



**INDEX**  
**JUSTIN PORTER**  
**Case No. 54866**

**PAGE NO.**

Amended Criminal Complaint filed 08/22/00.....	009-024
Amended Information filed 05/02/01.....	233-249
Criminal Complaint filed 08/15/00.....	001-008
Defendant Justin Porter's Reply To State's Written Argument Regarding Defendant's <u>Jackson v. Denno</u> Hearing filed 10/09/06.....	751-762
Defendant's Motion To Strike State's Notice of Intent To Seek Death Penalty filed 03/10/05.....	559-618
Defendant's Written Argument Regarding the Preliminary Hearing Received in JC 02/28/01.....	025-095
Defendant's Written Argument Regarding the Preliminary Hearing filed 02/27/01.....	104-175
District Court Minutes through 10/14/09.....	1055-1104
Ex Parte Order for Transcript filed 01/26/09.....	979-980
Ex Parte Order for Transport filed 08/02/07.....	765-766
Ex Parte Order for Transport filed 12/10/07.....	863-865
Ex Parte Order for Transport filed 06/23/08.....	962
Expedited Order for Transcript filed 06/25/08.....	963
Information filed 04/26/01.....	216-232
Instructions to the Jury filed 05/08/09.....	1012-1048
Judgment of Conviction filed 10/13/09.....	1051-1052
Justice Court Minutes through 04/18/01.....	096-103
Justin Porter's Motion to Remand The Case To Juvenile Court and Conduct a Hearing As To Whether He Should Be Certified as an Adult Filed 09/26/02, Date of Hrg: 10/14/02.....	369-385

1	Justin Porter's Motion to Remand The Case	
2	To Juvenile Court and Conduct a Hearing	
3	As To Whether He Should be Certified As An Adult,	
4	Filed 06/05/08, Date of Hrg: 06/16/08.....	882-894
5	Motion for Jury Questionnaire, Filed 04/14/09	
6	Date of Hrg: 04/27/09.....	985-1009
7	Motion In Limine To Prohibit the State From Referring	
8	To The Decedent, Gyaltsso Lungtok, As A Former "Monk",	
9	Filed 04/13/09, Date of Hrg: 04/27/09.....	981-984
10	Motion to Dismiss Notice of Intent to Seek Death	
11	Penalty For Violation of International Treaty and	
12	Customary Law, Filed 10/10/02, Date of Hrg: 10/21/02....	426-439
13	Motion to Sever Counts XXX, XXXI, XXXII Charging	
14	Murder and Related Crimes Against Gyaltsso Lungtok,	
15	From The Remaining Counts in the Second Amended	
16	Information filed 05/15/08, Date of Hrg: 05/28/08.....	868-881
17	Motion to Suppress Defendant's Confessions	
18	And Admissions to Metro and Chicago Detectives	
19	Based on Violation of His Miranda Rights and	
20	Involuntariness and Request for <u>Jackson v. Denno</u> ,	
21	Hearing, filed 09/26/02, Date of Hrg: 10/14/02.....	386-425
22	Notice of Appeal filed 10/29/09.....	1053-1054
23	Notice of Department Reassignment filed 03/09/06.....	677
24	Notice of Department Reassignment filed 01/12/07.....	763
25	Notice of Department Reassignment filed 01/22/07.....	764
26	Notice of Intent to Seek Death Penalty	
27	Filed 08/03/01.....	334-336
28	Notice to Place on Calendar filed 03/28/01.....	176
	Notice of Witnesses and/or Expert Witnesses	
	Filed 08/20/07.....	767-862
	Order filed 09/25/01.....	353-354
	Order filed 05/07/08.....	866-867
	Order (For Psychiatric Examination) filed 02/05/04.....	555-558

1		
2	Order Denying Defendant's Motion to Dismiss Notice of	
3	Intent to Seek Death Penalty for Violation of	
4	International Treaty and Customary Law, filed 01/02/03..	553-554
5	Order Denying Defendant's Motion to Remand to	
6	Juvenile Court filed 11/06/08.....	977-978
7	Order Granting Defendant's Motion to Sever Counts	
8	XXX, XXXI, XXXII, Charging Murder and Related Crimes	
9	Against Gyaltsso Lungtok, From the Remaining Counts	
10	In the Second Amended Information filed 07/03/08.....	975-976
11	Order to Transport filed 01/03/02.....	366
12	Order to Transport filed 07/25/02.....	367
13	Order to Transport filed 07/30/02.....	368
14	Petition for Writ of Habeas Corpus filed 07/03/01.....	250-283
15	Reply Brief filed 09/19/01.....	337-352
16	Return to Writ of Habeas Corpus filed 07/31/01.....	285-333
17	Second Amended Information filed 10/11/01.....	355-365
18	State's Opposition to Defendant's Motion to Dismiss	
19	Notice of Intent to Seek Death Penalty for Violation	
20	Of International Treaty and Customary Law, Filed 11/19/02,	
21	Date of Hrg: 11/26/02.....	440-468
22	State's Opposition to Defendant's Motion to Remand	
23	The Case To Juvenile Court And Conduct a Hearing As To	
24	Whether He Should Be Certified As An Adult, Filed 11/19/02	
25	Date of Hrg: 11/26/02.....	469-505
26	State's Opposition to Justin Porter's Motion to Remand	
27	Case to Juvenile Court to Conduct a Hearing As To	
28	Whether He Should be Certified as an Adult, filed 06/12/08	
	Date of Hrg: 06/16/08.....	926-961
	State's Opposition to Defendant's Motion to Sever	
	Counts XXX, XXXI, XXXII, Charging Murder and Related	
	Crimes Against Gyaltsso Lungtok, From The Remaining Counts	
	In the Second Amended Information, Filed 06/12/08	
	Date of Hrg: 06/18/08.....	895-925

1	State's Opposition To Defendant's Motion to Suppress	
2	Defendant's Confessions and Admissions to Metro and	
3	Chicago Detectives Based on Violation of his Miranda	
4	Rights and Involuntariness and Request for <u>Jackson v. Denno</u> ,	
	Hearing, filed 12/02/02, Date of Hrg: 12/17/02.....	506-552
5	State's Response to Defendant's Written Argument	
6	Regarding the Preliminary Hearing filed 04/06/01.....	177-215
7	State's Written Argument Regarding Defendant's	
8	<u>Jackson v. Denno</u> Hearing filed 08/18/06.....	678-750
9	Third Amended Information filed 04/30/09.....	1010-1011
10	Verdict filed 05/08/09.....	1049-1050
11	Writ of Habeas Corpus filed 07/13/01.....	284
12	Written Argument Regarding Defendant Justin Porter's	
13	<u>Jackson v. Denno</u> Hearing filed 08/24/05.....	619-676

#### TRANSCRIPTS

17	<b>Jury Trial - Day 1, Monday, May 4, 2009</b>	
18	<b>Filed 01/27/10.....</b>	<b>1635a-1862</b>
19	<b>Jury Trial - Day 2, Tuesday, May 5, 2009</b>	
20	<b>Filed 01/27/10.....</b>	<b>1863-2203</b>
21	<b>Jury Trial - Day 3, Wednesday, May 6, 2009</b>	
22	<b>Filed 01/27/10.....</b>	<b>2204-2450</b>
23	<b>Jury Trial - Day 4, Thursday, May 7, 2009</b>	
24	<b>Filed 01/27/10.....</b>	<b>2451-2646</b>
25	<b>Jury Trial - Day 5, Friday, May 8, 2009</b>	
26	<b>Filed 01/27/10.....</b>	<b>2647-2708</b>
27	Reporter's Transcript, Filed 12/11/09	
28	Date of Hrg: 08/23/06.....	1519-1524
	Reporter's Transcript, Filed 12/07/06	
	Date of Hrg: 11/15/06.....	1529-1602

1 Reporter's Transcript, Filed 01/09/07  
 2 Date of Hrg: 12/19/06..... 1603-1611  
 3 Reporter's Transcript of Arraignment, Filed 05/21/01  
 4 Date of Hrg: 05/02/01..... 1105-1111  
 5 Reporter's Transcript of Continuance, Filed 07/18/03  
 6 Date of Hrg: 07/14/03..... 1135-1139  
 7 Reporter's Transcript of Defendant's Motion To  
 8 Remand Case to Juvenile Court/Calendar Call  
 9 Filed 12/07/09, Date of Hrg: 06/23/08..... 1628-1631  
 10 Reporter's Transcript of Defendant's Motion To  
 11 Remand Case To Juvenile Court/Defendant's Motion  
 12 To Sever Courts XXX, XXXI, and XXXII, Filed 07/01/08,  
 13 Date of Hrg: 06/18/08..... 964-974  
 14 Reporter's Transcript of Evidentiary Hearing  
 15 Filed 03/09/04, Date of Hrg: 03/08/04..... 1146-1384  
 16 Reporter's Transcript of Evidentiary Hearing  
 17 Filed 02/09/05, Date of Hrg: 02/08/05..... 1398-1443  
 18 Reporter's Transcript of Evidentiary Hearing  
 19 Filed 02/10/05, Date of Hrg: 02/09/05..... 1444-1492  
 20 Reporter's Transcript of Hearing  
 21 Filed 08/31/04, Date of Hrg: 08/19/04..... 1390-1396  
 22 Reporter's Transcript of Hearing  
 23 Filed 12/15/09, Date of Hrg: 03/24/05..... 1493-1494  
 24 Reporter's Transcript of Hearing  
 25 Filed 12/15/09, Date of Hrg: 12/09/05..... 1495-1497  
 26 Reporter's Transcript of Hearing  
 27 Filed 12/15/09, Date of Hrg: 01/03/06..... 1498-1502  
 28 Reporter's Transcript of Hearing  
 Defendant's Various Motions, Filed 03/05/03  
 Date of Hrg: 11/25/02..... 1118-1122  
 Reporter's Transcript of Hearing In Re:  
 Petition for Writ of Habeas Corpus (Murder)  
 Filed 09/17/01, Date of Hrg: 09/06/01..... 1112-1116

1	Reporter's Transcript of Hearing Scheduled	
2	Evidentiary Hearing, Filed 09/30/03	
3	Date of Hrg: 09/15/03.....	1140-1145
4	Reporter's Transcript of Hearing Various	
5	Defense Motions (Murder With Use of a Deadly Weapon)	
6	Filed 11/21/02, Date of Hrg: 10/14/02.....	1129-1134
7	Reporter's Transcript of Hearing Various Motions	
8	Filed 03/31/04, Date of Hrg: 03/17/04.....	1385-1389
9	Reporter's Transcript of Proceedings	
10	Filed 12/22/09, Date of Hrg: 04/10/06.....	1503-1509
11	Reporter's Transcript of Proceedings	
12	Filed 12/22/09, Date of Hrg: 04/24/06.....	1510-1512
13	Reporter's Transcript of Proceedings	
14	Filed 12/22/09, Date of Hrg: 05/01/06.....	1513-1514
15	Reporter's Transcript of Proceedings	
16	Filed 12/22/09, Date of Hrg: 06/19/06.....	1515-1518
17	Reporter's Transcript of Proceedings	
18	Filed 12/22/09, Date of Hrg: 08/30/06.....	1525-1528
19	Reporter's Transcript of Proceedings	
20	Filed 12/22/09, Date of Hrg: 01/03/07.....	1616-1618
21	Reporter's Transcript of Proceedings	
22	Filed 12/22/09, Date of Hrg: 01/10/07.....	1619-1621
23	Reporter's Transcript of Setting of Motions	
24	Filed 12/18/02, Date of Hrg: 12/17/02.....	1123-1128
25	Reporter's Transcript of Status Check:	
26	Negotiations, Filed 12/07/09	
27	Date of Hrg: 09/19/07.....	1622-1627
28	Reporter's Transcripts of Status Check:	
	Status of Case, Filed 12/07/09	
	Date of Hrg: 01/31/07.....	1612-1615
	Reporter's Transcript of Status Check:	
	Trial Setting for Severed Counts/Deft's	
	Motion to Remand Case to Juvenile Court/	
	Calendar Call, Filed 12/07/09	
	Date of Hrg: 06/25/08.....	1632-1635

1 Transcript of Proceedings, Sentencing  
2 Filed 12/29/09, Date of Hrg: 09/30/09..... 2709-2715



ORIGINAL

ll

1 PHILIP J. KOHN, PUBLIC DEFENDER  
2 NEVADA BAR NO. 0556  
3 309 South Third Street, Suite 226  
4 Las Vegas, Nevada 89155  
5 (702) 455-4685  
6 Attorney for Defendant

FILED

2006 OCT -9 P 2:13

*Shirley B. Hagan*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA, )

8 Plaintiff, )

9 v. )

10 JUSTIN JUG CAPRI PORTER, )

11 Defendant. )

CASE NO. C174954X

DEPT. NO. 20

12 **DEFENDANT JUSTIN PORTER'S REPLY TO STATE'S WRITTEN ARGUMENT**  
13 **REGARDING DEFENDANT'S JACKSON V. DENNO HEARING**

14 COMES NOW, the Defendant, JUSTIN JUG CAPRI PORTER, by and through  
15 CURTIS S. BROWN and JOSEPH K. ABOOD, Deputy Public Defenders and hereby submits this  
16 Defendant Justin Porter's Reply to State's Written Argument Regarding Defendant's Jackson v.  
17 Denno Hearing.

18 This Motion is made and based upon all the papers and pleadings on file herein, and  
19 oral argument at the time set for hearing this Motion.

20 DATED this 9 day of October, 2006.

22 PHILIP J. KOHN  
23 CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

24 By

By

25 JOSEPH K. ABOOD, #4501  
26 Chief Deputy Public Defender

CURTIS S. BROWN, #4546  
Chief Deputy Public Defender

COUNTY CLERK

OCT 9 2006

RECEIVED

000751

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

**PROCEDURAL HISTORY**

Defendant Justin Porter filed a written argument concerning his Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964). The State filed their written argument on August 18, 2006. Argument is scheduled on October 24, 2006. The defense provides the following reply to State's written argument.

As this court knows, the State bears the burden of showing this court that Justin Porter's statements were given pursuant to lawful Miranda warnings, and given voluntarily, by a preponderance of the evidence. The defense has alleged that:

I. Justin Porter did not knowingly, intelligently and voluntarily waive his rights under Miranda (384 U.S. 436 (1996)).

II. Justin Porter's statements to Chicago and Las Vegas detectives were not voluntary since they were the product of coercion and on promises which included him to make confessions and admissions involuntarily.

**ARGUMENT**

I. Justin Porter did not knowingly and intelligently waive his rights under Miranda.

It is undisputed that the only actual proof we have of Justin Porter being Mirandized, and his response to those warnings occurred on August 12, 2000 at 1930 hours Chicago time, despite various detectives claiming Justin was Mirandized a number of times earlier, all off the record, so not subject to actual verification.<sup>1</sup> The waiver as represented by the State consisted of:

Q. (by Detective Jensen, LVMPD) Ok. And do you understand your rights?

<sup>1</sup> The only evidence this court has that Justin was earlier Mirandized twice by Chicago Detective Kristen Kato came from Kato's own testimony at the Denno hearing. These events were not memorialized despite the fact that Kato testified that when a suspect confesses in Chicago, he may choose a court reported statement, handwritten statement, or videotaped statement. None of these things occurred in this case. (Transcript, March 8, 2004 p.48).

1 A. Hm, kinda I do, but sometimes .... I yes. (according to Metro's transcription).

2 The actual answer Justin gave on tape was:

3 A. Hm, kinda I do, but sometimes... I, I don't, yes. (PHT Nov. 1, 2000 p.114-115).

4 This cannot be considered as a citizen indicating he understands these most important rights.

5 We know for sure from testimony at the Jackson v. Denno hearing that:

- 6 1. Justin Porter is classified with "borderline intelligence"<sup>2</sup> according to testing  
7 administrated by Dr. John Paglini. He has been in "special education" classes, and  
8 had to repeat the first grade.  
9  
10 2. That 93 out of 100 people in Justin's current age range scored better than he did in  
11 relation to his verbal abilities.  
12  
13 3. That Justin Porter's reading abilities are currently comparable to a 2<sup>nd</sup> grader  
14 according to the Wide Range Achievement Test.  
15  
16 4. That Justin Porter's spelling abilities are currently comparable to a first grader  
17 according to the Wide Range Achievement Test, and those spelling abilities were  
18 described as "very severely impaired" by Dr. John Paglini.  
19  
20 5. When questioned about whether it was possible that Justin may be malingering. Dr.  
21 Paglini stated that with respect to the adult intelligence test, the Wide Range  
22 Achievement Test, and the individual achievement test, there was no evidence of  
23 malingering. Justin's behavior indicated he was trying to succeed, not fail.  
24  
25 (Transcript, February 8, 2005, pp. 25-26).

26 <sup>2</sup> Further evidence that Justin is indeed of borderline intelligence consists of the fact that the I.Q. tests  
27 given him in grade school are comparable with the latest and other tests that Dr. Paglini administered pursuant  
28 to our request.

The fact of the matter is that these tests all indicate that Justin's I.Q. suggests borderline intelligence  
which is right over mental retardation. That makes Justin severely impaired. (Transcript, February 8, 2005,  
p.33).

- 1           6.     That when Justin was asked to read the advisement of Rights card by Detective  
2           Jensen, the only actual Miranda waiver we have proof of, and the last time he was  
3           supposedly Mirandized according to the State's witnesses, he could not read the  
4           words, was trying to simply pronounce them, was eventually helped along in his  
5           pronunciation by Detective Jensen. Justin Porter did not even understand some of  
6           the words he was sounding out.
- 7           7.     That after this failed attempt to have Justin read the advisement card; Detective  
8           Jensen asked him if he understand his rights. Justin's reply was "Hm kinda I do,  
9           but sometimes... I, I don't, yes".
- 10          8.     That Detective Jensen made no effect whatsoever to question Justin further as to  
11          what he did not understand, or to clear up any obvious concerns a reasonable  
12          interrogator should have had as to the ambiguous answer he was just given as to the  
13          extremely important issue of whether this suspect had any understanding of the  
14          rights he was being advised of.
- 15          9.     That the reason Detective Jensen did not do what the law demands of him in this  
16          regard is because by his own testimony, if a suspect invokes his right to remain  
17          silent, it impedes the gathering of information. (Transcript, March 8, 2005 p. 175-  
18          176.)
- 19          10.    That Dr. Greg Brown, a psychiatrist administrated an "Assessing Understanding  
20          and Appreciation of Miranda Rights Test' devised by Dr. Thomas Grisso, and  
21          Justin scored in the lowest one percentile which indicates that 99 out of 100 people  
22          would score higher than he did.

23               The fact of the matter is that Detective Jensen was on notice that Justin had difficulty  
24               understanding his Miranda warnings. This was based on Justin's inability to read the warnings  
25  
26  
27  
28

1 card, and on Justin's equivocal answer to the all important question of whether he understood what  
2 he had just been helped to read.

3 All the parties to this hearing agree that the State of the law is clear in that a valid waiver of  
4 rights under Miranda must be voluntary, knowingly, and intelligent. (See Miranda v. State, 130  
5 P.3d 176 (2005), State v. Taylor, 114 Nev. 1071 (1995)). The State cites Koger v. State, 117 Nev.  
6 138, 17 P.3d 428 (2001) and represented that it addresses issues similar to those raised in the case  
7 at bar. In that case the court wrote that, "Koger first claims that she did not understand her rights  
8 as given by Detective Mayo during the second interview and, therefore, that she did not waive her  
9 rights voluntarily. During that interview Koger responded that she "kind of" understood her rights  
10 as given during the first interview at Treasure Island. Prior to further questioning, Detective Mayo  
11 again advised Koger of her rights and inquired whether she understood them at that time. Koger  
12 then responded, "Yes, I do." Thereupon, Detective Mayo began the interview. The record shows  
13 no further indication of Koger attempting to stop the interview or otherwise invoking or  
14 misunderstanding her Miranda rights. In light of these facts, we conclude that Koger knowingly  
15 and voluntarily waived her Miranda rights before answering Detective Mayo, and thus the trial  
16 court properly admitted her statements."

17 That case seems to stand for the proposition that when a suspect indicates a misunderstanding of  
18 Miranda right ("kind of"), the waiver is not knowingly and voluntarily given.

19 That makes perfect sense as any other result would render the Miranda warnings  
20 meaningless. This court should note that the reason the Court ruled the trial court in that case  
21 properly admitted Koger's statements is because the detective explained the rights to Koger after  
22 she answered "kind of" when initially asked if she understood. In other words, when re-  
23 Mirandized, she gave an unequivocal answer to the question of whether she understood. Under  
24 that circumstance, the State has a right to conclude that she did understand.

1 The State's own submission points this out to the court on p. 55:

2 "Later that same day, at his office, Detective Mayo conducted a second interview of Koger.  
3 Prior to questioning, Detective Mayo again admonished Koger of her Miranda rights. Then,  
4 referring to their first interview, Detective Mayo inquired whether Koger had understood her rights  
5 "the first time." Koger responded, "Yes, I do." Koger was also given a Miranda waiver form  
6 which she read and signed. Id."

7 That case shows that when detectives do the right thing, and follow the dictates of the law, the  
8 State will be permitted to use a suspect's statements against him.  
9

10 In our case, Detective Jensen had every reason to know Justin did not understand the  
11 wording or implication of the waiver card, and made no effort to explain it or go over it again,  
12 because by his own admission he did not want Justin to invoke his right to remain silent, or to  
13 request the assistance of an attorney. (Transcript, March 8, 2005, p.175-176). The fact that Justin  
14 was a minor, and couldn't even read the advisement card to Jensen should and probably did put  
15 that Detective on notice that he was dealing with a person who needed further explanation or  
16 clarification of the important rights he was asked to waive. The final and most disturbing piece of  
17 evidence that Justin was not knowingly and intelligently waiving the rights he wasn't even able to  
18 read came in the form of his answer as to whether he understood the rights he was just unable to  
19 read to the detective. This court should recall that Detective Jensen testified that the reason he  
20 asks a suspect to read the advisement card to begin with is to "see where the suspect is" in terms of  
21 his vocabulary or intellect. The defense can't imagine that if that is Detective Jensen stated goal,  
22 then even more alarms should have gone off that he was dealing with a very simple,  
23 unsophisticated individual.  
24

25 The defense is confident that this court recognizes that all the legal and technical jibberish  
26 in the world cannot conceal the plain fact that a person who does not understand his rights, and is  
27  
28

1 intentionally left ignorant by those charged with explaining his rights even in the most basic way,  
2 may as well have no rights at all. Justin Porter did not knowingly, intentionally, voluntarily waive  
3 his rights.

4 II. Justin Porter's statements to Chicago and Las Vegas detectives were not voluntary  
5 since they were the product of coercion, and/or promises which induced him to  
6 make the confessions on admissions.  
7

8 What we learned in Justin Porter's Jackson v. Denno hearing is:

- 9 1. Detective Kristen Kato, the man who arrested Justin Porter in Chicago, and  
10 questioned him about crimes alleged committed in Nevada, is void of all credibility  
11 and should not be believed by this court.
- 12 2. Detective Kristen Kato has been accused scores of times during his career, of  
13 brutalizing suspects into confessing to crimes, and is known in Chicago as a  
14 ruthless and brutal interrogator.
- 15 3. Over the years, whole series of stories documenting accusations against Kato  
16 brutalizing confessions out of suspects have been printed in the Chicago Tribune.
- 17 4. That Detective Kato testified under oath to your honor that he did not recall many  
18 of these feature articles written about him including "Coercion and Illegal tactics  
19 torpedo scores of Cook County Murder Cases."  
20
- 21 5. That Deputy District Attorney (now Judge) Douglas Hendon stated on the record  
22 during the hearing that "the point seems to be the man (Kristen Kato) has been  
23 accused of improper interviews and stuff which he admits."  
24
- 25 6. That in the case of People of the State of Illinois v Ezekiel McDaniel, appellate  
26 court of Illinois 1<sup>st</sup> district, third division, 326, Ill App 3d, 771. The court stated  
27  
28

1 that as to Detective Kato's testimony in that case, it was not truthful as to one issue,  
2 and that the rest of his testimony was "suspect as to believability."

- 3 7. That Detective Kato had no valid reason to interrogate Justin Porter on two  
4 occasions and testified that he did so only because, "I like to know what he's  
5 thinking when he's doing these things". (Transcript, February 9, 2005 p.50).  
6  
7 8. That Detective Kato earlier testified that Metro wanted Justin to be interviewed  
8 (Transcript February 9, 2005 p. 39) even though our own detectives had testified in  
9 the past that:

- 10 1) Justin was not interviewed by Chicago detectives;  
11 2) That they requested that Chicago detectives interview him;  
12 3) They had no idea Chicago detectives interviewed him;  
13 4) Chicago detectives asked if they could interview Justin after his arrest;  
14 5) Chicago detectives were given permission to interview Justin.  
15

16 This court in the exercise of its common sense can see that Metro detectives would never  
17 allow Chicago detectives to interview their suspect, and were surprised to learn that Kato did just  
18 that. Their testimony concerning the issue evolved over time because Kato was able to threaten  
19 and coerce Justin into making incriminating statements, and those statements are more useful to  
20 the States case than any admission that Kato was acting on his own, without authorization of  
21 Metro.  
22

23 Detective Kato is a disgrace, and his actions are repugnant to the rule of law, and  
24 administration of justice. He has been shown time and time again to be a brutal, coercing,  
25 misrepresenting, dishonest scourge on the justice system. This court should exercise extreme  
26 caution in lending his actions any credibility whatsoever. Justin Porter has alleged to his lawyers,  
27  
28



1 before we knew anything about Detective Kato that he elicited an involuntary confession from  
2 Justin Porter by:

- 3 1. Stating that what he (Justin) did in Nevada was petty, and if he admitted to the facts  
4 they provided him, he would be treated leniently in Nevada. Justin specifically  
5 recalls the word "probation" being used by the Detective.
- 6 2. Suggesting that if he did not admit to the facts, that he would be taken to the  
7 "docks" and physically harmed.
- 8 3. Suggesting that a phone book could be used to harm him, and no marks would be  
9 apparent.
- 10 4. Refusing to honor his request to speak with his father while he was being  
11 questioned.
- 12 5. Refusing to allow George Porter, Justin's father, to speak with his son when he,  
13 George, requested to do so.

14  
15  
16 The great right of the evidence, apart from the fact that Justin Porter did not understand the nature  
17 of the Miranda warnings, so did not intelligently, knowingly waive them in that Justin did not  
18 voluntarily provide a statement either. If the court relies on its common sense, it knows that an  
19 avalanche of accusations over an extended period of time, against the same detective cannot be  
20 ignored.

21  
22 A detective who brutalizes suspects into admitting to crimes which occurred while it is  
23 later shown they were in jail is clearly violating the law. A detective who elicits confessions in  
24 cases which do not comport with the evidence in the case, resulting in acquittals or reversals is a  
25 sham. A detective who tells your honor he is unaware of the articles written about him in the  
26 Chicago Tribune is a liar. And a detective who has his sworn testimony labeled "unbelievable"  
27  
28

1 and "not truthful" in a published opinion in an appellate court in Illinois, and then tells your honor  
2 he doesn't recall the case, is a perjurer. That detective is Kristen Kato.

3 Your honor should not allow the state to profit from the misdeeds and crimes of Detective  
4 Kato. He threatened Justin Porter with physical harm of all sorts to force his confessions. He  
5 misrepresented the seriousness of the allegations against Justin to play on his obvious ignorance  
6 and lack of sophistication. He then came to Las Vegas to infect our justice system with the same  
7 lies he has used in Chicago for years.

8  
9 The defense must respectfully asks your honor to find that Justin's statement was not  
10 voluntarily given by the totality of circumstances.

11  
12 **CONCLUSION**

13 The defense respectfully requests that this court conclude that State has not shown your  
14 Honor by a preponderance of the evidence that:

- 15 1. Justin Porter knowingly and intelligently waived his rights pursuant to Miranda.  
16 2. Justin Porter voluntarily waived his rights free of coercion and without dishonest  
17 promises of leniency.

18 Therefore, Justin Porter confessions and admissions must be supposed.

19 DATED this 9 day of October, 2006.  
20

21  
22 PHILIP J. KOHN  
23 CLARK COUNTY PUBLIC DEFENDER

24 By

25 JOSEPH K. ABOOD, #4501  
Chief Deputy Public Defender

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By

CURTIS S. BROWN, #4546  
Chief Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Defendant Justin Porter's Reply to  
State's Written Argument Regarding Defendant's Jackson v. Renno Hearing is hereby  
acknowledged this 9<sup>th</sup> day of October, 2006.

CLARK COUNTY DISTRICT ATTORNEY

By Judy Olney

**Pages 763-766**

**Intentionally**

**Left**

**Blank**

ORIGINAL

NOTC

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
LISA LUZAICH  
Chief Deputy District Attorney  
Nevada Bar #005056  
200 South Third Street  
Las Vegas, Nevada 89155-2212  
(702) 455-4711  
Attorney for Plaintiff

*Chief Clerk*  
CLERK OF THE COURT

AUG 20 10 19 AM '07

FILED

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN D. PORTER, aka  
Jug Capri Porter,  
#01682627

Defendant.

CASE NO: C174954

DEPT NO: VIII

NOTICE OF WITNESSES AND/OR EXPERT WITNESSES  
[NRS 174.234 (1)(b)]

TO: JUG CAPRI PORTER, Defendant; and

TO: CURTIS BROWN, Deputy Public Defender, Counsel of Record:

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

These witnesses are in addition to those witnesses endorsed on the Information and  
any other witness for which a separate Notice has been filed.

NAME

ADDRESS

\*WELCH, DAVID

LVMPD P#1418 – Will testify as an expert

in the field of Serology/DNA and will report his findings relating to this case.

THOWSEN, THOMAS

LVMPD P#1467

THOMPSON, MICHAEL

LVMPD P#198

HEFNER, KENNETH

LVMPD P#2185

CLERK OF THE COURT

AUG 20 2007

RECEIVED

1 DANGELO, VINCENT LVMPD P#5787  
2 \*ANDERSEN, LAURA LVMPD P#2780 – Will testify as an expert  
3 in the field of Domestic Violence and Sexual Assault and will report her findings relating to  
4 this case.  
5 \*BRISCOE, GINO LVMPD P#3202 – Will testify as an expert  
6 in the field of Narcotics and will report his findings relating to this case.  
7 JENSEN, BARRY LVMPD P#3662 – Will testify as an expert  
8 in the field of Crime Scene Analysis and will report his findings relating to this case.  
9 \*REED, GARY LVMPD P#3731  
10 LOVE, DEBBIE LVMPD P#3748  
11 \*THOMAS, MARIA LVMPD P#4032 – Will testify as an expert  
12 in the field of Crime Scene Analysis and will report his findings relating to this case.  
13 KYGER, TERESA LVMPD P#4191  
14 \*LEMASTER, DAVID LVMPD P#4232 – Will testify as an expert  
15 in the field of Crime Scene Analysis and will report his findings relating to this case.  
16 REYES, RAYMOND LVMPD P#4346  
17 LAROCHELLE, JAMES LVMPD P#4353  
18 CASTENEDA, MICHAEL LVMPD P#4394  
19 \*BROTHERSON, DEBORAH LVMPD P#4931 – Will testify as an expert  
20 in the field of Crime Scene Analysis and will report her findings relating to this case.  
21 \*BOYD, FRED LVMPD P#5216 – Will testify as an expert  
22 in the field of Latent Prints and will report his findings relating to this case.  
23 \*PULLIAM, FRANCIS LVMPD P#5412 – Will testify as an expert  
24 in the field of Crime Scene Analysis and will report his findings relating to this case.  
25 WILLIAMS, ROBERT LVMPD P#5646  
26 \*ODONNELL, JAMES LVMPD P#5709 – Will testify as an expert  
27 in the field of Crime Scene Analysis and will report his findings relating to this case.  
28 KUZMAK, J. LVMPD P#5967

1	MISURACA, MARK	LVMPD P#5825
2	MITCHELL, JAMES	LVMPD P#1829
3	RONSENBERG, TODD	LVMPD P#3816
4	STELK, JAMES	LVMPD P#2550
5	*GELLER, JOEL	LVMPD P#5892 – Will testify as an expert
6	in the field of Latent Prints and will report his findings relating to this case.	
7	*GUENTHER, KATHY	LVMPD P#6109 – Will testify as an expert
8	in the field of DNA Analysis and will report her findings relating to this case.	
9	*SMINK, JEFFREY	LVMPD P#6556 – Will testify as an expert
10	in the field of Crime Scene Analysis and will report his findings as relating to this case.	
11	*GOOD, RICHARD	LVMPD P#806 – Will testify as an expert I
12	the field of Firearms and Toolmarks and will report his findings as related to this case.	
13	*ATKIN, MICHAEL	LVMPD P#5409 – Will testify as an expert
14	in the field of Crime Scene Analysis and will report his findings as relating to this case.	
15	*CARR, JENNY	LVMPD P#4792 – Will testify as an expert
16	in the field of Crime Scene Analysis and will report her findings as relating to this case.	
17	*FORD, DANIEL	LVMPD P#4244 – Will testify as an expert
18	in the field of Crime Scene Analysis and will report his findings as relating to this case.	
19	*MAIN, TERESA	LVMPD P#5062 – Will testify as an expert
20	in the field of Crime Scene Analysis and will report his findings as relating to this case.	
21	*MARTIN, TERRY	LVMPD P#5946- Will testify as an expert
22	in the field of Crime Scene Analysis and will report his findings as relating to this case.	
23	*SAMS, JESSIE	LVMPD P#4793 – Will testify as an expert
24	in the field of Crime Scene Analysis and will report his findings as relating to this case.	
25	*SCHELLBERG, PETER	LVMPD P#5413 – Will testify as an expert
26	in the field of Crime Scene Analysis and will report his findings and relating to this case.	
27	*REED, GARY	LVMPD P#3731 – Will testify as an expert
28	in the field of Crime Scene Analysis and will report his findings and relating to this case.	

1           \*WORKMAN, RICKEY J.                           LVMPD P#4597 – Will testify as an expert  
2 in the field of Crime Scene Analysis and will report his findings and relating to this case.

3           \*FLORES, FNU                                   LVFR #876 – Will testify as to observations  
4 and treatment of the victim in this case. (CV will be provided when obtained).

5           \*DIAZ, FNU                                   LVFR #804 – Will testify as to observations  
6 and treatment of the victim in this case. (CV will be provided when obtained).

7           TYLER, TERESA                               1224 Hart Ave, LV, NV  
8           CASE, LEONA                                 2117 Mourning Dove Dr, Venus, TX  
9           LEYVA, RAMMONA                             5252 Maryland Pkwy, #29, LV, NV  
10          LIVINGSTON, MARLENE                     1705 Horizon Sunset Blvd, LV, NV  
11          HALL, JONI                                 2416 Clifford Ave #119, LV, NV  
12          PARTIN, DOROTHY                         50 N 21<sup>st</sup> St, #78, LV, NV  
13          TYLER, SAMANTHA                         Unknown  
14          RUMBAUGH, CLARENCE                     436 N 12<sup>th</sup> St. #B, LV, NV  
15          RUMBAUGH, FRANCES                     436 N 12<sup>th</sup> St #B, LV, NV  
16          BARNETT, JEAN                             518 E Mesquite Ave, LV, NV  
17          BERNSTEIN, FLOSSIE                     4720 E Charleston Blvd #26, LV, NV  
18          FOWLER, LEROY                           2201 Ramsgate #8/824, Henderson, NV  
19          ZAZUETA, LAURA                         2850 E Cedar Ave #229, LV, NV  
20          LOPEZ, GUADALUPE                     2850 E Cedar Ave #229, LV, NV  
21          ZAZUETA, BEATRIZ                       2850 E Cedar Ave #229, LV, NV  
22          RIVERA-ROGERS, MARITERESA           200 S Third St, LV, NV  
23          SCHWINOF, MARIA                        601 S Maryland Pkwy #B-16, LV, NV  
24          \*GREEN, DR. SHELDON and/or DESIGNEE   1704 Pinto Lane, LV, NV – Will  
25 testify as an expert Medical Examiner and will report his findings relating to this case.

26          \*HEVEL, ROBERT                         LVFD, 500 Casino Ctr, LV, NV – Will  
27 testify in the field of Arson/Fire Investigation and will report his findings as relating to this  
28 case.



1

2           \*BITTKER, THOMAS, MD, LTD.       80 Continental Drive, #200, Reno, NV-Will

3 testify in response to defense challenge of Defendant's mental state as related to this case.

4           \*KIRBY, SUSAN, R.N. or DESIGNEE UMC Hospital - Will testify as an expert

5 Sexual Assault Nurse Examiner regarding the treatment of the victim in this case.

6           \*ADAMS, MARIAN R.N.                UMC Hospital - Will testify as an expert

7 Sexual Assault Nurse Examiner regarding the treatment of the victim in this case.

8           SMITH-PORTER, ANGELA               208 N 13<sup>th</sup> St #3, LV, NV

9           DELONEY, KRISTOPHER               1920 Lirio Way, LV, NV

10          PORTER, GEORGE                      1251 Kildare Ave #2, Chicago, IL

11          WILSON, ANTWOYNE                  2601 Tuskegee, LV, NV

12          FRAZIER, DOROTHY                  1920 Lirio Way, LV, NV

13          PREVOST, SERGO                     208 N 13<sup>th</sup> St, #3, LV, NV

14          CLEVELAND, JAY                     60 N. Pecos Rd, #13/2056, LV, NV

15          DAO, HAE                            6201 Don Zarembo Ave, LV, NV

16          REGALADO-GONZALEZ, REBECA       415 S 10<sup>th</sup> St #D, LV, NV

17          REGALADO-ORDONEZ, DINA           415 S 10<sup>th</sup> St #D, LV, NV

18          WINTERS, NAN                       415 S 10<sup>th</sup> St, #G, LV, NV

19          AWALOM, ALEMAYEHU               415 S 10<sup>th</sup> St, #D, LV, NV

20          STERLING, DERRICK                406 S 11<sup>th</sup> St, #8, LV, NV

21          DILLON, REGINA                    417 S 10<sup>th</sup> St #A, LV, NV

22          FOOTE, STACY                      624 N. 13TH #B, LV, NV

23          RICHARDS, KURTIS       236 N. Bruce, #C LV, NV

24          MATTHEWS, CHANEL   209 N. 18 Street, #B, LV NV

25          KATO, KRISTON                     Chicago Police Department

26          CIRONE, SAM                       Chicago Police Department

27          CUNNINGHAM, DET.                 Chicago Police Department

28

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

3 A copy of each expert witness curriculum vitae, if available, is attached hereto.  
4

5 DAVID ROGER  
6 DISTRICT ATTORNEY  
7 Nevada Bar #002781

8 BY

  
9 LISA LUZAICH  
10 Chief Deputy District Attorney  
11 Nevada Bar #005056

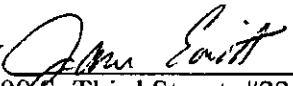
12 \*Indicates an expert witness.

13 RECEIPT OF COPY

14 RECEIPT OF COPY of the above and foregoing Notice of Witness and Expert  
15 Witnesses is hereby acknowledged this 20 day of August, 2007.

16 PUBLIC DEFENDER'S OFFICE  
17 ATTORNEY FOR DEFENDANT

18 BY

  
19 309 S. Third Street, #226  
20 Las Vegas, Nevada 89101  
21  
22  
23  
24  
25  
26  
27  
28

**Pages 773-865**

**Intentionally**

**Left**

**Blank**

ORIGINAL

1 ORDR  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 309 South Third Street, Suite 226  
5 Las Vegas, Nevada 89155  
6 (702) 455-4685  
7 Attorney for Defendant

FILED  
May 7 10 12 AM '08  
Clerk of the Court

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO. C174954X

DEPT. NO. VIII

11 JUSTIN JUG CAPRI PORTER,

12 Defendant.

ORDER

14  
15 Upon the above-named Defendant, by and through JOSEPH K. ABOOD, Clark County  
16 Public Defender, and good cause appearing therefor,

17 IT IS HEREBY ORDERED that Las Vegas Metropolitan Police Department Crime Lab  
18 provide any and all DNA data including all related reports that describe procedures used in  
19 analyzing said data for review by Dr. Norah Rudin, Ph.D., Forensic DNA Consultant, 650 Castro  
20 St., Suite 120-404, Mountain View, CA 94041, (650) 210-9344 pursuant to her standard DNA  
21 Discovery Request, already provided to the State, in case numbers 000201-2429, 000307-0141,  
22 000325-2971, 000404-0324, 000607-0313, 000613-0245 and 000712-0766.

23 IT IS ALSO ORDERED that the Las Vegas Metropolitan Police Department Crime Lab  
24 provide any and all latent fingerprint (either a comparable copy of digital latents on a disc or  
photocopies, not Xerox copies) of the original latent lifts, and photocopies (not Xerox copies) of the  
defendant's ten print exemplar card, and palm print exemplar card if available. Also, all copies of  
LVMPD's forensic reports including crime scene reports and the comparison report by the latent  
fingerprint examiner, and any reports or forms relative to the AFIS submission and verification if  
applicable, to Ms. Joi Dickerson, c/o Law Office of Mark Dickerson, 23929 Valencia Blvd., Suite

RECEIVED  
MAY 07 2008  
CLERK OF THE COURT

000866

1 101, Valencia, CA 91355, (661) 259-2296 in case numbers 000201-2429, 000307-0141, 000325-  
2 2971, 000404-0324, 000607-0313, 000613-0245 and 000712-0766.

3 DATED 6 day of May, 2008.

4  
5   
6 DISTRICT COURT JUDGE

7 Submitted by:

8 PHILIP J. KOHN  
9 CLARK COUNTY PUBLIC DEFENDER

10   
11 B JOSEPH K. ABOOD, #4501  
12 Deputy Public Defender  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Pages 868-881**

**Intentionally**

**Left**

**Blank**

ORIGINAL

FILED 7

1 PHILIP J. KOHN, PUBLIC DEFENDER  
2 NEVADA BAR NO. 0556  
3 309 South Third Street, Suite 226  
4 Las Vegas, Nevada 89155  
5 (702) 455-4685  
6 Attorney for Defendant

2008 JUN -5 A 9:42

CURTIS S. BROWN  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA, )

8 Plaintiff, )

9 v. )

10 JUSTIN JUG CAPRI PORTER, )

11 Defendant. )

CASE NO. C174954X

DEPT. NO. VIII

DATE: June 4, 2008

TIME: 9:00 a.m.

12 JUSTIN PORTER'S MOTION TO REMAND THE CASE TO JUVENILE COURT

13 AND CONDUCT A HEARING AS TO WHETHER HE SHOULD

14 BE CERTIFIED AS AN ADULT

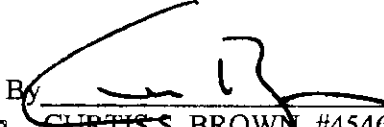
15 COMES NOW, the Defendant, JUSTIN JUG CAPRI PORTER, by and through CURTIS  
16 S. BROWN and JOSEPH K. ABOOD, Deputy Public Defenders and files this Motion to Remand  
17 the Case to Juvenile Court and Conduct a Hearing as to Whether he Should be Certified as an  
18 Adult.

19 This Motion is made and based upon all the papers and pleadings on file herein, the  
20 Memorandum of Points and Authorities, and oral argument at the time set for hearing this Motion.

21 DATED this 4<sup>th</sup> day of June, 2008.

22  
23 PHILIP J. KOHN  
24 CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

25  
26 By   
27 CURTIS S. BROWN, #4546  
28 Deputy Public Defender

By   
JOSEPH K. ABOOD, #4501  
Deputy Public Defender

CLERK OF THE COURT

RECEIVED  
JUN - 5 2008

000882

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

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

Defendant JUSTIN PORTER, a minor at the time of all the crimes, he is charged with (date of birth: December 13, 1982) is charged by way of a Second Amended Information, filed October 11, 2001, with a number of crimes involving a number of different victims.

On February 1, 2000, Teresa Tyler became the victim of a series of crimes which make up the basis of Counts I through VII of the Second Amended Information. A crime report was taken for this incident under Event Number 000201-2429. Investigation revealed that a black male known to Ms. Tyler as Chris "came to the apartment produced a small knife directed her into the bedroom and ordered her to remove her clothes." This suspect then allegedly forced Ms. Tyler to engage in various sexual acts with him and stole some of her money.

The Second Amended Information charges Mr. Porter with the following crimes based on the above allegations:

- I. Burglary While in Possession of a Deadly Weapon.
- II. First Degree Kidnapping With Use of a Deadly Weapon.
- III. Sexual Assault With Use of a Deadly Weapon.
- IV. Sexual Assault With Use of a Deadly Weapon.
- V. Sexual Assault With Use of a Deadly Weapon.
- VI. Sexual Assault With Use of a Deadly Weapon.
- VII. Sexual Assault With Use of a Deadly Weapon.

On March 7, 2000, Leona Case reported that she had been the victim of a series of crimes. A crime report was taken under Event Number 00307-0141. Investigation revealed that a black male knocked on her door and asked her to use the telephone. She refused. A few minutes later the suspect allegedly kicked in her front door, entered the apartment and began striking her in the



1 face demanding cash and valuables. He took forty-four dollars (\$44.00) and a ring belonging to  
2 Ms. Case. He then allegedly forced her to undress by threatening her with a pair of scissors.  
3 Sexually assaulted her and then attempted to strangle her with an electrical cord. Ms. Case was  
4 then stabbed with a kitchen knife. She was then barricaded inside of her bathroom and her  
5 apartment was set on fire.

6 The Second Amended Information charges Mr. Porter with the following crimes based on  
7 the above allegations:  
8

9 VIII. Burglary While in Possession of a Deadly Weapon.

10 IX. First Degree Kidnapping With Use of a Deadly Weapon With Substantial  
11 Bodily Harm.

12 X. Sexual Assault With Use of a Deadly Weapon With Substantial Bodily  
13 Harm.

14 XI. Attempt Murder With Use of a Deadly Weapon.

15 XII. Sexual Assault With Use of a Deadly With Substantial Bodily Harm.

16 XIII. Robbery With Use of a Deadly Weapon.

17 XIV. First Degree Arson.

18 On March 25, 2000, Ms. Ramona Leyva reported a series of crimes under Event Number  
19 000325-2971. Investigation revealed that a black male kicked in her door while she was in the  
20 bathroom. He grabbed Ms. Leyva by the back of her hair and dragged her into the main living  
21 area. He then retrieved a kitchen knife from her kitchen and threatened to kill her. Placed her on  
22 her bed and sexually assaulted her. He then took her vehicle keys and departed in her vehicle.  
23

24 The Second Amended Information charges Mr. Porter with the following crimes based on  
25 the above allegations:

26 XV. Burglary While in Possession of a Deadly Weapon.

27 XVI. First Degree Kidnapping With Use of a Deadly Weapon.  
28

1 XVII. Sexual Assault With Use of a Deadly Weapon.

2 XVIII. Robbery With Use of a Deadly Weapon.

3 On April 4, 2000, Ms. Marlene Livingston reported a series of crimes under Event Number  
4 000404-0324. Investigation revealed that a black male kicked in her apartment door and entered  
5 with a knife in his hand. He took money and other valuables from Ms. Livingston and forced her  
6 to perform fellatio on him. He then fled in Ms. Livingston's vehicle.

7  
8 Counts XIX through XXI charge crimes against Marlene Livingston:

9 XIX. Burglary While in Possession of a Deadly Weapon.

10 XX. Sexual Assault With Use of a Deadly Weapon Victim 65 year of age or  
11 older.

12 XXI. Robbery With Use of a Deadly Weapon Victim 65 years of age or older.

13 On April 12, 2000, Francis and Clarence Rumbaugh reported crimes under Event Number  
14 000412-2745. Investigation revealed that a black male entered the Rumbaugh's apartment through  
15 an unlocked screen door pushing Mr. Rumbaugh to the ground. He then cut the telephone cord in  
16 the kitchen area with a knife he retrieved from the Rumbaugh's kitchen. The suspect then  
17 allegedly searched through the apartment and took eighty dollars (\$80.00) from Mr. Rumbaugh.

18  
19 Counts XXII through XIV charge crimes against Clarence and/or Francis Rumbaugh:

20 XXII. Burglary While in Possession of a Deadly Weapon.

21 XXIII. Robbery With Use of a Deadly Weapon Victim 65 years of age or older.

22 XXIV. Robbery With Use of a Deadly Weapon Victim 65 years of age or older.

23 On June 6, 2000, Mr. Leroy Fowler became the victim of a home invasion. A crime report  
24 for this incident was taken under Event Number 000606-0165. Investigation revealed that a black  
25 male kicked in Mr. Fowler's apartment door holding a knife. Mr. Fowler began screaming at the  
26 suspect causing him to run out of the apartment.

27  
28 Count XXV charges a crime against Leroy Fowler:

XXV. Burglary While in Possession of a Deadly Weapon.

On June 7, 2000, Ms. Joannie Hall reported a series of crimes under Event Number 000607-0313. Investigation revealed that a black male kicked in her apartment door and confronted Ms. Hall in her bedroom. He was holding a knife in his right hand and directed her around the apartment. He then performed various sex acts with her and stole a number of items from her apartment.

These crimes make up the basis of Counts XXVI through XXIX of the Second Amended Information.

XXVI. Burglary While in Possession of a Deadly Weapon.

XXVII. First Degree Kidnapping With Use of a Deadly Weapon.

XXVIII. Sexual Assault With Use of a Deadly Weapon.

XXIX. Robbery With Use of a Deadly Weapon.

On June 9, 2000, Guadalupe Lopez, Laura Zazueta and Beatriz Zazueta were the victims of a series of crimes charged in Counts XXXIII through XXXVIII of the Second Amended Information. These crimes were reported under Event Number 000609-0140. They allege that a black male entered their residence through an unlocked front door in the middle of the night and demanded money from Laura Zazueta. She directed the suspect to her sister's room, Beatriz and her boyfriend Guadalupe Lopez. Guadalupe Lopez grabbed at the suspect's gun and a struggle ensued. The suspect fired three shots and Lopez was slightly injured. The suspect then broke free and jumped out the front window.

Counts XXXIII through XXXVIII charge crimes against Laura Zazueta, Guadalupe Lopez and/or Beatriz Zazueta:

XXXIII. Burglary While in Possession of a Deadly Weapon.

XXXIV. Robbery With Use of a Deadly Weapon.

1 XXXV. Attempt Robbery With Use of a Deadly Weapon.

2 XXXVI. Attempt Robbery With Use of a Deadly Weapon.

3 XXXVII. Attempt Robbery With Use of a Deadly Weapon.

4 XXXVIII. Battery With Use of a Deadly Weapon.

5 On June 10, 2000, Metro responded to a homicide at 415 South Tenth Street. The victim,  
6 Gyaltsso Lungtok was found dead in his apartment having been shot numerous times. The front  
7 door of the apartment had been kicked in and a footwear impression revealed that the shoe brand  
8 name was Saucony. Forensic Laboratory Manager Richard Goode determined that the firearm  
9 used on June 9, 2000, against Guadalupe Lopez was the same as that used against Gyaltsso  
10 Lungtok.  
11

12 Counts XXX through XXXII charge crimes against Gyaltsso Lungtok:

13 XXX. Burglary While in Possession of a Deadly Weapon.

14 XXXI. Attempt Robbery With Use of a Deadly Weapon.

15 XXXII. Murder With Use of a Deadly Weapon. (Open Murder).  
16

17 Defendant JUSTIN PORTER was charged as an adult for all these crimes he is alleged to  
18 have committed, without a full hearing, despite the fact that some of these offenses don't qualify as  
19 the type which would allow his certification as an adult.  
20

### 21 ARGUMENT

22 Nevada has established a juvenile court system which is tasked with dealing with children  
23 who commit crimes. NRS Title 5, Chapter 62. In Nevada, a person who is less than eighteen  
24 years of age is a child. NRS 62.020(a).

25 NRS 62.040(2)(a) provides that the Juvenile Court has exclusive jurisdiction over children,  
26 but specifically excludes from Juvenile Court a person who is charged with committing "murder or  
27  
28

1 attempted murder and any other related offense arising out of the same facts as the murder or  
2 attempted murder, regardless of the nature of the related offenses." NRS 62.040(2)(a).

3 NRS 62.040 Exclusive Original jurisdiction or court; procedure regarding minor traffic  
4 offenses:

5 1. Except if the child involved is subject to the exclusive jurisdiction of an  
6 Indian tribe, and except as otherwise provided in this chapter, the court has  
7 exclusive original jurisdiction in proceedings:

8 (a) Concerning any child living or found within the county  
9 who is in need of supervision because he:

10 (1) Is a child who is subject to compulsory school  
11 attendance and is a habitual truant from school;

12 (2) Habitually disobeys the reasonable and lawful  
13 demands of his parents, guardian or other custodian,  
14 and is unmanageable; or

15 (3) Deserts, abandons or runs away from his home or  
16 usual place of abode, and is in need of care or  
17 rehabilitation. The child must not be considered a  
18 delinquent.

19 (b) Concerning any child living or found within the county  
20 who has committed a delinquent act. A child commits a  
21 delinquent act if he violates a county or municipal  
22 ordinance or any rule or regulation having the force of law,  
23 or he commits an act designated a crime under the law of  
24 the State of Nevada.

25 (c) Concerning any child in need of commitment to an  
26 institution for the mentally retarded.

27 2. For the purposes of subsection 1, each of the following acts shall be  
28 deemed not to be a delinquent act, and the court does not have jurisdiction  
of a person who is charged with committing such an act:

(a) Murder or attempted murder and any other related offense arising  
out of the same facts as the murder or attempted murder, regardless  
of the nature of the related offense.

(b) Sexual assault or attempted sexual assault involving the use or  
threatened use of force or violence against the victim and any other

1 related offense arising out of the same facts as the sexual assault or  
2 attempted sexual assault, regardless of the nature of the related  
3 offense, if:

4 (1) The person was 16 years of age or older when the  
5 sexual assault or attempted assault was committed;  
6 and

7 (2) Before the sexual assault or attempted sexual  
8 assault was committed, the person previously had  
9 been adjudicated delinquent for an act that would  
10 have been a felony if committed by an adult.

11 (c) An offense or attempted offense involving the use or threatened  
12 use of a firearm and any other related offense arising out of the  
13 same facts as the offense or attempted offense involving the use or  
14 threatened use of a firearm, regardless of the nature of the related  
15 offense, if:

16 (1) The person was 16 years of age or older when the  
17 offense or attempted offense involving the use or  
18 threatened use of a firearm was committed; and

19 (2) Before the offense or attempted offense involving  
20 the use or threatened use of a firearm was  
21 committed, the person previously had been  
22 adjudicated delinquent for an act that would have  
23 been a felony if committed by an adult.

24 (d) A felony resulting in death or substantial bodily harm to the victim  
25 and any other related offense arising out of the same facts as the  
26 felony, regardless of the nature of the related offense, if:

27 (1) The felony was committed on the property of a  
28 public or private school when pupils or employees  
of the school were present or may have been  
present, at an activity sponsored by a public or  
private school or on a school bus while the bus was  
engaged in its official duties; and

(2) The person intended to create a great risk of death  
or substantial bodily harm to more than one person  
by means of a weapon, device or course of action  
that would normally be hazardous to the lives of  
more than one person.

(e) Any other offenses if, before the offense was committed, the  
person previously had been convicted of a criminal offense ...

1 Although JUSTIN PORTER was a minor at the time of his alleged crime, he was arrested,  
2 housed, and charged as an adult in District Court. No consideration was even given to Juvenile  
3 Court proceedings for none of the crimes he is charged with.

4  
5 In Kent v. U.S., 383 U.S. 541 (1966), the Court stated that it was improper to transfer that  
6 minor's case from juvenile court to adult court without a hearing. The Court deemed the waiver  
7 from juvenile court to be a "critically important" action involving "vitally important statutory  
8 rights" of a juvenile which required a hearing as a condition to a valid waiver. "We do not  
9 consider whether, on the merits, Kent should have been transferred; but there is no place in our  
10 system of law for reaching a result of such tremendous consequence in that ceremony - without  
11 hearing, without effective assistance of counsel, without a statement of reasons." Id. at 554.

12  
13 This sentiment was repeated in the similar case regarding the rights of juveniles charged  
14 with crimes. In re: Gault, 387 U.S. 1, 30 (1967), the Court added in that case "we said that the  
15 admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness."  
16 Id. at 30.

17  
18 NRS 620.080 Procedure when child 14 years or older is charged with felony; certification  
19 for criminal proceedings required under certain circumstances:

- 20 1. Except as otherwise provided in subsection 2 and NRS 62.081, if:
- 21 (a) A child is charged with an offense that would be a felony if
- 22 committed by an adult; and
- 23 (b) The child was 14 years of age or older at the time he
- 24 allegedly committed the offense,
- 25 the juvenile court, upon a motion by the district attorney and after
- 26 a full investigation, may retain jurisdiction or certify the child for
- 27 proper criminal proceedings to any court that would have
- 28 jurisdiction to try to offense if committed by an adult.
2. If a child:

1 (a) Is charged with:

2 (1) A sexual assault involving the use or threatened use  
3 of force or violence against the victim; or

4 (2) An offense or attempted offense involving the use  
5 or threatened use of a firearm; and

6 (b) Was 14 years of age or older at the time he allegedly  
7 committed the offense,

8 the juvenile court, upon a motion by the district attorney and after  
9 a full investigation, shall certify the child for proper criminal  
10 proceedings to any court that would have jurisdiction to try the  
11 offense if committed by an adult, unless the court specifically finds  
12 by clear and convincing evidence that the child's actions were  
13 substantially the result of his substance abuse or emotional or  
14 behavioral problems and such substance abuse or problems may be  
15 appropriately treated through the jurisdiction of the juvenile court.

16 3. If a child is certified for criminal proceedings as an adult pursuant to  
17 subsection 1 or 2, the court shall also certify the child for criminal  
18 proceedings as an adult for any other related offense arising out of the  
19 same facts as the offense for which the child was certified, regardless of  
20 the nature of the related offense.

21 4. If a child has been certified for criminal proceedings as an adult pursuant  
22 to subsection 1 or 2 and his case has been transferred out of the juvenile  
23 court, original jurisdiction of his person for that case rests with the court to  
24 which the case has been transferred, and the child may petition for transfer  
25 of this case back to the juvenile court only upon a showing of juvenile  
26 court only upon a showing of exceptional circumstances. If the child's  
27 case is transferred back to the juvenile court, the judge of that court shall  
28 determine whether the exceptional circumstances warrant accepting  
jurisdiction.

29 The statute calls for a "full investigation" prior to certifying the child to adult District  
30 Court. This statute applies to many of the counts JUSTIN PORTER is facing in adult District  
31 Court. "Full Investigation" requirements were explained as follows. In Kline v. State, 86 Nev. 59;  
32 464 P.2d 461 (1970) and Lewis v. State, 86 Nev. 889; 478 P.2d 168 (1970), the Supreme Court of  
33 Nevada adopted the criteria established by Kent v. United States, 383 U.S. 541 (1966), for  
34 determining a valid waiver of jurisdiction from Juvenile Court. The judge must carefully consider



1 the character and disposition of the juvenile, together with the nature of his past and present  
2 offenses, his amenability to juvenile treatment, and each of the remaining elements enunciated in  
3 Kent v. United States, 383 U.S. at 565 – 568, and Lewis v. State, 86 Nev. at 893; 478 P.2d at 170 –  
4 171. Accord, Martin v. State, 94 Nev. 687; 585 P.2d 1346 (1978). The Juvenile Court has  
5 considerable latitude in determining whether it should retain or waive jurisdiction. Kent v. United  
6 States, 383 U.S. at 552-553.

7  
8 Children charged with murder are specifically excepted from the jurisdiction of the juvenile  
9 courts. Shaw v. State, 104 Nev. 100; 753 P.2d 888 (1988). Alfred v. State, 111 Nev. 1409; 906  
10 P.2d 714 (1995). However, certain showings must be made as to all other crimes including sexual  
11 assault. It is for those crimes that a full investigation should have been accomplished prior to  
12 certification of a minor by Juvenile Court is error. Powell v. Sheriff, Clark County, 85 Nev. 684;  
13 462 P.2d 756 (1969).

14  
15 Transfer proceedings are to be initiated by written motion or petition which states explicitly  
16 the charged felony offense or offenses upon which the requested transfer is based and which  
17 further states the past record of criminal conduct. The motion or petition may also include material  
18 relating to the personal background and attributes of the subject youth which are considered  
19 material to the court's decision. Thomas R. v. Juvenile Division, Eighth Judicial District Court ex  
20 rel. County of Clark, 99 Nev. 427; 664 P.2d 947 (1983).

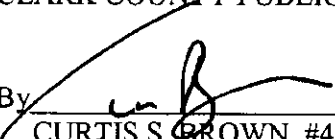
21  
22 In addition, to the fact that transfer proceedings are to be initiated by written motion and  
23 followed by a full investigation, any juvenile court transfer order must include a statement of the  
24 reasons or considerations therefore. This statement must be sufficient enough to permit  
25 meaningful review. Kline v. State, 86 Nev. 59; 464 P.2d 460 (1970).

26  
27 Because JUSTIN PORTER was not afforded the benefit of a full hearing prior to being  
28 certified as an adult, and, because some of the crimes he is charged with properly belong in

1 Juvenile Court, the defense respectfully requests that this entire matter be remanded to Juvenile  
2 Court, and Mr. Porter's Constitutional rights be protected.

3 DATED this 4 day of <sup>July</sup>~~May~~, 2008.

4  
5 PHILIP J. KOHN  
6 CLARK COUNTY PUBLIC DEFENDER

7 By   
8 CURTIS S. BROWN, #4546  
9 Deputy Public Defender

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By   
JOSEPH K. ABOOD, #4501  
Deputy Public Defender

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

NOTICE OF MOTION

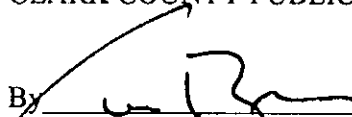
TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 16<sup>th</sup> day of June, 2008, at 9:00 a.m..

DATED this 4 day of May, 2008.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By   
CURTIS S. BROWN, #4546  
Deputy Public Defender

By   
JOSEPH K. ABOOD, #4501  
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Justin Porter's Motion to Remand the Case to Juvenile Court and Conduct a Hearing as to Whether He Should Be Certified As An Adult is hereby acknowledged this 5 day of May, 2008.

CLARK COUNTY DISTRICT ATTORNEY

By   
Eileen Monville

**Pages 895-925**

**Intentionally**

**Left**

**Blank**

ORIGINAL

FILED

JUN 12 2 57 PM '08

CLERK OF THE COURT

OPPS

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
LISA LUZAICH  
Chief Deputy District Attorney  
Nevada Bar #005056  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN D. PORTER  
aka Jug Capri Porter  
#1682627

Defendant.

CASE NO: C174954

DEPT NO: VIII

**STATE'S OPPOSITION TO JUSTIN PORTER'S MOTION TO REMAND CASE TO  
JUVENILE COURT AND CONDUCT A HEARING AS TO WHETHER HE  
SHOULD BE CERTIFIED AS AN ADULT**

DATE OF HEARING: 06/16/08  
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through LISA LUZAICH, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Justin Porter's Motion to Remand Case to Juvenile Court and Conduct a Hearing as to Whether He Should Be Certified as an Adult.

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

//

CLERK OF THE COURT

JUN 12 2008

RECEIVED

000926

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

**POINTS AND AUTHORITIES**

**STATEMENT OF GENERAL CASE FACTS**

All of the following Statement's of Facts refer to the Defendant as the perpetrator of the crimes being described. The Defendant was linked to every one of the following situations by either DNA evidence, fingerprint evidence, footwear impression evidence, admission or confession evidence, eyewitness identification and/or by a combination of a number of the above types of evidence.

A. **STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED AGAINST TERESA TAYLOR**

Defendant is charged by way of Second Amended Information with Count I- Burglary While in Possession of a Deadly Weapon; Count II - First Degree Kidnapping With Use of a Deadly Weapon; Counts III through VIII - Sexual Assault With Use of a Deadly Weapon, for crimes that were committed against victim Teresa Taylor.

On February 1, 2000, at approximately 7:30 p.m., Teresa Taylor heard a knock on the front door of her residence, located at 2895 E. Charleston, #2-106, Las Vegas, Nevada. Teresa had spoken to her mother earlier and was expecting her mother to come to the residence and pick something up from her.

Ms. Taylor opened the door and encountered the Defendant, whom she thought was looking for her sister. Ms. Taylor told the Defendant that her sister was not there, and he asked her for a drink of water. Ms. Taylor went and got the Defendant water and took it to the Defendant, who was still standing outside the residence. The Defendant asked Ms. Taylor if they could go in the house and she told him no. Not caring about Ms. Taylor's protest, the Defendant entered her residence and sat down on her couch. Ms. Taylor grabbed the Defendant's arm and attempted to pull him out of the apartment, at which time the Defendant pulled a knife on her.

After brandishing the weapon, the Defendant ordered Ms. Taylor into her bedroom and demanded that she disrobe. Fearful for her life, Ms. Taylor took her clothes off. Thereafter, the Defendant instructed Ms. Taylor to lay down on the bed. Defendant pulled

1 down his pants and got on top of Ms. Taylor, placing his penis in her vagina, while still  
2 holding the knife in his hand.

3 The Defendant got off of Ms. Taylor and started looking around her apartment for  
4 anything valuable. The Defendant took approximately \$30 or \$40 from Ms. Taylor's purse.  
5 The Defendant then went back to Ms. Taylor and put his penis in her mouth. Afterwards, the  
6 Defendant peed on Ms. Taylor's floor and began looking around her apartment for valuables  
7 again. The Defendant forced Ms. Taylor follow him around the apartment while he did that.  
8 The Defendant took some change from a vase in Ms. Taylor's living room but left the  
9 pennies behind.

10 The Defendant forced Ms. Taylor into the restroom of the apartment and told her to  
11 wipe her vaginal area. The Defendant took the towel from Ms. Taylor and began wiping her  
12 vagina area himself. Thereafter, the Defendant took Ms. Taylor back into the bedroom and  
13 forced her to lay down on the bed, on her stomach. The Defendant then placed his penis in  
14 Ms. Taylor's vagina, from behind, against her will. Afterwards, the Defendant forced Ms.  
15 Taylor to put his penis in her mouth a second time. After the Defendant sexually assaulted  
16 Ms. Taylor he stated, "You know you were raped, right?"

17 The Defendant permitted Ms. Taylor to put pants on and then tied her hands, behind her  
18 back, with a telephone cord. The Defendant also tied Ms. Taylor's feet together and then  
19 tied them to her hands. The Defendant dragged Ms. Taylor to the closet and put her inside.  
20 The Defendant then put water down Ms. Taylor's pants, in an attempt to remove his DNA  
21 from her vaginal area. Afterwards, the Defendant placed a knife from Ms. Taylor's kitchen  
22 in the closet with her, for the purpose of freeing herself after he left the residence. Ms.  
23 Taylor was eventually able to cut herself free and notify the police.

24 **B. STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED**  
25 **AGAINST LEONA CASE**

26 Defendant is charged by way of Second Amended Information with Count VII-  
27 Burglary While in Possession of a Deadly Weapon; Count IX - First Degree Kidnapping  
28 With Use of a Deadly Weapon; Counts X, and XII - Sexual Assault With Use of a Deadly

1 Weapon; Count XI – Attempt Murder With Use of a Deadly Weapon; Count XIII - Robbery  
2 With Use of a Deadly Weapon; and Count XIV - First Degree Arson, for crimes that were  
3 committed against victim Leona Case (DOB: 8/18/57).

4 On March 7, 2000, Leona resided in a studio apartment located at 2900 E. Charleston,  
5 #50. Leona lived alone at that time, and her apartment was located on the bottom floor. At  
6 approximately half past midnight on March 7, 2000, Leona was in her living room, watching  
7 a movie, when someone knocked on her door. Leona put the safety chain on her door and  
8 then opened it to see who was there, and she recognized the individual as somebody who  
9 had knocked on her door about three to four days prior, looking for the person who  
10 previously lived in the apartment. The first time the person at Leona's door had knocked on  
11 it, he asked if he could use her telephone, after telling her he was looking for the prior tenant.  
12 Leona took her telephone outside on that occasion, and allowed the Defendant to use it  
13 outside. The first time the person had knocked on Leona's door and asked to use her  
14 telephone, he had a friend with him. Defendant introduced himself to Leona by stating, "My  
15 name is Jug, and this is my buddy, Chris."

16 Leona recognized the person at the door on March 7, as being the individual who  
17 identified himself as "Jug." As he did the first time he knocked on Leona's door, Defendant  
18 again asked to use Leona's telephone but because it was so late at night, Leona told him,  
19 "No," and shut the door.

20 Leona was sitting in her chair in the living room, and heard something rattling at the  
21 window. Thereafter, Leona heard a couple of bangs on her door and then the Defendant  
22 kicked it open, off of the frame. After the Defendant entered Leona's apartment by kicking  
23 the door in, Leona picked up the telephone and attempted to call 911, however, the call did  
24 not go through because the Defendant slapped Leona on the face and knocked her to the  
25 ground, taking the phone away from her.

26 Defendant went into Leona's kitchen, opened the drawers, and got out a steak knife.  
27 Defendant first used the knife to threaten Leona, in order to find out where her money was  
28 and to move her into the bedroom. Defendant asked Leona where her money was at and she



1 told him she did not have any, however, Defendant saw Leona's purse sitting on her dresser  
2 and took \$44.00 and some food stamps from it. Defendant also told Leona to give him a  
3 little ten carat ring she was wearing that said "mom" on it. Leona gave the Defendant the  
4 ring because he had a knife.

5 Defendant wielded the knife and demanded Leona to go into the bedroom, where he  
6 had her hold a lamp that was beside the bed, while he cut the cord off of it. After cutting the  
7 cord off with the knife, Defendant put some kind of knot in it, slipped it over her neck, told  
8 her that he was going to tie her up, and started to strangle her with it. Leona grabbed the  
9 cord and put her fingers between her neck and the cord, while the Defendant climbed up on  
10 the back of the bed and wound it around both of his hands and began strangling her, pulling  
11 the cord tight with both hand. Leona began losing consciousness and Defendant stated  
12 several times, "Why don't you just die, Bitch." Leona fell forward and the Defendant let go  
13 of the cord causing Leona to pull it away from her neck and slip it off of her head, at which  
14 point the Defendant told her to disrobe.

15 Leona disrobed and shoved the cord under the corner of the bed because she did not  
16 want the Defendant to find it. Defendant told Leona that he was going to "fuck" her and  
17 asked her where her condoms were at. Leona told the Defendant that she did not have any  
18 condoms, so he grabbed a plastic bag that covered her coffee filters and used it as a  
19 makeshift condom, before putting his penis into Leona's vagina, against her will.

20 Defendant got off of Leona and took the plastic bag into the bathroom, where he  
21 flushed it down the toilet and then washed his private area. After putting her clothes back  
22 on, while the Defendant was in the bathroom, Leona found the steak knife laying on the  
23 dresser and shoved it between the mattress and box springs, like she had done with the cord.  
24 After Defendant was done in the bathroom, he went into the kitchen and got another knife.  
25 He returned to the bedroom with the knife and told Leona to get undressed and turn around,  
26 because he was going to "fuck her up the ass." Defendant used the cellophane off of Leona's  
27 cigarette package as a condom, and he, again, put his penis in her vagina, against her will.

28 //

1 After completing the second act of sexual assault on Leona, Defendant, again, went to  
2 the bathroom and washed himself. Leona put her underwear and t-shirt on and as she stood  
3 up, off the bed, Defendant lunged at her with the knife and began to stab her in the abdomen.  
4 The knife entered Leona's body so deeply that she felt the Defendant's fist hit her stomach.  
5 Defendant pulled the knife out and stabbed Leona again, pushing the knife full into her as  
6 before. After pulling the knife out of Leona's body the second time, Defendant attempted to  
7 cut the right side of Leona's neck with it.

8 Realizing the Defendant was trying to kill her, Leona attempted to kick the defendant.  
9 Defendant avoided Leona's kick, so Leona bent her head down and went for his waist,  
10 thinking maybe she could tackle him and get him down, however, Defendant's arm wound  
11 up around Leona's neck and he strangled her to unconsciousness. When Leona regained  
12 consciousness Defendant told her to go to the bathroom and wash herself. Defendant told  
13 Leona to use soap on her vaginal area.<sup>1</sup> After Leona came out of the bathroom, Defendant  
14 had her sit on the bed and made her clean out her fingernails because she had scratched him  
15 when she tried to remove his hands from her throat.

16 The next thing Leona recalled is that the Defendant had the cord again. Defendant  
17 told her to put it around her neck again but Leona refused. As a result, Defendant began  
18 whipping Leona with it and beat her around the head with it, till she was bleeding severely.

19 Defendant told Leona to go back into the bathroom and she complied. Defendant  
20 shut the bathroom door so Leona locked it. The next thing Leona heard was a bang, and then  
21 the smoke alarm going off. Leona knew her apartment was on fire because she heard the  
22 smoke alarm and could smell smoke. There also came a point when she heard a door slam,  
23 which caused her to unlock the bathroom door and try to open it.

24 Leona could not open the bathroom door because the Defendant had slid a nine-  
25 drawer dresser up against it, blocking Leona in the bathroom. Leona began banging the

---

26  
27 <sup>1</sup> Leona had to remove the cellophane from her vagina when the Defendant made her go to  
28 the bathroom and wash her vaginal area. Also, the Defendant told her to flush it down the  
toilet, which she did.

1 bathroom door with her shoulder trying to move the dresser over but it would not budge.

2 Leona began to think that if the Defendant could kick her front door in, she should be  
3 able to kick her way out of the bathroom; so she started kicking the door right beneath the  
4 door handle, and the dresser tipped over. When Leona was able to squeeze out of the  
5 bathroom door, she saw that her apartment was totally on fire. Leona grabbed her sister's  
6 cellular telephone and ran outside of the apartment and hid behind a stairwell, afraid the  
7 Defendant might still be around. Leona tried to use the cellular telephone three times but it  
8 would not connect. Leona ran down between the two buildings where she saw people. She  
9 was trying to get somebody to call 911, but she could not talk very well. However, the fire  
10 department did arrive and Leona was taken to the hospital for treatment.

11 After his arrest, Defendant admitted his involvement in the crimes committed against Leona  
12 Case.

13 C. STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED  
14 AGAINST RAMONA LEYVA

15 Defendant is charged in the Second Amended Criminal Information with having  
16 committed the crimes of: Count XVI - First Degree Kidnapping With Use of a Deadly  
17 Weapon; Count XVII - Sexual Assault With Use of a Deadly Weapon; and Count XVIII -  
18 Robbery With Use of a Deadly Weapon, against victim Ramona Leyva.

19 On March 25, 2000, Ramona Leyva resided with her husband in a studio apartment  
20 located at 600 Bonanza Rd., Apt. #144, Las Vegas, Nevada. At approximately 10:00 p.m.  
21 on the night of the 25th, Ramona had returned to the apartment after dropping her husband  
22 off at work. Ramona was in the apartment and had gone to the bathroom and heard a loud  
23 noise at the front door. Ramona looked up and saw the Defendant. Ramona quickly closed  
24 the bathroom door but the Defendant broke through it and pushed her against the bathroom  
25 wall, grabbing her hair and neck.

26 The Defendant indicated that Ramona should quiet down by telling her to "shush."  
27 The Defendant dragged Ramona by her hair and neck out to the kitchen where he grabbed a  
28 knife from her kitchen drawer. The Defendant put the knife against Ramona's neck and

1 demanded money from her. The Defendant moved Ramona around the apartment and  
2 continued to demand money from her. After convincing the Defendant that she had no  
3 money, the Defendant began to touch Ramona's breasts and buttocks with his hands, over  
4 her clothes. The Defendant also touched his penis with his hand, over his pants. The  
5 Defendant began removing his clothes and Ms. Leyva told him to get some protection,  
6 because she knew he was going to rape her and she did not want any disease from him.

7 Ramona's husband wore rubber gloves as a dishwasher at his job. There were a pair  
8 of rubber gloves on her husband's night stand and the Defendant put the thumb part of one  
9 of those gloves over his penis before penetrating Ms. Leyva's vagina with his penis.

10 Mrs. Leyva was very afraid during the rape and the Defendant told her to tell him that  
11 she liked what he was doing, so she did. The Defendant kept the knife in his hand while he  
12 sexually assaulted Ms. Leyva. After the sexual assault, the Defendant forced Ms. Leyva to  
13 take the glove off of his penis and flush it down the toilet.

14 The Defendant emptied Ms. Leyva's purse and found her car keys at which time he  
15 attempted to leave and take her car. Mrs. Leyva told the Defendant that she had to go work  
16 and asked him not to take her car. The Defendant left the apartment briefly to throw the  
17 knife into the parking lot. The Defendant then re-entered the apartment and picked up Ms.  
18 Leyva's telephone receiver to see if the line worked. After hanging the telephone back up  
19 the Defendant left the residence and stole Ms. Leyva's car.

20 After the Defendant fled in her car, Mrs. Leyva attempted to get some of her  
21 neighbors to help her but none of them would answer their doors. Mrs. Leyva walked to a  
22 fast food restaurant where she found a Spanish speaking couple to take her to her husband's  
23 job. After she arrived at her husband's job he took her to report the crimes.

24 **D. STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED**  
25 **AGAINST MARLENE LIVINGSTON**

26 Defendant is charged in the Second Amended Criminal Information with having  
27 committed the crimes of: Count XV - Burglary While in Possession of a Deadly Weapon;  
28 Count XVI - First Degree Kidnapping With Use of a Deadly Weapon, Victim 65 Years of

1 Age or Older; Count XVII- Sexual Assault With Use of a Deadly Weapon, Victim 65 Years  
2 of Age or Older; and Count XVIII - Robbery With Use of a Deadly Weapon, Victim 65  
3 Years of Age or Older, against victim Marlene Livingston.

4 On April 14, 2000, Marlene Livingston, (DOB 10/12/33), resided at an apartment  
5 complex located at 2301 Clifford, Las Vegas, Nevada. The complex has 11 apartments, and  
6 Marlene lived in Apt. #11, on the second floor.

7 On April 3, Marlene worked in the afternoon until 9:00 that night. After work,  
8 Marlene went home. At the time, Marlene drove a white, 1991 Dodge Dynasty. After  
9 Marlene arrived home from work that night, she checked the mail, had received her social  
10 security check, and went to Boulder Station to cash it. Marlene had \$515.00, after cashing  
11 her check. Marlene stayed at Boulder for approximately an hour or so, wherein she bought  
12 some Chinese food and played some nickels.

13 Marlene left Boulder Station and drove home, where she put some of the left over  
14 Chinese food on a plate and put it in the microwave, and then went to take her work clothes  
15 off. As Marlene sat on the edge of her bed, and was looking through her purse, wearing only  
16 her bra and pants, when she heard a boom and saw the Defendant break through her front  
17 door, wearing a mask that did not cover his whole face. Marlene also noticed the Defendant  
18 had a knife with a silver blade.

19 The Defendant demanded Marlene's money, which she took from her wallet and gave  
20 to him. Thereafter, the Defendant asked Marlene if she had any gold, and she gave him her  
21 pinky ring. The Defendant took the knife that he had and flicked through Marlene's purse  
22 with it and saw a \$10.00 bill. He accused Marlene of lying to him about having more  
23 money, which caused her to explain that she had cashed in \$10.00 worth of nickels at  
24 Boulder Station and then shoved it in her purse.

25 The Defendant told Marlene not to look at him, causing her to keep her head down  
26 and eyes closed. Marlene told the Defendant, "Take anything you want, I just want to see  
27 my grand kids tomorrow." Thereafter, Marlene heard the Defendant go around the bed and  
28 grab her telephone. The Defendant then demanded that Marlene stand up. When Marlene

1 complied the Defendant told her to bend over. When Marlene moved her pants to the side a  
2 little and told the Defendant that she had a pad on, the intruder sat on the bed, pulled his  
3 penis out, and told her they would do it orally and not to bite him. The Defendant told  
4 Marlene that "he liked to fuck old ladies."

5 Marlene was forced to put her mouth on the Defendant's (exposed) penis and the  
6 Defendant held the back of her head and pushed it up and down. During the assault,  
7 Marlene kept her eyes closed. During the act the Defendant kept telling Marlene not to bite  
8 him.

9 After the sexual assault, the Defendant asked Marlene if she had a car, a gun, and a  
10 husband that was going to come in. Marlene told the Defendant that she had a white  
11 Dynasty and he demanded her keys, which she took out of her purse and gave to him. The  
12 Defendant told Marlene to go into her bathroom and wash her mouth out. The Defendant  
13 also stood behind her during this act, and forced water into her mouth. Thereafter, the  
14 Defendant told Marlene to stay in the bathroom, where she stayed for approximately 10 to 15  
15 minutes, because she was scared to come out.

16 Once Marlene left the bathroom she looked outside and saw that her car was gone. Marlene  
17 was afraid the intruder might return so she put on her pajama's and then knocked on the  
18 landlord's door and told him what had happened. Marlene's landlord subsequently called the  
19 police. After his arrest, Defendant admitted committing the crimes against Marlene  
20 Livingston.

21 E. STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED  
22 AGAINST CLARENCE AND FRANCIS RUMBAUGH

23 Defendant is charged in the Second Amended Criminal Information with having  
24 committed the crimes of: XXII - Burglary While in Possession of a Deadly Weapon; Count  
25 XXIII - Robbery With Use of a Deadly Weapon, Victim 65 Years of Age or Older; and  
26 Count - XXIV - Robbery With Use of a Deadly Weapon, Victim 65 Years of Age or Older  
27 against the victims, Clarence and Francis Rumbaugh.

28 //

1 On April 12, 2000, Francis Rumbaugh (DOB 04/11/21) and her husband, Clarence  
2 Rumbaugh (DOB 09/19/16), lived at 436 North 12th Street #B, in Clark County, Las Vegas.  
3 The residence had one bedroom, a living room, and bathroom.

4 During the evening of April 12, at approximately 11:25 p.m., Francis and Clarence  
5 were at home eating cake and ice cream, in the living room. The front door was open,  
6 however the screen door was closed and latched at the time, when Francis heard a loud noise  
7 and somebody burst in.

8 After the Defendant had burst into the residence and Francis began to scream for help,  
9 the Defendant told her to shut up. The Defendant then shut two windows and the front door,  
10 and picked up the knife Francis had used to cut the cake with, and used it to cut the  
11 telephone cord. After the Defendant cut the telephone cord, with the knife still in his hand,  
12 he grabbed Francis by the left wrist area and threw her onto the couch. After throwing  
13 Francis onto the couch, Defendant approached Clarence Rumbaugh and wrestled with him,  
14 eventually throwing Mr. Rumbaugh to the floor and demanding the money from his wallet.

15 Mr. Rumbaugh got up off of the floor and took his wallet out of his back pocket, but  
16 before he could reach into it and take the money out, the Defendant reached in and took  
17 \$81.00 from the wallet. The Defendant pointed a knife at Mr. and Mrs. Rumbaugh and made  
18 them go into their bedroom where he rummaged through their belongings using the tip of the  
19 knife. The Rumbaugh's had El Cortez cups full of change on their desk and the Defendant  
20 picked up those cups to put the loose change consisting of nickels, dimes, and quarters, in his  
21 pockets. Afterwards, the Defendant took another hanky from his pocket and wiped the  
22 containers off.

23 The Defendant instructed the Rumbaugh's to stay in their bedroom while he fled the  
24 residence.

25 **F. STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED**  
26 **AGAINST LEROY FOWLER**

27 Defendant is charged in the Second Amended Criminal Information with having  
28 committed the crime of: Count XXV - Burglary While In Possession of a Deadly Weapon,

1 against the victim Leroy Fowler. On June 6, 2000, Mr. Fowler resided at 1121 East Ogden  
2 Avenue, Apt. #9, Las Vegas, Nevada, in a studio apartment.

3 On June 6, at approximately 1:55 a.m., Mr. Fowler was sleeping on his bed. Mr.  
4 Fowler awoke to his front door being kicked in. Mr. Fowler encountered the Defendant,  
5 who had a knife in his hand. Mr. Fowler picked up a kitchen chair and began swinging it at  
6 the Defendant. Mr. Fowler was making a lot of noise and the Defendant told him several  
7 times to shut up.

8 Mr. Fowler continued swinging the kitchen chair, at which time the Defendant turned  
9 and ran out of the apartment.

10 **G. STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED**  
11 **AGAINST JONI HALL**

12 Defendant is charged in the Second Amended Criminal Complaint with having  
13 committed the crimes of: Count XVI - Burglary While in Possession of a Deadly Weapon;  
14 XXVII - First Degree Kidnapping With Use of a Deadly Weapon; Count XXVIII - Sexual  
15 Assault With Use of a Deadly Weapon; and XXIX - Robbery With Use of a Deadly  
16 Weapon, against victim Joni Hall.

17 On June 7, 2000, Joni Hall resided in an apartment located at 624 North 13th Street,  
18 Las Vegas, Nevada. Joni had been living in the apartment for a little over a month. Joni and  
19 her child along with another woman and her three children all lived in the apartment.

20 On June 7, during the early morning hours between 1:30 and 2:00 a.m., Joni arrived  
21 home to the apartment and went straight to bed. Joni awoke to a thud type noise and thought  
22 that maybe her roommate was hitting the wall or one of the children was hitting the door.  
23 Joni lay in bed for a couple a seconds before starting to shut her eyes again. Joni saw that  
24 the bedroom door was opening and she also saw the Defendant standing in the doorway  
25 putting something over his face and saying, "Oh Yeah." The Defendant also had a knife in  
26 his right hand.

27 //  
28



1 The Defendant asked Joni if she had money and car keys. Joni told the Defendant no,  
2 and the Defendant told Joni not to lie to him. At that point the Defendant told Joni to get up  
3 out of bed and forced her to follow him into the living room and kitchen area of the  
4 apartment. The Defendant asked Joni if anybody else was in the apartment and Joni told  
5 him that her child was there and her roommate and her children were there.

6 The Defendant forced Joni to open and close cabinets in the living room and kitchen  
7 area of the residence to make sure she wasn't hiding anything. The Defendant also asked  
8 Joni what she had to eat and drink in the apartment.

9 The Defendant asked Joni for some Kool-Aid to drink and Joni gave it to him. The  
10 Defendant also took Joni's roommate's cigarettes out of a cabinet. After touching the outer  
11 cellophane of the cigarette package, the Defendant took the cellophane off of the package  
12 and burned it in the sink, telling Joni he didn't want evidence of his fingerprints around.

13 The Defendant forced Joni to walk back into her bedroom and he began going  
14 through Joni's things. The Defendant told Joni that he was going to "get some pussy from a  
15 scared white girl." The Defendant told Joni to lie down on the end of her bed and take off  
16 her pants. The Defendant then told Joni that he was just joking with her, that he wasn't like  
17 that, and that he wasn't going to do that to her.

18 A neighbor from upstairs made a loud noise which caused the Defendant to become  
19 nervous. The Defendant told Joni to turn off her kitchen and bathroom lights and then  
20 peaked out the kitchen blinds to see if anybody was coming downstairs.

21 The Defendant found some Saran Wrap in the kitchen and forced Joni to tear off a  
22 piece of it. The Defendant told Joni he was going to get some pussy from a white girl and  
23 told Joni to lay down on the floor, in front of the couch, in the living room. The Defendant  
24 walked towards Joni with the knife in one hand and the Saran Wrap in the other.

25 The Defendant unbuckled his belt and pulled down his pants and got down on the  
26 floor with Joni. The Defendant put the knife up near Joni's head and told her if she  
27 screamed or made any noise he would kill her. The Defendant put the Saran Wrap on his  
28 penis with the other hand and then put his penis in Joni's vagina for approximately one

1 minute. The Defendant then got up, went into the bathroom and flushed the toilet. Joni did  
2 not see the Saran Wrap again after the Defendant came out of the bathroom.

3 The Defendant told Joni that he was going to take her television and told her to bring  
4 a stroller that she had in the bedroom out into the front room. The Defendant put the  
5 television in the stroller and took Joni's walkman as well.

6 After the Defendant left the apartment Joni went and woke up her roommate and told  
7 her to go the call the police because they had been robbed and Joni had been raped.

8 **H. STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED**  
9 **AGAINST GYALTSO LUNGTOK**

10 Defendant is charged in the Second Amended Criminal Information with having  
11 committed the crimes of: Count XXX - Burglary While In Possession of a Deadly Weapon;  
12 Count XXXI - Attempt Robbery With Use of a Deadly Weapon; and Count XXXII - Murder  
13 With Use of a Deadly Weapon (Open Murder), against victim Gyaltsu Lungtok.

14 On the evening of June 8, 2000, Gyaltsu Lungtok became the victim of a homicide  
15 during a Burglary and Attempt Robbery perpetrated by the Defendant in this case.

16 The Defendant gave a statement to Detective LaRochelle, LVMPD Homicide  
17 Division, about the homicide investigation regarding Mr. Lungtok and during that initial  
18 conversation, Defendant indicated that he was out on the night in question with a guy named  
19 Deon. Defendant stated that Deon was talking about getting "a lick, which is a street term  
20 for a robbery to get money.

21 Defendant told Detective LaRochelle that Deon asked him for the gun that he was  
22 carrying, so he gave it to Deon.<sup>2</sup> Defendant further told Detective LaRochelle that he waited  
23 at a telephone bank while Deon entered the complex where Mr. Lungtok lived. Defendant  
24 indicated that he heard banging or crashing noises followed by gunshots. According to the  
25  
26

27  
28 <sup>2</sup> The gun used in the Lungtok homicide has been forensically identified as the same gun  
used in the Lopez/Zazucta crimes.

1 Defendant, Deon came running and they ran off together and Deon told him that the shell  
2 casings got picked up from the shooting and not to worry about it.

3 Thereafter, Detective LaRochelle told the Defendant that his story was not plausible  
4 and that he knew the Defendant was more involved than what he had previously told him, at  
5 which time the Defendant changed his story and told Detective LaRochelle that he entered  
6 Mr. Lungtok's apartment in an attempt to get away from a police car that he saw cruising the  
7 street. Defendant said that he had the gun on him and was worried about being arrested if  
8 the police stopped him. Defendant told Detective LaRochelle that he thought the apartment  
9 was empty, so he kicked the door open and entered the apartment. Defendant indicated it  
10 was dark inside the apartment and he became startled when someone came at him from the  
11 dark, at which point he fired the gun.

12 *I. STATEMENT OF FACTS PERTINENT TO THE CRIMES COMMITTED*  
13 *AGAINST LAURA ZAZUETA, GUADALUPE LOPEZ, AND BEATRIZ*  
14 *ZAZUETA*

15 Defendant is charged in the Second Amended Criminal Information with having  
16 committed the crimes of: Count XXXII - Burglary While In Possession of a Deadly Weapon;  
17 XXXIV - Robbery With Use of a Deadly Weapon; Count XXXV - Attempt Robbery With  
18 Use of a Deadly Weapon; Count XXXVI - Attempt Robbery With Use of a Deadly Weapon;  
19 Count XXXVII - Attempt Murder With Use of a Deadly Weapon; and Count XXXVIII -  
20 Battery With Use of a Deadly Weapon, for crimes committed against victims Laura Zazueta,  
21 Guadalupe Lopez, and Beatriz Zazueta.

22 Laura Zazueta, her sister Beatriz, her brother-in-law Guadalupe, and her nephews  
23 Carlitto, then 2 years of age, and Andras, then 4 years of age, lived at 2850 East Cedar  
24 Avenue, Apt. H-229. On the night of June 8, 2000, Laura went out with her boyfriend. He  
25 brought her home and left the apartment at approximately 11 or 12 p.m. At the time Laura  
26 got home none of her roommates were awake and she went directly to bed and went to sleep.  
27 At some point Laura woke up because she heard a noise, and found the Defendant in her  
28 bedroom.

1 In both English and Spanish, the Defendant told Laura to give him the money she  
2 had. Laura gave the Defendant approximately \$200.00 that she had in a chest of drawers, in  
3 her bedroom. After Laura gave the Defendant the money, he demanded more money and  
4 became vulgar saying things like "fuck you" and "bitch." Laura became nervous and was  
5 forced to her sister's room, while the Defendant followed behind her pointing the gun at her.  
6 When she got to her sister's room, her sister and brother-in-law woke up, causing the  
7 Defendant to demand more money from all of them and pointed the gun at all of them.  
8 Laura's four-year-old nephew woke up as the Defendant held them at gun point demanding  
9 money.

10 Laura's brother-in-law told the Defendant that he did not have any money, which  
11 caused the Defendant to become upset and place the gun against Guadalupe's forehead.  
12 Guadalupe grabbed the gun and a struggle ensued causing the gun to fire approximately four  
13 times. At that time, Laura dropped to the floor of the bedroom as her sister embraced the  
14 child. The Defendant and Guadalupe struggled with each other out of the bedroom and into  
15 the living room where Laura watched as the intruder got away by jumping from the couch  
16 through a window.

17 **J. STATEMENT OF FACTS PERTINENT TO DEFENDANT'S PRIOR**  
18 **JUVENILE CONVICTION FOR ARMED ROBBERY IN CHICAGO**

19 On September 4, 1996, Defendant, then 12 years of age, pointed a small handgun  
20 (later identified as a starter pistol) at Mertice Gawne, as he attempted to take her car from  
21 her. Police reports indicate that on the aforementioned day, Mertice Gawne was leaving a  
22 friend's house and walking to her automobile when she noticed the Defendant and two other  
23 boys observing her. Mertice got into her vehicle and waited until the boys were out of sight  
24 before leaving the area.

25 When Mertice got to the intersection of 110th and Hoyne, the Defendant and two  
26 other boys jumped out of some bushes and surrounded her car. The Defendant pointed a gun  
27 at Mertice and told her to get out of the car because he was taking it from her. The  
28 Defendant opened the driver's side door and another boy pounded on the hood of the car.

1 Mertice quickly drove away from the boys and notified police with her cellular telephone.

2 The Defendant and the other two boys were picked up shortly thereafter. Ms. Gawne  
3 identified all three of the boys as the boys who tried to take her car.

4 On January 31, 1996, Defendant was adjudicated a delinquent and pled guilty to  
5 Armed Robbery, a Class X felony in the State of Illinois. On March 6, 1996, Defendant was  
6 placed on probation.

7 A copy of the police report and juvenile court disposition papers are attached hereto  
8 for this Court's review as Exhibit "1".

9 **LEGAL ARGUMENT**

10 **I. THE STATE WAS NOT REQUIRED TO CONDUCT A JUVENILE COURT**  
11 **HEARING TO CERTIFY THE DEFENDANT AS AN ADULT.**

12 Defendant's motion cites specifically to NRS 62.040 and NRS 62.080, as supportive  
13 to his instant argument. The State would point out that NRS 62.036 to 62.080 were repealed  
14 by Laws 2003, c. 206 § 383, effective January 1, 2004. As such, former provision NRS  
15 62.040 is now NRS 62B.330, while former provision NRS 62.080 is now NRS 62B.390.

16 NRS 62B.330 states:

17 1. Except as otherwise provided in this title, the juvenile court  
18 has exclusive original jurisdiction over a child living or found  
19 within the county who is alleged or adjudicated to have  
committed a delinquent act.

20 2. For the purposes of this section, a child commits a  
delinquent act if the child:

21 (a) Violates a county or municipal ordinance;

22 (b) Violates any rule or regulation having the force of law; or

23 (c) Commits an act designated a criminal offense pursuant to  
the laws of the State of Nevada.

24 **3. For the purposes of this section, each of the following**  
25 **acts shall be deemed not to be a delinquent act, and the**  
26 **juvenile court does not have jurisdiction over a person who is**  
27 **charged with committing such an act:**

28 **(a) Murder or attempted murder and any other related**  
**offense arising out of the same facts as the murder or**  
**attempted murder, regardless of the nature of the related**  
**offense.**

1       **(b) Sexual assault or attempted sexual assault involving**  
2       **the use or threatened use of force or violence against the**  
3       **victim and any other related offense arising out of the same**  
4       **facts as the sexual assault or attempted sexual assault,**  
5       **regardless of the nature of the related offense, if:**

6       **(1) The person was 16 years of age or older when the**  
7       **sexual assault or attempted sexual assault was committed;**  
8       **and**

9       **(2) Before the sexual assault or attempted sexual**  
10       **assault was committed, the person previously had been**  
11       **adjudicated delinquent for an act that would have been a**  
12       **felony if committed by an adult.**

13       **(c) An offense or attempted offense involving the use or**  
14       **threatened use of a firearm and any other related offense**  
15       **arising out of the same facts as the offense or attempted**  
16       **offense involving the use or threatened use of a firearm,**  
17       **regardless of the nature of the related offense, if:**

18       **(1) The person was 16 years of age or older when the**  
19       **offense or attempted offense involving the use or threatened**  
20       **use of a firearm was committed; and**

21       **(2) Before the offense or attempted offense involving**  
22       **the use or threatened use of a firearm was committed, the**  
23       **person previously had been adjudicated delinquent for an act**  
24       **that would have been a felony if committed by an adult.**

25       **(d) A felony resulting in death or substantial bodily harm to**  
26       **the victim and any other related offense arising out of the same**  
27       **facts as the felony, regardless of the nature of the related offense,**  
28       **if:**

**(1) The felony was committed on the property of a public**  
      **or private school when pupils or employees of the school were**  
      **present or may have been present, at an activity sponsored by a**  
      **public or private school or on a school bus while the bus was**  
      **engaged in its official duties; and**

**(2) The person intended to create a great risk of death or**  
      **substantial bodily harm to more than one person by means of a**  
      **weapon, device or course of action that would normally be**  
      **hazardous to the lives of more than one person.**

**(c) Any other offense if, before the offense was committed,**  
      **the person previously had been convicted of a criminal offense.**

(Emphasis added).

The statutory provisions of NRS 62B.330 (3)(a),(b) and (c), does not give the juvenile court jurisdiction over this Defendant.

1 Initially, it should be noted that the Defendant was quite clearly 16 years of age or  
2 older when all of the charged crimes occurred and he was previously adjudicated as a  
3 delinquent for the charge of Armed Robbery on January 31, 1996, in Chicago, Illinois. See  
4 *Exhibit "1."* Obviously, Armed Robbery would be a Felony conviction if sustained by an  
5 adult.

6 Turning to the instant charges, the Defendant is charged with Murder, among other  
7 related charges, in the killing of Gyaltsso Lungtok; Attempted Murder, among other related  
8 charges, in the attack on Leona Case; and Attempted Murder, among other related charges,  
9 in the attack on Guadalupe Lopez. As such, per NRS 62B.330(3)(a). Thus, the Juvenile  
10 Court would have no jurisdiction over the Defendant for the above cases.

11 Moreover, the Defendant is charged with Sexual Assault, among other related  
12 charges, in the attacks on Teresa Taylor, Ramona Leyva, Marlene Livingston and Joni Hall.  
13 The aforementioned Leona Case was also sexually assaulted so her case could be included in  
14 this category as well. As such, per NRS 62B.330 (3)(b)(1) and (2), the Juvenile Court would  
15 have no jurisdiction over the Defendant for the above cases.

16 Additionally, the Defendant is charged with crimes involving the use or threatened  
17 use of a firearm, among other related charges, in his attacks against Laura Zazueta and  
18 Beatrice Zazueta. The use or threatened use of a firearm is an aspect of the crimes involving  
19 Guadalupe Lopez and Gyaltsso Lungtok as well, so they would be included in this category,  
20 too. As such, per NRS 62B.330 (3)(c) (1) and (2), the Juvenile Court would have no  
21 jurisdiction over the Defendant for the above cases.

22 Finally, all of the criminal events described in this Opposition occurred within a four  
23 (4) month time period and are inextricably intertwined in terms of the modus operandi (MO)  
24 associated with the offenses, the area of town in which the offenses were occurring and the  
25 motives behind the offenses. As such, the State would submit that all the offenses are  
26 essentially "related offenses" per NRS 62B.330; that is to say, that all offenses are  
27 essentially related to the other offenses in the other events. Due to the fact that most all  
28 events involve Murder, Attempted Murder, Sexual Assault or the Use of a Firearm as aspects

1 of the cases, and because all events and offenses are related, per NRS 62B.330, the Juvenile  
2 Court would have no jurisdiction over the Defendant for the above cases.

3 Contrary to the Defendant's belief that a hearing should be held in this case, based  
4 upon the aforementioned statutory language, the Defendant committed the type of crimes  
5 that preclude the juvenile court from having any jurisdiction over the matter for a hearing to  
6 be held.

7 Additionally, the Defendant cannot claim that the juvenile court failed to conduct a  
8 full investigation in this matter. The Juvenile Court never had jurisdiction or a need to do  
9 anything. Based upon the charges the Defendant was facing and the fact that he had a prior  
10 juvenile adjudication that would have been a felony if the crime had been committed by an  
11 adult, the police officers were given the authority to transfer the Defendant from the juvenile  
12 facility in Illinois to the adult facility here in Las Vegas, after the prosecutors in this case  
13 established with the Juvenile Division of the District Court that that division did not have the  
14 authority to take the Defendant.

15 **CONCLUSION**

16 Based upon the above and foregoing Points and Authorities the State respectfully  
17 requests Justin Porter's Motion to Remand the Case to Juvenile Court and Conduct a  
18 Hearing as to Whether he should be Certified as an Adult be denied.

19 DATED this 12th day of June, 2008.

20 Respectfully submitted,

21 DAVID ROGER  
22 Clark County District Attorney  
23 Nevada Bar #002781

24 BY

25   
26 LISA LUZAICH  
27 Chief Deputy District Attorney  
28 Nevada Bar #005056



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

CURTIS S. BROWN, DPD  
JOSEPH K. ABOOD, DPD  
FAX #383-6602

BY Shellie Warner  
Employee of the District Attorney's Office

21

**EXHIBIT "1"**

CHICAGO POLICE  
ARREST REPORT  
CPD-11.420 (Rev. 6-92)

1. NAME <b>PORTER JUSTIN</b>	2. AKA <b>None</b>	3. DOB <b>007 5-9 140</b>	4. SEX <b>BLK</b>	5. HEIGHT <b>Short</b>	6. WEIGHT <b>Arm</b>	7. HAIR <b>Red</b>
8. ADDRESS <b>5741 S WOOD</b>	9. CITY <b>CHICAGO</b>	10. STATE <b>IL</b>	11. ZIP <b>60638</b>	12. PHONE <b>737-9198</b>	13. BUSINESS <b>None</b>	14. EMPLOYER <b>None</b>

15. ARRESTING OFFICER <b>283421</b>	16. CHARGE <b>283421</b>	17. ARREST DATE <b>04 SEPT 95</b>	18. ARREST TIME <b>2145</b>	19. ARREST LOCATION <b>11000 S Prospect</b>
--	-----------------------------	--------------------------------------	--------------------------------	--

20. VEHICLE <b>None</b>	21. VEHICLE TYPE <b>None</b>	22. VEHICLE MAKE <b>None</b>	23. VEHICLE MODEL <b>None</b>	24. VEHICLE YEAR <b>None</b>	25. VEHICLE COLOR <b>None</b>	26. VEHICLE VIN <b>None</b>	27. VEHICLE DISPOSITION <b>None</b>
----------------------------	---------------------------------	---------------------------------	----------------------------------	---------------------------------	----------------------------------	--------------------------------	--

28. PERSON IN INVESTIGATIVE UNIT NOTIFIED <b>HARDY 156680 A/Youth 2248</b>	29. NAME OF TOWNE/NOTIFIED TIME <b>2218</b>	30. NAME OF AS & TEL. NO. <b>CHGO IL</b>	31. CHARGE APPROVED <b>YES</b>
---	--	---	-----------------------------------

32. VICTIM COMPLAINT <b>GAWNE MERTIER</b>	33. VICTIM NAME <b>P 2 65</b>	34. VICTIM HOME ADDRESS <b>2218 W 107 TH</b>	35. VICTIM CITY <b>CHGO IL</b>	36. VICTIM STATE <b>IL</b>	37. VICTIM ZIP <b>60638</b>	38. VICTIM PHONE <b>737-9198</b>
--	----------------------------------	---	-----------------------------------	-------------------------------	--------------------------------	-------------------------------------

39. NO. REFERENCES (FBI - PAR)	40. REFERENCES (FBI - PAR)	41. OFFENSES	42. DISPOSITIONS	43. REFERENCES (FBI - PAR)	44. OFFENSES	45. DISPOSITIONS
1	720 HCS 5/18-2 Att. ARM ROBB	2	Detention Denied per Ackley	3	Detention Denied per Ackley	4
5	Detention Denied per Ackley	6	Detention Denied per Ackley	7	Detention Denied per Ackley	8

46. NARRATIVE (The facts for probable cause to arrest AND to substantiate the charges include, but are not limited to, the following):

Porter Justin taken into custody after he pointed a small handgun at the victim and told her to get out of her vehicle and give it to him. The victim drove away and called police. A short time later Porter was taken into custody and positively identified by the victim.

Also Arrested: Radoliff 112198 CHURCH

Mother- Angela Smith 5741 S. Wood 737-9198  
Father- George Porter U-N-K Picked up son  
ADDITIONAL ARRESTING OFFICERS BT. 5218 DET. J Hamilton 20945 DET BAGDEN 205

No E.T. Avail on Zone 9

Gang Affiliation: Denied

First Arresting Officer's Signature: J. H. ARDAWAY

Second Arresting Officer's Name: M. Vogenthaler 19000 022

Prints and Photo's waived per Sgt. Willis No E.T. Avail on Zone 9

Arresting Officer's Name: Y.O. Gurtatowski 17609 022

Court Information

Arrest Date: 28SEP95 0930

Arrest Location: Juv Ct

JUVENILE MINUTES SHEET  
YOUTH DIVISION/CHICAGO POLICE

CALENDAR Juv Ct Y.D. AREA 2 R.D. NO. Z-415843

NAME (LAST-FIRST-M.I.)		SEX/RACE/AGE	DATE ARRESTED-TIME	CHARGES	Y.D. NO.	DETAINED/ COURT REFERRED - DATE
Porter, Justin		M/1/12	04SEP95 2145	720ILCS5/18-2	283421	<input type="checkbox"/> D <input checked="" type="checkbox"/> R 28SEP95
Ratcliff, Cameron		M/1/13	04SEP95 2145	720ILCS5/18-2	283422	<input type="checkbox"/> D <input checked="" type="checkbox"/> R 28SEP95
Gipson, Bennie		M/1/12	04SEP95 2215	720ILCS5/18-2	283423	<input type="checkbox"/> D <input checked="" type="checkbox"/> R 28 SEP 9

DATE OF OFFENSE-TIME  
04SEP95 2130

LOCATION  
2141 W. 110th st

NAME (LAST-FIRST-M.I.)	SEX/RACE/AGE	VICTIM(S)	ADDRESS	<input type="checkbox"/> HOME <input type="checkbox"/> WORK TELEPHONE
Gawne, Mertice	F/2/65	2218 W 107th pl		<input checked="" type="checkbox"/> 445-8796

WITNESS(ES) (W) OR ADDITIONAL VICTIM(S) (V)

<input type="checkbox"/> W				<input type="checkbox"/>
<input type="checkbox"/> V D-N-A				<input type="checkbox"/>
<input checked="" type="checkbox"/> W				<input type="checkbox"/>
<input type="checkbox"/> V				<input type="checkbox"/>

WEAPONS: ☐ NONE ☒ DISCOVERED PROP. INVENTORY NOS. 1537249 DESCRIPTION Black Plastic Starter Pistol (Toy gun)  
☒ YES ☐ MISSED ☐ STOLEN

GANG AFFILIATION None RIGHTS GIVEN Yes STATEMENT(S) (ORAL/WITTEN) Oral

RANK-NAME	STAR NO.	UNIT	D.O.G.
P.O. J. Hardaway	14233	022	7
P.O. M. Vogenthaler	19001	022	7

INVESTIGATION (BE SPECIFIC, SUBSTANTIATE THE CHARGE(S), INCIDENT, ARREST(S), PROPERTY TAKEN/RECOVERED, STATEMENT, PREVIOUS HISTORY WILL BE LISTED AFTER NARRATIVE. CONTINUE ON REVERSE SIDE.)

P.O. A. Noren # 10629  
P.O. Janiszewski # 7007  
P.O. J. Kupczak #6132  
P.O. P. Madden #11924  
Sgt. J. Coghlan #1411  
Det. J. Hamilton # 20945  
Det. Bagden # 20551

Justin Porter, Cameron Ratcliff and Bennie Gipson were arrested for Attempt Armed Robbery by the arresting officer's after they were alerted to the Attempt Robbery by the victim calling on her cellular phone from her car. Arresting officer's apprehended immediately Justin Porter and Cameron Ratcliff and They were both positively identified by the victim as the one's who tried to take her car at gun point. A small starter pistol was recovered and inventoried by the arresting officer's under Inventory #1537249, inventoried was a Toy Gun, A small black starter pistol. A short time later tactical officer's learned of the third offender's location and found him at his residence was Bennie Gipson. He was also identified by the victim in that only that one difference was that he changed his shirt. Victim related to the arresting officer that after leaving a friend's house she was walking to her auto and she noticed that she was being observed by the offender's. Victim waited until the offender's were out of sight before she drove off and as she got to the intersection of 110th and Hoyne the offender's jumped out (Continued on Back)

PREPARED BY-NAME Y.O. Gurtatowski STAR NO. 17609 APPROVED BY-NAME Sgt. Willis # STAR NO. 1754

CPD-24.110(8/83)

108-J 810/880 P 886-1

2839 745 6832

CPD ALPHABETIC/YOUTH DIV CPD

13:47 02-29-02

000949

continued from page 1-

from some bushes and surrounded her car. Justin Porter approached the drivers door and pointed a blue steel handgun at her as he opened the left driver's door. Victim also related that she heard someone thumping on her hood of her vehicle and that Justin Porter told her to get out, because he was taking her car. At that point the victim drove off and alerted the police and subsequently all were taken into custody, advised of their rights and transported to the 022nd district for processing.

R/YO Again spoke to the complainant and she related the same facts of the incident and also again described each of the 3 offenders and what parts they had in the incident which were the same facts as reported to the police.

R/YO then advised all three offender's of their rights simultaneously to Jason Porter, Bennie Gipson and Cameron Ratcliff. Bennie Gipson refused to give a statement at this time but both Justin Porter and Cameron Ratcliff gave the following statements.

Cameron Ratcliff stated that he did not have anything to do with the Robbery but he did say he saw Justin Porter point a gun at the victim while he tried to open her car door and heard him say that he wanted her car and to get out. R/YO asked if he was with Bennie and Justin and knew if Justin had a gun prior to them going up to the vehicle and he stated that he knew Justin had the gun, and that they were just playing.

Justin Porter then stated to R/YO that he did in fact point the gun at the victim and demand her vehicle and that they were just playing.

Bennie Gipson gave no statement as to what had occurred or his part in the incident

Prior History:

Justin Porter - None  
Cameron Ratcliff- None  
Bennie Gipson- 1 ADJ- 01FEB92-Shoplifting

Y.O. Gurtatowski A/2 Youth Z-415843

*C. Gurtatowski #7609*

Oct-29-92 01:07pm From-JUV CRT YOUTH

CHICAGO PD

+312 433 6654

T-664 P.002

F-882

95JD15824 PORTER

JUSTIN

0055 AA7372 95JD15824

C001 ROBBERY, ARMED

PORTER JUSTIN  
10/02/1995 1ST COURT DATE

10/06/1995 09:00

0055

0055

PORTER JUSTIN  
10/06/1995 CASE ASSIGNED FROM JUDGE  
SUMNER, THOMAS R 0055

PORTER JUSTIN  
10/06/1995 CASE REASGN INSTAND NEW JUDGE  
SUMNER, THOMAS R 0055 0052

PORTER JUSTIN  
10/06/1995 PUB DEF APPT AS ATTY FOR DEF  
DEMPSEY, JULIA Q 0052

PAGE NO: \_\_\_\_\_  
PAGE 1 OF

ACT DATE: \_\_\_\_\_  
9 FOR CASE 95JD15824

PF3=MENU

PF7=BACK

PF8=FWD

CLEAR=EXIT

10/01/018 P.010/018 F-807

+312 745 6832

From-ALPHA/YOUTH DIV CPD

13:47 10-29-92

000951

PORTER JUSTIN  
10/06/1995 WAIVE FORMAL READING OF PET  
DEMPSEY, JULIA Q 0052

PORTER JUSTIN  
10/06/1995 DENIAL OF CHARGES  
DEMPSEY, JULIA Q 0052

PORTER JUSTIN  
10/06/1995 STIPULATION TO FACTS  
DEMPSEY, JULIA Q 0052

PORTER JUSTIN  
10/06/1995 STIP TO JUVENILE JURISDICTION  
DEMPSEY, JULIA Q 0052

PAGE NO: \_\_\_\_\_ ACT DATE: \_\_\_\_\_ PF3=MENU PF7=BACK PF8=FWD CLEAR=EXIT  
PAGE 2 OF 9 FOR CASE 95JD15824

PORTER JUSTIN  
10/06/1995 RESTRAINING ORDER ENTERED  
DEMPSEY, JULIA Q 0052

PORTER JUSTIN  
10/06/1995 MUTUAL DISCOVERY  
DEMPSEY, JULIA Q 0052

PORTER JUSTIN  
10/06/1995 ORDER AMEND COMPLAINT OR PETIT  
DEMPSEY, JULIA Q 0052

PORTER JUSTIN  
10/06/1995 FOR TRIAL  
DEMPSEY, JULIA Q 0052

PAGE NO: \_\_\_\_\_ ACT DATE: \_\_\_\_\_ PF3=MENU PF7=BACK PF8=FWD CLEAR=EXIT  
PAGE 3 OF 9 FOR CASE 95JD15824



Oct-28-92 01:07pm From-JUV CRT YOUTH CHICAGO PD

+312 433 6654

T-564 P.005/010 F-582

PORTER JUSTIN  
10/06/1995 CONTINUED TO  
DEMPSEY, JULIA Q

0052

0032

01/31/1996 09:00

PORTER JUSTIN  
01/31/1996 DENIAL WITHDRAWN  
DEMPSEY, JULIA Q

0052

PORTER JUSTIN  
01/31/1996 RESPONDENT DEMANDS TRIAL (BDT)  
DEMPSEY, JULIA Q

0052

PORTER JUSTIN  
01/31/1996 ADMISSION (GUILT)  
DEMPSEY, JULIA Q

0052

PAGE NO: ACT DATE: PF3=MENU PF7=BACK PF8=FWD CLEAR=EXIT  
PAGE 4 OF 9 FOR CASE 95JD15824

1-807 810/018 P.013/018

+312 745 6832

From-ALPHA/YOUTH DIV CPD

13:48 Oct-28-92

000954

PORTER JUSTIN  
01/31/1996 ORDER AMEND COMPLAINT OR PETIT  
DEMPSEY, JULIA Q 0052

PORTER JUSTIN  
01/31/1996 FINDING OF DELINQUENCY  
DEMPSEY, JULIA Q 0052

PORTER JUSTIN  
01/31/1996 FINDING BEST INTEREST  
DEMPSEY, JULIA Q 0052

PORTER JUSTIN  
01/31/1996 SOCIAL INVESTIGATION ORDERED  
DEMPSEY, JULIA Q 0052

PAGE NO: \_\_\_\_\_ ACT DATE: \_\_\_\_\_ PF3=MENU PF7=BACK PF8=FWD CLEAR=EXIT  
PAGE 5 OF 9 FOR CASE 95JD15824

PORTER JUSTIN  
01/31/1996 CONTINUED FOR DISP  
DEMPSEY, JULIA Q 0052

PORTER JUSTIN  
01/31/1996 DISMISS A SPECIFIC CHG OR COUNT  
DEMPSEY, JULIA Q 0052

C001

PORTER JUSTIN  
01/31/1996 CONTINUED TO 03/06/1996 09:00  
DEMPSEY, JULIA Q 0052 0052

PORTER JUSTIN  
03/06/1996 MINOR PLACED ON PROBATION  
HAYES, MARSHA D. 0052 00100000

PAGE NO: ACT DATE: PF3=MENU PF7=BACK PF8=FWD CLEAR=EXIT  
PAGE 6 OF 9 FOR CASE 95JD15824

Oct-29-92 01:07pm From-JUV CRT YOUTH CHICAGO PD

+312 422 6654

T-564 P.006/010 F-682

PORTER JUSTIN  
03/06/1996 COMMUNITY SERVICE  
HAYES, MARSHA D. 0052

PORTER JUSTIN  
03/06/1996 CASE ASSIGNED FROM JUDGE  
HAYES, MARSHA D. 0052 0052

PORTER JUSTIN  
03/06/1996 CASE REASSIGNED TO NEW JUDGE  
HAYES, MARSHA D. 0052 0055

PORTER JUSTIN  
03/06/1996 CONTINUED TO 03/05/1997 09:00  
HAYES, MARSHA D. 0052 0055

PAGE NO: \_\_\_\_\_ ACT DATE: \_\_\_\_\_ PF3=MENU PF7=BACK PF8=FWD CLEAR=EXIT  
PAGE 7 OF 9 FOR CASE 95JD15824

Oct-29-92 01:07pm From-JUV CRT YOUTH CHICAGO PD

+312 422 6654

T-564 P.006/010 F-682

03/06/1996 COMMUNITY SERVICE

000957

PORTER JUSTIN  
03/11/1996 NOTICE OF MOTION FILED  
0055

03/05/1997 09:00

0055 NW 00000002

PORTER JUSTIN  
03/11/1996 AFFIDAVIT

0055 0055 LR 00000002

PORTER JUSTIN  
03/11/1996 MOTION

0055 VACATE NW 00000002

PORTER JUSTIN  
03/05/1997 PROBATION TERM SATISFACTORILLY  
MIRANDA, DANIEL R. 0055

PAGE NO: ACT DATE: PF3=MENU PF7=BACK PF8=FWD CLEAR=EXIT  
PAGE 8 OF 9 FOR CASE 95JD15824

Oct-29-02 01:07pm From-JUV CRT YOUTH CHICAGO PD

+312 438 6634

T-564 P.010/010 F-682

PORTER JUSTIN  
03/05/1997 WARDSHIP TEAM  
MIRANDA, DANIEL R.

0055

PORTER JUSTIN  
03/05/1997 PROCEEDINGS CLOSED  
MIRANDA, DANIEL R.

03/05/1997 09:00

0055

0035

\*\*\* END OF DATA FOR 95JD15824 \*\*\*

PAGE NO: \_\_\_\_\_ ACT DATE: \_\_\_\_\_ PF3=MENU PF7=BACK PF8=FWD CLEAR=EXIT  
PAGE 9 OF 9 FOR CASE 95JD15824

Oct-29-02 13:48 From-ALPHA/YOUTH DIV CPD

T-850 P.017/018 F-807

+312 745 6832

000959

10/20/2003 11:20 FAX 3840146

DA CRIMINAL DIVISION

0004

AUG-21-00 15:30 FROM: AREA 04 DETECTIVE-CHICAGO PD

+3127454012

T-720 P 03/03 Jdb-153

271

JUVENILE INFORMATION

6100

10 MORE SUMMARY INFORMATION

NAME: LAST PORTER

FIRST JUSTIN

MIDDLE

CR-JUV CRT CLK RECORD

YD - Y 0283421

FINAL

DATE DISP OFFENSE

IO PD COURT  
NUMBER DISP

21OCT94 CCR

04SEP95 REF ATT ARMED ROBBERY

31JAN96 CK ROBBERY, ARMED

06MAR96 CK ROBBERY, ARMED

22AUG96 ADJ ATTEMPT THEFT

18MAR98 ADJ THEFT

2415843

2415843 FINDING OF DELINQUENT

2415843 MINOR PLACED ON PROB

A616908

C901267

JUV 312-745-6004

BAIKIE, JENNIFER

\*\*\*\*\*  
\*\*\* TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO 0606  
CONNECTION TEL 3838602  
CONNECTION ID  
ST. TIME 06/12 12:28  
USAGE T 05'12  
PGS. SENT 36  
RESULT OK

**OPPS**

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
LISA LUZAICH  
Chief Deputy District Attorney  
Nevada Bar #005056  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )

Plaintiff, )

CASE NO: C174954

-vs- )

DEPT NO: VIII

JUSTIN D. PORTER  
aka Jug Capri Porter  
#1682627

Defendant. )

**STATE'S OPPOSITION TO JUSTIN PORTER'S MOTION TO REMAND CASE TO  
JUVENILE COURT AND CONDUCT A HEARING AS TO WHETHER HE  
SHOULD BE CERTIFIED AS AN ADULT**

DATE OF HEARING: 06/16/08  
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through  
LISA LUZAICH, Chief Deputy District Attorney, and hereby submits the attached Points

000961



**Pages 962-963**

**Intentionally**

**Left**

**Blank**

FILED

JUL 1 10 21 AM '08

CRAIG R. S.  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ORIGINAL

THE STATE OF NEVADA,

PLAINTIFF,

VS.

JUSTIN JUG CAPRI PORTER,

DEFENDANT.

CASE NO: C174954

REPORTER'S TRANSCRIPT

OF

DEFT'S MOTION TO REMAND CASE TO JUVENILE  
COURT/DEFT'S MOTION TO SEVER COUNTS XXX, XXXI AND  
XXXII

BEFORE THE HONORABLE JUDGE LEE A. GATES  
DISTRICT COURT JUDGE  
DEPARTMENT VIII

DATED WEDNESDAY, JUNE 18, 2008

FOR THE PLAINTIFF: ELISSA LUZAICH, ESQ.

FOR THE DEFENDANT: JOSEPH K. ABOOD, ESQ.  
CURTIS BROWN, ESQ.

REPORTED BY: SONIA L. RILEY, CCR NO. 727

SONIA L. RILEY, INC.

(702) 526-1298

RECEIVED  
JUL 6 12 01 PM  
CLERK OF THE COURT

000964

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 ELISSA LUZAICH, ESQ.  
4 DISTRICT ATTORNEY'S OFFICE  
5 200 Lewis Avenue  
6 Las Vegas, Nevada 89155  
7 (702) 671-2501

8 FOR THE DEFENDANT:

9 JOSEPH K. ABOOD, ESQ.  
10 CURTIS BROWN, ESQ.  
11 PUBLIC DEFENDER'S OFFICE  
12 309 S. Third Street  
13 Suite 226  
14 Las Vegas, Nevada 89155  
15 (702) 455-4685

16 DEFENDANT PRESENT

17 \* \* \* \* \*

18

19

20

21

22

23

24

25

1 LAS VEGAS, NEVADA; WEDNESDAY, JUNE 18, 2008

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

3 \* \* \* \* \*

4 THE COURT: Mr. Abood?

5 MR. ABOOD: Yes, your Honor.

6 THE COURT: I'm listening.

7 MR. BROWN: Do you want him up here,  
8 Judge? Do you want Mr. Porter up here?

9 THE COURT: Whatever he wants.

10 He can stay there.

11 What are we waiting on?

12 MR. ABOOD: We're ready when your Honor  
13 is.

14 THE COURT: I've been waiting for you for  
15 30 minutes.

16 (Laughter.)

17 MR. ABOOD: Judge, we filed a couple of  
18 motions in this case. The first motion we filed was  
19 a motion to remand the case back to juvenile court  
20 and conduct a hearing as to whether or not Justin  
21 should be certified as an adult. I know your Honor  
22 has read the motion, but our main thrust is, Judge,  
23 that according to statute, one of the elements would  
24 have to have been that Justin had been previously  
25 adjudicated of what would have been a felon had he

1 been an adult in an offense that he committed in  
2 Chicago. Now, the only thing we really know about  
3 his adjudication in Chicago on that case is it ended  
4 up being adjudicated as a theft according to the  
5 paperwork that the State attached in their  
6 opposition to our motion. That's all we know,  
7 Judge. If that offense is not a felony, then Justin  
8 cannot be just summarily found to be an adult and  
9 taken out of the juvenile system for purposes of the  
10 offenses that he's facing which are going to trial  
11 in this particular case. That's why we asked for a  
12 hearing to make a determination whether or not  
13 Justin actually could or whether or not Justin  
14 actually qualifies for treatment in adult court or  
15 whether or not this was a case that was better dealt  
16 with in juvenile court based on that adjudication in  
17 Chicago.

18           THE COURT: State, what's your response to  
19 that?

20           MS. LUZAICH: Well, it was my  
21 understanding that it was a felony.

22           THE COURT: I know.  
23 What was that based on?

24           MS. LUZAICH: I hate to say it may have  
25 been based on a conversation. My understanding may

1 have been based on a conversation that I had with  
2 somebody as opposed to documents that I had in my  
3 hand.

4           THE COURT: The requirement for those  
5 sexual assaults I think is that he needs to have  
6 been adjudicated for a crime that would have been a  
7 felony before or a previous sexual assault, so we  
8 need to find out whether or not that was actually  
9 officially considered a felony. If it was theft,  
10 like a misdemeanor theft or a petty larceny, then  
11 that wouldn't qualify. If it was grand larceny, it  
12 would. Maybe we just need to try to get that  
13 information, something official from Chicago.

14           MR. BROWN: Your Honor, we'll try and make  
15 efforts as well with the defense attorney system  
16 that he had in place at the time. I don't know how  
17 the records will hold up, but I think that that is a  
18 critical issue that needs to be resolved.

19           THE COURT: In light of this motion,  
20 that's true, but that doesn't have any effect on the  
21 other charges.

22           MR. BROWN: Well, it really would only be  
23 the one other charge. It has affect on everything,  
24 I think, except the homicide charge, which I agree  
25 with the Court would automatically, but when they

1 went to Chicago and originally conducted their  
2 investigation, they clearly were there on the  
3 charges other than the homicide, at least that's  
4 what they officially said in their reports, and they  
5 never announced and never informed anybody they were  
6 there on that until they got back to Las Vegas.

7 THE COURT: That's fine.

8 Miss Luzaich, how much time do you need?

9 MS. LUZAICH: Calendar call is Monday or a  
10 week from Monday.

11 THE COURT: We can work around that.

12 MS. LUZAICH: Hopefully I will know before  
13 that.

14 THE COURT: Let's continue this to  
15 calendar call.

16 You had another motion on, didn't you?

17 MR. ABOOD: Yes, your Honor.

18 Your Honor, we filed a motion to sever.  
19 The basis of that motion, Judge -- again, it's  
20 spelled out in our motion, but our biggest concern,  
21 your Honor, is that there are a number and a series  
22 of crimes that Justin is charged with over a period  
23 of time, and if you believe the State's theory, it  
24 culminates in a homicide. Now, this homicide, your  
25 Honor, really has no connection at all to any of the

1 other offenses. It's got a character all its own,  
2 and the evidence concerning the homicide is  
3 substantially thinner, very slim than any of the  
4 other evidence the State has to introduce concerning  
5 the other counts. Now, our concern is that if that  
6 homicide is tried together with the other counts  
7 where the evidence tends to be somewhat stronger,  
8 that the jury, because of the sheer number of counts  
9 in the case, is simply going to conclude that if the  
10 State may have met their burden concerning some of  
11 the other counts based on the way they're presenting  
12 their case, we might as well just assume that he's  
13 guilty of the homicide as well. That's the danger,  
14 and that's our biggest concern.

15           For that reason, we're asking your Honor  
16 to sever the homicide which has, you know, very  
17 little evidence to support it from the other counts.  
18 Frankly, Judge, the homicide case can be tried in  
19 less than a week. We proposed to your Honor that we  
20 just try that case first and then the other counts  
21 we can just reset and maybe something will happen,  
22 maybe it won't, Judge, but the nature of our request  
23 is that it would be unfair to our client concerning  
24 that homicide count, the most serious of these  
25 counts, to try it together with the other counts.



1           THE COURT: Well, what about Count XXXI?  
2 Those counts -- that's an attempt robbery where a  
3 weapon was used, I think, as opposed to the other  
4 ones where there were sexual assaults and the facts  
5 of those other cases.

6           MR. ABOOD: You're right, your Honor, it  
7 is, but it's removed in time. It would be one thing  
8 if it occurred on the same night.

9           THE COURT: I don't know.

10          Miss Luzaich --

11          MS. LUZAICH: The homicide --

12          THE COURT: -- why do you have all these  
13 cases together?

14          MS. LUZAICH: The homicide is not such a  
15 poor case in light of the defendant's confession  
16 that has already been ruled admissible. He's  
17 confessed to committing all of these offenses.

18          THE COURT: I understand that.

19          MS. LUZAICH: That being said, what it is  
20 is a series of home invasion robberies where he  
21 kicks in the door, goes in, tries to take stuff, and  
22 then the result of what happens while he's inside  
23 differs depending on who is in there. When there  
24 were women in there, he sexually assaulted them.  
25 When a man was in there, he killed him, but the

1 whole series of incidents --

2           THE COURT: I know, but how does this hurt  
3 you by separating this murder from the rest of the  
4 sexual assaults? How are you prejudiced?

5           MS. LUZAICH: That's not the issue,  
6 necessarily.

7           THE COURT: It's their issue. It's their  
8 issue. You just go and put -- every crime someone  
9 commits, you put them all together and try them all  
10 together.

11           What rule is that?

12           MS. LUZAICH: The rule that says that all  
13 the crimes that are related to each other can be  
14 tried together under the statute, and they are all  
15 related to each other because he enters all of these  
16 residences in about the same way, and then evidence  
17 that is found within --

18           THE COURT: You're trying to show common  
19 design scheme?

20           MS. LUZAICH: Yes. Additionally, evidence  
21 that is --

22           THE COURT: I think it's more prejudicial  
23 for you to have this murder with the rest of these  
24 sexual assaults. The Court is going to grant the  
25 motion to sever.

1 MR. ABOOD: Thank you, your Honor.

2 THE COURT: However, I'm not going to try  
3 the murder first. I'm going to try all the other  
4 ones first and get all the big ones out of the way.

5 MR. BROWN: Thank you, Judge.

6 THE COURT: Unless Miss Luzaich has an  
7 objection to that.

8 MS. LUZAICH: No, not right now I do not.

9 THE COURT: Okay.

10 MR. ABOOD: Thank you very much, your  
11 Honor.

12 MR. BROWN: We'll be back on calendar call  
13 for the juvenile issues?

14 THE COURT: Yes, so we can see when we're  
15 going to go to trial.

16 MR. BROWN: Okay, Judge. Thank you.

17 (WHEREUPON, THE PROCEEDINGS WERE  
18 CONCLUDED.)

19 \* \* \* \* \*

20

21

22

23

24

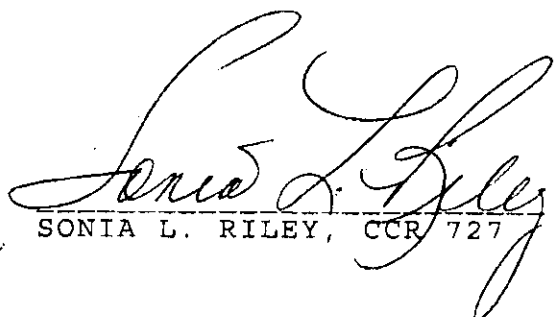
25

REPORTER'S CERTIFICATE

STATE OF NEVADA)  
:SS  
COUNTY OF CLARK)

I, SONIA L. RILEY, CERTIFIED COURT  
REPORTER, DO HEREBY CERTIFY THAT I TOOK DOWN IN  
STENOTYPE ALL OF THE PROCEEDINGS HAD IN THE  
BEFORE-ENTITLED MATTER AT THE TIME AND PLACE  
INDICATED, AND THAT THEREAFTER SAID STENOTYPE NOTES  
WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY  
DIRECTION AND SUPERVISION AND THE FOREGOING  
TRANSCRIPT CONSTITUTES A FULL, TRUE AND ACCURATE  
RECORD TO THE BEST OF MY ABILITY OF THE PROCEEDINGS  
HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO  
SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF  
CLARK, STATE OF NEVADA.

  
SONIA L. RILEY, CCR 727

ORIGINAL

32

ORDR

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
LISA LUZAICH  
Chief Deputy District Attorney  
Nevada Bar #005056  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

FILED

JUL 3 9 33 AM '08

*Clark County*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN JUG CAPRI PORTER,  
#1682627

Defendant.

Case No. C174954  
Dept No. VIII

ORDER GRANTING DEFENDANT'S MOTION TO SEVER COUNTS XXX, XXXI,  
XXXII CHARGING MURDER AND RELATED CRIMES AGAINST GYALTZO  
LUNGTOK, FROM THE REMAINING COUNTS IN THE SECOND AMENDED  
INFORMATION

DATE OF HEARING: 06/18/08  
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the  
18th day of June, 2008, the Defendant being present, represented by CURTIS BROWN and  
JOSEPH ABOOD, Deputy Public Defenders, the Plaintiff being represented by DAVID  
ROGER, District Attorney, through LISA LUZAICH, Chief Deputy District Attorney, and  
the Court having heard the arguments of counsel and good cause appearing therefor,

CLERK OF THE COURT

JUL 03 2008

RECEIVED

1 IT IS HEREBY ORDERED that the Defendant's above-entitled motion, shall be, and  
2 it is granted.

3 DATED this 2 day of ~~June~~<sup>July</sup>, 2008.

4  
5  
6   
DISTRICT JUDGE 

7  
8 DAVID ROGER  
9 DISTRICT ATTORNEY  
Nevada Bar #002781

10   
11 LISA LUZAICH  
12 Chief Deputy District Attorney  
13 Nevada Bar #005056

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 mmw/SVU

ORIGINAL

FILED

Nov 6 5 21 PM '08

CLERK OF THE COURT

ORDR

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
LISA LUZAICH  
Chief Deputy District Attorney  
Nevada Bar #005056  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JUSTIN D. PORTER,  
#1682627

Defendant.

Case No. C174954  
Dept No. VIII

ORDER DENYING DEFENDANT'S MOTION TO REMAND TO JUVENILE COURT

DATE OF HEARING: 10/13/08  
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 13th day of October, 2008, the Defendant not being present, REPRESENTED BY JOSEPH ABOOD, Deputy Public Defender, the Plaintiff being represented by DAVID ROGER, District Attorney, through LISA LUZAICH, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and having been under advisement and the Court make a decision on the 15th day of October, 2008, and good cause appearing therefore,

//

//

//

RECEIVED

NOV 06 2008

CLERK OF THE COURT

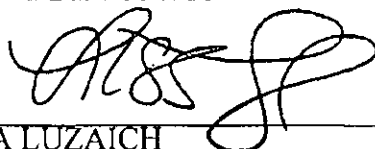
1 IT IS HEREBY ORDERED that the Defendant's Motion to Remand to Juvenile  
2 Court, shall be, and it is denied.

3 DATED this 5 day of <sup>Nov</sup> October, 2008.

4  
5  
6   
DISTRICT JUDGE<sub>n</sub>

7 for Hon. Lee Hanes

8 DAVID ROGER  
9 DISTRICT ATTORNEY  
Nevada Bar #002781

10   
11 LISA LUZAICH  
12 Chief Deputy District Attorney  
13 Nevada Bar #005056  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

mmw/SVU



● ORIGINAL ●

73

1 PHILIP J. KOHN, PUBLIC DEFENDER  
2 NEVADA BAR NO. 0556  
3 309 South Third Street, Suite 226  
4 Las Vegas, Nevada 89155  
5 (702) 455-4685  
6 Attorney for Defendant

FILED

2009 APR 13 P 3:25

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

*Ed [Signature]*  
CLERK OF THE COURT

7 THE STATE OF NEVADA, )

8 Plaintiff, )

9 v. )

10 JUSTIN JUG CAPRI PORTER, )

11 Defendant. )

CASE NO. C174954X

DEPT. NO. VI

DATE: April 27, 2009  
TIME: 8:30 a.m.

12 MOTION IN LIMINE TO PROHIBIT THE STATE FROM REFERRING TO THE  
13 DECEDENT, GYALTSO LUNGTOK, AS A FORMER "MONK"

14 COMES NOW, the Defendant, JUSTIN PORTER, by and through JOSEPH K. ABOOD  
15 and CURTIS S. BROWN, Deputy Public Defenders and hereby submits this motion in limine to  
16 prohibit the state from referring to the decedent, Gyaltsso Lungtok, as a former "monk".

17 This Motion is made and based upon all the papers and pleadings on file herein, and oral  
18 argument at the time set for hearing this Motion.

19 DATED this 13 day of April, 2009.

21 PHILIP J. KOHN  
22 CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

23 By *[Signature]*  
24 CURTIS S. BROWN, #4546  
25 Deputy Public Defender

By *[Signature]*  
JOSEPH K. ABOOD, #4501  
Deputy Public Defender

RECEIVED

APR 13 2009

CLERK OF THE COURT

28

CMC

000981

## STATEMENT OF FACTS

Justin Porter is alleged to have killed a man named Gyaltsso Lungtok after kicking in his apartment door and being confronted by the victim. During the investigation of this case, a witness named Jay Cleveland, a friend of Mr. Lungtok, spoke of the victim as aspiring to be a Monk. The victim was Chinese, living in India. While in India he attendtion "Monk school". He left India and decided to come to Las Vegas and live a "Norman life". Not only is there no evidence that the victim was a monk, but, even if the State could establish that, it is irrelevant and/or highly prejudicial.

## LAW

NRS 48.015 states:

### **48.015. "Relevant evidence" defined.**

As used in this chapter, "relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

The suggestion that Mr. Lungtok may have been a monk years ago in India, if true, has not relevance at all to the State's case, and would only be used by the State to elicit sympathy or place Mr. Porter in a very bad light. The potential prejudice of this unsupported fact is clearly no justified based on its irrelevancy to the facts in issue.

### **NRS 48.025. Relevant evidence generally admissible; irrelevant evidence inadmissible.**

1. All relevant evidence is admissible; except:

- (a) As otherwise provided by this Title;
  - (b) As limited by the Constitution of the United States or of the State of Nevada; or
  - (c) Where a statute limits the review of an administrative determination to the record made or evidence offered before that tribunal.
2. Evidence which is not relevant is not admissible.

1 Finally, if the State is able to show any relevance whatsoever in referring to the victim as a  
2 prior monk, its probative value is substantially outweighed by the danger of unfair prejudice of  
3 confusion of the issues, or of misleading the jury.

4 The defense will be placed in a position to refute the proposition that the victim was ever  
5 actually a monk as there is no evidence other than what witness Jay Cleveland alleges that he  
6 heard from the victim concerning his life in India. This would clearly be a waste of time, and be  
7 unrelated to any material issue in this case.

8  
9 **48.035 Exclusion of relevant evidence on grounds of prejudice, confusion or waste of**  
10 **time.**

11 1. Although relevant, evidence is not admissible if its probative value is substantially  
12 outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.

13 2. Although relevant, evidence may be excluded if its probative value is substantially  
14 outweighed by considerations of undue delay, waste of time or needless presentation of cumulative  
evidence.

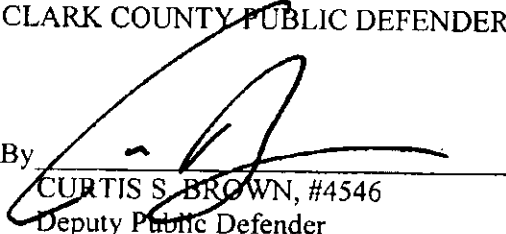
15 3. Evidence of another act or crime which is so closely related to an act in controversy  
16 or a crime charged that an ordinary witness cannot describe the act in controversy or the crime  
17 charged without referring to the other act or crime shall not be excluded, but at the request of an  
interested party, a cautionary instruction shall be given explaining the reason for its admission.

18 **CONCLUSION**

19 Based on the foregoing, the defense respectfully requests that your Honor order the State to  
20 instruct their witness not to testify in any way that the victim in this case is or ever was a monk.  
21

22 DATED this 13 day of April, 2009.

23  
24 PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

25  
26  
27 By   
CURTIS S. BROWN, #4546  
28 Deputy Public Defender

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By   
JOSEPH K. ABOOD, #4501  
Deputy Public Defender

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

NOTICE OF MOTION

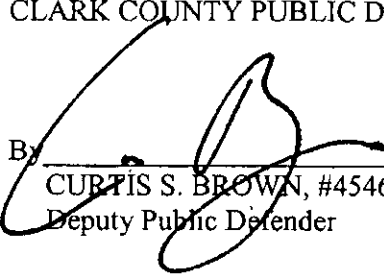
TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

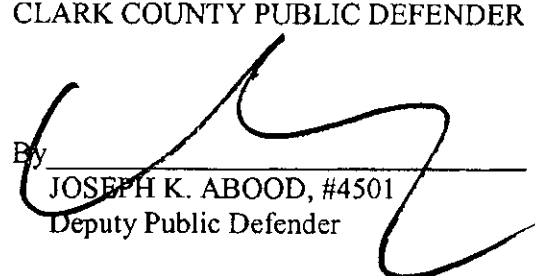
YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 22<sup>nd</sup> day of April, 2009, at 8:30 a.m..

DATED this 13 day of April, 2009.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

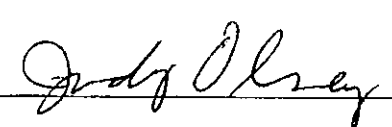
By   
CURTIS S. BROWN, #4546  
Deputy Public Defender

By   
JOSEPH K. ABOOD, #4501  
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion in Limine to Prohibit the State from referring to the decedent, Gyaltsu Lungtok, as a former "Monk" is hereby acknowledged this 13<sup>th</sup> day of April, 2009.

CLARK COUNTY DISTRICT ATTORNEY

By 

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

No. 54866

## 9

0  
1  
2

DAVID ROGER  
Clark County District Attorney  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155

2  
3  
4

## 6

7  
8

9

HOWARD S. BROOKS  
PHILIP JAY KOHN

1  
2

3  
4  
5

6  
7  
8