:30 or 10:00.

DEPUTY GRAHAM: Yes, Your Honor.

MR. BEHLER: Your Honor, I can be available whenever the Court would like to schedule this in.

THE COURT: We have quite a few 830s. Maybe 10:00 tomorrow.

MR. BEHLER: That will be fine, Your Honor.

THE COURT: Okay. We'll bring Mr. Jackson – if you could bring him into court by any means necessary 10:00 tomorrow morning.

DEPUTY GRAHAM: Yes, Your Honor.

THE COURT: All right. Thank you. Mr. Behler, we've got a plea that I'm going to be taking for a wellness court client in a few minutes I hope. Maybe not. So I don't know if you want to wait around and talk to the jury or not. I can let them know either way.

MR. BEHLER: Your Honor, if they'd like to get out of here, I certainly understand. If they are willing to stick around, I frankly would just like to thank them

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for their time. But if they want to go, I certainly understand that as well.

[77] I'll be here, but whatever works for them.

THE COURT: All right. Thank you. I'll let them know.

(Proceedings concluded.)